



Drafted by : DR WEDER, KAUTA & HOVEKA INC 3 rd FLOOR, WKH HOUSE, AUSSPANNPLATZ, WINDHOEK A SWANEPOEL/am COPYRIGHT RESERVED	
Revision Date 16 February 2015	
OFFICE USE	
Erf No: _____	
Purchaser Signed: _____	
Seller Signed: _____	

MEMORANDUM OF AGREEMENT OF SALE

MADE AND ENTERED INTO BETWEEN:

ACCOLADE PROPERTIES NAMIBIA (PROPRIETARY) LIMITED

Herein represented by Geon Ellis, he being duly authorized thereto

of P.O. Box 26585, WINDHOEK, NAMIBIA.

Tel: +264 (0) 61 222 891 E-mail: geon@apn.com.na

(Hereinafter referred to as the **SELLER**),

And (pls incl Co registration or Trust No)

Represented by (if applicable) _____

of P.O. Box: _____

Mobile: _____ Tel (w) _____

E-mail: _____ Fax: _____

(Hereinafter referred to as the **PURCHASER**)

WHO DECLARED THAT:

RECITALS

WHEREAS the SELLER is the registered owner of the property described as the Remainder of Portion 55 of the Farm Ondekaremba No 78, situate in the Settlement Area of Kappsfarm, held under General Plan No. K447;

AND WHEREAS the SELLER has established the Township of Sungate upon the aforesaid property comprising erven of a mix zoning and density for use thereof for light industrial, commercial, retail, residential and leisure purposes as more fully indicated on General Plan No K447;

AND WHEREAS the aforesaid Township will be managed and administered by an Owners Association subject to certain Architectural and Townplanning guidelines and such further terms and conditions as may be imposed by the SELLER as Developer.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:**1 INTERPRETATION**

In this Agreement unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings assigned to them hereunder:

PART A: THE PARTIES

- 1.1 "SELLER" means Accolade Properties Namibia (Pty) Ltd, Reg no: 2006/730
- 1.2 "SELLER'S address" means 45 Feld Street, Windhoek
- 1.3 "PURCHASER" means the party as described on page one of this agreement
- 1.4 "PURCHASER'S address" means _____
(physical address) _____

PART B: GENERAL DEFINITIONS

- 1.5 "addendum" means the addendum to this Agreement, more fully described in Annexure "A" hereto;
- 1.6 "agent" means (name) _____
Of (agency) _____
- 1.7 "agreement" means this document together with all of its annexures, as amended from time to time;
- 1.8 "business day" means any calendar day, excluding Saturdays, Sundays and official public holidays in the Republic of Namibia;
- 1.9 "conditions precedent" means the conditions precedent stipulated in clause 4;
- 1.10 "completion date" means the date upon which the construction of services as contemplated in clause 4.1.1 has been completed to the satisfaction of the Engineer;
- 1.11 "date of acceptance" means the date of signature of this agreement by the signatory which signs it last in time (provided that all the parties to this agreements signs the agreement);
- 1.12 "deposit" means N\$ _____ (_____)
_____)
Payable per 3.1.1 below into to the Conveyancers Account per 1.27 below.
- 1.13 "development or project" shall mean The servicing of the land by the construction and completion of bulk and local authority and other related services as indicated on the sketch plan annexed hereto marked "A" and the subsequent marketing and sale of individual erven within the Township of Sungate;
- 1.14 "development period" shall mean the full period required for the completion of the construction of the services which may, in the discretion of the SELLER, be conducted and performed in various phases;
- 1.15 "drawings and specifications" shall mean the approved Engineers drawings and specifications according to which the bulk and local authority and other related services in respect of the phase in which the property hereby sold is situated, will be constructed;

1.16	"engineer" means	a qualified professional Engineer appointed by the SELLER for the project;
1.17	"guarantee due date" means	14 (fourteen) days after date of acceptance; or, in the event of application for loan finance in terms of clause 4.1.2.1 herein, then within 10 days of approval thereof;
1.18	"land surveyor" means	the Land Surveyor appointed by the SELLER from time to time;
1.19	"land" means CERTAIN SITUATE MEASURING	Remainder of Portion 55 of the Farm ONDEKAREMBA No 78 in the Settlement Area of Aris , Registration Division "K" Khomas Region, approximately 408 Hectares
1.20	"management and conduct rules" shall mean	the Management and Conduct Rules adopted by the Sungate Owners Association and amended as required;
1.21	"material adverse change" shall mean	the occurrence of any facts and/or circumstance which has, or which is reasonably considered likely to have, a material adverse effect on 1.4.1 the business, operations, property, condition (whether financial or otherwise) and/or the prospects of the SELLER; and/or 1.4.2 the ability of the SELLER to comply with its obligations arising out of this Agreement;
1.22	"occupation date" means	the date of transfer;
1.23	"offer expiry date" means	Expiry of the period referred to in clause 24.1 herein;
1.24	"parties"	the PURCHASER and the SELLER and a reference to "party" encompasses a reference to each individually;
1.25	"property" means SITUATE MEASURING	Erf No _____ SUNGATE In the Township of Sungate Registration Division "K", Khomas Region _____ Square Metres;
1.26	"purchase price" means	the price per clause 2 below;
1.27	"SELLER'S Conveyancer" means	Dr WEDER, KAUTA & HOVEKA INC, 3 RD Floor, WKH HOUSE, Jan Jonker Road, Aussspanplatz, Windhoek, (Tel: 06127555 : Nevadia van Zyl / André Swanepoel); Bank Windhoek, Windhoek, Branch Code 481972, Acc # 1026643801
1.28	"services" shall mean	all bulk and local authority and other related public services to be constructed upon the land which services, inter alia, will relate to Civil Engineering works like streets, stormwater drainage, internal water and sewerage network etc. including electrical network services and telecommunication services which services, in the sole discretion of the SELLER, be constructed in various phases;
1.29	"sketch plan" means	the plan annexed hereto marked "A";
1.30	"Sungate Owners Association" shall mean	the Sungate Owners Association (Reg No: 21/2013/0573) incorporated in terms of the Companies Act 28/2008 as amended for the purposes of the management and administration of the Township of Sungate by the Powers granted it as a Local Authority in terms of the Proclamation notice, Gazetted on 16 January 2012. (#4870).

- 1.31 "transfer" means the registration of transfer of the property into the name of the PURCHASER;
- 1.32 "transfer date" means the date upon which registration of transfer of property into the name of the PURCHASER is registered by the Registrar of Deeds, Windhoek;
- 1.33 "VAT" means valued added tax as defined in the Value Added Tax Act No 10 of 2000, as amended;
- 1.34 the singular shall include the plural or vice versa and words importing one gender shall include the other genders;
- 1.35 headings to clauses are for reference purposes only and are not be used in the interpretation thereof;
- 1.36 the number of days prescribed shall be calculated exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.37 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the signature date, and as amended or substituted from time to time;
- 1.38 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this agreement;
- 1.39 where any term is defined within a particular clause other than this clause 1 that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement;
- 1.40 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.41 any term which refers to a Namibian legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this agreement may apply or to the laws of which a party may be or become subject;
- 1.42 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.

The terms of this agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this agreement.

2 PURCHASE AND SALE

- 2.1 The SELLER hereby sells to the PURCHASER, who hereby purchases, the property –
- 2.1.1 subject to the terms and conditions set out in this Agreement;
- 2.1.2 subject to all conditions and servitudes (if any) mentioned or referred to in the title deed of the property; and
- 2.1.3 for a purchase consideration of N\$ _____ (_____

_____), **EXCLUSIVE of VAT** ("the purchase price")

- 2.2 The property is sold voetstoots and the SELLER gives no warranty with regard thereto, whether express or implied. The property is furthermore sold subject to the conditions contained herein as well as such conditions as may be mentioned or referred to in the SELLER'S title deed in respect of the property and/or the relevant diagram or general plan. The SELLER shall point out any survey beacons or boundaries of the property to the purchaser only on written request to do so from the PURCHASER, which written request must be received by the SELLER within 7 days of transfer of the property to the PURCHASER whereafter no further obligation to point out such survey bacons or boundaries

rests on the SELLER. The SELLER shall furthermore not be responsible to the PURCHASER for any deficiency in the extent of the property that may be found upon the measurement thereof and in a like manner, the PURCHASER shall be entitled to the benefit of any excess.

3 PURCHASE PRICE AND PAYMENT

3.1 The purchase price and the VAT thereon (if any) shall be payable by the PURCHASER, in the following manner namely:

3.1.1 DEPOSIT AND BALANCE ON TRANSFER DATE

3.1.1.1 **the deposit** per 1.12 above shall be paid by the PURCHASER to the SELLER within 3 (three) business days of the date of acceptance. The deposit shall be paid to the SELLER'S Conveyancer in trust and invested by the SELLER'S Conveyancer in an interest bearing trust account in the name of the PURCHASER in terms of Section 26(3) of the Legal Practitioners Act 15 of 1995. Interest on the deposit shall accrue for the benefit of the PURCHASER until the transfer date. On the transfer date the deposit shall be paid to the SELLER and the interest to the PURCHASER; and

3.1.1.2 **the balance of the purchase price together with VAT** shall be paid on the transfer date. Payment of the balance of the purchase price and VAT shall be secured by a bank guarantee, in a form and substance acceptable to the SELLER, from a registered financial institution acceptable to the SELLER, and shall state to be payable against transfer of the property into the name of the PURCHASER on the transfer date. Such cash or guarantees shall be furnished to the SELLER'S Conveyancer on or before the guarantee due date specified in Clause 1.17 above..

3.1.2 VALUE ADDED TAX (VAT)

The purchase price is exclusive of value added tax, and such VAT shall be secured per 3.1.1.2 above and paid on the transfer date over and above the purchase price.

4 CONDITIONS PRECEDENT

4.1 This Agreement, save for the provisions set out in 1 and 3.1.1.1., this clause 4, and 10 to 19, 21, 23 and 24 (all inclusive) shall be of immediate force and effect, is subject in its entirety to the fulfilment or waiver, as the case may be, of each of the following conditions precedent, namely; that:

4.1.1 COMPLETION OF SERVICES

4.1.1.1 The completion, in accordance with the approved drawings and specifications of bulk and local authority and other related public services in respect of the particular phase in which the property hereby sold is situated which services are more fully detailed in Annexure "A" hereto;

4.1.1.2 The services stipulated in 4.1.1.1 in respect of the particular phase shall be constructed and completed within 90 (ninety) days from the signature date hereof, or such later date as the SELLER may notify the PURCHASER in writing.

4.1.1.3 The SELLER shall be entitled to complete such services in various phases at the SELLER'S sole discretion and a PURCHASER of a property shall be obliged to take transfer of a property if such property is situated in that particular phase provided the bulk services and services of that particular phase of the project have been completed.

4.1.1.4 The services referred to above shall be designed and be constructed under the supervision of a registered professional Engineer who shall issue a completion certificate upon completion of such services which completion is to be effected prior to any registration of transfer of any property situated within a particular phase within the development.

4.1.1.5 A certificate of completion by the Engineer shall be sufficient and conclusive proof of the completion of the services.

4.1.1.6 Any additional services required by the PURCHASER eg. electrical substations, electrical and water meters shall however be the sole responsibility of the PURCHASER and be for his costs. Such applications shall be made and paid through the Sungate Owners Association as the Proclaimed Local Authority.

4.1.2 APPROVAL OF A LOAN TO THE PURCHASER

4.1.2.1 The procurement by the PURCHASER of a loan from a financial institution of its choice against security of the property in an amount of not less than N\$_____ (_____

NAMIBIA DOLLARS). The PURCHASER undertakes to **apply for such loan within 7 (seven) days** after date of acceptance and to sign all documents necessary and/or required to facilitate the approval thereof which **approval** shall be obtained by the PURCHASER **within 21 (twenty one) days from date of acceptance.**

4.2 In the event of either of the conditions referred to in clauses 4.1.1 and 4.1.2 not being fulfilled within the periods referred to herein or within such extended period as the parties may agree upon in writing, then this Agreement shall terminate and all sums already paid by the PURCHASER under clause 3.1.1.1, shall be refunded to him, with interest accrued thereon. Upon such refund no party shall have or retain any further claim of whatsoever nature against the other party arising from or under this Agreement.

4.3 In particular, no claim of damages of any nature whatsoever shall lie against the SELLER. The SELLER, however, undertakes and binds itself to take all reasonable steps and to do all such things as may be reasonable in order to procure the fulfilment of the conditions precedent per this Clause.

4.4 Either party to this Agreement may at any time prior to the fulfilment of any of the conditions precedent contained in this Agreement, which condition is to his or its benefit, advise the other in writing that he or it waives the benefit of such conditions in which event this Agreement will no longer be subject to such conditions. The condition referred to in clause 4.1.2 is for the sole benefit of the PURCHASER who shall be entitled by way of written notice to that effect to the SELLER, to waive compliance with such condition, or, if agreed, extend the date by which the condition is to be fulfilled to a later date. The condition referred to in 4.1.1 is not capable of being waived

5 **OCCUPATION, RISK AND POSSESSION**

Possession and occupation of the property hereby sold shall be tendered by the SELLER to the PURCHASER only after the completion of the services as referred to in clause 4.1.1.1 hereof and fulfilment of all other condition precedent.

The following shall be deemed to be the position regarding possession and occupation of the property:

5.1 It is expressly agreed that no person shall have access to the property hereby sold from the time that the SELLER has commenced with the construction of services to the land, with the exception of the SELLER, its employees its representatives and sub-contractors, and, the PURCHASER or his authorized representatives, provided prior approval has been granted by the SELLER to the PURCHASER.

5.2 Occupation and possession of the property shall be given to and be taken by the PURCHASER on the occupation date upon which date all risks and benefits shall pass to the PURCHASER.

5.3 If the PURCHASER shall (for whatever cause or reason) occupy the property prior to the transfer date, then such date of first occupation by him, shall irrevocably also be deemed to be the date of possession (however, the SELLER reserves its right to evict the PURCHASER or the occupant from the property, if such occupation should have taken place otherwise than in accordance with this Agreement);

6 **TRANSFER**

6.1 It is hereby recorded that transfer of the property in the name of the PURCHASER shall be given and taken as close as reasonably possible to the date on whichever of the following events might occur, the later in point of time:

6.1.1 The PURCHASER has signed all the necessary transfer documents and has made payment to the Conveyancers of the costs of transfer including stamp duty on the Deed of Transfer and has paid or guaranteed payment of the full balance of the purchase price referred to herein;

6.1.2 The fulfilment or waiver, as the case may be, of all the conditions precedent.

6.2 Transfer of the property will be effected by the SELLER'S Conveyancers.

6.3 The PURCHASER shall be obliged to take transfer of the property when requested thereto by the Conveyancers and once all conditions precedent have been fulfilled which registration will be effected, notwithstanding any conditions contained herein to the contrary, prior to the commencement of any building operations pursuant thereon.

7 COSTS OF TRANSFER

7.1 All normal costs of transfer of the property, including the costs hereof, transfer duty and all other costs which have to be incurred in order to comply with statutes, other enactments or regulations relating to the passing of transfer of the property and the registration of a bond (if any) shall be paid by the PURCHASER within 5 days of being requested thereto by the Conveyancers, by default of which the SELLER will be entitled to cancel this Agreement without any further notice and subject to the SELLER'S rights and remedies set out herein.

7.2 For the purposes aforesaid the parties hereto specifically agree that, notwithstanding the provisions of any act or regulation to the contrary, that the PURCHASER will also be liable for all stamp duty payable on this transaction, whether or not the SELLER might be legally liable therefore.

7.3 The PURCHASER acknowledges that he is aware of the fact that he is liable to pay transfer duty within 6 (six) months from date of acceptance hereof, from which date interest at a rate of 10% (ten per centum) per month on the amount of the transfer duty, will be levied. In order not to pay any interest on transfer duty, the PURCHASER is entitled to pay the transfer duty before expiration of the period of 6 (six) months to the Receiver of Revenue, Windhoek, or to the Conveyancers effecting the transfer, and request them to deposit same with the Receiver of Revenue. Although the Conveyancers will endeavour to notify the PURCHASER timeously of such payment, the PURCHASER hereby indemnify them and the SELLER against any claims that might arise therefrom.

8 CONDITIONS OF TITLE

8.1 The PURCHASER will be obliged to take transfer of the property subject to the conditions:

8.1.1 imposed under approval of the Township by the Local Authority or Government or any other competent authority, or other body of persons of authority having jurisdiction thereover;

8.1.2 of any servitudes which may be applicable to the property hereby sold, or to the building structures to be constructed thereon if laid down in accordance with the contents of this Agreement by the Local Authority or imposed by them upon approval of the township;

8.1.3 of any servitudes contained in the existing title deed of the land;

8.1.4 which the SELLER as Developer and/or the Sungate Owners Association intends to impose, which conditions are more fully set out in clause 9 hereof;

8.1.5 contained in any Sungate Management and/or Conduct Rules adopted by the Sungate Owners Association for purposes of effectively administrating the township for the benefit of all members of the Association;

8.2 The PURCHASER shall not be entitled to resell or alienate in any manner whatsoever the property or if registered in any corporate entity, the interest or shares in and to such corporate entity to any person or other legal entity prior to the transfer date or the date of occupation whichever date is the later unless prior written approval has been obtained from the SELLER which will only be given once the PURCHASER has complied with all the conditions regarding resale as hereinafter fully described and more particularly in clause 9 hereof. It is agreed that and accepted that the said condition is included in this Agreement for the sole benefit of the SELLER as Developers in order to protect their rights

under the Agreement. Any such sale by the PURCHASER without the aforesaid consent shall ipso facto constitute a breach of this Agreement entitling the SELLER to cancel this Agreement in terms of the provisions of clause 10 hereof.

- 8.3 The SELLER shall have the right in its sole discretion to develop the land and commence with and complete the services in various phases depending on the demand for serviced properties and the PURCHASER shall upon completion of the construction of services in respect of a specific phase be obliged to take transfer of a property purchased in such particular phase notwithstanding the fact that the rest of the land has not been provided with the necessary services.

9 SUNGATE OWNERS ASSOCIATION

- 9.1 It is recorded that the SELLER has effected the incorporation of the Sungate Owners Association (a Section 21 company) the purpose of which is to manage and administer the Township and to promote and service the communal interests of registered owners of properties.

- 9.2 The PURCHASER agrees that it will be a condition of this Agreement that:

9.2.1 immediately on becoming the registered owner of the property the PURCHASER will automatically become and remain a member of the Sungate Owners Association and thereafter will be and remain bound, for so long as the PURCHASER is a registered owner, by its Memorandum and Articles of Association and/or Constitution as well as the said Association's Conduct Rules and Regulations adopted by it;

9.2.2 should the PURCHASER sell the property the PURCHASER will ensure that the subsequent PURCHASER is made fully aware of the existence of the Sungate Owners Association and the fact that such successor purchaser shall be obliged to become and remain a member thereof and to comply with the aforesaid rules and regulations and remains bound to it;

9.2.3 The property may not be sold, transferred, leased or disposed of in any manner whatsoever to any person without the prior written approval of the Sungate Owners Association which approval shall only be given once:-

9.2.3.1 the prospective PURCHASER has agreed in writing that he will, upon registration of transfer, become a member of the said Association and be and remain bound by their rules and regulations for so long as he is and remains the registered owner of the property; and

9.2.3.2 the Sungate Owners Association Company has certified in writing that:

9.2.3.2.1 the provisions of 9.2.1 and 9.2.2 above have been complied with; and

9.2.3.2.2 levies for a period of not less than three months after the date of the certificate in question have been paid or secured to the satisfaction of the said Association; and

9.2.4 For purposes hereof sale, transfer or dispose of, shall include any sale or transfer of shares or members interest or beneficial interest by the PURCHASER in the event of it being a Company with share capital, Close Corporation or Trust respectively, having the effect of changing the composition of shareholders, members or beneficiaries respectively from that date as at the date of signature hereof.

- 9.3 Notwithstanding the provisions of 9.2 above, registration of transfer of the property to any other person shall automatically and ipso facto constitute that person to be a member of the Sungate Owners Association and to be bound by the said Association's Memorandum and Article of Association or Constitution as well as its Conduct Rules and Regulations.

- 9.4 The SELLER shall be entitled to procure that in addition to all other conditions of title and/or subdivision and/or conditions of establishment referred to therein that the following conditions will be inserted in the deed of transfer in terms of which the PURCHASER takes title to the property, and shall be registered against the title deed of the property in the following form or in such other form as may be acceptable to the Registrar of Deeds, all of which are

imposed as conditions in favour of the SELLER and/or Developer and/or the Sungate Owners Association as the case may be and the PURCHASER hereby agrees to such amendment as may be required;

- 9.4.1 "every owner of the erf or any subdivision thereof or any interest therein or unit thereon and his successors in title shall automatically upon registration of transfer become and remain a member of the Sungate Owners Association and become and remain bound by its Memorandum and Articles of Association and/or Constitution and by any Management and/or Conduct Rules and Regulations adopted by the said Association until the owner ceases to be an owner as aforesaid. Neither the property nor any subdivision or consolidation thereof, nor any interest therein or thereto, shall be transferred to any person who has not agreed to become a member of the Sungate Owners Association and to remain bound by its Memorandum and Articles of Association or Constitution as well as the Management and/or Conduct Rules or Regulations adopted by it; and who has not secured payment by way of a debit order or such other method of payment acceptable to the said Association of the monthly levy due to them".
- 9.4.2 "the owner of the erf or any subdivision thereof or any interest therein or unit thereon and his successors in title of the property, or of any interest therein or thereto, ("the owner") shall not be entitled to transfer the property, or any subdivision or consolidation thereof or if the property is registered in the name of any corporate entity, the owner or holder of such interest, shares or rights in and to such entity shall not be entitled to transfer such interest, share or rights without the Sungate Owners Association's prior written consent which shall not be given unless the said Association has confirmed in writing that it has satisfied itself that all conditions imposed by the Sungate Owners Association have been met and that all amounts due to it by the owner have been paid and/or secured";
- 9.4.3 "No improvement of any nature may be effected to the property without the prior written approval of the Sungate Owners Association or its nominee, and any building plans in respect of any improvements to be erected on the property shall be subject to the prior written approval of the said Owners Association or its successors-in-title. Such approval will be required without limitation to all external finishes including materials and colours for all walls, roofs and windows";
- 9.4.4 "The owner of the property shall not make any application for the rezoning, consolidation or sub-division of his property without the prior written consent of the Sungate Owners Association".
- 9.4.5 The PURCHASER and future owner of the property shall at all times comply with the Environmental Management Plan as determined and implemented by the Sungate Owners Association.
- 9.5 The above conditions are for the benefit of the Sungate Owners Association and/or the SELLER as Developer as the case may be and constitute a stipulatio alteri for their respective benefits which may be enforced by them on behalf of any or all such members at any time.
- 9.6 The PURCHASER acknowledges that his attention has been drawn to the fact that there exists or shall exist a number of important and related Agreements and documents in connection with the Development and or the Sungate Owners Association, which inter alia deal with the control management and administration of the Sungate Town to be established within the Development and the architectural and building requirements for improvements within the Township, all of which will be binding upon the PURCHASER in his capacity as such and as future member of the Sungate Owners Association.
- 9.6.1 These documents include but are not limited to the following, as determined by the Seller or its representative/s:
- 9.6.1.1 The Memorandum and Articles of Association of the Sungate Owners Association;
- 9.6.1.2 Management and or Estate Conduct Rules;
- 9.6.1.3 Design Review Panel process, including Architectural and /or other guidelines;
- 9.6.1.4 Builders Code of Conduct and construction guidelines;

- 9.6.2 The PURCHASER acknowledges that as PURCHASER and as future member of the Sungate Owners Association, he will by his signature hereto, become irrevocably bound thereby and by the terms and conditions thereof.

10 BREACH AND CANCELLATION

10.1 By PURCHASER:

If the PURCHASER defaults in the payment of any sum whatsoever payable by the PURCHASER in terms hereof or breaches any of the PURCHASER'S other obligations (all of which are agreed to be material) hereunder and fails to remedy such default or breach within 10 (ten) days from the date of dispatch of written notice by the SELLER requiring the remedy of such default or breach, the SELLER shall be entitled, without prejudice to any other rights available to it in terms of this Agreement or in law:

- 10.1.1 to claim forthwith from the PURCHASER the whole of the balance of the purchase price together with interest at the prime overdraft rate charged by Bank Windhoek Limited from time to time, calculated monthly in advance from the date of breach to the date of payment in full, as well as all other sums for which the PURCHASER may then be liable in terms of this Agreement; or
- 10.1.2 to cancel this Agreement and claim from the PURCHASER such damages as it may have sustained by reason of the cancellation; or
- 10.1.3 to cancel this Agreement and retain all amounts which the PURCHASER has paid in terms hereof as a genuine pre-estimate of the damages which the SELLER has sustained by reason of such cancellation. In this event, the PURCHASER shall be deemed to have authorised the SELLER'S Conveyancer to pay to the SELLER any amount paid by the PURCHASER in terms hereof and invested by the SELLER'S Conveyancer on the PURCHASER'S behalf, and also to claim from the PURCHASER occupational interest until the date of repossession.
- 10.2 For purposes of the above the PURCHASER acknowledges that he is aware of the provisions of the Limitations of Penalties Act and hereby specifically waives the benefits thereof.

10.3 By SELLER:

If the SELLER defaults in any of its obligations as set out in this Agreement, the PURCHASER shall be entitled, without prejudice to any other rights which it may have at law, to:

- 10.3.1 cancel the Agreement and claim such damages from the SELLER as it may have suffered as a result of such default; or
- 10.3.2 institute proceedings to compel the fulfilment by the SELLER of its obligations;
- provided that it has first given the SELLER reasonable notice to rectify its default, which notice shall be for a period no less than 10 (ten) days from the date of dispatch of such notice, and the SELLER has failed to comply with such notice.

- 10.4 It is specifically recorded that should any breach by either party occur at a time critical to the registration of transfer, the other party shall be entitled to require the defaulting party to remedy such breach within a period of 48 (forty eight) hours, and not within the 10 (ten) days period provided for in clause 10.1, or

- 10.5 In the event of the occurrence of any facts or circumstances which constitutes a material adverse change as defined, the SELLER shall be entitled to, unilaterally, at its election, cancel the Agreement in which event all monies paid by the PURCHASER will be refunded and the status quo ante be restored as near as possible as it was prior to the entering into of this Agreement and no party will have any further claim whatsoever against each other.

11 THE PURCHASER AS MANDATOR/MANDATORY

- 11.1 In the event of the PURCHASER to this Agreement being a corporate body or signs this Agreement as PURCHASER in his capacity as trustee of a company or close corporation to be incorporated, a trust or any other juristic body, or act as mandatory or representative of such instance or body:
- 11.1.1 such signatory or PURCHASER hereby binds himself personally as surety and co-principal debtor in solidum for the due and proper fulfilment of all the PURCHASER'S obligations and liabilities towards the SELLER in terms of this Agreement and herewith renounces the benefits divisionis et excussionis, dedendarum actionum and de duobus vel pluribus reis debendi, the meaning and consequences of which he hereby admits being fully conversant with;
- 11.1.2 such signatory or PURCHASER acknowledges both in his personal and his mandatory capacity, that in the event of the SELLER not accepting his mandator as PURCHASER of the erf, which non acceptance the SELLER hereby undertakes to transmit to the signatory within 14 (fourteen) days after receipt of particulars of the PURCHASERS mandator, he shall remain personally liable as PURCHASER in terms of this Agreement and as such be obliged to take transfer of the property in his own name;
- 11.1.3 such signatory or PURCHASER shall within 14 (fourteen) days of signature hereof be obliged to divulge to the SELLER all and every detail regarding the nature, juristic character, status, composition and membership of his mandator, failing which it shall be assumed that the mandator is not acceptable to the SELLER, provided further that the SELLER shall still be entitled not to accept the mandator as PURCHASER even though all the requisite information has been divulged timeously, in which event the stipulation of clause 11.1.2 shall mutandis apply;
- 11.1.4 the SELLER, in his absolute discretion, shall be entitled to hold the signatory liable as PURCHASER, as stated in clause 11.1.1, in the event of the signatory failing to furnish the SELLER'S Conveyancers with such documents as may be required to effect transfer to the erf, within such time as the said SELLER'S Conveyancers may determine; provided that in such event the SELLER shall be entitled to cancel this Agreement and hold the signatory liable for all such money, costs and disbursements expended or increased;

12 PURCHASER AS NOMINEE

If the PURCHASER signs this Agreement:-

- 12.1 in his personal capacity, but with the right to nominate an as yet undisclosed third party ("the nominee") to be the PURCHASER in terms of this Agreement:-
- 12.2 the PURCHASER shall be personally liable as PURCHASER in terms of this Agreement unless the nominee advises the SELLER in writing within 14 (fourteen) days after the date upon which the SELLER signs this Agreement that such nominee:-
- 12.2.1 is the undisclosed third party for whom the PURCHASER was acting when he signed this Agreement; and
- 12.2.2 undertakes to be bound by all the terms and conditions of this Agreement as PURCHASER in terms thereof;
- 12.3 In the event of the nominee duly advising the SELLER in terms of 12.2 above, then the PURCHASER by his signature hereto hereby interposes and binds himself in favour of the SELLER as surety for and co-principle debtor in solidum with the nominee for the due and timeous performance by nominee of all of his obligations as PURCHASER in terms of this Agreement and herewith renounces the benefits divisionis et excussionis, dedendarum actionum and de duobus vel pluribus reis debendi, the meaning and consequences of which he hereby admits being fully conversant with;
- 12.4 the PURCHASER acknowledges being aware that upon such nomination, further transfer duty may become payable on the transfer of the erf into the name of the nominee and undertakes to make payment of such further transfer duty on behalf of the nominee mutatis mutandis in accordance with 7.1 above.

13 FURTHER ACKNOWLEDGEMENTS BY THE PURCHASER

13.1 The PURCHASER acknowledges that:

- 13.1.1 the development of the entire Sungate Development and construction of services will be undertaken in various phases in the sole discretion of the SELLER;
- 13.1.2 the phases may not necessarily be constructed in numerical order;
- 13.1.3 the PURCHASER may suffer inconvenience as a result of continuing construction operation on the development site. Such inconvenience shall not entitle the PURCHASER to any claim against the SELLER or any other party;
- 13.1.4 the SELLER may on behalf of and to the exclusion of the PURCHASER or PURCHASERS conclude an Agreement with the proposed Sungate Owners Association and will appoint the necessary personnel on behalf of the said Owners Association for managing and operating Sungate for the benefit of all owners for which purposes the PURCHASER, by his signature hereto, irrevocably authorises the SELLER to enter into and conclude such Management Agreement or Agreements and to appoint such personnel as it in its sole discretion may determine.

14 DOMICILIUM

- 14.1 The parties choose their *domicilium citandi et executandi* for all purposes under this Agreement in respect of Court process, notices or other documents or communications of nature, at the addresses set out in 1.2 and 1.4 respectively.
- 14.2 Either party shall be able to change that party's *domicilium citandi et executandi* on written notice to the other provided that it must be an address in the Republic of Namibia. Such change of *domicilium citandi et executandi* shall take effect on the fourteenth day after the delivery to the other parties of the notice referred to therein.
- 14.3 Any notice addressed to a party at its *domicilium citandi et executandi* will be sent by prepaid registered post, or delivered by hand at the addresses set out in 1.2 and 1.4 respectively,
- 14.4 A notice will be presumed, unless the contrary is proved, to have been given:
 - 14.4.1 if posted by prepaid registered post, 5 (five) days after the date of posting thereof;
 - 14.4.2 if hand delivered during business hours on a business day, on the day of delivery;

15 MORE THAN ONE PURCHASER

In the event of the PURCHASER to this Agreement being more than one person, then in such event all purchasers shall be jointly and severally be liable in solidum and as co-principal debtors together with the PURCHASER for all the liabilities and obligations arising for the PURCHASER from this Agreement, and no such party shall be entitled to any defence or exception of any nature which would otherwise have been available to him in order to evade or in any manner reduce the strict effect and provisions of this clause.

16 JURISDICTION

For purpose of any action, interdict or other form or litigation which might arise from this Agreement or form of application or which might result therefrom, the parties hereto agree to the jurisdiction of the Magistrate's Court for the district of WINDHOEK notwithstanding the fact that such aforesaid Court might otherwise not have possessed jurisdiction in such matter. This clause shall be deemed to contain the written consent to jurisdiction referred to in Clause 45 of the Magistrate's Courts Act No. 33 of 1945, as amended. Notwithstanding anything contained to the contrary herein the SELLER shall at all times reserve the right for himself to demand that any action brought by himself or by the PURCHASER be brought before any other Court with applicable jurisdiction.

17 WAIVER AND RELAXATION

Notwithstanding any conditions to the contrary contained herein no extension of time nor relaxation which the SELLER may

give or allow the PURCHASER in regard to the payment of any sum or sums due in terms hereof, or in regard to the fulfilment of any obligation in terms hereof, shall prejudice the SELLER'S rights in terms of this Agreement, nor be regarded as a waiver or abandonment of any of its rights.

18 AGENT'S COMMISSION

18.1 The SELLER shall pay to the agent commission in the amount of N\$ _____ (_____) (INCLUSIVE OF VAT), which commission shall be earned on fulfilment or waiver, as the case may be, of all the conditions precedent, and shall be payable on registration of transfer: provided that, if the Agreement is cancelled as a result of any breach hereof by the PURCHASER, the PURCHASER shall be liable to pay such commission to the agent on the date of such cancellation which amount is recoverable by the agent directly from the PURCHASER and is not deductible from any deposit/s the PURCHASER may have paid.

The SELLER'S Conveyancer is hereby authorised and directed by the SELLER to pay to the agent the commission from the proceeds of the sale on registration of transfer.

18.2 The PURCHASER and the SELLER warrant to each other, as a material warranty, that, save for the agent, no person, company or other legal person, is entitled to any commission in respect of the transaction set out in this agreement.

19 CO-OPERATION

Each of the parties hereby undertakes to:

- 19.1 do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 19.2 pass, and to procure the passing of all such Resolutions of members, to the extent that the same may lie within such party's power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

20 ADDITIONAL CONDITIONS APPLICABLE ON RESALE PRIOR TO TRANSFER DATE

Notwithstanding the provisions of clause 8 hereof the parties hereto agree that the following further conditions shall apply in the event of the PURCHASER selling or purporting to sell his or her property or any interest therein purchased in terms hereof by way of a resale prior to the transfer date as determined herein, namely:

- 20.1 The SELLER shall only be accountable and liable to the PURCHASER for the compliance of any term and condition hereof and not to any successors in title or subsequent PURCHASER;
- 20.2 The PURCHASER shall remain liable to comply with all the terms and conditions hereof personally and on the due date thereof, failing which the SELLER shall be entitled to revert to its remedies referred to in clause 10;
- 20.3 This Agreement or any party thereto shall not be substituted in any manner by any subsequent Agreement entered into between the PURCHASER and any other third party prior to the date of registration and the SELLER shall not agree to any cession of its rights pursuant to this Agreement or to any transfer directly to the subsequent PURCHASER;

21 SUCCESSORS IN TITLE

The parties to this Agreement hereby bind their Heirs, Executors, Administrators or Assigns and Successors in Title to the terms of this Agreement.

22 SELLERS FURTHER RIGHTS AND OBLIGATIONS

22.1 The SELLER shall be entitled to utilise any portion of the Land until the expiry of the Development Period for a sales and marketing office.

22.2 The SELLER intends to develop and market the Development as the SELLER deems fit and for the duration of the Development Period the SELLER shall enjoy unrestricted rights with regard to the marketing of individual properties and, in particular, the right to erect the necessary signage within the Development.

23 **GENERAL**

23.1 This Agreement represents the entire Agreement between the parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect save as expressly included herein.

23.2 No variation of or addition to or consensual cancellation of this Agreement and no waiver by the SELLER of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.

23.3 No latitude, extension of time or other indulgence which may be given or allowed by the SELLER to the PURCHASER in respect of any of its obligations in terms of this Agreement shall constitute a waiver, abandonment or novation of the SELLER'S rights in terms hereof

23.4 This agreement shall be governed by and construed in accordance with the laws of the Republic of Namibia.

24 **OFFER**

24.1 This Agreement, once signed by the PURCHASER, shall constitute an offer by the PURCHASER and shall be irrevocable and open for acceptance by the SELLER for a period of 30 (thirty) days from date of signature by the PURCHASER (acceptance date) and shall not be capable of being withdrawn during the said period.

24.2 Acceptance of the PURCHASER'S offer shall be conveyed to the PURCHASER within 7 (seven) days of acceptance hereof by the SELLER or SELLER'S Conveyancer by furnishing the PURCHASER with a copy of the signed Agreement.

25 **OTHER**

SIGNED at _____ on this the _____ day of _____ 201__

AS WITNESSES:

1. _____

2. _____

PURCHASER (duly authorised)

SIGNED at _____ on this the _____ day of _____ 201__

AS WITNESSES:

1. _____

2. _____

SELLER (duly authorised)