

SALE OF MEMBERS' INTEREST AGREEMENT

_____ Close Corporation

CC/ _____ / _____

[Mountain View Estatg]

Agreement made and entered into by and between:

Identity Number: _____

of

(hereinafter referred to as the "**SELLER**")

AND

Identity Number: _____

of

and of

P O Box _____

Tel: _____

e-mail: _____

(hereinafter referred to as "**the PURCHASER**")

[collectively referred to as "**the parties**"]

WHEREAS THE SELLER IS CURRENTLY HOLDING 100% (ONE HUNDRED PERCENT) OF THE MEMBERS' INTEREST IN _____
(CC/_____/_____) (HEREINAFTER REFERRED TO AS "**THE CORPORATION**");

AND WHEREAS THE SELLER, AS THE ONLY REGISTERED MEMBER OF THE CORPORATION, IS DESIROUS TO SELL HIS 100% MEMBERS' INTEREST IN THE CORPORATION TO THE PURCHASER, WHO WISHES TO PURCHASE SAME, FOR THE PURPOSE OF OBTAINING 100% (ONE HUNDRED PERCENT) OF THE MEMBERS' INTEREST OF THE CORPORATION AND TO ACQUIRE THE BENEFITS TO BE DERIVED FROM THE PROPERTY;

AND WHEREAS THE PARTIES HAVE REACHED AN AGREEMENT WITH REGARD TO THE AFOREGOING AND IN RELATION TO ALL MATTERS ANCILLARY THERETO;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement the following terms shall bear the following meanings:

- 1.1.1 "***the Accounting Officer***" shall mean the accounting officer for the time being of the Corporation, and/or such new accounting officer as will be designated by the PURCHASER after the transfer of the members' interest;
- 1.1.2 "***Agreement***" means this Agreement for the sale of member's interest, together with all Annexures hereto, which shall form an integral part of this Agreement;
- 1.1.3 "***Conveyancers***" shall mean **Koep & Partners**, 33 Schanzen Road, Windhoek, contact Beate Loch,

- 1.1.4 **"the Close Corporation"** shall mean _____, a Close Corporation duly incorporated in terms of the Close Corporations Act of Namibia (as amended) with its registration number being CC/_____/_____;
- 1.1.5 **"Development Company"** means Mountain View Development Company (Pty) Ltd, a Company duly registered and incorporated in terms of the Companies Act (as amended) and applicable in the Republic of Namibia, with its registration number being **2009/0348**, having its registered address situate at 61 Bismarck Street, Windhoek, Namibia;
- 1.1.6 **"Effective Date"** means **date of registration of transfer** of the members interest into the name of the Purchaser;
- 1.1.7 **"Engineers"** means **Knight Piesold Consulting (Pty) Ltd**, an engineering firm, which firm has been appointed by the SELLER to attend to the development, installation and management of the Services;
- 1.1.8 **"Land"** means -
- CERTAIN:** Portion A of Portion 3 of the Farm Groot Aub No 267

SITUATE: In the District of WINDHOEK
Registration Division "K"
KHOMAS Region

MEASURING: ± 856 Hectares

- 1.1.9 "**Loan Account**" means the amount set out against the Loan of the SELLER as member of the Corporation in the latest Annual Financial State-ments of the Close Corporation;
- 1.1.10 "**Members' Interest**" shall mean the members interest in the Close Corporation expressed as a percentage;
- 1.1.11 "**Home Owners Association**" means the registered owners of all the plots forming part of the Mountain View Scheme situate on Portion 3 of the Farm *Groot Aub* No 267, district of Windhoek;
- 1.1.12 "**Payment dates**" means dates referred to in clause 4.2 hereunder;
- 1.1.13 "**Services**" shall mean the sewerage system and solar electricity system to be constructed/laid on the Property in accordance with the Engineer's specifications attached hereto marked "**A**";
- 1.1.14 "**Scheme**" means the Scheme in terms whereof 27 (twenty seven) plots, as well as a remainder are being developed by the

Development Company on Portion 3 of the Farm *Groot Aub* No 267, and which shall henceforth be known as **Mountain View Estate**;

1.1.15 **“Signature Date”** means the date on which the last party to this Agreement signs the same;

1.1.16 **“Immovable Property” and “Property”** means:

CERTAIN : Portion No. _____ (A Portion of Portion 3) of the Farm *Groot Aub* No 267

SITUATE : In the Municipality of WINDHOEK Registration Division “M” KHOMAS Region

MEASURING : _____ Hectares, as is more clearly indicated on the copy of the provisional diagram annexed hereto as Annexure “**B**”, and subject to such further conditions that may be imposed thereon in terms of clause _____ hereunder;

HELD BY : Deed of Transfer / Land Title

and “Plot” shall have a corresponding meaning.

1.2 In this Agreement and in the annexures to this Agreement –

- 1.2.1 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.2 unless the context indicates a contrary intention and express which denotes –
 - 1.2.2.1 any gender includes the other genders;
 - 1.2.2.2 a natural person includes a juristic person and vice versa;
 - 1.2.2.3 the singular includes the plural and vice versa.
- 1.3 This Agreement includes the annexures;
 - 1.3.4 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
 - 1.3.5 If any provision in a definition is a substantive provision conferring rights imposing obligations on any party, notwithstanding that it is only in a definition clause, the effect shall be given to it as if it was a substantive provision in the body of the Agreement;
 - 1.3.6 When any number of days is prescribed in this Agreement, same shall be reckoned 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;
 - 1.3.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
 - 1.3.8 Expressions defined in this Agreement shall bear the same meanings in the schedule annexed to this Agreement and which do not themselves contained there own definitions;

1.3.9 Where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the terms so defined have limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the terms have not been defined in this interpretation clause.

2. PURCHASE AND SALE OF MEMBERS' INTEREST

Subject to the fulfillment of the conditions as set out herein, the SELLER hereby sells to the PURCHASER, who hereby purchases, as one indivisible transaction, 100% (one hundred percent) of the members' interest in the Close Corporation, and the SELLER simultaneously cedes all its right, title and interest in the loan account of the SELLER, hereby warranting that his members' interest comprises 100% (one hundred percent) of the members' interest in the Corporation.

3. ASSETS OF THE CLOSE CORPORATION

The SELLER, as only member of the Close Corporation, hereby warrants to the PURCHASER that the assets of the Close Corporation will consist only of the IMMOVABLE PROPERTY, as described in clause 1.1.16, that the IMMOVABLE PROPERTY will be unencumbered as on the Effective Date, save for such mortgage bond(s) as may be registered on the instructions of the PURCHASER to secure payment of the Purchase Price or part thereof.

4. PURCHASE PRICE

(Delete whichever Option is not applicable)*

A. OPTION 1: (Including Solar Electrical System and Sewer System)*

4.1 The purchase price is the sum of **N\$** _____
(_____ **NAMIBIA DOLLARS**)
which includes a Solar Electrical System and Sewer System, as specified,
and as part of the SERVICES to be provided to the property by the SELLER

as soon as reasonably possible after the EFFECTIVE DATE, and which amount is made up as follows:

4.1.1 N\$100-00 in respect of the 100% members' interest;
and

4.1.2 The balance in respect of the cession of the loan account.

4.2 The Purchase Price will be paid by the PURCHASER to the SELLER as follows:

4.2.1 A deposit in the amount of N\$ _____

(_____ NAMIBIA DOLLARS)

on date of signature hereof, to be paid into the trust account of the Conveyancers and to be invested by them in an interest bearing call account for credit of the PURCHASER and to be paid to the SELLER on the transfer date.

4.2.2 The PURCHASER shall be obliged to deliver a suitable bank guarantee as security for payment of the balance of the purchase consideration within 7 (seven) working days after being requested thereto by the Conveyancers. The said guarantee must be payable on the Effective Date.

4.3 Once the PURCHASER has complied with his obligations in clause 4.2 and the suspensive condition in clause 22 has been fulfilled, transfer of the Members Interest and cession of the loan account shall be effected by the SELLER as prescribed in clause 5 hereunder and possession of and all risk and benefit in respect of the IMMOVEABLE PROPERTY shall pass to the PURCHASER.

or

B. OPTION 2: (Excluding Solar Electrical System and Sewer System)*

4.1 The purchase price is the sum of **N\$** _____
(_____ **NAMIBIA DOLLARS**)
which amount is made up as follows:

4.1.1 N\$100-00 in respect of the 100% members' interest;
and

4.1.2 The balance in respect of the cession of the loan account.

4.2 The Purchase Price will be paid by the PURCHASER to the SELLER as follows:

4.2.1 A deposit in the amount of N\$ _____

(_____ NAMIBIA DOLLARS)
on date of signature hereof, to be paid into the trust account of the Conveyancers and to be invested by them in an interest bearing call account for credit of the PURCHASER and to be paid to the SELLER on the transfer date.

4.2.2 The PURCHASER shall be obliged to deliver a suitable bank guarantee as security for payment of the balance of the purchase consideration within 7 (seven) working days after being requested thereto by the Conveyancers. The said guarantee must be payable on the Effective Date.

4.3 Once the PURCHASER has complied with his obligations in clause 4.2 and the suspensive condition in clause 22 has been fulfilled, transfer of the Members Interest and cession of the loan account shall be effected by the SELLER as prescribed in clause 5 hereunder and possession of and all risk and benefit in respect of the IMMOVEABLE PROPERTY shall pass to the PURCHASER.

- 4.4 If and when the PURCHASER elects to install his own solar electrical system and/or sewerage system at the PROPERTY, such services shall be installed according to the design and specifications approved in writing by the ENGINEER and the trustees of the Home Owners Association.

5. TRANSFER

Immediately once the PURCHASER has complied with his obligations in terms of clause 4.2, an Amended Founding Statement shall be signed by the SELLER hereto and provided to the PURCHASER in order to give transfer of his members' interest to the PURCHASER. Such Amended Founding Statement of the Corporation shall thereafter be completed and signed by the PURCHASER and be registered by the CONVEYANCERS to give effect to the registration of the transfer of the members' interest in the Close Corporation, transfer of which is to coincide with the registration of a new bond over the immovable property (if applicable), as well as the cancellation of any existing bonds (if any) over the Immovable Property.

6. CONDITIONS AND WARRANTIES

- 6.1 The SELLER, as sole member of the Close Corporation, hereby warrants to the PURCHASER that the Immovable Property, as described in clause 1.1.16 *supra*, is registered in the name of the Corporation as at the Effective Date.
- 6.2 It is further recorded that the SELLER shall ensure that all mortgage bonds (if any) currently registered over the Immovable Property, shall be cancelled simultaneously with compliance by the PURCHASER of his obligations in terms of clause 4.2 and the registration of the new bond (if any) by the PURCHASER. All costs and disbursements incidental to the cancellation of any existing bonds shall be borne by the SELLER.
- 6.3 The SELLER warrants that as at the Effective Date, there are (save for any existing mortgage bond which is to be cancelled) no debts owed by the Corporation to any third party, and the SELLER accordingly indemnifies the PURCHASER against any such claims which may be brought against the Corporation or its members, after the Effective Date.

- 6.4 The PURCHASER agrees to be bound by and to comply strictly with the Rules of the Home Owners Association, a copy of which is annexed hereto as Annexure "C", and which shall be recorded against the title deed as a special condition, and which the PURCHASER hereby acknowledges to have read, understood and agreed to be bound thereby. The PURCHASER shall sign a Notarial Deed for the registration of the Rules of the Home Owners Association against the title deed of the PROPERTY at the Deeds Office immediately when requested thereto by the CONVEYANCERS.
- 6.5 The PURCHASER undertakes and agrees to include the condition in clause 6.4 above, in any contract of sale whether for the sale of his/her interest, alternatively for the subsequent sale of the Immovable Property to any third party. The PURCHASER further acknowledges that the Scheme may be subject to a Town Planning Scheme determined by the Government of Namibia, and further acknowledges that the Scheme resorts under the control of the Municipality of Windhoek ("*the Council*"). In the event of conflict between the House Rules and the Regulations of the Council, the Regulations of the Council shall prevail.
- 6.6 It is acknowledged by the PURCHASER that the Home Owners Association shall, in the event of the PURCHASER wishing to sell his interest in the Corporation, alternatively sell the Land, have a right of first refusal to purchase the same on the same terms and conditions as offered to any third party.

7. POSSESSION AND RISK

- 7.1 The PURCHASER shall take vacant occupation of the property on **the Effective Date**
- 7.2 All risk in and benefit of the members' interest of the SELLER shall, subject to compliance with all the terms of this Agreement, pass to the PURCHASER on date of registration of transfer of the members' interest, from which date all risk in and to the members' interest shall pass to the PURCHASER.

8. RATES, TAXES AND INSURANCE

The PURCHASER shall refund to the SELLER a proportionate share of the rates, taxes and other local authority levies, or any other levies paid to the Home Owners Association in advance upon the property beyond the date of transfer, and the existing insurance over the property shall remain in force until date of registration of transfer, from which date the PURCHASER will make his/her own arrangements for the necessary insurance cover.

9. AGENT'S COMMISSION

9.1 It is specifically recorded that this Agreement was not concluded through the instrumentality of any agent, and hence no agents commission whatsoever is payable to any person/entity.*

or

9.2 The SELLER shall be liable to _____ for estate agents commission in the total amount of **N\$** _____ (VAT included), which amount shall be paid over by the Conveyancing Attorneys to _____ on date of registration of transfer. The parties furthermore confirm that the aforesaid estate agents were the effective cause of this sale. *

(* Delete whichever is not applicable)

10. BREACH

10.1 If a party is in breach of any term of, or warranty given in terms of this Agreement, the other party shall be entitled to cancel this Agreement *only* if such breach is material.

10.2 Such breach shall not be material if written notice of such breach is given to the reaching party by the aggrieved party and remedied within 7 (seven) days of receipt of such notice.

10.3 Subject to the provisions of clause 10.1 above, should any party hereto commit a material breach of this Agreement, and fail to remedy same within the time period stipulated in clause 10.2 *supra*, then the aggrieved party shall be entitled at his/her option to exercise all or any rights which he might hold under the common law of Namibia or otherwise.

11. VOETSTOOTS

It is recorded that this transaction is concluded on the basis that for all purposes the PURCHASER shall be deemed to be in the same legal position as if he was the buyer of the PROPERTY in a sale of the immovable property voetstoots with all defects, whether latent or patent. The PURCHASER admits having inspected the property to his/her satisfaction and that no guarantees or warranties of any nature were made by the SELLER regarding the condition or quality of the property or any of the improvements thereon or accessories thereof.

12. NOTICES AND DOMICILIA

12.1 The parties select as their respective *domicilia citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following address:

SELLER: P O Box 2184 Windhoek
61 Bismarck Street Windhoek

PURCHASER: _____

or such other address or telefax number as may be substituted by notice given as required. Each party will be entitled from time to time to vary its *domicilium* by written notice to the other to any other address within Namibia which is not a post office box or *poste restante*.

12.2 Any notice addressed to a party at its physical or postal address will be sent by prepaid registered post, or delivered by hand, or sent by telefax.

12.3 A notice will be presumed, unless the contrary is proved, to have been given -

12.3.1 if posted by prepaid registered post, 7 (seven) days after the date of posting thereof;

12.3.2 if hand delivered during business hours on a business day, on the day of delivery;

12.3.3 if sent by telefax, on the first business day following the date of sending of such telefax.

13. WHOLE AGREEMENT

13.1 This Agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.

13.2 The parties agree that no other terms or conditions other than those embodied in this Agreement will apply, whether oral, written, express or implied.

14. NON-WAIVER

No waiver of any of the terms and conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. GENERAL

15.1 The parties undertake to do all such things, perform all such actions and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or impact of this Agreement.

15.2 The clause headings in this Agreement are for reference purposes only and shall not be used for the purposes of interpreting this Agreement.

16. COSTS

The costs of and the costs incidental to the transfer of the members' interest from the SELLER to the PURCHASER and the arranging of registration thereof simultaneously with the registration and cancellation of the Mortgage Bonds (if any) and linking with such Conveyancers, as well as any stamp duty payable thereon shall be paid for by the **PURCHASER** on an attorney/own client scale and in terms of the prescribed transfer fee in terms of Schedule I to the Government Gazette No. 3155 dated 17 February 2004. The costs are payable by the PURCHASER to the Conveyancers on demand.

17. SEVERABILITY

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any risk of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to the other party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original interest of the parties as closely as possible in an acceptable manner to the end that transaction contemplated hereby are fulfilled to the greatest extent possible.

18. NOMINEES

Where any person signing this Agreement, is acting in any capacity other than in his/her personal capacity, or making the offer to purchase in his/her capacity as nominator of his/her nominee, he/she hereby binds himself/herself irrevocably as surety and co-principal debtor with the PURCHASER he/she hereby represents or nominates.

19. NOVATION

19.1 The parties hereby agree that this Agreement shall supersede **all** previous agreements (*whether in writing or not*) made by the parties in respect of the sale of the property and accordingly this Agreement constitutes a novation of any previous agreement(s), relating to the subject matter of this Agreement, between the parties.

19.2 In addition, the parties agree that no previous cause of dealing or usage of trade not specifically set forth in this Agreement shall be admissible to explain, modify or contract the terms of this Agreement.

20. DEVELOPMENT

20.1 The SELLER reserves for itself and/or for the Development Company as the SELLER'S nominee the right to extend the Scheme from time to time, but within a period of 10 (ten) years from date of selling of the first property, for its own account and sole benefit, by subdividing the LAND into further plots and buildings.

20.2 The SELLER, the Development Company or its Agents shall be entitled to all access to plots therein, as it may require in respect of the development of current or later stages, which rights of access shall include, without limiting the generality of the foregoing, the right to construct and lay pipelines, sewers, drains, guardhouses, boreholes and the like, and to register servitudes in respect thereof as may be required and/or prescribed by the Council. The PURCHASER shall have no claim against the SELLER in respect of thereof, provided that the SELLER shall as

far as possible, exercise such rights so as not to cause any undue inconvenience to the PURCHASER.

20.3 The SELLER shall not, however, have any obligation to the PURCHASER to proceed with and/or complete any stage or stages other than that in which the PURCHASER's properties are situated.

21. GOVERNING LAW AND JURISDICTION

The provisions of this Agreement shall be governed by and in accordance with the laws of the Republic of Namibia. The parties hereto consent to the exclusive jurisdiction of the High Court of Namibia in regard to all matters arising from this Agreement.

22. SUSPENSIVE CONDITION

This agreement is subject to the suspensive condition that the PURCHASER shall be successful in obtaining a loan for at least **N\$** _____ from a Banking Institution in Namibia. In the event of such loan not being obtained by the PURCHASER within **21 (twenty one) days** from Signature Date, this Agreement shall not be binding on the parties, will lapse and become *null and void*. This suspensive condition is for the benefit of both parties and may only be waived in writing by both parties. The thirty day period for the fulfillment of this suspensive condition may however be extended in writing by the SELLER.

DATED and SIGNED at _____ on this the _____ day of _____ 2015 in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____

2. _____

SELLER

DATED and SIGNED at _____ on this the _____ day of
_____ 2015 in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ **PURCHASER** _____

2. _____ **PURCHASER** _____