

## NAMIBIA REAL ESTATE

### LEASE AGREEMENT FOR RESIDENTIAL PROPERTY

Take note that once completed and signed by both the LESSOR and LESSEE this document will become a binding contract – subject to the conditions contained therein. *(Initial each page, full signatures of both Seller and Purchaser together with witnesses at the end of the agreement in the provided areas, include the date on which the agreement was signed.)*

For a lease agreement the basic common law contractual formalities are applicable. This would mean that the parties, with the necessary legal capacity, must have consensus (meeting of the mind between them) and they must have intended for the agreement to result in terms which can be enforced. Therefore the agreement must be lawful with certain and definite terms in order to prevent a void for vagueness scenario. Leasing a property in Namibia allows for contractual freedom, within the common law guidelines, between lessor and lessee – **it is simply what is agreed upon in the contract.**

The common law duty/obligation to mitigate losses upon the landlord where the tenant is in breach can be excluded in the lease agreement. To mitigate losses is the principle that a party (landlord) who has suffered loss (breach of contract by the lessee) has to take reasonable action (get a new lessee) to minimize the amount of the loss suffered – this obligation could be excluded from the lease agreement. In other words; if excluded, the landlord may hold the lessee responsible for all losses.

**Supplied courtesy of**

**Sauls Jacobs & Co.**

**Find us at:**

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*Parties complete this document and enter into this agreement at their own risk and accept full responsibility for doing so. Sauls Jacobs & Co, Namibia Real Estate and the sponsors on the [www.namibia-realestate.com](http://www.namibia-realestate.com) web site are not liable for the correctness, completeness or adequacy of this document. No responsibility can be accepted for the wrongful use of this document, any errors, or for any losses caused or sustained, by any person.*

**AGREEMENT OF LEASE**

**BETWEEN:**

\_\_\_\_\_  
\_\_\_\_\_

P O Box \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

(hereinafter called the Lessor)

and

\_\_\_\_\_  
\_\_\_\_\_

P O Box \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

(hereinafter called the Lessee)

**WHEREAS** the Lessor is the Owner of a certain Erf / Unit known as \_\_\_\_\_,  
situated at \_\_\_\_\_ (hereinafter referred to as the Premises)

**AND WHEREAS** the Lessor is prepared to let the Premises to the Lessee and the lessee is prepared to hire the Premises from the Lessor on certain conditions.

**NOW THEREFOR** it is agreed as follows:

**1 PREMISES**

The Lessor hereby lets and the Lessee hereby hires the said Premises situated at Erf no.  
\_\_\_\_\_.

**2 DURATION**

The lease shall be for \_\_\_\_\_ months; it shall  
commence on the \_\_\_\_\_ and shall terminate on the  
\_\_\_\_\_.

**3 RENTAL**

3.1 The rental payable in respect of the dwelling shall be N\$ \_\_\_\_\_  
( \_\_\_\_\_ Namibian Dollar per month:-

3.1.1 provided that in the event of the assessment rates and levies imposed by  
either the Local Authority, or Body Corporate or Home Owners Association,  
whatever the case may be, and levied against the property or owner being  
increased during the period of this lease, the Lessee shall be obliged and  
hereby agrees to pay an increased rental to cover the said increase, subject  
to the discretion of the Lessor.

3.2 Payment of the rental provided for in 3.1 shall be made on or before the  
\_\_\_\_\_ day of every calendar month, free of exchange and without deduction,  
directly to the Lessor or at such other place as the Lessor may notify the Lessee in  
writing.

3.3 The monthly rental shall escalate annually equal to the formal inflation rate of the  
Republic of Namibia for the previous year.

**4 USE OF PREMISES**

4.1 The Premises shall be used for residential purposes only and shall be occupied by  
the Lessee and/or his lawful dependants, and one household servant only, which  
dependants and servant shall not exceed 4 persons residing there permanently.

4.2 The Lessee shall conduct his activities on Premises in conformity with the existing Municipal Bye-Laws, Regulations, Government Ordinances and Statutes and with any other Laws including Body Corporate and/or Home Owners Association rules if applicable, which may be promulgated at any time in the future relating to the Lessee's activities and the Lessee shall be obliged to comply with the those requirements and rules in connection with such activities from time to time.

4.3 This lease is furthermore subject to all the terms, conditions and restrictions at forth in the original and subsequent Deeds of Transfer of the property on which the Premises are situated.

#### 4.4 **THE LESSEE**

4.4.1 shall not use any apparatus or carry on any trade or keep any combustibles or goods on the Premises which will vitiate or endanger the Lessor fire policy covering the Premises, or allow same to take place and

4.4.2 binds himself to pay and make good to the Lessor any increase in his fire insurance premium resulting from the carrying on of any trade or process or the keeping of any combustible or hazardous goods on the Premises by the Lessee and or his dependants and/or his servant.

### 5 **MAINTENANCE**

5.1 Within 7 (SEVEN) days from the date of commencement of this lease the Lessee shall be obliged to notify the Lessor in writing of any deficiencies which may exist in the dwelling generally or in keys, locks, catches, fastenings, glass, windows doors, sewerage pipes and pans, electrical appurtenances, water taps, gas installations and all other appurtenances in or upon the Premises, and

5.1.1 failing such notice the Lessee shall be deemed to have acknowledged that he has received the Premises generally in good order and condition.

#### 5.2 **THE LESSEE UNDERTAKES:-**

5.2.1 to care for and maintain the Premises and appurtenances mentioned in 5.1 in the good order and condition in which it was received throughout the continuance of this lease and to return and redeliver the same to the Lessor in like good order and condition, fair wear and tear excepted, and

5.2.2 to make good and repair, at the Lessee's own cost and charge, any damage, breakage or loss or alternatively to reimburse the Lessor for the cost of replacing, repairing or making good the same, and

5.2.3 to keep and maintain all sewerage pipes, water pipes, guttering and drains free from obstructions and blockage.

5.3 The Lessee shall be responsible for and make good any damage to the dwelling caused by burglars or other like unauthorised persons.

- 5.4 The Lessor shall be responsible for the maintenance of the exterior including the roof of the dwelling.
- 5.5 The Lessee shall be responsible for the maintenance of the interior of the dwelling.
- 5.6 The Lessee shall not drive, or permit to be driven in nails, or screws without the Lessor's consent in writing first having been obtained.
- 5.7 The Lessee undertakes to remedy any defect, damage or loss for which he is liable in terms of this agreement forthwith upon discovery thereof and the Lessor shall be entitled to repair any damage or replace any article for which the Lessee is liable in terms of this agreement, should the Lessee fail to do so, and to recover from the Lessee the costs thereof.
- 5.8 The Lessee shall not interfere with, remove or damage any of the equipment, fixtures, fittings or articles presently in or on the Premises and shall take all reasonable precautions to prevent wilfull or negligent loss or damage to the said equipment, fixtures, fittings and articles.
- 5.9 The Lessee undertake at his expense to keep the grounds and gardens of the Premises in a neat and tidy condition and free from all weed and to maintain the existing gardens and lawns, in good condition and properly watered. In the event of a swimming pool or tennis court or any other amenity being situated on the Premises the Lessee shall maintain and keep same in proper working order and in a fit and proper state to the satisfaction of the Lessor or any person duly authorised by him thereto.
- 5.10 The Lessor or his agent/s shall be entitled at all reasonable times to enter upon the Premises to inspect the condition thereof and with his workmen, agents and other to execute such repairs and renovations to the Premises, both external and internal, as shall be compatible with the proper repair and maintenance of the Premises.
- 5.11 The dwelling shall at no stage during the currency of this lease be left vacant and in the event of any damage being occasioned to the dwelling for any reason whatsoever, the Lessee shall be liable towards the lessor for damages in respect of his failure to take proper care of the dwelling.

## **6 MUNICIPAL CHARGES**

- 6.1 The Lessor shall be responsible for and pay all municipal assessment rates and sewerage and refuse removals charges levied by the Municipal Authorities in respect of the Premises.
- 6.2 The Lessee shall be responsible for and pay all municipal charges levied in respect of the Premises for electricity, water and all other charges not provided for in 6.1.

## **7 NON-LIABILITY**

- 7.1 Neither the Lessor nor any persons acting with his authority shall be liable in any way to any persons whatsoever:-

- 7.1.1 on account of personal injury to or the death of the Lessee or any of the Lessee's employees or any other persons on the Premises with the leave and licence of the Lessee arising out of any defect in the Premises or due to the condition of the walls, floors, roofs, ceilings, doors, passages, stairs, steps, entrance halls, installations, appointments and fittings and equipment in the Premises contained, or
- 7.1.2 for any damage or loss caused to the goods and property of the Lessee or his employee or to the goods and property of any other persons in or on the Premises with the leave and licence of the Lessee due to the defective condition of the Premises or owing to leakages or to the elements such as rain, wind, hail or lightning, or due to the leased Premises falling into disrepair or particular repairs thereto not having been effected, or
- 7.1.3 for any damage whatsoever which the Lessee or any of his employees or any other persons in or on Premises with the leave and licence of the Lessee may sustain arising out of flood, fire, riots, strikes, civil commotion, burglars, the enemies of the State and the like.
- 7.2 The Lessee hereby indemnifies and holds the Lessor harmless against all claims made against the Lessor or any persons acting by and with his authority as aforesaid arising from any of the causes mentioned in 7.1
- 7.3 The Lessor shall further not be responsible for any damage or inconvenience which the Lessee may suffer owing to any difficulties experienced from time to time in the supply of electric current, water or other amenities nor shall the Lessee be entitled to an abatement of rent in respect of such occurrence.

## 8 COSTS

- 8.1 The costs for stamp duty and other costs incidental thereto shall be borne by the Lessee.
- 8.2 The Lessee shall be responsible for and hereby undertakes to pay to the Lessor all expenses, costs and charges which the Lessor may incur arising out of the default of the Lessee including any costs of tracing the Lessee, collection commission at the ruling rate and all legal costs as between attorney and client.

## 9 ALTERATIONS

- 9.1 The Lessee shall not make any structural alterations whatsoever in, or additions to, the Premises without the written consent of the Lessor first being had and obtained:
- 9.2 The Lessor shall be entitled to require that all alterations, repairs or maintenance carried out in terms of 9.1 shall be effected by a builder and/or with the approval of and/or under the supervision of an architect to be nominated by the Lessor, and such alterations, repairs or maintenance shall in all cases be executed to the satisfaction of the Lessor.
- 9.3 The Lessee shall not be entitled to any compensation for any work or improvements effected by him in pursuance of 9.1.

- 9.4 In the event of the Lessor electing to make any alterations or additions to the during the currency of this lease he shall be entitled to do so without let or hindrance from the Lessee, and
- 9.4.1 he shall be entitled to erect such scaffolding or pillars as may be considered necessary for the purpose of such rebuilding or alterations or additions, and
- 9.4.2 the Lessee hereby expressly waives any claim which he may have otherwise enjoyed to restrain the Lessor or to claim damages from him as a result of any damage or loss that he may sustain as a result of such rebuilding operations, and
- 9.4.3 the Lessor undertakes to minimise to the utmost extent any possible inconvenience to the Lessee and
- 9.4.4 The Lessee shall be entitled to a pro rata remission of rental in respect of any period during which the Lessee is deprived of the beneficial use of the dwelling on account of any alterations or rebuilding activities in terms of 9.4
- 9.5 The Lessor shall not be responsible for the installation of electrical wiring, lighting, switchgear or any other electrical installations or appurtenances in the dwelling.
- 9.6 No installations or improvements of whatever nature by the Lessee may be removed without the prior written consent of the Lessor at the termination of this lease, however upon termination such installations and improvements shall become the property of the Lessor who shall not be obliged compensate to the Lessee therefor.
- 9.7 In so far as concerns the removal of any articles which the Lessee is entitled to remove, the Lessee shall be obliged to make good or alternatively pay to the Lessor the cost of making good any damage or disfigurement to the Lessor's property occasioned by such removal.

## 10 **DESTRUCTION BY FIRE**

Should the dwelling be destroyed by fire during the continuance of this lease in such manner as to render the same untenable:-

- 10.1 this lease shall not thereby be terminated automatically, but
- 10.2 the Lessor shall be obliged to notify the Lessee in writing within 30 (THIRTY) days of the date of such fire whether or not he intends to reinstate the dwelling, and
- 10.2.1 only failing such notice within the time specified shall the Lessee be entitled forthwith to terminate the lease, provided that
- 10.2.2 in the event of the Lessor giving notice in terms of 10.1 this lease shall continue for the unexpired period thereof after the date upon which the lease would normally have expired for a like period to that during which the Lessee is deprived of beneficial occupation, and provided further that
- 10.2.3 the Lessee shall be entitled to a prorata remission of rental for the period of non-beneficial occupation, and

10.2.4 in the event, that rebuilding of the dwelling is not completed within 3 (THREE) months from the date of the fire, the Lessee at his option shall be entitled to declare this lease terminated and neither party shall then have any claim of whatever nature against the other save for claims accruing up to the date of the fire.

## 11 SUB-LEASE

The Lessee **shall not** be entitled to sub-let the Premises or any part thereof nor assign, cede or transfer his interest under this lease nor part with possession of the dwelling upon the Premises to any other party of body, without the written consent of the Lessor first being had and obtained, provided that,

- 11.1 in the event of the Lessor consenting to sub-letting of the dwelling, the sub-tenant shall be obliged and bound to pay the rentals direct to the Lessor, who for the purpose of this clause shall be deemed to be the duly authorised agent of the Lessee, and
- 11.2 the Lessee shall in no way be relieved of his obligations to the Lessor under this lease by reason of any sub-lease.

## 12 TO LET NOTICES

The Lessor shall have the right of affixing and exhibiting on the said dwelling "TO LET" notices for a period of 2 (TWO) months prior to the termination of this agreement and the Lessee shall permit prospective tenants or buyers to view the interior of the Premises during reasonable hours.

## 13 DEFAULT

- 13.1 In the event of the Lessee failing to pay the rental or any other moneys as herein provided on the due date thereof, or in the event of the Lessee failing to carry out each and every one of the terms and conditions of this lease, the Lessor or his duly authorised agent, shall be entitled:-
- 13.1.1 at his option and notwithstanding anything to the contrary herein contained or previous waiver or latitude, and
- 13.1.2 without prejudice to any action or remedy which he may have against the Lessee for damages, for breach of contract and recovery of any moneys which may be due to him hereunder or otherwise.
- 13.2 to declare the Lessee's rights under this lease and tenancy of the dwelling as terminated, and
- 13.3 to immediately eject the Lessee and all other occupants from the Premises and
- 13.3 to hold the Lessee liable for damages and lost of income.



14 **HOLDING OVER**

- 14.1 In the event of the Lessor cancelling this lease and the Lessee disputing his right to cancel and remaining in occupation of the dwelling, the Lessee shall pending a decision in such dispute, continue to pay an amount equivalent to the monthly rental provided for in this lease together with all other payments herein provided and on the due date provided for in this lease and at the place provided for and the Lessor shall be entitled to accept and recover such payments, either before or after legal proceedings have been instituted and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the Lessor's claim of cancellation then in dispute.
- 14.2 Should the dispute be determined in favour of the Lessor the payments made and received in terms of 10.1 shall be deemed to be amount paid by the Lessee on account of damages suffered by the Lessor by reason of the cancellation of the lease and/or the unlawful holding over by the Lessee.

15 **DOMICILIUM CITANDI ET EXECUTANDI**

The parties hereby choose domicilium citandi et executandi at the following addresses where all notices required in terms of this agreement shall be delivered or if sent by registered mail, to which such notices shall be addressed and where all legal process or other documents shall be served:-

THE LESSOR : \_\_\_\_\_

\_\_\_\_\_

THE LESSEE : \_\_\_\_\_

\_\_\_\_\_

- 15.1 provided that either party shall be entitled to change its domicilium citandi et executandi to any address in the Republic of Namibia by giving written notice of such change to the other party.

16 **RENEWAL**

The Lessee shall be entitled upon expiry of this lease to a right of first refusal in respect of a new lease of the dwelling subject or such terms and conditions as the Lessor may determine

- 16.1 provided that the Lessee shall advise the Lessor in writing at least 30 (Thirty) days before the expiry of this lease of his desire to enter into such new lease whereupon
  - 16.1.1 The Lessor shall within 7 (seven) days of the receipt of such advice, inform the Lessee of the conditions under which he is prepared to further let the dwelling to the Lessee.
  - 16.1.2 The Lessee shall within 7 (Seven) days after receipt of the Lessor's advice, inform the Lessor whether he accepts the terms laid down by the Lessor.

17 **NOTICES**

All notices required to be given in terms of this Agreement shall be in writing and shall either

17.1 be hand delivered to the party for which it is intended and an acknowledgement of receipt obtained therefor or alternatively;

17.2 be posted by prepaid registered mail and if sent by prepaid registered mail the notice shall be deemed (unless the contrary is proved) to have been received within 5 (five) business days after the date on which it is so posted.

18 **JURISDICTION**

The parties hereby consent in terms of section 45 of the Magistrate's Court Act No 32 of 1944 to the jurisdiction of any Magistrate's Court having jurisdiction over their respective persons under section 38 of that Act, notwithstanding that any action or proceeding arising out of this agreement would otherwise be beyond the jurisdiction of such court; provided that the Lessor shall have the right to institute action in any other competent court.

19 **PLATE GLASS INSURANCE**

19.1 The Lessee is obliged to insure and keep insured all plate glass and/or windows in the dwelling with such company and for such risks and to punctually pay all premiums in respect of such insurance on the due date thereof and shall on request by the Lessor produce proof of such payment from time to time;

19.2 alternatively and in its discretion the Lessor shall be entitled to effect such insurance in its own name in which event the Lessee shall be obliged to refund to the Lessor forthwith on demand therefor the amount of all premiums from time to time paid by the Lessor in respect of such insurance;

19.3 alternatively, the Lessor shall be entitled to repair or replace any damaged plate glass or windows for which the Lessee is liable in terms of this agreement, should the Lessee fail to do so, and to recover from the Lessee the costs thereof.

20 **AGREEMENT BINDING**

20.1 This document constitutes the entire agreement between the parties, and

20.1.1 no representations, warranties or undertakings of any nature whatsoever of any nature whatsoever shall be of any force or effect, save as recorded herein, and

20.1.2 no variation of or addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised agents.

20.2 No latitude or extension of time which may be allowed by Lessor to the Lessee in respect of any payment provided for herein, or in respect of any matter or thing which the Lessee is bound to perform or observe in terms hereof, shall in any circumstances be deemed to be a waiver of the Lessor's right at any time to require strict and punctual compliance with each and every provision or term hereof.

21 **TERMINATION**

The Lessee herewith consents that this agreement can be terminated unilaterally by the Lessor with a 60 (sixty) days prior notice to the Lessee.

22 **DEPOSIT**

This agreement of lease is subject to the condition that the Lessee shall deposit an amount **equal to 1 (one) month's** rent as key deposit, prior to date of occupation, which deposit shall be kept in trust with the Lessor and be refunded to the Lessee on termination of this lease less any expenses for keys not returned, any breakages and/or damages whatsoever caused by the Lessee. Whenever during the lease period the deposit is so applied in whole or part, the Lessee shall on demand reinstate the deposit to its original amount. Whenever the lease agreement is renewed and the monthly rent amount increased, the Lessee shall on demand, subject to the Lessor's discretion, pay the balance between the original rental amount and the increased rental amount to the Lessor, which balance payment will then from part of the deposit. The deposit demanded may never be used as the last month's rent payment.

23 **GOOD FAITH**

In implementation of this lease agreement the parties hereto undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of the other of them.

THUS DONE and SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
LESSEE

THUS DONE and SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
LESSOR