

DEED OF SALE

MEMORANDUM OF AGREEMENT ENTERED INTO AND BETWEEN

THE MUNICIPAL COUNCIL OF WINDHOEK



herein represented by **SHERIDAN SIMPSON** 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 **ELIA TUHAFENI SHAPOPI** 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

Name	
Identity Number	
Tax Number	
Postal Address	
Physical Address	
E-mail Address	
Cellphone Number	

with spouse as joint PURCHASER if applicable

Name	
Identity Number	
Tax Number	
Postal Address	
Physical Address	
E-mail Address	
Cellphone Number	

(Hereinafter jointly referred to as the "PURCHASER")

DESCRIPTION OF PROPERTY

CERTAIN ERF AUASBLICK (EXTENSION NO. 1)

SITUATE In the Municipality of Windhoek, Khomas Region, Registration Division "K"

MEASURING Square Metres in extent as will more fully appear from General Plan SG No. _____ filed at the offices of the Surveyor General and Registrar of Deeds in Windhoek.

(hereinafter referred to as the "PROPERTY")

as proclaimed in Government Notice No. _____

WHEREAS

- A. The SELLER is the owner of the erven and streets in the Township of AUASBLICK, EXTENSION NO. 1 which township is in the process of being proclaimed.
- B. The SELLER has entered into a Public Private Partnership Agreement with Sinco Investments Sixty One (Proprietary) Limited, Registration Number 2013/0874 (referred to as the DEVELOPER) in terms of which agreement the DEVELOPER has the obligation to provide all municipal related infrastructural services to the Township over a future estimated period of 24 months (referred to as the DEVELOPMENT). The first phase of which shall be completed within an estimated period of 2 months.
- C. The PURCHASER has accepted and signed a Pre-Sales agreement with the DEVELOPER and has made an offer to pay a purchase price for the abovementioned PROPERTY.
- D. The SELLER will by the time of DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS NOTIFICATION have accepted the bid (offer) by the PURCHASER for the abovementioned PROPERTY as well as a deposit to reserve the PROPERTY for the PURCHASER in contemplation of this agreement.
- E. FISHER, QUARMBY & PFEIFER ATTORNEYS have been appointed as the CONVEYANCERS to attend to the property transfers in the Township as per the development agreement.
- F. Transfer of any property in the Township is suspended until the Developer has provided the phase of the DEVELOPEMENT where the PROPERTY is situated with all municipal services related to electricity, water, sewerage, roads and stormwater drainage to the satisfaction of the SELLER and the SELLER has taken over the responsibility for the services and the SELLER has issued a Take-Over Certificate.
- G. The SELLER will notify all purchasers when the services have been taken over by the SELLER and the properties can be transferred into private ownership.
- H. A purchaser may only improve/develop the PROPERTY once the Property has been registered in his/her name in the Deeds Registry of Windhoek.

NOW THEREFORE the Parties hereto agree as follows:

1. RELEVANT DATES

In this agreement the following DATES shall have the following meanings:

- 1.1 DATE OF SALE – means the date on which the Deed of Sale has been signed by/on behalf of the SELLER. The duly authorised signatory on behalf of the SELLER shall sign when the PURCHASER has provided the CONVEYANCERS with a duly completed Deed of Sale signed by the PURCHASER (operation of the sale shall be suspended until the date of Notification of Completion).
- 1.2 DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS NOTIFICATION – means the date when the SELLER has notified the PURCHASER that it has fulfilled suspensive

conditions as set out in clause 5.1, 5.2 and 5.3 5 below and that transfer of the PROPERTY shall proceed.

1.3 DATE OF TRANSFER – means the date of transfer of ownership of the PROPERTY into the name of the PURCHASER is registered in the Deeds Registry of Windhoek.

2. PURCHASE PRICE

THE PURCHASE PRICE shall be the sum of N\$.....
(.....):

2.1 It is recorded that the PURCHASER has, in terms of the Pre-Sales Agreement, effected payment of a deposit in the amount of N\$ 50 000.00.

2.2 The BALANCE of the PURCHASE PRICE is the sum of N\$
(.....) which is payable on DATE OF TRANSFER free of any deductions and which BALANCE shall be settled as follows: -

2.2.1 The Purchaser shall be obliged to either pay the BALANCE of the PURCHASE PRICE into the Trust account of the Conveyancer within 60 (sixty) days from DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS NOTIFICATION, the particulars of which are as follows:

FISHER, QUARMBY & PFEIFER TRUST ACCOUNT.
FIRST NATIONAL BANK
ACCOUNT NO: 555 0203 9338
BUSINESS BRANCH CODE: 281 872
SWIFT CODE: FIRNNANX
REF: ERFAB X1, SURNAME

or

FISHER, QUARMBY & PFEIFER TRUST ACCOUNT.
STANDARD BANK
ACCOUNT NO: 6 00000 36195
BRANCH CODE: 082 372
SWIFT CODE: SBNMNANX
REF: ERF..... AB X1, SURNAME

or

FISHER, QUARMBY & PFEIFER TRUST ACCOUNT.
NEDBANK
ACCOUNT NO: 1199 0023 516
BRANCH CODE: 461 041
SWIFT CODE: NEDSNANX
REF: ERF..... AB X1, SURNAME

2.2.2 Alternatively the Purchaser shall be obliged to furnish the Conveyancers with a Bank Guarantee for the BALANCE of the PURCHASE PRICE within 60 (sixty) days from DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS NOTIFICATION.

2.2.3 Should the Purchaser fail to secure the BALANCE PURCHASE PRICE as per the period referred to in clauses 2.2.1 and 2.2.2 above, the Purchaser shall automatically be afforded an additional 30 (thirty) days within which to do so. During the additional 30 (thirty) day

period penalty interest shall be charged on the BALANCE PURCHASE PRICE at the rate of prime plus 2% per annum.

- 2.2.3 All funds received in terms of subclause 2.2.1 above, shall be invested in an interest-bearing account under Section 26 (3) of the Legal Practitioners Act No.15 of 1995 at the Conveyancer's normal investment fees. The interest earned thereon will be for the credit of the PURCHASER by agreement of the parties.

3. DOCUMENTS AND CONVEYANCING

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:

Fisher, Quarmby and Pfeifer Attorneys in Windhoek
Tel: 061 233 171 or 083 2233 100
at No. 43 Dr. Theo Ben Gurirab Street
Email: manuela@fqp.com.na

4. COSTS OF TRANSFER AND TRANSFER DUTY

- 4.1 The PURCHASER shall pay the costs of settling this Deed of Sale and any amendments thereof to the Conveyancers upon request by notice to them.
- 4.2 The PURCHASER shall pay all transfer costs in respect of the transfer of the PROPERTY (including costs in respect of registration of any servitudes) (see clause 13.3) which amounts shall be paid immediately upon request by notice of the Conveyancers at the tariffs applicable on date of the request.
- 4.3 Transfer duty is payable on the purchase price in terms of the Transfer Duty Act No. 14 of 1993. Transfer duty is payable within 6 (six) months from DATE OF SALE by the PURCHASER to the Namibian Revenue Authority (NamRa). The PURCHASER notes that Section 4 of Act 14 of 1993 provides for penalties in the case of payment after 6 months at the rate of 10% of the duty per year.
- 4.4 The obligation is on the PURCHASER to arrange with the Conveyancers to make a provisional transfer duty payment to NamRa if he/she is unwilling to pay penalties at a later date.

5. SUSPENSIVE CONDITIONS

This transfer is subject to fulfilment of the following suspensive conditions namely:-

- 5.1 the approval of the Minister being obtained in terms of Section 30(1)(t) and publishing of the relevant Notice in terms of Section 63(2) of the Local Authorities Act, Act 23 of 1992 within 120 (one hundred and twenty) days from DATE OF SALE.
- 5.2 the Development has been proclaimed in the Government Gazette and the General Plan registered in the Deeds Registry of Windhoek within 120 (one hundred and twenty) days from DATE OF SALE.
- 5.3 Subject to the Provisions of Clause 6, the Developer has completed the Development of the municipal related infrastructural services in the Township, or phase of the Township

to the satisfaction of the SELLER, the SELLER has taken over the responsibility for the services and the SELLER has issued the Take Over Certificate.

- 5.4 that the PURCHASER secures the BALANCE PURCHASE PRICE in terms of the provisions of Clause 2 above.

6. SUSPENSIVE CONDITION – NON- COMPLETION

- 6.1 If the SELLER has not been able, for whatever reason, to issue a DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS NOTIFICATION within 120 (one hundred and twenty) days of the DATE OF SALE, this agreement, save for clause 7.3 below, shall lapse except in circumstances of *vis majeure (Act of God)* including a national pandemic, preventing delivery of service or materials. The parties may enter into an agreement to extend the period of completion prior to this date of lapse.
- 6.2 If the agreement has lapsed as per clause 6.1 above the PURCHASER will be refunded with the CAPITAL PART of the DEPOSIT (less the rates taxes and fees set out in clause 7.3 below) and BALANCE PURCHASE PRICE and all interest earned on the investment.
- 6.3 The PURCHASER will not be entitled to claim mora interest, loss or damages suffered.
- 6.4 Subject to clause 6.5 herein, the PURCHASER will be entitled to an immediate refund of all transfer costs paid to the Conveyancers, but Transfer duty must be reclaimed from Namibia Revenue Agency.
- 6.5 The Conveyancers will only be entitled to retain all fees in respect of drafting and amending of the DEED OF SALE (see clause 4.1 and 4.2) fee for investment of funds.
- 6.6 Should the Purchaser fail to secure the BALANCE PURCHASE PRICE as per clause 2 above the Purchaser shall forfeit its deposit.

7. OCCUPATION AND BILLING

- 7.1 The PURCHASER shall not be entitled to access the PROPERTY prior to the DATE OF SALE for any purpose other than viewing and measurements. (The DEVELOPER is in occupation).
- 7.2 The PURCHASER shall be entitled to take possession and occupation of the PROPERTY on the DATE OF TRANSFER from which date he/she shall accept all risks in respect thereof and shall be entitled to all benefits therefrom.
- 7.3 From the DATE OF FULFILMENT OF SUSPENSIVE CONDITIONS 5.1, 5.2 AND 5.3 above, the PURCHASER shall be liable for all assessment rates and taxes, municipal services basic fees and levies to the Municipality (and any regional electricity company to whom the electricity distribution may have been transferred). Should the sale not proceed for any reason, the Purchaser consents that any rates, taxes or fees owing in terms of Clause

8.1 below shall be deducted from their deposit and paid directly to the MUNICIPALITY OF WINDHOEK.

7.4 The Purchaser hereby irrevocably authorizes and instructs the CONVEYANCERS to effect payment to the MUNICIPALITY OF WINDHOEK in respect of any amounts due in terms of clause 7.3 above.

8. ASSESSMENT RATES AND OBLIGATION TO IMPROVE

8.1 MUNICIPALITY OF WINDHOEK may not and shall not charge any rates, taxes or fees prior to the DATE OF FULFILLMENT OF SUSPENSIVE CONDITIONS 5.1 AND 5.2 of the services as no un-serviced land may be legally sold. Operation of this sale has been suspended by law and by this agreement to the said DATE.

8.2 From the DATE OF SALE the PURCHASE PRICE shall be deemed to have been entered as the Unimproved property value in the provisional valuation roll of properties in the MUNICIPALITY OF WINDHOEK. The PURCHASER shall pay to the SELLER the assessment rates levied thereon.

8.3 Should the official valuation reflected in the next Interim or Main Valuation Roll be less or be more than the (deemed) provisional valuation under clause 8.2, the SELLER shall credit the account or the PURCHASER shall pay in the difference between the rates calculated on the deemed provisional valuation and the rates calculated on the subsequent Interim or Main Valuation Roll as the case may be.

8.4 The PURCHASER notes that the valuation of the PROPERTY is used to calculate the municipal assessment rates, fees and levies payable by a property owner.

8.5 The PURCHASER shall improve the PROPERTY by erection of a building or buildings within 2 (two) years from the DATE OF TRANSFER.

8.6 The value of the main building, (outbuildings excluded) as calculated by the Manager: Valuation Services of the SELLER, shall meet the minimum building value specified for a property situated in this Township or zoning as set out in the approved Zoning Scheme of Windhoek. (see Annexure "A" hereto for the zoning of this PROPERTY)

8.7 If the PURCHASER fails to comply with the above sub clause, the SELLER shall collect from the PURCHASER, and his/her successors in title, the improvement assessment rates as if the PROPERTY has been duly improved as well as a penalty rate on the unimproved property (under Section 73(4)(b) and Section 76A of the Local Authorities Act, Act 23 of 1992 (as amended) from the day the improvements should have been so completed.

8.8 The levy and collection of rates in terms of clause 8.7 shall not prejudice the rights of the SELLER to apply any other clause of this Agreement.

9. ALIENATION RESTRICTION CONDITION FOR NON-COMPLIANCE TO ERECT IMPROVEMENTS

9.1 The parties agree to register against the Deed of Transfer or other title deed of the PROPERTY the following Conditions in favour of the SELLER (referred to as the MUNICIPAL COUNCIL OF WINDHOEK in this clause), namely:

- (a) The PURCHASER and his/her successors in title shall not alienate or transfer his/her rights in the PROPERTY with the exception of registration of a mortgage bond to any third party, without the prior written consent of the COUNCIL having been obtained.
- (b) The COUNCIL shall consent to transfer to a third party if the PURCHASER has erected improvements equal to the minimum value determined by the Municipal Council.
- (c) The condition will lapse when the Council issues a certificate that the PROPERTY has been duly improved equal to the minimum building value so required and the conditions have been fulfilled.
- (d) The COUNCIL will only waive its restrictive condition prior to completion and consent to transfer when the PROPERTY is to be sold in execution by a financial institution who is a secured creditor;
- (e) The COUNCIL may consent to transfer with or without retention or reimposition of the restrictive conditions:
 - (i) to an heir or legatee pursuant to the death of the OWNER, or
 - (ii) otherwise, subject to a penalty amount of TWENTY PERCENT (20 %) of the purchase price of this sale payable to the COUNCIL on (or before) the date of further transfer.

9.2 The COUNCIL may elect to impose and include the conditions in the Power of Attorney to Pass Transfer or impose them by a Notarial Deed.

9.3 The PURCHASER shall bear the costs of registration of the conditions by way of a Notarial Deed of Imposition of Conditions against the Title Deed of the PROPERTY.

9.4 In the event of the PURCHASER being a close corporation, a company or a Trust then:

9.4.1 the holder of the members interest, shares of shares or the beneficial interest in the Trust of such purchasing entity respectively shall not have the right to alienate the members interest, shares of shares or the beneficial interest in the Trust without the prior written consent of the SELLER having been obtained; and

9.4.2 sub-clause 9.1 (a-e) shall *mutatis mutandis* be applicable to this sub-clause 9.4.

9.5 **NOTICE OF INTENTION TO COMMENCE BUILDING.**

“(a) Before commencing to erect any building, the person intending to erect such building, or his duly authorised agent shall notify the Council thereof on the form prescribed by the Council and in such notice shall specify the date upon which the erection of such building is to be commenced.

(b) Before commencing to construct the foundations or any portion thereof of such building such person or agent shall give notice to the Council on a form prescribed by the Council of the fact that the excavations for such foundations or any portion thereof, as the case may be, will be ready for inspection on a date specified in such notice.

(c) Before commencing to construct anything upon the foundations or any portion thereof of such building, such person or agent shall give notice to the Council on a form

prescribed by the Council of the fact that such foundations or any portion thereof, as the case may be, will be ready for inspection on a date specified in such notice.

(d) Before commencing to backfill any excavation made for stormwater drainage or sewerage work or any portion of such excavation, and before enclosing such stormwater drainage or sewerage work or any portion thereof, such person or agent shall give notice to the Council on a form prescribed by the Council stating the fact that such drainage or sewerage work or portion thereof, as the case may be, will be ready for inspection on a date to be specified in such notice.

(e) Each of the notices referred to in subregulations (a), (b), (c) and (d) of this regulation shall reach the town engineer at least two clear days before the date specified in each such notice.

(f) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence.

9.6 INSPECTION.

“(a) No person shall commence or cause or suffer to be commenced the construction of the foundations or any portion thereof of any building which is being erected until the excavations for such foundations or portion thereof as the case may be, shall have been inspected by the town engineer or by some other employee of the Council, generally or specially authorised by the Council for that purpose.

(b) No person shall commence or cause or suffer to be commenced the construction of anything upon the foundations or upon any portion of the foundations of any building which is being erected until the foundations or portion thereof, as the case may be, shall have been inspected by the town engineer or other employee as aforesaid.

(c) No person shall commence or cause or suffer to be commenced the backfilling or enclosing referred to in regulation 9.5 (d) until the work referred to in the said paragraph has been inspected and tested by the town engineer or other employee as aforesaid.

(d) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence”.

10. GENERAL CONDITIONS AND LIMITATIONS APPLICABLE

- 10.1 The PROPERTY is sold subject to the conditions of this Agreement and the provisions of the Urban and Regional Planning Act (Act 5 of 2018).
- 10.2 This sale is subject to the conditions of the Zoning Scheme of Windhoek promulgated in terms of the Urban and Regional Planning Act (Act 5 of 2018) and the PROPERTY may only be used in accordance with the said Scheme.
- 10.3 The PURCHASER acknowledges that it was his/her responsibility to make enquiry and understand the restrictions and conditions imposed in terms of the aforesaid Act and Zoning Scheme prior to signature of this Deed of Sale.

11. VOETSTOOTS

- 11.1 The PROPERTY is sold "**voetstoots**" and the SELLER does not warrant that the PROPERTY is suitable for the purpose for which it is bought.
- 11.2 The SELLER does not warrant that the extent of the PROPERTY stipulated in the diagrams, notices, sale conditions or this agreement is in fact the extent of the PROPERTY and the SELLER is not liable on re-measurement of the PROPERTY for any shortfall, nor does it wish to benefit from any excess.
- 11.3 The PURCHASER herewith expressly acknowledges that no guarantee, representations or undertaking were given or made to him/her by or on behalf of the SELLER in respect of any attributes of the PROPERTY, or otherwise than herein reflected.
- 11.4 The PURCHASER herewith explicitly agrees 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 therefor, nor would the PURCHASER be allowed to cancel this agreement after discovery of the same (save and except for the provisions of clause 13.6).
- 11.5 It shall be the sole responsibility of the PURCHASER, before the submission of building plans, to do the necessary soil tests to determine if the land has been filled. Should it appear that the land has been filled; the PURCHASER must undertake at his/her 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.
- 11.6 That the PURCHASER shall take responsibility for extraordinary cost due to poor soil conditions, inclusive of the bearing capacity thereof.
- 11.7 The PURCHASER acknowledges that the cost of complying with any special condition and requirement or failure to obtain any approval as a prerequisite for the proposed development of the PROPERTY, (even when the SELLER has opposed such application), will not entitle him/her to cancel this Agreement or to claim a reduction of the purchase price, nor to claim damages from the SELLER.

12. SANITATION, WATER AND ELECTRICITY

- 12.1 The PURCHASER shall as from DATE OF FULFILLMENT OF SUSPENSIVE CONDITIONS 5.1 AND 5.2 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.
- 12.2 The PURCHASER must apply for provision of services and electricity and water connections and meters from the Municipal Offices (and/or a registered electricity distributor company if electricity distribution has been taken over by them).
- 12.3 The SELLER cannot guarantee availability of telecommunication services to the PROPERTY.
- 12.4 Any refuse, building materials, debris or rubble, dumped on the PROPERTY must be removed by the PURCHASER at own cost.

13. SERVITUDES AND RESTRICTIONS AND SPECIAL CONDITIONS

13.1 It is hereby recorded that on DATE OF SALE the infrastructure of the municipal services of the Township may not be completed.

13.2 The following reservation of right will be registered against the title deed of the PROPERTY 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.” Unless the reservation of this right is contained in the zoning scheme and the SELLER confirms that inclusion thereof in the Deed of Transfer will be superfluous.”

13.3 Certain services may be laid under or over the PROPERTY and place restrictions on the use thereof as set out in the special conditions under clause 15 and 19 and referred in Annexure “A” hereto. The SELLER may impose the restrictions against the title deed of the PROPERTY and may require a Notarial Deed of Servitude and/or a Notarial Deed of Imposition of Restrictive Conditions to be registered in respect of such services against the PROPERTY at the expense of the PURCHASER.

13.4 Clauses 9.2 and 9.3 apply similarly to clauses 13.2 and 13.3

13.5 Such restrictions shall be pointed out in Annexure “A” hereto.

13.6 If the services or servitude areas of the PROPERTY are not restricted to the normal building restriction areas of an erf, (namely 3 metres wide along the lateral and rear boundary and 5 metres wide along a street boundary) and is not referred to in the Special Features in the Schedule in Annexure “A” and the use or value of the PROPERTY is materially adversely affected thereby the PURCHASER shall notify the SELLER and conveyancers within 30 days that he/she disputes the continuation of the sale (subject to the restrictions/conditions of PROPERTY as referred to in clause 13.3) and elects to resile from the agreement.

14. BOUNDARY BEACONS

14.1 The SELLER will once only (after the date of sale), through its registered land surveyor point out, free of charge to the PURCHASER the survey beacons of the erf provided: -

14.2.1 The PURCHASER applies in writing to the SELLER’S department dealing with the sale of land (a representative of the PURCHASER must submit a special Power of Attorney to apply on his/her behalf);

14.2.2 The PURCHASER’S Building Plans have been approved;

14.2.3 The application is made at least 30 days prior to the start of the construction of the PURCHASER’S improvements; and

14.2.4 No excavations or mechanical clearing of the ground has taken place.

- 14.2 The pointing out of the survey beacons is a right in favour of the PURCHASER only and may not be ceded to a successor in title
- 14.3 The PURCHASER or successor in title must appoint his/her own professional surveyor to point out or replace the survey beacons or pegs if the survey beacons have once been pointed out or if any excavations or mechanical clearing of the ground have taken place.
- 14.4 The PURCHASER and his/her successor in title shall keep in good repair and 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.
- 14.5 Should the PURCHASER construct improvements on the PROPERTY or if he/she commences excavations or mechanical clearing of the ground or the erection of improvements, using incorrect beacons (whether beacons were pointed out or not) the PURCHASER bears the risk of any ensuing encroachment on neighbouring properties, and all expenses related thereto.

15. SPECIAL CONDITIONS

Upon completion of the Development of municipal services infrastructure any special conditions referred to hereinafter may be applicable to the PROPERTY (as per the Erf conditions set out in annexure B hereto).

STORMWATER

- 15.1. Surface water runoff must be accommodated according to Clause 35 of the Windhoek Zoning Scheme stating:
 - (15.1.1) That 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.
 - (15.1.2) The maintenance of such stormwater pipe, channel or work shall be the responsibility of the owner of the concerned property.
- 15.2 Prior approval must be obtained from the Chief Engineer: Planning, Design and Traffic Flow if the accommodation of the storm water on the erf is contemplated.
- 15.3 Engineering drawings on how the stormwater would be accommodated must be to the satisfaction of the Chief Engineer: Planning, Design and Traffic Flow be submitted for approval, simultaneously with the building plans.
- 15.4 Existing stormwater pipes, outlets and inlets or any other stormwater system must be clearly indicated on all building plans submitted prior to approval thereof.

- 15.5 No building plans will be approved until the above stormwater conditions are met.
- 15.6 Accommodation of any stormwater shall be to the satisfaction of the Strategic Executive: Urban and Transportation Planning.

15.7 ROADS AND PAVEMENTS

The level of the roads and pavements have not been completed and the SELLER does not guarantee any levels to be the eventual levels.

- 15.9 Any height differences must be accommodated and the road fill or sidewalk must not be disturbed or lowered for access purposes since this may lead to damages of underground services which must be repaired at the PURCHASER'S costs in event of damages. The access to the affected erven must be effected at the cost of the PURCHASER to the satisfaction of the Strategic Executive: Infrastructure, Water and Technical Services. If ramps must be constructed on the erf and ways to overcome the difference, the plans are to be submitted together with building plans.
- 15.10 Any damage to the road sidewalk due to building activities or construction of erf entrances by the PURCHASER or developer appointed by him/her, shall be repaired by the PURCHASER at own cost: Should the PURCHASER fail to do so, the Strategic Executive: Infrastructure, Water and Technical Services may repair it and claim the costs from the PURCHASER.
- 15.11 The erven which have sewer lines crossing the erven and sewer manholes must be protected at the PURCHASER'S cost and the building lines must be maintained in these instances as no relaxation will be allowed.
- 15.12 The PURCHASER must make arrangements with the Strategic Executive: Electricity Services with regard to the provision of electricity and costs related to such provision. The Electricity Department of the SELLER could be outsourced to an Electricity Distributor Company (EDC) in which event the PURCHASER has to approach the EDC for the provision of electricity and the conditions for such provision.
- 15.13 The prepayment method for the supply of electricity might be introduced on the PROPERTY at the sole discretion of the SELLER or EDC.
- 15.14 The SELLER does not provide or facilitate any telecommunications services. The SELLER can give no undertakings in this regard.
- 15.15 The internal building service connections shall be for the account of the PURCHASER.

16. INVASIVE AND PROTECTED TREES AND PLANTS

- 16.1 The PURCHASER may not plant the tree known as Prosopis SPP or invasive alien plants, neither shall the PURCHASER allow such tree or plant to grow on the PROPERTY.
- 16.2 The PURCHASER may not remove any Protected Tree Species from the PROPERTY, namely: - Camelthorn (Kameeldoring) and Shepherd's Tree (Witgat) and Leadwood (Hardekool). IMPROVEMENTS must be designed and constructed around them. The PURCHASER and his/her Architect/Designer and any of his/her Contractors and Subcontractors may be criminally prosecuted for failure to comply herewith.

17. DOMICILIUM AND NOTICE

17.1 For the purpose of this Agreement NOTICE shall mean 5 (five) business days unless a different period is expressly stated and for any notices which may require to be delivered to or served on the PURCHASER hereunder,

And his/her postal and electronic addresses as reflected on the first page of this Agreement

17.2 The PURCHASER chooses *domicilium citandi et executandi* at the physical address reflected on the first page of this agreement.

17.3 It shall be the sole responsibility of the PURCHASER to amend his/her *domicilium* and other 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 PROPERTY as *domicilium* of the PURCHASER.

17.4 The SELLER chooses its *domicilium citandi et executandi* at:

**The office of the
Chief Executive Officer
c/o Chief Legal Officer
City of Windhoek
No. 80 Independence Avenue (TOWNHOUSE)
Windhoek**

17.5 The physical addresses set out in Clause 18.2 and 18.4 shall serve 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.

17.6 A notice to a party may also be sent electronically or by pre-paid registered post.

17.7 Any notice or other communication to a Party sent by prepaid registered post in a correctly addressed envelope to his postal address will be deemed to have been received on the 14th (fourteenth) Business Day after posting (unless the contrary is proved).

17.8 Any communication to a Party delivered by hand to a responsible person during ordinary business hours at his *domicilium* address will be deemed to have been received on the day of delivery (unless the contrary is proved).

17.9 Any communication to a Party sent electronically to his/her cellular telephone number or e-mail address, will be deemed to have been received, unless the contrary is proved at 12h00 noon of the 1st (first) Business Day following despatch or when it has been responded or acted upon whichever is the earlier date and time.

17.10 Notwithstanding anything to the contrary herein contained, a communication actually received by a Party will be an adequate communication to him/her notwithstanding that it was not sent to or delivered at his/her chosen *domicilium*, postal or electronic address.

17.11 Any Party may by notice to the other change his/her/its addresses 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* and postal address must at all times be

a physical address and postal address within Windhoek or Namibia.

18. GENERAL

18.1 INCONSISTENCY WITH SCHEDULES

In the event of any inconsistency between the provisions in the body of this agreement and the annexure or schedules to this agreement, the provisions in the body of this agreement shall prevail and take priority over such annexes and schedules.

18.2 ENTIRE CONTRACT

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

18.3 VARIATION, CANCELLATION AND WAIVER

No agreement varying, adding to, deleting from or cancelling this agreement, including this clause and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by a duly authorised representative of each of the parties.

18.4 INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

18.5 SEVERABILITY

If any provision of this agreement is found by a competent court or tribunal to be invalid or unenforceable, the remaining provisions of the agreement shall be unaffected.

18.6 AUTHORITY

The person or persons signing this agreement on behalf of the respective parties represent and warrant to the other party that they have been duly authorised to sign this agreement. The parties shall, if required, provide written resolutions authorising the persons signing this agreement, to sign this agreement and generally representing the parties in all matters in connection with this transaction.

18.7 EFFECT OF TERMINATION

Any termination of this agreement, for whatever reason, shall be without prejudice to any other rights or remedies that a party may be entitled to under this agreement or at law, and shall not affect any accrued rights or liabilities of either party, nor the coming into or continuance in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force on or after that termination.

18.8 COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts. The parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

18.9 INDEPENDENT ADVICE

Each Party acknowledges that it has been free to secure independent legal advice as to the nature and effect of all the provisions of this Agreement and that /it has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

SIGNED AT..... on..... day of on behalf of the PURCHASER:

WITNESSES:

1 **PURCHASER**

2 **PURCHASER**

SIGNED AT Windhoek on day of on behalf of the SELLER:

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 289/12/2016 and 214/07/2023)

(SELLER)

See Annexure "A"
See Annexure "B"