

DEED OF SALE



MEMORANDUM OF AGREEMENT ENTERED INTO AND BETWEEN

THE MUNICIPAL COUNCIL OF THE MUNICIPALITY OF WINDHOEK

herein represented by **ELLY SHOOMBE SHIPIKI** as the Manager: Property Management acting on behalf of the Chief Executive Officer in terms of section 27(5) of Act 23 of 1992 and **KENNETH UIRAB** as Section Head: Property Sales and Acquisitions acting on behalf of the chairperson of the Management Committee in terms of section 31A(a) of act 23 of 1992

(Hereinafter referred to as the "SELLER")

AND

(i)
(Hereinafter in this Agreement referred to as the "PURCHASER")

Identity No:

Marital Status:

Residential Address:

Postal Address:

Telephone: (w).....(h)

Cell Phone

Employer Address

Next of Kin or Other Contact Address:

WHEREAS

The SELLER agrees to sell to the PURCHASER who agrees to purchase the under mentioned property (herein after called the Property) upon the following terms and conditions:

NOW THEREFORE the Parties hereto agree as follows:

1.

DESCRIPTION OF PROPERTY

The SELLER hereby sells to the PURCHASER who hereby purchases the following property known as

CERTAIN ERF
ACADEMIA
EXTENSION 1

SITUATE in the municipal area of Windhoek, Khomas Region, Registration Division "K"

MEASURING **SQUARE METRES** in extent as will more fully appear from a General Plan and/or Diagram in possession of the SELLER (hereinafter referred to as the "PROPERTY"), subject to the following terms and conditions:

HELD by Deed of Transfer Number

2.

PURCHASE PRICE AND METHOD OF PAYMENT

The purchase price is the sum of **N\$..... (EXCLUDING VAT)** payable free of any deductions whatsoever by the PURCHASER to the SELLER as follows:

- 2.1 The purchase price shall be paid to the SELLER against registration of transfer of the property into the name of the PURCHASER, which purchase price shall be secured by a guarantee or guarantees (within 30 days) acceptable to the SELLER's Conveyancers alternatively cash and which shall be lodged with the SELLER's Conveyancers or if paying cash (within 7 days), after the date of signature of this agreement by the SELLER. Any such cash paid by the PURCHASER shall be held by the Conveyancers in accordance with the provisions of clause 2.2 herewith.
- 2.2 Not later than the 27th of October 2014, upon signature of this agreement by the PURCHASER, the PURCHASER shall pay a deposit in the sum of **N\$10,000-00** to DR WEDER, KAUTA & HOVEKA INC. The Purchaser shall pay a further sum of **N\$3,000.00** to the seller not later than the 17th October 2014 at the Seller's offices. Any direct deposit shall be invested in an interest bearing trust account. Payments to the Conveyancers shall be made 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

Or

FIRST NATIONAL BANK LTD – INDEPENDENCE AVENUE

TRUST ACCOUNT NO: 620 1677 2578

BRANCH CODE: 28 19 72

On date of registration of transfer the purchase price shall be paid to the SELLER and the interest accrued to the PURCHASER.

All payments in terms hereof shall further be made free of exchange at the address of the Conveyancers as appointed in clause 6 hereof or at such other address or to such a person as the SELLER may nominate in writing.

3.

METHOD OF PAYMENT

3.1 The total purchase price totalling **N\$.....**
(..... **THOUSAND NAMIBIAN DOLLARS**), together with a fee of N\$3,000-00 (**THREE THOUSAND NAMIBIAN DOLLARS**) is payable in cash or per bank guaranteed cheque within seven (7) days from date of sale: Provided that should payment be late the SELLER may grant extension of time if payment is made after 7 days from the date of sale, interest thereon, at the rate of twenty per cent (20 %) per annum is payable. The N\$3,000.00 must be paid to the Seller's offices as a deposit for Rates and Taxes amongst others.

OR

3.2 **Deposit (clause 2.2) pending submission of a Bank Guarantee [Once off method of payment only to approved Purchasers]**

The prescribed non-refundable amount of **N\$10,000-00 (Ten Thousand Namibia Dollars)** is payable against signing of this Agreement by no later than the 27th of October 2014.

Where the deposit (clause 2.2) has been paid, the total purchase price, together with interest thereon, calculated at the rate of 15 % (fifteen percent), calculated monthly in advance on an annuity basis from the date of sale of the PROPERTY to payment thereof, shall be payable on/or before date of registration of the transfer of the PROPERTY into the name of the PURCHASER. The PURCHASER undertakes to provide to the SELLER, within 30 (thirty) days from the date of sale, a Bank or Financial Institution Guarantee, payable against registration of transfer, for the full purchase price and interest as well as all amounts due to the SELLER in terms of this Agreement.

4.

INCREASE OR DECREASE IN INTEREST

- 4.1 Should the prime overdraft rate of the SELLER's Bank, First National Bank or such financial institution appointed as the SELLER's Bank from time to time, be increased or decreased, the interest rate as set out in clause 3.1 and 3.2, will be increased or decreased with the same percentage increase or decrease with effect of the first day of the month following such increase or decrease.
- 4.2 The PURCHASER hereby agrees in favour of the SELLER that rendering of an account by the SELLER reflecting the new interest rate will be sufficient notice of such increase or decrease.
- 4.3 The PURCHASER hereby further agrees in favour of the SELLER that a certificate certified by the Strategic Executive: Finance of the SELLER will be prima facie proof of the correctness of such increase or decrease.

5.

COSTS OF TRANSFER:

The PURCHASER shall pay all transfer costs incurred in respect of the transfer of the property, including Transfer Duty, Stamp Duty on the Transfer Deed and the costs of this Agreement, which amounts shall be paid immediately upon request of the Conveyancers appointed in Clause 6 hereof.

6.

TRANSFER

Transfer of the property shall be passed by the Conveyancers, **DR WEDER KAUTA & HOVEKA INCORPORATED**, of P O Box 864, WKH House, **Ausspannplatz, Jan Jonker Rd, Windhoek (GJ LIGTHELM)** and shall be given and taken upon the PURCHASER having complied with the payments

due in terms of clauses 2, 3 and 4 hereof, and as soon as possible after the fulfillment of the conditions mentioned in clauses 7 and 8 hereof. As soon as the SELLER tenders transfer the PURCHASER will be compelled to take all necessary steps and to perform all other actions in order to take transfer without any delay.

7.

CONDITION PRECEDENT

- 7.1 It is a condition precedent to this Agreement that if the applicable deposit, deposit instalment, payment or applicable guarantee or service account amounts, as set out above **“Payments”** is not made or submitted timeously, this Agreement will not commence but will be null and void.
- 7.2 Notwithstanding the provisions of clause 7 (DATE OF SALE AND OCCUPATION), occupation shall not be given prior to the fulfilment of the applicable condition.
- 7.3 The SELLER in its sole discretion may apply the provisions hereof or grant extension of time for payment/submission of a guarantee, subject to payment of interest in the case of both payment methods. Should the SELLER elect to so grant extension of time it shall not derogate from the condition precedent created in this clause.

8.

CONDITION PRECEDENT APPLICABLE TO PURCHASER

- 8.1 It is a further condition precedent to this Agreement that the PURCHASER:
- 8.1.1 must have a sound credit rating from the SELLER, if investigated, and have no previous defaulting erf sales records with the SELLER; and

8.1.2 has the financial means to acquire the PROPERTY: Provided that, unless the purchase price is paid in cash, within seven (7) days of sale the PURCHASERS buying with guarantees undertakes:

8.1.3 during registration for the purpose of an offer; or

8.1.4 against signing the Deed of Sale; or

8.1.5 within 30 days from the date of sale,

to submit an acceptable bank guarantee to the conveyancers for transfer of the property.

9.

FAILURE TO ELECT METHOD OF PAYMENT

Should sub-clauses 3.1 and 3.2 of this Agreement not be properly completed or should the methods of payment, which is not applicable, not be properly struck out and initialled, then in such event the method of payment contained in clause 3.1 shall be applicable. The SELLER shall be entitled to claim payment of the total purchase price plus interest at the rate of twenty per cent (20 %) per annum thereon, but subject to clause 3.1, calculated from date of sale to date of payment.

10.

BANK CHARGES, PLACES AND ALLOCATION OF PAYMENT

All payments due in terms of this Agreement are to be made in terms of clause 6 at the offices of DR WEDER, KAUTA AND HOVEKA or at such place or places indicated from time to time in writing by the SELLER to the PURCHASER. Payments will in the first instance be employed in the payment of interest or interest in arrear and thereafter to reduce capital debt.

All Payments due in terms of this Agreement shall be made free of bank charges, commission, VAT (where applicable), or any other tax or levy which may become payable to the Government or the Khomas Regional Council or an electricity distribution company to be established. The PURCHASER shall not be entitled to withhold, defer, set-off, or make any deduction due to the SELLER, whether or not the SELLER is indebted to the PURCHASER or in breach of any obligation to the PURCHASER.

11.

DATE OF SALE AND OCCUPATION

- 11.1 For purposes of this Agreement, but subject to the provisions of clauses 2, 3, 4, 7 and 8, the **date of sale** shall be the 16th of October 2013:
- 11.2 As from which date the PURCHASER takes possession of the PROPERTY, accepts all risks in respect thereof and shall be entitled to all rents and profits accruing therefrom.
- 11.3 From the date of sale, the PURCHASER shall also be liable for all levies, rates and taxes due in respect of the PROPERTY, whether these are due to the Government, the Regional Council, the Municipality, regional electricity company or whomsoever and regardless of whether such moneys are payable pursuant or according to legislation or resolution of the instance to which it is payable.

12.

RATES AND TRANSFER DUTY

- 12.1 If the sum of N\$3,000-00 is paid by the PURCHASER in terms of clause 2.2 and 3.1 is paid to the Seller's attorney they shall transfer to the SELLER as payment in terms of clause 11.3 above.

- 12.2 To facilitate the collection of such monies the PURCHASER undertakes; from the date of sale until the PROPERTY has been entered in the provisional valuation roll of properties in the municipal area of Windhoek, to pay to the SELLER an amount or amounts equal to the assessment rates which would have been levied on the PROPERTY if its purchase price had been so entered in the aforementioned provisional valuation roll from date of sale.
- 12.3 The amount levied in lieu of assessment rates in respect of the first period shall be calculated proportionately as from the date of sale to the end of the year, half-year, quarter or month in respect of which assessment rates are normally levied.
- 12.4 The provisional municipal valuation reflected in clause 12.1 shall be deemed to be the valuation of the property for the time being. Should the official valuation reflected in the next interim or main Valuation Roll be less or more than the provisional valuation, the SELLER shall refund or the PURCHASER shall pay in the difference between the rates calculated on the provisional valuation and the rates calculated on the interim or main Valuation Roll as the case may be.
- 12.5 Transfer duty is payable on the purchase of the PROPERTY by the PURCHASER in terms of the Transfer Duty Act 14 of 1993. Such transfer duty is payable within 7 or 30 days from date of sale by the PURCHASER to the Permanent Secretary of the Ministry of Finance. The purchaser should note that section 4 of Act 14 of 1993 provide for heavy penalties in the case of late payment.

13.

SANITATION, WATER AND ELECTRICITY

Notwithstanding the provisions of Clause 7 hereof, the PURCHASER shall as from date of sale be liable for payment of the basic tariffs for sanitation services, water, electricity, public open space or street cleaning and refuse services available to the

PROPERTY. The SELLER can, however, give no guarantee on the time of availability of telecommunication or electricity services to the PROPERTY. The PURCHASER should note that electricity provision to the PROPERTY may be taken over by the the electricity distribution company to be established in which event the provision of electricity must be arranged with such company.

14.

IMPROVEMENTS

- 14.1 The PURCHASER binds him-, her-, itself to erect a building or buildings on the PROPERTY within **2 (two)** years from date of sale of which the value of the main building, outbuildings excluded, as calculated by the Manager: Valuation Services of the SELLER, shall not be less than the minimum building value specified for a property situated in the relevant township or zoning as set out in clause 39 of the Town Planning Scheme of Windhoek or as determined by the SELLER or any law from time to time. Such building value shall be expressed as a factor of the ground value of the PROPERTY as it is entered into the Valuation Roll of the SELLER from time to time when assessment rates are levied against the PROPERTY.
- 14.2 Should the PURCHASER fail to carry out the terms of this clause, the SELLER shall have the right to demand payment of and to collect from the PURCHASER and his/her its successor in title, annually, half-yearly, quarterly, or monthly, as the case may be, an amount which is equal to the improvement assessment rates which would have been levied if the terms of this clause had been complied with as a rate in terms of section 73(4)(b) as well as a penalty rate on the unimproved property under section 76A of the Local Authorities Act, 1992 (Act 23 of 1992) as amended. The aforesaid amount is payable from the day following the date on which the building or buildings should have been completed in terms of this clause. The levy and collection of rates in terms of this clause shall not prejudice the rights of the SELLER to apply any other clause of this Agreement.

- 14.3 Should the PURCHASER, prior to having paid the full purchase price of the PROPERTY and any amounts outstanding in terms of this Agreement, erect any improvements on the PROPERTY, without first having obtained the SELLER's express written approval thereto and irrespective of whether building plans have been approved by or on behalf of the SELLER, then such improvements, shall become the property of the SELLER without any compensation being payable in respect of same by the SELLER in the event that this Agreement may be cancelled in terms thereof: Provided that at the sole option and discretion of the SELLER, the SELLER shall have the right to demand that the PURCHASER remove such improvements at his/her/its cost.
- 14.4 Should the PURCHASER, prior to having paid the full purchase price of the PROPERTY and any amounts outstanding in terms of this Agreement, wish to apply to improve or to erect improvements or for the subdivision of the PROPERTY, the SELLER'S prior written approval and conditions pertaining to the same must first be obtained. In such event the PURCHASER may not commence with any building operations, excavation of the land or the erection of improvements on the PROPERTY or the marketing of the project, before such payment of the full purchase price under clause 2, 3.1 or 3.2 have been effected.

15.

BOUNDARY BEACONS

- 15.1 Subject to the provisions of this clause, the SELLER accepts the responsibility, after the date of sale, through its registered land surveyor to point out, free of charge, once only, to the PURCHASER the surveyor beacons.
- 15.2 The pointing out of the surveyor beacons is a right in favour of the PURCHASER only and may not be ceded to a successor/s-in-title or name and will only be undertaken, if-
- 15.2.1 The PURCHASER applies in writing to the SELLER's Department dealing with the sale of land;

- 15.2.2 The application is made in writing after approval of the PURCHASER's Building Plans,
 - 15.2.3 The application is made at least thirty days prior to the start of the construction of the PURCHASER's improvements;
 - 15.2.4 The application is made by the PURCHASER him-, her- or itself or his or her or its representative who is in possession and who has submitted together with the application a special power of attorney to act on such PURCHASER's behalf; and
 - 15.2.5 No excavations or mechanical clearing of the ground have taken place.
- 15.2 The PURCHASER takes note that after the pointing out of the beacons or if any excavations or mechanical clearing of the ground have taken place, the SELLER accepts no responsibility for pointing out or replacing surveyors' pegs or beacons and the PURCHASER or its successor in title must thereafter appoint his, her or its own professional surveyor to point out or replace the surveyor beacons.
- 15.3 The PURCHASER and its successor in title bind itself to keep in good repair, visible and maintain the surveyor's boundary beacons of the PROPERTY in such manner that the boundaries will always be distinguishable as prescribed under the Survey Act of 1994.
- 15.4 Should the PURCHASER construct improvements in or on the PROPERTY or in or on a location using incorrect beacons (whether beacons were pointed out or not) or if a PURCHASER elects to start with excavations or mechanical clearing of the ground or the erection of improvements, without the beacons having been pointed out, the risk of using incorrect beacons and any ensuing

encroachment on neighbouring properties, would be for the risk and account of the PURCHASER.

16.

CANCELLATION

Should the PURCHASER, after the SELLER granted extension of time in terms of clause 3, fail on due date submit the necessary guarantee or fail to pay the purchase price or any portion thereof, or commit any breach of any of the terms of this Agreement, the SELLER shall, notwithstanding the condition precedent created in clause 7 and 8 above, be entitled at its option -

- 16.1 immediately to claim payment of the whole balance of the purchase price and interest due by the PURCHASER under this Agreement, or
- 16.2 after seven (7) days' notice given personally or by registered post to the PURCHASER of its intention to do so, to cancel the sale hereby made; and
- 16.3 upon the expiration of such notice the PURCHASER shall, if he/she/it had taken possession of the PROPERTY, immediately vacate the PROPERTY and give the SELLER peaceful and legal possession thereof, and the SELLER shall be entitled to forthwith, and without reference to the PURCHASER, alienate the PROPERTY to a third party.
- 16.4 The SELLER shall furthermore be entitled to claim a penalty amount from the PURCHASER, which may at the SELLER'S option, be:
 - 16.4.1 to retain all or part of such sum or sums of money as the PURCHASER may have paid under clause 2 or 3 of this Agreement or the Auction or Tender conditions (where applicable), as a consideration for the payment of the purchase price or interest on it; or

16.4.2 to claim an amount equal to 5% of the purchase price as set out in clause 2 and 3, or

16.4.3 to claim the difference between the purchase price as set out in clause 2 and 3 the resale price, should the resale price be less than the purchase price, plus the costs of re-advertising and any other charges incurred.

Provided however that the SELLER in its sole discretion as a further option hereby reserves the right to claim damages from the PURCHASER.

17.

CONDITIONS AND LIMITATIONS APPLICABLE

17.1 The PROPERTY is sold subject to the conditions of this Agreement, any servitudes or notarial deeds which may be registered against it and all such conditions and limitations as the State has or may impose by virtue of the provisions of the Townships and Division of Lands Ordinance, 1963 (Ordinance 11 of 1963) or by virtue of the provisions of the Townships Ordinance, 1928 (Ordinance 11 of 1928).

17.2 Without prejudice to the foregoing this sale shall further be subject to the conditions of the Town Planning Scheme of Windhoek promulgated in terms of the Town Planning Ordinance 18 of 1954 and the PROPERTY may only be used in accordance with the said Scheme.

17.3 For the purposes hereof the PURCHASER acknowledges that the PURCHASER is aware of and understands the restrictions and conditions imposed in terms of the aforesaid Ordinances and Scheme.

18.

VOETSTOOTS AND CARRYING CAPACITY

- 18.1 The PROPERTY is sold "**voetstoots**" and the SELLER is not liable on remeasurement of the PROPERTY for any shortfall, nor does it wish to benefit from any excess.
- 18.2 The SELLER does not warrant that the PROPERTY is suitable for the purpose for which it is bought or that the extent of the PROPERTY stipulated in the diagrams, notices, sale conditions or this agreement is in fact the extent of the PROPERTY.
- 18.3 The PURCHASER herewith expressly acknowledges in favour of the SELLER that no guarantee, representations or undertaking were given or made to him/her/it by or on behalf of the SELLER in respect of any attributes of the property, or otherwise.
- 18.4 Without detracting from the generality of the previous clause 18.3 the PURCHASER hereby acknowledges in favour of the SELLER that the cost of complying with any special condition imposed by clause 24 or failure to obtain any approval needed in terms of clause 27 as a prerequisite for the proposed development of the property, even if the SELLER had opposed such application, will not entitle him/her/it to cancel this Agreement or to claim a reduction of the purchase price nor will it entitle the PURCHASER to claim damages from the SELLER.
- 18.5 The PURCHASER herewith explicitly agrees in favour of the SELLER that no compensation will be payable for patent or latent defects and no reduction of the purchase price will be considered or effected to compensate for the same nor would the PURCHASER be allowed to cancel this agreement after discovery of the same.

18.6 The SELLER hereby places it on record that the carrying capacity of ground in Windhoek differs from area to area and that ground was filled in certain areas in the past. The SELLER therefore does not guarantee in any way the carrying capacity of the PROPERTY, and no reduction of the purchase price will be considered or effected to compensate for such defect nor will it be a ground for the cancellation of this Agreement by the PURCHASER.

18.7 It shall be the sole responsibility of the PURCHASER at its cost, before the submission of building plans, to do the necessary soils tests to determine if the land has been filled. Should it appear that the land has been filled; the PURCHASER must undertake at its costs a geo-technical survey to determine the foundation conditions and its requirements, which should be adhered to. The PURCHASER undertakes to submit to the SELLER together with its building plans, the results of such a geo-technical survey.

19.

PROSOPIS SPP

The PURCHASER may not plant or allow any person to plant the tree known as Prosopis Spp. on the PROPERTY; neither shall the PURCHASER allow such tree to grow on the PROPERTY.

20.

DOCUMENTS

All documents, deeds and legal work necessary in connection with the sale hereby made and the transfer of the PROPERTY to the PURCHASER shall be drawn and effected by the SELLER'S conveyancers.

21.

DOMICILIUM

21.1 For the purpose of this Agreement and for any notices which may require to be delivered to or served on the PURCHASER hereunder, the PURCHASER chooses domicilium citandi et executandi at:

ERF.....
PO BOX
WINDHOEK

It shall be the sole responsibility of the PURCHASER to amend its domicilium addresses as stated in this Agreement. Should the PURCHASER fail to do so and the PURCHASER is untraceable at the domicilium as provided, the SELLER shall be entitled to accept the addresses provided in the preamble of the Agreement or alternatively the PROPERTY as domicilium of the PURCHASER.

21.2 The SELLER chooses its domicilium citandi et executandi at:

Chief Executive Officer
The City of Windhoek
Box 59
Windhoek

Tel: +264 61 290 2618
Fax: +264 61 290 2111
E-mail: ses@windhoekcc.org.na

80 Independence Avenue
P. O. Box 59
Windhoek.

- 21.3 The Parties choose the addresses set out in Clause 21.1 and 21.2 as their *domicilii citandi et executandi* (“domicilium address”) for all purposes under this Agreement whether in respect of payment of money, the service or delivery of court or mediation process, communications or other documents or all other communications.
- 21.4 Any Party may by notice to the other change its domicilium address to another address, such change to become effective on the 5th (fifth) Business Day from the deemed receipt of the notice by the other Party, provided that the domicilium address must at all times include a physical address, telefax, postal address and telephone number within Windhoek or, with the prior approval of the other Party, which approval shall not unreasonably be withheld, any other place within Namibia or Southern Africa.
- 21.5 Any communication to a Party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium address will be deemed to have been received on the 14th (fourteenth) Business Day after posting (unless the contrary is proved).
- 21.6 Any communication to a Party delivered by hand to a responsible person during ordinary business hours at its domicilium address will be deemed to have been received on the day of delivery (unless the contrary is proved).
- 21.7 Any communication to a Party sent by telefax to its chosen telefax address or e-mail address, will be deemed to have been provided, unless the contrary is proved at 12h00 noon of the 1st (first) Business Day following the issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the communication.

21.8 Notwithstanding anything to the contrary herein contained, a communication actually received by a Party will be an adequate communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium address.

21.9 The Laws of the Republic of Namibia govern this Agreement.

22.

RESERVATION OF RIGHTS

No relaxation of a term or condition of this Agreement by the SELLER and no indulgence which the SELLER may expressly or by implication concede to the PURCHASER, by not insisting on explicit performance of the PURCHASER's obligations in terms of this Agreement, nor the acceptance of any payments after due date, shall prejudice the SELLER's rights under this Agreement nor be constructed as constituting a waiver of any such right, nor shall it be constructed as a novation of this Agreement or as a tacit amendment of any of the terms or conditions of this Agreement. None of the foregoing shall operate as an Estoppel against the SELLER.

23.

SPECIAL CONDITIONS

The special conditions referred to hereinafter shall be applicable to the PROPERTY, and for purposes hereof the PURCHASER acknowledges in favour of the SELLER that the PURCHASER has satisfied him/her/ itself of the nature, consequences and effect thereof **prior to the signing hereof**, failing which the PURCHASER hereby agrees that the PURCHASER shall be irrefutably presumed to so have satisfied him/her itself.

24.

ELECTRICITY, TELEPHONE CONNECTIONS AND MUNICIPAL SERVICES

- 24.1 The PURCHASER **accepts** the fact that the PURCHASER must make arrangements **during the planning stage** with the Strategic Executive: Electricity Services with regard to the provision of electricity and costs related to such provision. Electricity supply will be limited to 3x60 amps. Should more than 3 x 60 amps electricity be required, the PURCHASER should in that event provide at own cost an electricity substation building or make alternative arrangements to the reasonable satisfaction of the Chief Electrical Engineer: Distribution. The PURCHASER should note that the SELLER is busy with a ring fencing exercise whereby the Electricity Department could be outsourced to an Electricity Distributor Company in which event such Company has to be approached for the provision of electricity and the conditions for such provision
- 24.2 The PURCHASER **must note** that the **prepayment** method for the supply of electricity might be introduced on the PROPERTY at the sole discretion of the SELLER or a Regional Electricity Distributor Company to be established.
- 24.3 The PURCHASER undertakes to **contact** Telecom Namibia or any other telecommunications utility during the planning stage with regard to the availability of services, supply and costs related to such supply as well as to the requirements of Telecom or any other telecommunications utility regarding plans, provision of exchanges (where relevant), as well as the requirement to submit site and electrical layout plans for approval relating to the position and nature of Telecom's or any other telecommunications utility's services. The SELLER can give no undertakings in this regard.
- 24.4 The PURCHASER **takes note** that where permanent structures such as tar roads, paving of pavements, bridges and/or accesses are to be effected on a property, Telecom Namibia or any other telecommunications utility should be contacted **during the planning phase**, in order to install sleeves to accommodate possible future services.

- 24.5 The PURCHASER must **during the planning phase clear the location and availability of electricity, water, sewer and other municipal services** with the Departments of the Strategic Executive: Electricity Services or a Regional Electricity Distributor Company to be established and the Strategic Executive: Infrastructure, Water and Waste Management, respectively. The PURCHASER must ascertain which of the existing municipal services may influence its future upgrading or development or design and on which point such services will be connected. Access points and parking layouts (where applicable) should be cleared **during the planning phase** to the satisfaction of the Strategic Executive: Transportation.
- 24.6 The PURCHASER must, **take note**: of the panhandle entrances at erven **978, 961, 962, 950, 898** and **1004**.
- 24.7 That municipal plans are only an indication of the location of individual erven and should not be seen as a final erf diagram or general plan and the details regarding extent, topographic characteristics, access, exact location of Municipal services crossing erven and servitudes must be clarified as set out in clause 17.
- [No topographic characteristics, access or actual location of municipal services depicted on such plan are guaranteed.]
- 24.8 Of existing and/or planned services or stormwater on the PROPERTY, to be cleared with the Departments as set out in clause 17.
- 24.9 That internal building service connections shall be for the account of the PURCHASER.
- 24.10 That, subject to the availability of funds, no gravel street will be tarred/paved, where applicable, until such time as plus minus seventy five percent (75 %) of the buildings adjacent to the street have been completed. (This condition would

not apply to areas where the development costs of the township did not include the tarring/paving of internal streets in the upset prices of erven. The PURCHASER has to ascertain if costs for the provision of a tarred/paved road had been included in the upset price or not).

24.11 That if refuse, building materials, debris, rubble, motor wrecks etc have been dumped on the PROPERTY the same must be removed by the PURCHASER at own cost. This would have been taken into account at the determination of the upset prices of erven.

24.12 That the PURCHASER shall take responsibility for extraordinary cost due to poor soil conditions, inclusive of the bearing capacity thereof.

24.13 That the sale of the PROPERTY is subject to the following servitudes and restrictions which shall, at the cost of the PURCHASER, be registered against the title of the PROPERTY or by way of a power of attorney in favour of the SELLER :

"The PROPERTY shall be subject to the reservation by the Municipal Council of Windhoek of the right of access and use without compensation of the area 3 metres parallel with any boundary for the construction and maintenance of municipal services in respect of water, sewerage, drainage, electricity and gas, which right includes the right to place on such erf temporarily any materials that may be excavated or used during such operations on the erf or any adjacent erf, which reservation shall be registered in favour of the Municipal Council against the title of the erven."

25.

MINIMUM BUILDING VALUES AND DEVELOPMENT CONDITIONS

The PURCHASER must **take note** that the density zoning or minimum building value of the PROPERTY in terms of clause 39 of the Town Planning Scheme attached as Annexure I hereto; should be cleared with the Chief Planner: Urban Policy, Strategy, Facilitation and Implementation Services of the SELLER.

26.

GENERAL

That Purchasers of high density residential erven be advised to consult with the Chief Planner: Urban Policy, Strategy, Facilitation and Implementation Services and the Building Inspectorate prior to bidding for such property at the auction or prior to the purchase of such erf to ascertain what the applicable standards for housing structures are, before committing themselves financially.

27.

PRIVATE TOWNSHIP DEVELOPMENT, SUBDIVISION AND CONSOLIDATION OF ERVEN

27.1 In the event of the PURCHASER buying two adjacent erven for **consolidation** purposes, the PURCHASER shall at his/her/its own cost effect the consolidation by instituting the necessary procedures in terms of the Townships and Division of Lands Ordinance, 1963 (Ordinance 11 of 1963) to obtain the necessary approval for consolidation.

Consolidation of the erven will only be effected after the necessary approval of the Townships Board had been obtained to consolidate the erven and after the necessary approved diagrams became available.

- 27.2 In the event of a PURCHASER buying an erf for subdivision the PURCHASER shall at his/her/its own cost effect the subdivision by instituting Ordinance, 1963 (Ordinance 11 of 1963) to obtain the necessary approval for subdivision. **No subdivision** of Erven zoned General Residential shall be allowed.
- 27.3 It must be noted that **no subdivision** of Erven zoned General Residential shall be allowed.
- 27.4 In event of a proposed **subdivision into more than eleven erven** or where public services are to be provided, the standard conditions applicable to large subdivisions must be obtained from the Chief: Housing and Properties for perusal prior to purchase of an erf. Failure to follow the above guidelines will not entitle the prospective purchaser to cancel the Deed of Sale.
- 27.5 A PURCHASER of high-density residential block and general residential zoned erven should note that the PROPERTY could be used for **sectional title development**.

Use can be made of the full potential of the PROPERTY in all the various density cases. The developer has to bear the costs of the internal electricity, gas, water and sewer networks.

- 27.6 PURCHASERS should take note that where a payment method 3.2 (payment of deposit pending bank guarantees) apply the PURCHASER shall not be allowed to take occupation of the PROPERTY, in event of private township development or subdivision of erven, or to start excavations or marketing of its project or give transfer to third parties, unless the purchase price of the PROPERTY has been fully paid or the PURCHASER has submitted to the Council a bank or financial institution guarantee for full payment of the purchase price and all municipal service and rates accounts.

- 27.7 The SELLER will only provide municipal services to the boundary and all other internal municipal services need to be provided at own costs.
- 27.8 No Sectional Title developments nor developments having the effect of informal subdivisions will be allowed where each separate unit is to be allocated to a single Close corporation or to a single Private Limited Company.
- 27.9 The PURCHASER notes that the zoning of residential, general residential, business and office erven in terms of the Windhoek Town Planning Scheme allow the following primary uses:

TABLE B

USE ZONE (1)	PRIMARY USES (2)	CONSENT USES (3)	PROHIBITED USES (4)
I Residential	Dwelling units	Residential buildings, Places of public worship, Places of instruction, Social halls, Institutions, Special buildings, Bed-and-breakfasts, Resident occupations and Heritage buildings (For details refer to Table H)	Other uses not under columns 3 and 4
II	Dwelling	Places of public	Other uses

<p>General Residential</p>	<p>units, residential buildings</p>	<p>worship, Places of instruction, Institutions, Special buildings, Hotels, Resident occupations, and Heritage buildings (For details refer to Table H)</p>	<p>not under columns 3 and 4</p>
<p>IV Business</p>	<p>Shops, Business buildings, dwelling units, residential buildings and social halls</p>	<p>Other uses not under columns 2 and 4</p>	<p>Noxious industrial buildings</p>
<p>XII Office</p>	<p>Offices</p>	<p>Dwelling units, Residential buildings, Institutions, Places of public worship, Business buildings, hotels, Restaurant</p>	<p>Other uses not under columns 2 and 3</p>

27.10 Any Prospective Purchaser who intends to use the PROPERTY FOR OTHER PURPOSES THAN ITS PRIMARY USE or a higher residential zoning should **beforehand** get the necessary consent of the Council for such a "consent use" or where a higher density is required, follow the rezoning procedures to obtain

such a higher density. Although the auction erf lists may indicate that certain properties in Windhoek are situated in policy areas favouring higher densities, the Council's policy and the prescribed legal procedures under Planning Ordinance 18 of 1954 will still apply and must still be implemented. Rezoning procedures with applicable payment of betterment fees must still be followed by the successful purchaser. The upset prices for such erven have been determined taking the current density zone into consideration and not any higher densities as per the policy zone. A rezoning to a higher density is not automatically included.

28.

RESTRICTIVE RESALE AND REVERSION CONDITIONS FOR NON-COMPLIANCE TO ERECT IMPROVEMENTS

The parties agree to the registration against the Title Deed of the PROPERTY of the following conditions imposed for the benefit of and enforceable by the SELLER, or its assigns, namely:

- 28.1 It is a condition of this Agreement that the PURCHASER shall not be entitled to sell the Property to a third Party or to any subsequent Successor/s in Title or successors in Name or cede or assign this Agreement to any third party or Successor-in-title or Name without the consent of the SELLER thereto having been had and been obtained. This permission will not be granted by the SELLER until such time the PROPERTY has been improved equal to the minimum building value as set out clause 39 of the Town Planning Scheme or alternatively effected to the sole choice of the SELLER, payment under clause 21.12.3.
- 28.2 Where the PURCHASER does not materially improve the PROPERTY within five years from the date of sale to the value as set out in clause 14 or within the period granted in terms of sub clause 22, the PURCHASER hereby provides the SELLER with an irrevocable Power of Attorney to effect repossession of the PROPERTY.

28.3 The repossession referred to in subclause 28.2, shall, subject to the Common Law to claim damages in respect of such default to be set off against the purchase price received, be done without any liability by the SELLER to repay any payments made by or on behalf of the PURCHASER to the SELLER: Provided that the SELLER shall be entitled, if it so elects:

28.3.1 to refund the PURCHASER, but to, keep 20% of the Purchase price in 2, 3.1 or 3.2 as a penalty for breach of contract and demand payment of an occupational rental at 10% of the purchase price per annum until the land is retransferred to the SELLER; or:

28.3.2 the Seller will only waive its restrictive resale or reversionary right condition if and when the property is to be sold in execution by a financial institution who is a secured creditor; and:

28.3.3 should the SELLER waive its restrictive resale condition or reversionary right in favour of the Purchaser or a secured creditor, without improvements being erected, a penalty amount of TWENTY PERCENT (20 %) of the purchase price as set out in clause 2, 3.1 or 3.2 of the Deed of Sale and an occupational rental at 10% of the purchase price per annum until the land is transferred will be payable to the SELLER on the date of transfer to a successor-in-title or a successor in name.

28.3.4 The irrevocable Power of Attorney referred to in sub-clause 28.2, shall, upon the issue of a certificate by or on behalf of the SELLER that the development or improvements have been completed, lapse and shall be void.

- 28.3.5 Where circumstances, which are reasonably beyond the control of the PURCHASER, prevent or delay the PURCHASER from materially developing the PROPERTY within the development periods referred to in clause 10, the parties shall negotiate a reasonable extension of the time period within which the PURCHASER must complete the development of the PROPERTY.
- 28.3.6 The PURCHASER undertakes to effect at its own cost the registration of the conditions contained in clause to 28 by way of a **Notarial Deed of Imposition of Conditions against the Title Deed of the PROPERTY**, should transfer be taken before the erection of improvements, the wording of such Notarial Deed to be determined by the Notary of the SELLER to reflect the intention of the PURCHASER and SELLER contained in the said clauses.

29.

COMPANIES, CLOSED CORPORATIONS AND NOMINEES

In the event that the PURCHASER is purchasing the PROPERTY on behalf of a company, a closed corporation in the course of formation or a nominee, it shall be a special condition that:

- (a) The provisions of section 42 of the Companies Act 28 of 2004 and section 53 of Close Corporations 26 of 1988 and the provisions of the Transfer Duty Act 14 of 1993 pertaining to the payment of transfer duty, shall have been complied with; and
- (b) The company, closed corporation or identified nominee accept and ratify the sale and any agreement which may arise therefrom in writing within thirty days from the date of sale, failing which the signatory hereby agrees in favour of the Municipality that the signatory shall be bound to the Deed of Sale and the signatory shall be deemed to have signed and entered into this sale in his/her personal capacity.

Section 42 of the Companies Act, No. 28 Of 2004 reads as follows:

"42. Any contract made in writing by a person professing to act as agent or trustee for a company not yet incorporated, shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by such company after it has been duly incorporated as if it had been duly incorporated at the time when the contract was made and such contract had been made without its authority: but, the memorandum on its registration, must contain a statement with regard to the ratification or adoption of or the acquisition of rights and obligations in respect of such contract, and that two copies of that contract, one of which shall be certified by a notary public, have been lodged with the Registrar together with the lodgement for registration of the Memorandum and Articles of the Company."

Section 53 of the Closed Corporation Act, No. 26 of 1988 reads as follows:

"53(1) Any contract in writing entered into by a person professing to act as an agent or a trustee for a corporation not yet formed, may after its incorporation be ratified or adopted by such corporation as if the corporation had been duly incorporated at the time when the contract was entered into.

53(2) The ratification or adoption by a corporation referred to in subsection(1) shall be in the form of a written consent of all the members of the corporation, given within a time specified in the contract or, if no time is specified, within a reasonable period of time after incorporation."

Where the Deed of Sale is entered into on behalf of another person or a legal person, it must be accompanied by the necessary Power of Attorney and, where applicable, a certified extract of the Minutes of the legal person.

Where these conditions are not complied with or should the proposed company, closed corporation or nominee not ratify the Agreement in writing in the specified time, the

signatory hereby agrees in favour of the Municipality that the signatory shall be bound in his/her personal capacity in the event where the other person or legal person is not legally bound hereto.

30.

DISPUTE RESOLUTION

30.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the Representatives of the Parties within 3 (three) Business Days after the dispute had arisen, or such extended period as the Parties may in writing allow, such dispute must be submitted to the Council of the SELLER who shall endeavour to resolve the dispute with the PURCHASER within 30 (thirty) Business Days, or such extended period as such executives may in writing agree, after the dispute having been referred to them by the Representatives. The Representatives shall be required to jointly articulate the nature of the dispute for the purposes of notifying the said Council for a resolution.

30.2 Should the Council and the PURCHASER be unable to resolve the dispute within the agreed period, the dispute may be referred by either Party to a Mediator or failing him an Arbitrator as selected by the President of the Law Society of Namibia. Any costs arising out of such mediation or arbitration shall be shared by the Parties. The laws of Namibia and the Rules of local (Namibian) arbitration shall apply.

31.

CONDITIONS TO BE INCORPORATED IN SUBSEQUENT DEEDS OF SALE

In the event that the PURCHASER sells the PROPERTY he/she/it undertakes in favour of the SELLER to incorporate the following clauses of this Agreement in the Deed of Sale with the further condition that his/her/its successors in title will similarly bind their successors in title to infinity:

- 31.1 Clause 12 insofar as it relates to the payment of assessment rates;
- 31.2 Clause 13 until such time as the services described therein have been connected to the PROPERTY;
- 31.3 Clauses 7 and 8 until such time as the conditions imposed therein have been fulfilled;
- 31.4 Clause 14;
- 31.5 Clause 15;
- 31.6 Clause 17; and
- 31.7 Clause 23 insofar as it is applicable to the Property.

THUS DONE AND SIGNED AT WINDHOEK this of 2014 on behalf of the SELLER in the presence of the undersigned witnesses:-

WITNESSES:

1 _____
_____ **on behalf of the Chief Executive Officer**

2 _____
_____ **on behalf of the Chairperson of the Management Committee**
(Certified in accordance with Council Resolutions 259/09/2003, 203/06/2007, 333/10/2008,

396/11/2008, 327/09/2009, 365/11/2011)

THUS DONE AND SIGNED AT WINDHOEK this day of 2014 on behalf of the PURCHASER in the presence of the undersigned witnesses: -

WITNESSES:

1 _____

PURCHASER

2 _____

PURCHASER

Annexure “1”

1 Minimum Building Values in terms of the Town Planning Scheme

Clause 39 of the Town Planning Scheme with regard to minimum building values provides as follows:

“39. Minimum building values

- (1) Unless otherwise determined by Council, the value of buildings, structure and improvements erected on any property shall not be less than the minimum building value specified for that property.
- (2) Minimum building values imposed in terms of this section are applicable to the value of a main building excluding any outbuilding or a single house in the case of a "residential" zoned erf, unless otherwise determined by Council.
- (3) For all new townships proclaimed from 1 January 1996, the minimum building value of any erf zoned "institutional", "restricted business", "garage" and "industrial" shall equal the current municipal valuation of the land comprising that erf.
- (4) For all new townships proclaimed from 1 January 1996, the minimum building value of any erf zoned "office", or "business" shall equal 4 times the current municipal valuation of the land comprising that erf.
- (5) For all new townships proclaimed from 1 January 1996, unless otherwise specified in this Scheme, the minimum building value of any erf zoned "residential", or "general

residential" shall equal 2 times the current municipal valuation of the land comprising that erf.

(6) Any erf zoned "residential" or "general residential" in the following townships shall have a minimum building value equal to 4 times 1000 times the municipal valuation of the land comprising that erf divided by the area in square metres (4000 times municipal valuation ÷ area): Provided further that the building value is not less than four times the municipal valuation of the erf.

(a) Auasblick

(7) Any erf zoned "residential" or "general residential" in the following townships shall have a minimum building value equal to 4 times 600 times the municipal valuation of the land comprising that erf divided by the area in square metres (2400 times municipal valuation ÷ area):

(a) Kleine Kuppe Extension 1

(8) No minimum building value shall be applicable to erven zoned "residential" or "general residential" in the following townships:

(a) Big Bend and its extensions

(b) Okuryangava Extension 6

(9) Any erf zoned "residential" or "general residential" in the following townships shall have a minimum building value equal to 4 times the municipal valuation of the land comprising that erf:

(a) Kleine Kuppe (Proper)"

The minimum building value, excluding the outbuildings, of Erven in Cimbebasia, Cimbebasia Extensions 1, 2, 3 & 4A shall be twice the municipal valuation, excluding the outbuildings, and a residential density zoning of one residence per 250 m² or 300 m² shall apply for Cimbebasia.

2 Storm Water

Clause 35 of the Town Planning Scheme pertaining to Stormwater shall apply, which reads as follows:

"No stormwater drainage pipe, canal, work or obstruction (except stormwater drain pipes, canal or works which have been authorised in writing by the local authority or which have been or may be built, laid or erected in terms of any law) may be constructed on or over the property or located in such a way that-

- (i) The flow of stormwater from higher lying property to lower lying property is impeded or obstructed and through which any property is or may be endangered; or
- (ii) The flow of a natural watercourse (in which the local authority allows floodwater to run off, be discharged or to be canalised) is or can be changed, canalised or impeded.
- (iii) The maintenance of such stormwater pipe, channel or work shall be the responsibility of the owner of the concerned property."

In event of very flat terrain and if applicable, storm water of erven lying on the upstream side must be accommodated on the erven lower down, in which event clause 35 of the Town Planning Scheme shall also apply.

3 Development Conditions of High-Density Residential Block Erven.

A PURCHASER of high-density residential block zoned erven intending to **subdivide** the same, should take note of clauses 22, 31 to 34 AND 36 of the Town Planning Scheme, which provide as follows:

“22. Number of dwelling units which may be erected (density)

- (1) Not more than one dwelling house or residential building may be erected on any erf without the consent of the Council.
- (2) No building shall be so erected that the number of dwelling houses and dwelling units on an erf exceeds the number specified in Table E for the density zone in which the erf is situated;

Provided that in the case of a boarding house, residential club, hostel, hotel or similar use, Council may consent to a floor area not exceeding an area obtained by multiplying the permissible number of dwelling units by eighty (80) square metres in addition to a dwelling house.”

31. Endowment

- (1) Any property owner subdividing land shall pay to the Council an endowment as provided for in the Townships and Division of Land Ordinance No. 11 of 1963, of

7,5% of the value of the new portions being created, on or before registration of the new portions, except as may otherwise be determined by Council.

32. Land provisions

- (1) Any property owner subdividing land shall make provision for and transfer, free of all charges, such portions of land required for Municipal services related to and required by that subdivision.
- (2) Any property owner subdividing land shall make provision for public services such as schools, crèches, powerline reserves, etc. as may be reasonably required by the State or the Council.

33 Minimum site requirements

- (1) Where, upon the subdivision of an erf, land is given off for a street or for some other public purpose, the area of such land may, with the consent of the Council, be calculated as part of the area of the subdivision for the purpose of Tables E, F, and G.
- (2) The Council shall not, in those areas in which in terms of Table E only one dwelling house per existing erf is allowed, consent to any subdivision of an existing erf, provided, however, that the Council may consent to such a subdivision if no portion smaller in extent than ninety per cent (90%) of the area of the original erf is used as the site of a dwelling house and provided further that the permissible coverage is not exceeded.
- (3) The Council shall not, in those areas in which in terms of Table E a minimum area of site is required per dwelling house, consent to any subdivision of land whereby any portion which may be used for residential purposes is less than the prescribed minimum, except in the case of an existing erf which has been built upon before the approval of the Scheme on 13 July 1987, in which case a reduction of at most ten per cent (10%) of the prescribed minimum size may be permitted if corners or additional beacons

are thereby avoided, or in other special circumstances provided that the coverage permitted shall not be exceeded.

- (4) Upon the subdivision of any land where any portion of such land is physically separated by the execution, or proposed execution of public works and provided that such portion does not fall below 75% (seventy five per cent) of the minimum area as laid down in column 3 of Table E for the said land, such portion may be used for residential purposes.

34. Access and street numbers

- (1) If an erf has more than one street frontage, access to the erf shall be obtained from the street(s) determined by the Council. The determination shall be made before the approval of any building plans showing how access is to be taken.
- (2) Street numbers shall be regulated as follows.
 - (a) All erven within the municipal area shall be fitted with a conspicuous number plate, showing the erf's street address number, erected on the street boundary from which access is legally taken, within six weeks of submitting a building plan for the main building on that erf, or within six weeks from the date of proclamation hereof.
 - (b) No service connection will be given to any erf created by private subdivision or consolidation unless a street number has been allocated and a number plate is displayed.
 - (c) No service connection will be given to any unit in a sectional title scheme unless that unit has been numbered and a number plate displayed to the satisfaction of Council.

- (d) In the event of an owner failing to comply with sub-paragraphs (a), (b) and (c), Council shall have the right to, after written notice of its intention to do so, within a specified period, which period may not be less than 21 days, fit such number plate and to recover the cost thereof from the owner as a liquid claim.

36. Unserviced erven

- (1) Sale or transfer of unserviced erven.

No property owner may sell or otherwise give transfer of an erf or farm portion which lacks any of the following:

- (a) access to a public street constructed and surfaced in accordance with Municipal standards;
- (b) a Municipal water connection or access to a communal water supply point or supply pipeline which has been approved by the Municipality for use by that erf or farm portion;
- (c) a sewer connection or access to a sewage disposal system or sewer which has been approved by the Municipality for use by that erf or farm portion;

except with the consent of Council.

- (2) Building plans or building operations on unserviced erven.

No person shall submit building plans or commence any building operations on an erf or farm portion which lacks any of the following;

- (a) access to a public street constructed and surfaced in accordance with Municipal standards;

- (b) a Municipal water connection or access to a Municipal communal water supply point or supply pipeline which has been approved by the Municipality for use by that erf or farm portion;

- (c) a sewer connection or access to a sewage disposal system or sewer which has been approved by the Municipality for use by that erf or farm portion;

except with the consent of Council.”