

DEED OF SALE

**MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO
BY AND BETWEEN:-**

THE FINKENSTEIN DEVELOPMENT TRUST

**(herein represented by GERHARDUS DANIEL BURMEISTER
and/or GIDEON JOHANNES FACKULYN GOUS, duly thereto
authorised)**

P O BOX _____

TEL: _____

(hereinafter called the SELLER)

AND

Born on _____

P O BOX _____

TEL: _____

(hereinafter called the PURCHASER)

THEUNISSEN, LOUW & PARTNERS

Schutzen Haus, no. 1 Schutzen Street

WINDHOEK, NAMIBIA

Tel : 237856 / Fax : 228335

e-mail: attorneys@theunissenlouw.com

WITNESSETH:**1. SALE AND PURCHASE:**

That the SELLER hereby sells to the PURCHASER who hereby purchases:

CERTAIN: Erf _____

REGISTRATION DIVISION "K", Khomas Region

MEASURING: _____ Square metres

(hereinafter referred to as the PROPERTY) as indicated on the layout diagram annexed hereto as annexure "A" subject to all such conditions and servitudes which may exist in regard thereto, and in the condition and to the extent such as it now lies, and upon the following terms:-

2. PURCHASE PRICE AND PAYMENT

The PURCHASE price is the sum of N\$ _____

Inclusive of estate agents commission of N\$ _____ payable by the PURCHASER as follows:

(i) the full purchase **price in cash against signature** hereof directly to the SELLER.

Alternatively

(ii) (a) an amount of N\$ _____
(equal to 10% of the purchase price) against signature of this agreement directly to the SELLER, which deposit the parties agree, will be non refundable, unless the agreement is cancelled as a result of non fulfilment of a suspensive condition.

(b) the balance of the purchase price, alternatively and acceptable Bankers' or Building Society guarantee for the amount of N\$ _____ payable at such a place and to such a person in Namibia as the SELLER may determine, payment to be effected in the currency of the Republic of South Africa/Namibia with out deduction or demand **within 30 days of date of signature hereof**. Should the PURCHASER fail to provide the payment, payment guarantee or other acceptable security as set out above the SELLER shall be entitled to at his sole discretion cancel the agreement by written notice to the PURCHASER to such effect.

- (c) Should the SELLER elect not to cancel the agreement in terms of ii(b) above, the PURCHASER shall as from the due date referred to in ii(b) above:-
- i become liable to the payment of levies to the Homeowners Association as if the property had been duly transferred and registered in the PURCHASER'S name;
 - ii become liable for the payment of interest on the balance purchase price at the rate of 2% per month or any part of a month.
- (d) The interest and levies referred to above shall be due and payable monthly in arrears before or on the last day of each relevant month.

3. OCCUPATION AND POSSESSION

- a. Possession and occupation of the property will be given to the PURCHASER and the PURCHASER shall be obliged to take possession thereof against registration of transfer.
- b. Should the PURCHASER so require possession and occupation may be given and taken at any earlier date, subject however to a suitable arrangement regarding access to the property having been agreed to with the SELLER.
- c. The PURCHASER shall be liable for payment of all local authority and/or Homeowners Association fees, rates and taxes from date of occupation. Should the services not be completed on date of occupation, the purchaser shall become so liable from date of official completion thereof.
- d. From date of occupation the property shall be at the sole risk of profit and loss of the PURCHASER.
- e. If occupation is given to the PURCHASER before the date of transfer:-
 - i. The PURCHASER shall not be entitled to make any alterations to the PROPERTY before transfer without the prior written consent of the SELLER, which consent shall be at the SELLER'S sole and absolute discretion.

- ii. The PURCHASER shall be obliged to vacate the PROPERTY forthwith upon cancellation of the sale for any reason whatsoever, it being agreed that no tenancy shall be created by any such prior occupation.

4. TRANSFER AND TRANSFER COSTS

Transfer of the PROPERTY shall be effected by the SELLER'S conveyancers THEUNISSEN, LOUW & PARTNERS within a reasonable time after the PURCHASER has complied with the terms of clause 1 hereof and made payment to the SELLER'S conveyancers of transfer duty, revenue stamps and all other costs of transfer and matters incidental thereto, for all of which the PURCHASER shall be liable and obliged to make provision on demand.

5. BREACH

Should the PURCHASER fail to furnish the guarantee/s under clause 2 above by the date mentioned therein, and/or fail to comply with any other obligations under this contract within seven days of the date of despatch by prepaid registered post of written notice requiring the PURCHASER to carry out the obligation/s in question, then in such event the SELLER shall be entitled (in addition to and without prejudice to any other rights available at Law):-

- a. To claim specific performance on the part of the PURCHASER, OR
- b. To cancel this Agreement and to recover from the PURCHASER any damages which the SELLER may have sustained by reason of the aforesaid breach and subsequent cancellation by the SELLER of this agreement. The SELLER shall be entitled to retain all monies paid by the PURCHASER as an agreed on pre-estimate of the minimum damages to be suffered by the SELLER, should the PURCHASER breach the agreement.

6. EXTENT OF PROPERTY

6.1 The SELLER shall not be liable for any deficiency in the extent of the PROPERTY hereby sold, nor shall the SELLER benefit by any possible surplus. The PROPERTY is sold Voetstoots (as it stands) as to condition and extent, and the SELLER shall not be liable for any defects, either latent or patent. If the PROPERTY has been erroneously described herein, such mistake or error shall not be binding on the SELLER but the description of the PROPERTY as set out in the Title Deed shall apply and the parties agree to the rectification hereof to conform to the intention of the parties. The PURCHASER is hereby deemed to have made

himself acquainted with the situation, boundaries, nature, condition, extent and locality of the PROPERTY the SELLER and/or his Agent being entirely free from any liability in respect thereof.

6.2 The SELLER and/or his Agent shall not be required to indicate to the PURCHASER the position of the beacons and/or pegs of the PROPERTY.

7. DOMICILIUM CITANDI ET EXECUTANDI

The parties hereby select for all purposes of this contract the addresses set out by them herein under as the domicilium citandi et executandi by each of them for the delivery of all notices and/or process thereto, it being agreed that all notices despatched in the Republic of South Africa and Namibia by prepaid registered post to the domicilium selected shall be deemed to have been received seven (7) days from the date of posting thereof. Either party may from time to time change that parties domicilium by delivery of written notice to the other party to that effect.

SELLER: _____

PURCHASER: _____

8. JURISDICTION

For the purposes of all or any proceedings herein the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended; notwithstanding that such proceedings are otherwise beyond this jurisdiction this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court act of 1944 as amended. Notwithstanding the foregoing, the SELLER shall have the right at the SELLER'S sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction.

9. GENERAL

9.1 Any latitude or extension of time which may be allowed by the SELLER to the PURCHASER in respect of any payment provided for herein, or any matter or thing which the PURCHASER is bound to perform or observe in terms hereof, shall not in any circumstances be deemed to be a waiver of the SELLER'S right at any time, to require strict and punctual compliance with each and every provision or term hereof.

- 9.2 Any agreement between the PURCHASER and SELLER to cancel, alter or add to this Deed of Sale shall not be binding and shall be of no force nor effect unless reduced to writing and signed by the parties hereto.
- 9.3 The parties agree that this Deed of Sale constitutes the entire contract between them and that there are no other conditions, stipulations, warranties or representations whatsoever made, other than such as may be included herein and signed by the parties hereto.
- 9.4 The PURCHASER shall not be entitled to sell, cede, assign or make over the PURCHASER'S rights in terms hereof without the SELLER'S prior written consent.
- 9.5 All annexures to this agreement are initialled by the parties hereto for the purpose of identification and form an integral part of this agreement.

10. HOMEOWNERS ASSOCIATION

- 10.1 The PURCHASER hereby records and acknowledges that the PROPERTY is subject to the authority of the FINKENSTEIN HOME OWNERS ASSOCIATION (hereinafter referred to as the F.H.A.) which comprise of a single member namely the SELLER. Against transfer of the PROPERTY into his name the PURCHASER shall *ipso facto* become a member of the said F.H.A.. By adding his signature to this agreement the PURCHASER accepts the terms and conditions of the constitution of the F.H.A. annexed hereto as annexure “**B**” the contents, force and effect of which he hereby declares himself to be fully acquainted with.
- 10.2 The PURCHASER hereby acknowledges himself to be bound to the design guidelines of the F.H.A, a copy of which is annexed hereto as “**C**”.
- 10.3 The PURCHASER hereby acknowledged himself to be bound to the agreement entered into between the F.H.A and Moltkeblick Game Farm (Proprietary) Limited, a copy of which is annexed hereto as annexure “**D**”.
- 10.4 The PURCHASER irrevocably and unconditionally undertakes to enter into a notarial deed of imposition of conditions essentially in the form of and with the terms and conditions contained in Annexure “**E**” hereto.

11. SERVITUDES

- 11.1 The PURCHASER hereby unconditionally and irrevocably consents to the registration of all necessary servitudes (for instance, but not limited to right of way; services, like water, electricity and sewerage ect.) over the property, and undertakes to sign all documents necessary for such registration on demand.

11.2 The SELLER shall be entitled to register a servitude of Services and of right of way, 5 metres wide, along all boundaries of the property.

11.3 A sewer servitude, as indicated on the diagram annexed hereto as "F", will be registered against the property. The PURCHASER will, upon request by the conveyancers, sign all documents necessary for the registration thereof.

11.4 the property shall be entitled to a servitude of right of way from the main road to an access point on the property as determined in the sole discretion of the SELLER.

12. RESTRICTION ON RESALE

In order to successfully complete the development, the SELLER is dependant on the marketing and sales of erven which fact the PURCHASER hereby acknowledges. Therefore the PURCHASER hereby expressly, irrevocably and unconditionally agrees and consents not to sell, donate, exchange or other wisely alienate the property before _____ without the prior written consent of the SELLER, which will not unreasonably be withheld.

13. ESTATE AGENT'S COMMISSION

The Seller shall pay the Agent's Commission of N\$_____ (VAT **inclusive / exclusive**) which commission shall be deemed to have been earned upon the signature of this Deed of Sale by both parties, as well as the subsequent fulfilment of clause 1(c) and shall be payable upon the date of registration of transfer into the name of the Purchaser.

The parties hereto furthermore agree that in the event of the 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 Seller and/or the Agent for the agent's commission above-mentioned.

In the event of a deposit having been made, then upon registration of transfer into the name of the Purchaser or upon cancellation whether under clause 5 below or any other basis, the Agent shall be entitled to receive payment of commission based on the full purchase price directly out of such deposit, unless the commission shall have been previously paid. Should the sale be cancelled or transfer not be implemented 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 abovementioned.

- 1. **THE FINKENSTEIN DEVELOPMENT TRUST**
(herein represented by Gideon Johannes Fackulyn Gous)
(hereinafter called "THE OWNER")

by virtue of a Power of Attorney granted to him at WINDHOEK on the
day of _____, and

- 2. **GIDEON JOHANNES FACKULYN GOUS** in his capacity as trustee and duly
authorized thereto by FINKENSTEIN HOME OWNERS ASSOCIATION

(hereinafter referred to as the ASSOCIATION),

by virtue of a Power of Attorney granted to him at WINDHOEK on the
day of _____, and

which Power of Attorney appointing the Appearer have this day been exhibited to me and
now remains filed in my Protocol,

AND the said Appearer declared that:

WHEREAS the OWNER is the registered OWNER of certain land described as

- CERTAIN:**
- SITUATE:**
- REGISTRATION DIVISION “K”**
- KHOMAS REGION**
- MEASURING:**
- HELD BY :**

(hereinafter referred to as the “PROPERTY”)

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AND WHEREAS the OWNER and the ASSOCIATION have agreed to impose the following conditions against the PROPERTY

NOW THEREFORE THE APPEARER DECLARED THAT

1. The PROPERTY shall be subject to the following conditions in favour of the ASSOCIATION, namely:
 - 1.1 The OWNER and/or its successors in title shall by virtue of his ownership of the PROPERTY automatically become and remain a member of the ASSOCIATION and be bound by its Memorandum and Articles of ASSOCIATION and any Rules adopted by the ASSOCIATION until such OWNER ceases to be an OWNER.
 - 1.2 The OWNER and/or its successors entitle shall by virtue of its automatic membership of the ASSOCIATION, and payment of levies as such be liable for the construction and future maintenance of all services upon the PROPERTY which services include water, electricity and sewer.
 - 1.3 The PROPERTY or any portion thereof shall not be sold, alienated, transferred or leased without the prior written consent of the ASSOCIATION which consent shall only be issued once the ASSOCIATION has confirmed in writing that it has satisfied itself that all conditions imposed by the ASSOCIATION have been met and that all amounts due to it by the OWNER have been paid.
 - 1.4 Neither the PROPERTY nor any subdivision or consolidation thereof, nor any section erected thereon, nor any interest therein or thereto, shall be sold or transferred to any person or entity who has not agreed to become a member of the ASSOCIATION and to be bound by its Memorandum and Articles of ASSOCIATION and any Rules adopted by it and who has not secured payment by way or a debit order or such other method of payment acceptable to the ASSOCIATION of the monthly levy due to it.

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- 1.5 No further improvements of any nature may be effected on the PROPERTY without the prior written approval of the ASSOCIATION or its nominee and any building plans in respect of any such improvements to be erected on the PROPERTY shall be subject to prior written approval of the said ASSOCIATION. Such approval will be required without limitation to all external finishes including materials and colours for all walls, roofs and windows and such improvements shall at all times comply with the Architectural Design and guidelines as accepted by the ASSOCIATION.
- 1.6 The OWNER and/or its successors in title of the PROPERTY shall not make any application for the rezoning, consolidation or subdivision of his PROPERTY without the prior written consent of the ASSOCIATION.
- 1.7 The PROPERTY shall be subject to a right of access by employees and/or agents of the ASSOCIATION for the purpose of the construction and day to day maintenance of Municipal related services in respect of water, sewerage, drainage, electricity and gas including any telecommunication services, roads and pathways which right includes the right to place on such PROPERTY any material that may be excavated on the PROPERTY or any adjacent PROPERTY.
- 1.8 The building value of the main building, excluding the outbuilding must be at least 1,5 (one comma five) times the valuation of the erf from time to time.
2. The OWNER or his successors in title shall further be entitled to make use of all roads and pathways constructed within the DEVELOPMENT, the ownership of which will vest in the ASSOCIATION, for purposes of obtaining access to the PROPERTY and such use shall be so vested in perpetuity.

3. SUCCESSORS IN TITLE

The terms "OWNER" and "ASSOCIATION" include their respective successors in title or assigns and all the rights and obligations herein created are so vested and imposed in perpetuity.

4. ACCEPTANCE

And the appearer on behalf of the OWNER and the ASSOCIATION hereby accept, in so far as is necessary, the benefits of the agreement subject to the terms and conditions aforesaid.

5. ATTESTATION

THIS DONE AND EXECUTED by the appearer before me, Notary Public on the day month, and year first aforewritten, in the presence of the subscribing witnesses.

AS WITNESSES:

1. _____ q.q

2. _____ q.q

QUOD ATTESTOR

NOTARY PUBLIC

INFORMATION FOR TRANSFER PURPOSES:

PURCHASER:

This property is to be registered into the name of a -

- 1. Company / Close Corporation / Trust name: _____

- 2. Company / Registration no.: _____
- 3. Full names of Directors / Members / Trustees: _____

- 4. Postal Address: _____
- 5. Telephone numbers: _____

This property is to be registered into my personal name -

- 1. Full names: _____
- 2. Date of Birth: _____
- 3. Postal Address: _____
- 4. Telephone numbers: _____
- 5.1 Are you married:
 - a) Yes / No
 - b) In community of property
 - c) Out of community of property
(delete whichever is not applicable)
- 5.2 If married:
 - a) Full names of spouse: _____
 - b) Date of Birth: _____
- 5.3 Place of marriage: _____