

# Usakos Town Council

## DEED OF SALE

Usakos Town Council |



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DEED OF SALE

Memorandum of Agreement concluded and entered into by and between:

**THE TOWN COUNCIL OF USAKOS**

Herein represented by **Jackson Ivin Lombardt** in his capacity as **CHIEF EXECUTIVE OFFICER** of the said Town Council and

**Clerens Calven Katorab** the Chairperson of the Management Committee acting in terms of section 31A(a) of the Local Authorities Act 23 of 1992.

(Hereinafter referred to as the "SELLER")

And

Full Names: **Mr Silias Filippus representing DIGITS Investments CC**

Identity number/Birth date: **77060900411**

Citizenship: **Nambian**

Postal Address: **P O Box 3813, Vinteta, Swakopmund**

Telephone: **N/A**

Fax number: **N/A**

Cell Phone: **+264 81 124 6024**

Marital Status: **Married**

**WHEREAS**

The SELLER sold to, and the PURCHASER purchased a certain immovable property, **NOW THEREFORE** the Parties hereto agree as follows:

Usakos Town Council |



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**1. DESCRIPTION OF ERF**

The SELLER hereby sells to the PURCHASER who hereby purchases a certain immovable property known as

**CERTAIN:** Undetermined Portion of TOWNLANDS, Usakos Ost

**SITUATE:** USAKOS, TOWNLANDS

**MEASURING:** 20 Hectares in extent and

**HELD:** under Title Deed/ Certificate of Registered Title No: N/A

And as depicted on the General Plan/Erft Diagram/Plan No: N/A

(Hereinafter referred to as the "ERF"), subject to the following terms and conditions:

**2. PURCHASE PRICE AND METHOD OF PAYMENT**

2.1. The purchase price of the property is the sum of **NS 300,000.00**

**(THREE HUNDRED THOUSAND NAMIBIA DOLLARS ONLY)**

And is payable as follows:-

(a) The total purchase price in cash or per bank certified cheque within 24 hrs from date of sale, provided that should payment be late, interest at the rate of 15% (fifteen percent per annum is payable.

(b) (i) 50% (fifty percent) of the purchase price within 24 hrs from date of sale and

(ii) the balance of the purchase price together with interest thereon calculated at the rate of 15% (fifteen percent) calculated annually in advance on an annuity basis from the date of sale and payable in 12 (twelve) equal monthly instalments being payable before or on the seventh day of the month following on the sale and monthly thereafter before or on the seventh date of each month.

Or

(c) The total purchase price, together with interest thereon calculated at the rate of 15% (fifteen percent) calculated annually in advance on an annuity basis from the date of the property to payment thereof, on or before date of registration of transfer of the property into the name of the Purchaser and the Purchaser undertakes to provide a Bank or Building Society Guarantee to the Seller, payable against registration of transfer, for the full purchase price and interest within 30 (thirty) days after having been requested to do so

**SUSPENSIVE CONDITIONS:**

2.2 It is a suspensive condition of this contract that if the payments as set out below are not made timely occupation, occupation shall not be given prior to the fulfillment of these conditions.

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- Payments:
- Method A: The total purchase price in cash.
  - Method B: 50% (fifty percent) of the purchase price within 24 hours from date of sale and the balance paid within 12 (twelve) months with interest thereon calculated at the rate of 15% (fifteen percent) calculated annually in advance on an annuity basis from the date of sale of the property.
  - Method C: Provide a Bank or Building Society Guarantee to seller payable against registration of transfer within 30 (thirty) days from the date of sale of property.

It shall also be suspensive condition of this contract that if the bank guarantee as provided for in Method C is not provided within 30 (thirty) days after it was requested, this contract shall be null and void and notwithstanding the provision of Clause 7 (date of sale and occupation), occupation shall not be given prior to the fulfillment of this condition.

Should Clause 2.1 of this agreement not be properly completed or should one of the alternative methods of payment which is not applicable not be properly struck out and initialed, then in such event the method of payment contained in Clause 2 (A) shall be applicable and the seller shall be entitled to claim immediate payment of the unpaid portion of the purchase price plus interest at the rate of 16% (fifteen percent) per annum thereon calculated from date of sale to date of payment.

The seller reserves the right in respect of the alternative method of payment to charge interest at the rate of interest then applicable to the capital in respect of which the arrear interest has accrued.

No provision of this agreement prohibits the purchaser to make larger or more frequent payments than those agreed upon or to anticipate the total outstanding balance of the purchase price at any time.

All payments due in terms of this agreement are to be made free of bank charges at the office of the seller at such place indicated from time to time in writing by the seller, and is in the first instance – employed in the payment of interest and thereafter to reduce capital debt.

### 3.

#### DATE OF SALE AND OCCUPATION

3.1 For purposes of this Agreement, but subject to the provisions of clauses 2.2 and 2.3 the date of sale shall be the date of signing hereof by or on behalf of the SELLER.

3.2 As from which date the PURCHASER takes possession of the ERF, accepts all risks in respect thereof and shall be entitled to all rents and profits accruing therefrom.

3.3 From the date of sale, the PURCHASER shall also be liable for all levies, rates and taxes due in respect of the ERF, due to the Town Council or whomsoever and regardless of whether such moneys are payable pursuant or according to legislation or resolution of the instance to which it is payable.

### 4.

#### RATES AND TAXES

4.1 The PURCHASER shall pay an amount equal to the municipal assessment rates leviable in respect of the ERF from date of sale.

4.2 To facilitate the collection of such monies the PURCHASER undertakes; from the date of sale until the ERF has been entered in the provisional valuation roll of properties in the municipal area of Usakos, to pay to the SELLER an amount or amounts equal to the assessment rates which would have been levied on the ERF if its purchase price had been so entered in the aforementioned provisional valuation roll from date of sale.



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4.3 The amount levied in lieu of assessment rates in respect of the first period shall be calculated proportionately as from the date of sale to the end of the year, half-year, quarter or month in respect of which assessment rates are normally levied.

4.4 The provisional municipal valuation reflected in clause 8.2 shall be deemed to be the valuation of the Erf for the time being. Should the official valuation reflected in the next Valuation Roll be less or more than the provisional valuation, the SELLER shall refund or the PURCHASER shall pay in the difference between the rates calculated on the provisional valuation and the rates calculated on the Valuation Roll as the case may be.

5.

**5. SANITATION, WATER AND ELECTRICITY**

Notwithstanding the provisions of Clause 7 hereof, the PURCHASER shall as from date of sale be liable for payment of the basic tariffs for sanitation services, water, electricity and refuse services available to the Erf. The SELLER can, however, give no guarantee on the time of availability of telecommunication or electricity services to the Erf.

**6. IMPROVEMENTS**

6.

6.1 The PURCHASER binds him-, her-, itself to erect a building or buildings (together with the necessary boundary fences), in accordance with the approved plan and specification in terms of the "SELLERS" Building Regulations, on the Erf.

6.2 Should the PURCHASER fail to carry out the terms of this clause, the SELLER shall have the right to demand that the land revert to it in terms of clauses 19.5 and 21 and until such revision to demand payment of and to collect from the PURCHASER and his/her successor in title, annually, half-yearly, quarterly, or monthly, as the case may be, an amount which is equal to the improvement assessment rates which would have been levied if the terms of clause 10.1 had been complied with, which shall be recovered as a rate in terms of section 73(4)(b) read with section 76A of the Local Authorities Act, 1992 (Act 23 of 1992) as amended.

6.3 Should the PURCHASER, prior to having paid the full purchase price of the Erf and any amounts outstanding in terms of this Agreement, erect any improvements on the Erf, without first having obtained the Seller's express written approval thereto and irrespective of whether building plans have been approved by or on behalf of the SELLER, then such improvements, shall become the property of the SELLER without any compensation being payable in respect of same by the SELLER in the event that this Agreement may be cancelled in terms thereof. Provided that at the sole option and discretion of the SELLER, the SELLER shall have the right to demand that the PURCHASER remove such improvements at his/her/its cost.

6.4 The "PURCHASER" undertakes prior to the issue of such completion certificate in clause 10.2 not to further mortgage the Erf without the written consent of the "SELLER" having been obtained.

6.5 In the event of the "PURCHASER" having to alienate the Erf involuntarily or alienation being effected for any reason whatsoever, without the provisions of clause 10.1 having been complied with, the "PURCHASER" shall personally remain responsible to the "SELLER".



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**7. CONDITIONS AND LIMITATIONS APPLICABLE**

7.1 This sale is subject to the following conditions which shall be registered against the title of the erf in the deed of transfer and which shall be binding on any successors in title of the "PURCHASER".

7.2 The condition of title contained in the Government gazette in which the erf is located was approved as a Township in terms of Section 13 of the Townships Division of Land Ordinance, Ordinance 11 of 1963. The "PURCHASER" herewith specifically declares him/her/itself familiar with the zoning of the Erf and undertakes to abide by that.

7.3 Any building regulations, health regulations or conditions imposed in terms of a Town Planning Scheme that are in Force at the time of entering into this Agreement or that may still be created and be implemented by the "SELLER" after entering into this agreement

7.4 Should any of the conditions referred to in Clause 7.1 not be registered against the title deed for any reason what so ever, the Purchaser shall nevertheless be bound to comply with such conditions and the provisions of Clause 7.1 shall apply in respect of any such conditions not registered.

7.5 The "PURCHASER" hereby agrees not to alienate the Erf unless it has been made a condition that his/her or its successor in its title shall, before transfer is effected, enter into an agreement with the "SELLER", in order that any such successor in title shall be contractually bound to comply "mutatis mutandis" with the "PURCHASER's obligations created in this agreement ) The "PURCHASER" hereby agrees that the "SELLER" may withhold the issue of a Clearance Certificate necessary for the issue of a Conveyances Certificate in term of section 78 of the Local Authorities Act (Act 23 of 1992) until such time as the stipulations of this clause have been complied with, without, however exempting the "PURCHASER" of his/her/its liabilities in terms of this clause.

**8. CANCELLATION**

8.1 Should the "PURCHASER" be guilty of any breach of any condition of this Agreement and fail to remedy such breach within 14 (Fourteen) days of the Receipt of a notice sent by prepaid registered mail to the *domicilium citandi et executandi* of the "PURCHASER" requiring such breach to be remedied, the "SELLER" shall be entitled without prejudice to any other rights available to it in law:

8.2 Immediately claim payment of the whole balance of the purchase price and interest due by the PURCHASER under this Agreement or Mortgage Bond in its favor, or

8.3 To cancel the sale hereby made; and upon the expiration of such notice and failure to remedy the breach, the PURCHASER shall, if he/she/it had taken possession of the ERF, immediately vacate the ERF and give the SELLER peaceful and legal possession thereof, and in the event of the transfer of the Erf having been given to the "PURCHASER", the "PURCHASER" shall when called upon to do so, transfer the erf to the "SELLER" and all costs in connection therewith, including transfer duty and the costs of any application to court, should the "PURCHASER" fail to retransfer voluntarily, shall be borne by the "PURCHASER" and the SELLER shall be entitled to forthwith, and without reference to the PURCHASER, alienate the ERF to a third party.

8.4 Should this agreement be cancelled in terms of provision of clause 8.1 hereof the PURCHASER shall have no claim for compensation in respect of any improvements which he/she/it has effected on the Erf.

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conditions of this agreement to effect such transfer. The PURCHASER shall pay the necessary costs referred to in clause 16 on demand and sign the necessary documents within thirty (30) days after requested to do so by the SELLER or its agent. Without limiting the rights of the SELLER in respect of other provisions hereof, the SELLER may apply clause 12 of this Agreement should the PURCHASER fail to comply with such request or demand or fail to take transfer within a reasonable period or fail to obtain a clearance certificate.

## 12.

### 12 COSTS

The "PURCHASER" undertakes to pay the costs of the preparation of the Diagram of the Erf, if applicable, the survey costs, advertisements costs, costs and charges of and incidental to the transfer (including transfer and stamp duties) including bond registration costs (if applicable), and all costs and charges arising from this Deed of Sale, but excluding the cost of the drafting of this Deed, including the cost of registration of servitudes and any other legal expenses in connection therewith, which costs is payable on demand.

### 13 DOMICILIUM

## 13.

13.1 For the purpose of this Agreement and for any notices which may require to be delivered to or served on the SELLER hereunder, the SELLER chooses domicilium citandi et executandi at P O BOX 67 USAKOS or the Office of its Chief Executive Officer at the Town Council Buildings, Usakos.

For the purpose of this Agreement and for any notices which may require to be delivered to or served on the PURCHASER hereunder, the PURCHASER chooses domicilium citandi et executandi at Erf 703 Hakhaseb or at P O BOX 23 Usakos

13.1.1 Any Party may by notice to the other change its *domicilium* address to another address, such change to become effective on the 5<sup>th</sup> (fifth) Business Day from the deemed receipt of the notice by the other Party, provided that the *domicilium* address must at all times include a physical address, telefax, postal address and telephone number within Usakos or, with the prior approval of the other Party, which approval shall not unreasonably be withheld, any other place within Namibia.

13.1.1 Any communication to a Party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium* address will be deemed to have been received on the 5<sup>th</sup> (fifth) Business Day after posting (unless the contrary is proved).

13.1.2 Any communication to a Party delivered by hand to a responsible person during ordinary business hours at its *domicilium* address will be deemed to have been received on the day of delivery (unless the contrary is proved).

13.1.3 Any communication to a Party sent by fax to its chosen fax address or e-mail address, will be deemed to have been provided, unless the contrary is proved at 12h00 noon of the 1st (first) Business Day following the issuance, by the transmitting fax machine, of





a report confirming correct transmission of all the pages of the document containing the communication.

13.1.4 Notwithstanding anything to the contrary herein contained, a communication actually received by a Party will be an adequate communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium* address.

13.1.5 The legal system applicable will be that of Namibia.

## 14.

### 14. SPECIAL CONDITIONS

14.1 The special conditions referred to hereinafter shall be applicable to the ERF, and for purposes hereof the PURCHASER acknowledges in favour of the SELLER that the PURCHASER has satisfied him/her/itself of the nature, consequences and effect thereof **prior to the signing hereof**, failing which the PURCHASER hereby agrees that the PURCHASER shall be irrefutably presumed to so have satisfied him/her/itself.

14.2 This agreement is subject to the following suspensive conditions and:

14.3 The PURCHASER must, where applicable, **take note:**

14.3.1 That municipal plans are only an indication of the location of individual erven and should not be seen as final erf diagram or general plan and the details regarding extent, topographic characteristics, access, exact location of Municipal services crossing erven and servitudes must be clarified.

[No topographic characteristics, access or actual location of municipal services depicted on such plan are guaranteed.]

14.3.2 That service connections in areas where the development standards allow such on site connections; would be for the account of the PURCHASER.

14.3.3 That if refuse, building materials, debris, rubble, motor wrecks, etc have been dumped on the ERF the same must be removed by the PURCHASER at own cost. This would have been taken into account at the determination of the upset prices of erven.

14.3.4 That the PURCHASER shall take responsibility for extraordinary cost due to poor soil conditions, inclusive of the bearing capacity thereof.

14.4 That the sale of the ERF is subject to the following servitudes and restrictions which shall, at the cost of the PURCHASER, be registered against the title of the ERF or by way of a power of attorney in favour of the SELLER:

"The ERF shall be subject to the reservation by the Usakos Town Council of the right of access and use without compensation of the area 3 metres parallel with any boundary for the construction and maintenance of municipal services in respect of water, sewerage, drainage, electricity and gas, which right includes the right to place on such erf temporarily any materials that may be excavated or used during such operations on the erf or any adjacent erf, which reservation shall be registered in favour of the Town Council against the title of the erven."

14.4.1 Access to other Portions must be guaranteed from the existing access. At this point, no additional access can be granted from the trunk road entering the Town.



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14.4.2 The proposed upgrading and traffic calming measures to be implemented in the current financial year by the Roads Authority also need to be considered and future planned bypass should be borne in mind.

14.4.3 The parties agree to the registration against the Title Deed of the ERF, in event of transfer being taken within two years from the date of sale, of the following conditions imposed for the benefit of and enforceable by the SELLER, or its assigns, namely:

14.4.4 The ERF shall revert to the SELLER in the event of the PURCHASER not complying with the conditions set out in this agreement.

14.4.5 The PURCHASER shall retransfer the ERF to the SELLER at the PURCHASER'S cost, and the SELLER shall not be liable to pay the PURCHASER any compensation for the improvements on the ERF.

### 15. RESERVATION OF RIGHTS

No relaxation of a term or condition of this Agreement by the SELLER and no indulgence which the SELLER may expressly or by implication concede to the PURCHASER, by not insisting on explicit performance of the PURCHASER'S obligations in terms of this Agreement, nor the acceptance of any payments after due date, shall prejudice the SELLER'S rights under this Agreement nor be construed as constituting a waiver of any such right, nor shall it be construed as a novation of this Agreement or as a tacit amendment of any of the terms or conditions of this Agreement.

### 16.

#### NON COMPLIANCE

Where the PURCHASER does not materially develop the ERF within two years from the date of sale, or within the period granted in terms of sub clause 21.3, the PURCHASER hereby provides the SELLER with an irrevocable Power of Attorney to effect retransfer of the ERF to the SELLER.

The retransfer referred to in sub clause 21.1, shall, subject to the Common Law, be done without any liability by the SELLER to repay any payments made by or on behalf of the PURCHASER to the SELLER.

The irrevocable Power of Attorney referred to clause 20 shall, upon the issue of a certificate by or on behalf of the SELLER, that the development has been completed as indicated herein, lapse and shall be void.

### 17.

#### SEVERABILITY

In the event that any of the provisions of this Agreement are found to be invalid, unlawful or unenforceable, such provisions shall be severable from the remaining provisions of this Agreement, which shall continue to be valid and enforceable.

### 18.

#### ENTIRE AGREEMENT AND VARIATIONS

This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject

Usakos Town Council



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matter thereof. The Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

No variation of or addition to this Agreement will be of any force or effect, unless reduced to writing and signed by or on behalf of the Parties.

Neither Party to this Agreement has given any warranty or made any representation to the other, other than any warranty or representation expressly recorded in this Agreement.

19.

**19. DISPUTE RESOLUTION**

If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the Representatives within 3 (three) Business Days after the dispute had arisen, or such extended period as the Parties may in writing allow, such dispute must be submitted to senior executives of the Parties who shall endeavour to resolve the dispute within 5 (five) Business Days, or such extended period as such executives may in writing agree, after the dispute having been referred to them by the Representatives. The Representatives shall be required to jointly articulate the nature of the dispute for the purposes of notifying the said executives pursuant to this Clause.

**THUS DONE and SIGNED at USAKOS on this 08 day of July 2022**

on behalf of the SELLER in the presence of the undersigned witnesses :

WITNESSES:

1. *[Signature]*  
 2. *[Signature]*

Chairperson of the Management Committee  
 Chief Executive Officer

**THUS DONE and SIGNED at USAKOS on this 08 day of July 2022** by or on behalf of the PURCHASER in the presence of the undersigned witnesses:

WITNESSES:

1. *[Signature]*  
 2. *[Signature]*

PURCHASER

SPOUSE (where applicable)



Usakos Town Council

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