

DEED OF SALE



MADE AND ENTERED INTO BY AND BETWEEN

Full Name/s:

Date/s of Birth:

Address: _____ **P O Box**

Tel: _____ **Cell:** _____ **Married:**

(hereinafter referred to as the "PURCHASER")

AND

Full Name/s:

Date/s of Birth:

Address: _____ **P O Box**

Tel: _____ **Cell:** _____ **Married:**

(hereinafter referred to as the "SELLER")

The parties warrant that they are duly authorised to act and bind themselves personally for due performance of all obligations, this warrant is also applicable in the event of the parties signing on behalf of a legal entity. The provisions of this Agreement have been settled by prior negotiation, each party has been free to secure independent legal advice prior to entering into this Agreement. The rule of construction that, in the event of ambiguity, interpretation shall be against the party responsible for drafting, does not apply. Once completed and signed by both parties this offer will become a binding deed of sale for immovable property, subject to the possible suspensive conditions contained herein.

The SELLER hereby sells to the PURCHASER, who agrees to buy the bellow-mentioned property subject to the following terms and conditions.

1 PROPERTY

The property hereby sold is described as:

Certain Erf or Unit Number

Situated in the Township or Sectional Title Scheme

Municipality of _____ Measuring _____ Square Metres and held by

Deed of (Sectional) Transfer no T _____ Subject to all the terms and conditions as may

be stipulated in the said Title, together with all improvements, fixtures and fittings of a permanent nature (such as electrical light fittings and fitted carpets). *In the case of the property being a sectional title unit, it is subject to Levies and Body Corporate membership, management and rules. Exclusive Use Area/s as may be indicated on the said Title is also included herewith.*

Hereinafter referred to as “the Property”.

2. PURCHASE PRICE AND PAYMENT

The purchase price is the sum of N\$ _____

(_____ NAMIBIAN DOLLAR)*, payment to be effected in the currency of the Republic of Namibia, free of exchange, set off, deductions or bank charges (save for what is mentioned herein) against transfer of the Property into the name of the PURCHASER. Payment is to be secured in advance either by means of electronic funds transfer (EFT) into the trust account of the Conveyancer mentioned herein, or a banker's or other approved guarantee(s) by the PURCHASER (or both). Payment by EFT must occur, or such approved guarantee (s) as security for payment must be delivered by the PURCHASER, at the address of the Conveyancer mentioned herein, within 10 (ten) days after being requested by the said Conveyancer. **Transfer shall not be affected before** EFT payment, or deliverance of guarantees, was made for the full purchase price as well as the costs referred to in clause 3.

(Value Added Tax (VAT) is included in the purchase price should the SELLER be registered as a vendor under the VAT Act. Residential properties are exempted from VAT) (If amounts or figures are specified in numerals and in words and if there is any discrepancy between them the words shall apply)*

3. COSTS OF TRANSFER

The PURCHASER shall pay the transfer costs incurred in respect of the transfer of the Property, including transfer fees, transfer duty as well as stamp duty and all other costs of transfer and matters incidental thereto, including the costs associated with bank administration and related costs in order to register a mortgage bond to finance the purchase of the Property. The PURCHASER acknowledges being fully acquainted with all costs and shall immediately upon request by the Conveyancer mentioned in clause 4 make such payments. The PURCHASER also acknowledge being aware that transfer duty is payable within six months of acquiring the Property in order to avoid penalties. The SELLER shall cancel all mortgage bonds upon transfer of the Property and shall be responsible for all costs incidental to such cancellation/s – which costs may include additional costs due to the issuance of specific bank or other financial institution guarantees, should the SELLER's bank so require in order to cancel existing mortgage bonds.

4. TRANSFER

Transfer of the Property shall be passed by the Conveyancer at the law firm of **SAULS JACOBS & Co, Tel 061 387 1000** and shall be given and taken within reasonable time after compliance with the conditions in terms of clauses 2, 3 and 7 hereof and as soon as possible after fulfilment of the suspensive condition as mentioned herein. The SELLER and the PURCHASER shall immediately upon being requested by the Conveyancer sign all documents required to be signed and take all further necessary steps and actions in order to have transfer registered without any delay. The Conveyancer are duly and irrevocably authorized and indemnified by the parties to affect transfer and registration as well as payments on their behalf in terms of this Agreement.

5. RISK AND POSSESSION

Risk and possession of ownership shall pass from the SELLER to the PURCHASER on date of registration of transfer of the Property in the Deeds Registry - from which date the PURCHASER shall receive all benefits in and from the Property. The SELLER's existing insurance cover over the Property (fixtures, fittings, structures and buildings) shall remain in force until date of registration of transfer, from which date the PURCHASER shall be responsible and make his/her own arrangement for the necessary insurance cover (household as well as fixtures, fittings, structures and buildings).

6. OCCUPATION

Subject to clause 16 hereof, *vacant* occupation of the Property shall be given to the PURCHASER on date of registration of transfer of the Property at the Deeds Registry. If the date of registration does not coincide with the date of occupation, the party enjoying occupation of the Property whilst it is registered in the name of the other party, shall in consideration thereof pay in advance to the other party occupational rent of 1% of the total purchase price per month, or a pro rata share thereof.

Should the PURCHASER takes occupation prior to date of registration, no sub-letting shall be allowed and –

- 6.1 the PURCHASER shall not be entitled to make, or cause to make any alterations to the Property before the date of registration without the prior written consent of the SELLER;
- 6.2 should the PURCHASER get engaged in any such alterations, maintenance or constructional work to the Property, the PURCHASER will not have a claim against the SELLER for any such expenses, unless this Agreement is subsequently cancelled due to a breach on the side of the SELLER;
- 6.3. the PURCHASER shall be responsible for payments of all Rates and Taxes of the local authority, including Levies to a possible Home Owners Association or Body Corporate during such period of pre-transfer occupation;
- 6.4 the PURCHASER shall be obliged to vacate the Property forthwith upon cancellation of this Agreement for any reason whatsoever, it being agreed that no tenancy shall be created by any such pre-transfer occupation;

7. RATES, TAXES, LEVIES AND COMPLIANCE

- 7.1 Subject to clause 6, the payment of consumption accounts, Rates, Taxes and local authority service charges or Levies due to a possible Home Owners Association or Body Corporate are for the account of the SELLER up to date of registration of transfer - and for the PURCHASER's account beyond registration.
- 7.2 In the case of occupation by the PURCHASER prior to registration, the SELLER shall be responsible for consumption accounts only up to date of occupation by the PURCHASER - from which date the PURCHASER will become liable for the consumption accounts, Levies, Rates and Taxes on the Property. The PURCHASER shall refund to the SELLER the proportionate share of the Rates, Taxes and local authority charges, or Levies, paid in advance by the SELLER beyond the date of transfer.
- 7.3 Transfer shall not be registered without compliance with regards to consumption accounts, Rates, Taxes and local authority service charges or Levies in order to obtain applicable Clearance Certificates.
- 7.4 Should the Property be located within the Municipal boundaries of the Municipal Councils of Windhoek or Swakopmund, the SELLER shall prior to transfer, at the SELLER's expense, apply for, obtain and deliver, to the Conveyancer, a Building Compliance Certificate in accordance with the Regulations of the Local Authorities Act.

8. VOETSTOOTS

- 8.1 The Property is sold as described in the Title thereof, and is subject to all conditions, servitudes (if any) relating thereto or mentioned or referred to in the said Title or prior Title Deeds. The SELLER shall not be liable for any deficiency in extent or error in description which may be revealed upon any resurvey nor shall the SELLER benefit by any possible surplus. The PURCHASER acknowledges being fully acquainted with the Property and conditions of Title on the date of signing this Agreement.
- 8.2 The Property is further sold "voetstoots" and as it is. The SELLER gives no warranty in regard to the buildings and any improvement upon the Property. The SELLER shall not be liable for any defects in the Property, either latent or patent – unless the SELLER is aware of defects (including defective building plans at the applicable Local Authority) and such defects are deliberately concealed with the intent to defraud the PURCHASER.
- 8.3 The SELLER further warrants that the Property will be free of all encumbrances, including mortgage bonds, upon date of registration of transfer. The SELLER has all of the right, title and interest in the Property and there are no other options or rights over the Property which may limit his/her legal capacity to deal with the Property or which may in any way jeopardize the rights of the PURCHASER as owner of the Property.

9. BREACH

In the event of the PURCHASER failing to fulfil on due date any of the material terms and conditions of this Agreement and remains in default after 14 (fourteen) days written notice to remedy such breach, the SELLER shall have the right either to:

- 9.1 cancel the Agreement by registered mail or hand delivered notice to the PURCHASER, without prejudice to the SELLER's other legal rights and remedies and the right to claim damages; or
- 9.2 claim immediate payment of the whole of the purchase price and the fulfilment of all terms and conditions hereof.

It is particularly agreed upon that if there is more than one PURCHASER to this Agreement, then and in such case, they will be liable jointly and severally *in solidum*.

In the event of the SELLER failing to fulfil on due date any of the material terms and conditions of this Agreement and remains in default after 14 (fourteen) day's written notice to remedy such breach, the PURCHASER shall have the right either to:

- 9.3 cancel the Agreement by registered mail or hand delivered notice to the SELLER in which event the SELLER shall repay all monies (if any) paid to him/her in terms hereof, without prejudice to the PURCHASER's other legal rights and remedies and the right to claim damages; or
- 9.4 claim immediate transfer of the Property into the name of the PURCHASER, and the fulfilment of all the terms and conditions hereof.

10. **AGENT'S COMMISSION**

(Delete the sub clause which is not applicable)

- 10.1 The PURCHASER hereby warrants that no estate agent was instrumental in the conclusion of this Agreement and specifically indemnifies the SELLER against claims from any estate agent arising from the sale and purchase of the Property to the PURCHASER. **or**
- 10.2 The SELLER shall pay the estate agent's Commission of N\$ _____ (_____ NAMIBIAN DOLLAR) *inclusive of VAT*, which commission shall be deemed to have been earned upon the fulfilment of the suspensive conditions contained herein, payable upon registration of transfer. The PURCHASER hereby warrants that _____ (the Agent) from _____ is the effective cause of the sale and hereby indemnifies and holds the SELLER free and harmless from and against any claim which may be made by any other agent in respect of commission arising out of the sale of the Property, where such other agent claims to have actually introduced the PURCHASER to the Property and/or to the SELLER in connection with a possible sale of the Property. *Provided* that the Agent represents his/her valid Fidelity Fund Certificate from the Namibian Estate Agents Board, the SELLER hereby irrevocably instructs the Conveyancer to pay the commission to the Agent from the proceeds of the sale against registration and transfer of the Property into the name of the PURCHASER at the Deeds Registry. *Provided* that the suspensive conditions are fulfilled and If not prohibited by the local authority or Body Corporate, the Agent is authorised to display a SOLD Board/Sign on the property for 60 (Sixty) days after the transfer has been registered. In the event of the suspensive conditions being fulfilled and sale being cancelled or transfer not being implemented as a result of any failure by the PURCHASER to carry out the PURCHASER's obligations hereunder, then the PURCHASER shall be liable to the Agent for the Agent's commission, alternatively as a result of any failure by the SELLER to carry out the SELLER's obligations hereunder, then the SELLER shall be liable to the Agent for the Agent's commission.

11. **WHOLE AGREEMENT**

The parties agree that this Agreement constitutes the entire contract between them and that there are no other disclosures, expressions, opinions, conditions, stipulations, warranties or representations whatsoever made, other than such as may be included herein and signed by the parties hereto. Neither of the parties relied in entering into this Agreement on any such other disclosures, expressions, opinions, conditions, stipulations, warranties or representations which have not been incorporated into this Agreement as warranties or undertakings. No variation, addendum or consensual cancellation of this Agreement shall be of any force or effect unless reduced to legible writing in English – AND signed by both parties.

12. **WAIVER**

Notwithstanding any expressed or implied provisions of this Agreement to the contrary any latitude or extension of time which may be allowed by the SELLER in respect of any matter or thing that one party is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the other party's rights at any time, and without notice to require strict and punctual compliance with each and every provision or terms hereof.

13. **MAINTENANCE**

The SELLER shall, from date of signing of this Agreement to date of occupation (or transfer whichever is first) by the PURCHASER, keep and maintain the Property, garden and all the buildings and improvements thereon in a good state of repair and condition.

14. DOMICILIA AND NOTICES

Both the SELLER and the PURCHASER choose the addresses as provided on the front page of this Agreement for delivery of legal notices and/or the process thereto, and any other notices with regards to this Agreement. Any notice required to be given in terms of this Agreement shall be delivered at the chosen addresses and deemed to have been received upon the day of hand delivery thereof, or if send by pre-paid registered mail to such address, 7 (seven) days after the date of such mailing. Notice or communication *actually received* by one of the parties from another, including by way of facsimile transmission or electronic communication, shall be regarded as adequate notice to such party.

15. SUSPENSIVE CONDITION

It is a suspensive condition of this Agreement that the PURCHASER shall obtain a loan from a financial institution against security of a mortgage bond over the Property - upon conditions acceptable to the PURCHASER. In the event of such loan not being approved, within _____ (_____) days from date of signature hereof, this Agreement shall immediately lapse and be of no further force and effect - provided that the parties will use their respective best endeavours to restore the situation that existed before entering into this Agreement. Should the loan be approved within the time period allowed in this clause 15, however upon conditions not acceptable to the PURCHASER, the PURCHASER is entitled to cancel this Agreement based upon the unacceptable conditions of the loan by informing the Conveyancer of such non-acceptance in writing within 5 (five) days of the written approval being issued by the applicable financial institution. This clause 15 is to the sole benefit of the PURCHASER who may unilaterally waive same at any time prior to the lapsing of the time period allowed for the fulfilment. The PURCHASER undertakes to apply for a loan forthwith and authorises the Conveyancer to make enquiries at financial institutions regarding the status of applications. The provisions of clauses 9, 12, 14, 19 and 21 are of immediate force and effect and shall be given effect whether or not suspensive conditions are fulfilled.

16. TENANTS / LEASE / OPTIONS

(Delete the sub clause which is not applicable)

- 16.1 It is recorded that there are no existing contracts with current and and/or future tenants which may limit the vacant occupation or any other rights of the PURCHASER and the SELLER warrant that there will be no such lease, rental or option agreements in place on the Property on date of registration of transfer. **or**
- 16.2 The Property is leased under an existing lease agreement to _____; The PURCHASER acknowledges being fully acquainted with the lease and shall take the SELLER's place as lessor, together with the rights and obligations applicable to the lease, effectively upon date of registration of transfer.

17. CHOICE OF LAW AND JURISDICTION

- 17.1 The proper law of this Agreement is the law of Namibia, and accordingly any dispute about this Agreement, including any dispute about its validity, existence, interpretation, rectification, breach or termination or any dispute about any matter arising out/from of this Agreement, its avoidance, interpretation, rectification, breach or termination shall be determined according to the laws of Namibia.
- 17.2 The parties submit to the jurisdiction of any Namibian Magistrate's Court in respect of matters arising from this Agreement, provided that nothing shall prevent a party from approaching the Namibian High Court for relief in appropriate circumstances, nor from being entitled to costs on the High Court scale of tariffs.

18. SEVERABILITY

- 18.1 Each of the provisions of this Agreement shall be regarded as distinct and severable from the other provisions thereof, and shall be given effect to as such regardless of the manner in which it has been linked grammatically to any other provision of this Agreement.
- 18.2 If one or more provisions are found to be invalid or unlawful or unenforceable for any reason whatsoever, it shall in no way affect any other provision which shall continue to be of full force and effect.

19. CO-OPERATION

The parties undertake in utmost good faith to each other to do and to procure the doing by themselves as well as other persons, all such acts to the extent that the same may lie within such party's power, and may be required to give effect to the import and intent of this Agreement, or pursuant to the provisions of this Agreement including

compliance with relevant laws. Should the SELLER be married In Community of Property, or by virtue of a foreign marriage, the signature of the SELLER's spouse contemplates the necessary consent. The parties warrant that all written consents required in terms of the Married Persons Equality Act 1996, or any other applicable marriage regime, have been or will be given.

20. SPECIAL CONDITIONS

21. SIGNATURE

This Agreement is intended to be signed firstly by the PURCHASER and thereafter by the SELLER. The PURCHASER's signature hereto constitutes an offer to purchase the Property on the terms and conditions set out herein and shall be duly concluded upon timeous signature by the SELLER. Upon the SELLER's signature and subsequent acceptance being communicated to the Purchaser within reasonable time, the offer will become valid and irrevocable subject however to the possible suspensive conditions.

| |
|----------------------------------|
| SIGNED at _____ on _____ 20_____ |
| 1. _____ |
| 2. _____ |
| WITNESSES |
| PURCHASER / CO-PURCHASER |

| |
|---|
| SIGNED at _____ on _____ 20_____ |
| 1. _____ |
| 2. _____ |
| WITNESSES |
| SELLER / CO-SELLER / SPOUSE <i>(In Community of Property or Non-Namibian marriage - both spouses must sign)</i> |

INFORMATION FOR CONVEYANCER

PURCHASER

Full Names _____

I.D. Number _____

Date of Birth _____

Non-Namibian _____

Foreign Passport & Residence / Visa No: _____

Spouse's Full Names _____

I.D. Number _____

Date of Birth _____

Non-Namibian _____

Foreign Passport & Residence / Visa No: _____

Marital Status:

In Community of Property / Out of Community of Property;

Married outside Namibia / Proclamation (15 Of 1928) Marriage / OR: _____

Date of Marriage _____

Country _____

Unmarried – (Single / Widow / Widower / Divorcee) _____

Contact detail:

Address _____

P O Box _____

Tel. No. - Business _____

Tel. No. - Residential _____

Tel. No. - Cellular _____

E-Mail address _____

Bond / Finance:

Bond applied for N\$ _____

When _____

Financial Institution _____

Contact person _____

When would it be convenient for the Conveyancer to call? _____

I / We certify the above is correct

Signed _____

and (spouse) _____

Date _____

Include copies of Namibian Identity / foreign passports with visas and marriage certificates with Antenuptial Contracts (ANC).

INFORMATION FOR CONVEYANCER

SELLER

Full Names _____

I.D. Number _____

Date of Birth _____

Non-Namibian _____

Foreign Passport & Residence / Visa No:

Spouse's Full Names _____

I.D. Number _____

Date of Birth _____

Non-Namibian _____

Foreign Passport & Residence / Visa No:

Marital status:

In Community of Property / Out of Community of Property;

Married outside Namibia / Proclamation (15 Of 1928) Marriage / OR: _____

Date of Marriage _____

Country _____

Unmarried – (Single / Widow / Widower / Divorcee) _____

If Married in Community or in terms of foreign (Non-Namibian) marriage, spouse must sign with two witnesses.

Contact detail:

Address _____

P O Box _____

Tel. No. - Business _____

Tel. No. - Residential _____

Tel. No. - Cellular _____

E-Mail address _____

Building Compliance Certificate: YES/NO _____

When would it be convenient for the Conveyancer to call? _____

I / We certify the above is correct

Signed _____ **and (spouse)** _____ **Date** _____

Witness _____ **and** _____

*Include copies of Namibian Identity / foreign passports with visas and marriage certificates with Antenuptial Contracts (ANC) –
and Building Compliance Certificate*