

MEMORANDUM OF AGREEMENT

Entered by and between

KRUMHUK TRADING CC

(represented by Nikolai Gilck in his capacity as Partner)

And

WINDHOEK SANDWORX CLOSE CORPORATION

(represented by Dehan Landsberg)

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Me*

1. THE PARTIES

1.1 The parties to this agreement are:

1.1.1 KRUMHUK TRADING CC

1.1.2

1.1.3 Windhoek Sandworx Close Corporation:

1.2 The Parties agree as set out below.

2. DEFINITION AND INTERPRETATION

2.1 The headings to the clauses and annexes to the Agreement are for reference purpose only and shall in no way govern or affect the interpretation of, nor modify, nor amplify the terms of this Agreement, nor any clause or annexure hereof.

2.2. Unless inconsistent with the context, the words and expression set forth below, shall bear the following meanings and cognate expressions shall bear corresponding meanings.

2.2.1. "Agreement", "this Agreement", "hereto" and "hereof" and similar expressions may be used interchangeably and each refer to the memorandum of agreement as set out in this document, including any annexes and schedules hereto;

2.2.2. "Authorizations" means any consent, registration, filing, certificates, license, approval, permit, authority, confirmation, waiver or exemption from or by or with any national, supranational or regional government or administrative, fiscal, judicial or governmental body, commission, agency, authority, including any registration with a relevant professional body required for implementing this Agreement;

2.2.3. "Bank Account" means the bank in which all amounts due the Grantors pursuant to the Agreement shall be paid, being

Name of Bank

Account number

Account name

2.2.4. **"Business Day"** means any day, other than a Saturday, Sunday and official recognized public holiday in Namibia, in terms of the Public holidays Act 26 of 1990;

2.2.5. **"Condition Precedent"** means the condition precedent specified in 4 (Condition Precedent);

2.2.6. **"Consideration"** means the consideration for the Right as more fully set out in clause 8 (Consideration and Payments) below;

2.2.7. **"Corporation"** means Namib Invest CC, a corporation with limited liability duly register and incorporated as such in accordance with the applicable Laws in Namibia, with registration No CC/2000/14/14;

2.2.8. **"Cubic" "m3"** means the unit volume of Building Sand or Gravel, determined on the basis on meter in length, breadth and height;

2.2.9. **"Designated Area"** the portion of the Farm in respect of which the Right is granted and is to be exercised by the Grantee;

2.2.10. **"Duration"** means the duration of use and exercise of the Right as specified in 6 (Commencement and Duration);

2.2.11. **"Effective Date"** means notwithstanding the Signature Date and the Commencement Date, the date upon which the Condition Precedent has been fulfilled in accordance with the provisions of 4(Condition Precent);

2.2.12. **"EMA"** means the Environmental management Act 7 of 2007, including regulations made in terms thereof;

2.2.13 **"Environment"** means in the context of this Agreement, the Farm's animals, plants and all other living organisms including ecological systems of which they form part, air and water;

2.2.14. **"Environmental Clearance Certificate"** means an environmental clearance certificate issued in terms of section 34 or 37 of the EMA;

2.2.15. **"Events of Default"** means any event or circumstances specified as such in 13 (Events of Default);

2.2.16. **"Farm"** means farm Krumhuk..... in the district of Windhoek;

unincorporated association or organization, government authority, syndicate or other entity, whether or not having legal status;

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- 2.2.18 "**Grantee**" means Windhoek Sandworx Construction CC, a close corporation duly registered and incorporated as such in accordance with the applicable Laws in Namibia, with registration No. CC/2013/05632;
- 2.2.19 "**Grantors**" means the Trustees;
- 2.2.20 "**Gravel**" means a combination of sand and loose rock fragments;
- 2.2.21 "**Human Water Use**" means in the context of this Agreement, the consumption of water for domestic purposes, including laundering, washing, cleaning, cooking and bathing;
- 2.2.22 "**Law**" means any law (including common or customary law), statutory, constitutional, decree, judgment, treaty, regulation, directive, By-law, order or any other legislation proclaimed by any government, local government, statutory or regulatory body or court;
- 2.2.23 "**Mining**" means in the context of this Agreement, the excavation and removal of Gravel from the designated Area, for commercial purposes, and in accordance with 10(Mining);
- 2.2.24 "**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- 2.2.24.1 if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- 2.2.24.2 if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month, and "**Months**" shall have a corresponding meaning as the context may require;
- 2.2.25 "**Parties**" means collectively the Trustees and the Grantee and "**Party**" means any one of them, as the context may require;
- 2.2.26 "**Person**" means any individual, company, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personae, estate, group, body corporate, corporate, corporation



Unincorporated association or organization, government authority, syndicate or other entity, whether or not have legal status;

2.2.27. "**Rate per Cubic**" means the price per one cubic of Gravel excavated, calculated at base rate of N\$ 15.00 (fifteen Namibian Dollars), excluding VAT, as at the Effective Date, subject to an annual escalation equal to the then prevailing Namibian Consumer Price Index.

2.2.28. "**Right**" means the exclusive right granted to the Grantee by the Grantor in terms of the Grantee shall, for the duration of such extended time as the Parties may agree in writing and then subject to the terms and conditions as set out in this Agreement, be entitled to :

2.2.28.1. carry out mining

2.2.28.2. establish an use the Site Camp;

2.2.28.3. draw and use water from the Farm;

2.2.28.4. do such other things incidental to the above;

2.2.29. "**Secured Obligation**" means any obligation or indebtedness of whatsoever nature (whether present, future, actual or contingent and whether as a principal or in some other capacity), monetary or otherwise from whatsoever cause and howsoever rising, which the Grantee may now or at any time hereafter owe or towards the Grantor, including its obligation and indebtedness under, in terms of and arising from this Agreement.

2.2.30. "**Signature Date**" means the date of signature of this Agreement by the Party signing last in time, provided that all signatories to the Agreement have signed same;

2.2.31. "**Site Camp**" means the site camp on the Farm to be established by the Grantee for purposes of providing temporary housing and toilet facilities for not more than two employees acting as security guards.

2.2.32. "Termination" means the termination of this Agreement as fully set out below under 15 (Termination);

2.2.33. "VAT" or Value Added Tax" means value added tax or any tax similar or equivalent to value added tax imposed by any applicable jurisdiction.

2.3. Unless inconsistent with the context and the contrary is expressly indicated:

2.3.1. a reference to a Party includes that Party's successors-in-title and permitted assigns;

2.3.2. the words "shall" and "will" and "must" used in the context of any obligation or restriction on a Party have the same meaning.

2.4. Unless inconsistent with the content, an expression which denotes:

2.4.1. any one gender includes the other genders;

2.4.2. a natural person includes an artificial person and vice versa; and

2.4.3. a singular includes the plural and vice versa.

2.5. The rule of construction that in the event of ambiguity, the Agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply to the interpretation of this Agreement.

2.6. The word "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.

2.7. The words "other" and "otherwise" shall not be construed eiusdem generis with any preceding words if a wider construction is possible.



2.8 Where this Agreement requires a Party to use "Best Endeavours" in relation to an action or omission, that Party shall do all such things as are or may be necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, each of the Parties shall consult and cooperate with each other and continue to take action so as to achieve that action or omission until each of the Parties agree that it is not reasonable to take action or is reasonable to omit taking an action, provided that any actions or omissions required to be undertaken:

2.8.1. shall at all times be commercially reasonable as regards all Parties; and

2.8.2. shall not be such as to result in a breach of fiduciary duty or contravention of any Law.

2.9. Capitalized terms used in this Agreement have the meaning given to them in this 2 (Definitions and Interpretation) or as stated elsewhere in this Agreement.

3. INTROUCTION

3.1. The Farm is owned by 21 KRUMHUK

3.2. NIKOLAI GILCK....., manage the Farm on behalf of

3.3. The Grantee is desirous of acquiring the Right and the Trustee are willing to grant the Right to the Grantee on the terms and conditions as set out herein.

4. CONDITION PRECEDENT

4.1 The rights and obligations of the Parties in terms of this Agreement (other than those contained in 1 (Parties), 2 (Definitions and Interpretation), this 4 (Conditions Precedent), 7 (Warranties), 19 (Domicilium Citandi Executandi), 20 (Cooperation), 21 (Novation), 22 (general), 23 (Governing Law and Jurisdiction). (all of which shall be of immediate force and effect) are subject in their entirety to the fulfillment of the Condition Precedent being the issuance of an Environmental Clearance Certificate.

4.2. The Parties acknowledge that the Condition Precent has been incorporated in this Agreement as a requirement of the Law and cannot be waived by agreement between the Parties.

4.3. If the Condition Precedent is not fulfilled within 60 (sixty) calendar days from the Signature Date or within such an extended period as the Parties may agree to in

writing, then this Agreement in its entirety, shall never become effective and to the extent already effective as indicated in 4.1 above, shall cease to be effective and-

4.3.1. no Party shall have any right or claim against the other arising out of this Agreement; and

4.3.2. to the extent that this Agreement may have been partially implemented, the Parties shall be restored as near as may be reasonably possible to their status quo ante.

5. **GRANT OF THE RIGHT**

The Grantors hereby grants and transfer the Right to the Grantee, who accepts and agrees to Exercise the Right for the Duration, subject to the terms and conditions as set out in this Agreement.

6 **COMMENCEMENT AND DURATION**

This agreement shall be effective (and the Grantee shall be entitled to the use and enjoyment The Right) from the Effective Date and, unless terminated earlier as provided for herein, remain valid up to 60 (Sixty) months from the Effective Date. Provided that the Parties may agree to renew the Agreement for another 3 (three) years period on such terms and conditions as the Parties may then agree in writing.

WARRANTIES

6.1. Each of the Grantors and the Grantees unconditionally warrants and represents to the other of them, that as at the Signature Date:

6.1.1. he has the legal capacity and the means to enter into and implement this Agreement on the terms and conditions herein set out;

6.1.2. he has obtained all the Authorizations required to fully implement the Agreement;

6.1.3. the rights and obligations expressed to be assumed by each in this Agreement are legal, valid, binding and enforceable obligations;

6.1.4. by entering into this Agreement, he does and will:

6.1.4.1. contravene any applicable Law or regulation or any order of any governmental or other official authority, body or agent or any judgement, order or decree of and court having jurisdiction over him; or



6.1.4.2. conflict with or result in any breach of any of the terms of, or constitute a default under, any Agreement or other instrument to which he is party or any licence to which he is subject.

6.2. Save for the warranties set above in 6.1. The Parties make no other warranties or expressions to other of them, express or implied.

7. CONSIDERATIONS AND PAYMENTS

7.1. A consideration for the Right, the Grantee shall pay to the Grantor the following:

7.1.1. in respect of Gravel:

7.1.1.1. the value of the total volume of Gravel excavated during the preceding month ("Amount Due"), calculated on the basis of the applicable Rate per Cubic and determined as follows:

$$A = B \times C$$

Where

"A" is the Amount Due

"B" is the total volume of Gravel excavated during the preceding month

"C" is the applicable Rate per Cubic.

7.1.2. In respect of the Site Camp, a monthly rental fee in the amount of N\$ 5000 (five thousand N\$), ("Rent"), which Rent shall be subject to an annual escalation at a rate of 12% (twelve percent), including the use of water.

7.2. All payments in terms of consideration shall become due to the Grantor not later than the 7th day of each and every month and shall be paid into the following Bank Account:

Bank Windhoek
Code: 482 172
Acc No: 80 10 99 59 85

7.3. The Parties acknowledge that the Grantor will charge VAT.



8. SITE CAMP

8.1. The Grantee shall be entitled to establish and maintain the Site Camp within the designated area, on a portion thereof to be agreed to by the Parties.

8.2. The Grantee undertakes to ensure that:

8.2.1. all standing structures shall be made of prefabricated material and will not be permanently fixed to the ground.

8.2.2. it will use the Site Camp solely for accommodation for two employees that are needed for carrying out the mining and/or serve as security guards.

8.2.3. at its own cost, it will maintain the Site Camp in a sanitary condition

8.2.4. its use and occupation of the Site Camp will not cause any unnecessary disturbances or nuisance or disruption to the Grantors' use and/or administration of the Farm.

9. MINING

9.1. the Mining shall be carried out only within the boundaries of the Designated Area

9.2. The Grantee undertakes to:

9.2.1. comply with all conditions imposed on it in terms of the Grantor.

9.2.2. to the extent that it is possible and feasible, to use its Best Endeavour to mitigate the impact of the Mining on the Environment.

9.2.3. at its own cost and expense.

9.2.3.1. tally sheets for verifying the number and volumes of truckloads of Gravel removed from the Farm on each day, and

9.2.3.2. submit to the Grantor all information and data collected as contemplated under 9.2.3.1. above at the end of each month.



10. OBLIGATIONS OF THE GRANTORS

10.1. Without in any way derogating from the obligations imposed upon the Parties in terms of this Agreement, the Grantors undertake in favor of the Grantee (but subject to the provisions of 12.2.1 below) to-

10.1.1. ensure that the Grantee is not hindered in its exercise of the Right;

10.1.2. procure that the Grantee has an unobstructed access to the Farm and the Designated Area for purpose of exercising the Right; and

10.1.3. generally, do all acts necessary and refrain from any such acts, so as to ensure That the Grantee is not disturbed in its exercising of the Right.

11. EXCLUSION OF HE GRANORS FROM CERTAIN LIABILITIES AND INDEMNITY

11.1. Notwithstanding anything herein contained, the Grantors shall be liable for any damage suffered by the Grantee or any third party as a result of-

11.1.1. damage or destruction of property while on the Farm; or

11.1.2. any interruption or interference with the Grantee's activities and undertake in terms of or under the Right as a result of the Grantors' doing.

12. EVENTS AND DEFAULT

12.1 Each of the events or circumstances set out in this 12 (Events of Defaults) is an Event of Default.

12.1.1. NON-PAYMENT

The Grantee does not pay on the due date any amount payable pursuant to the Agreement unless its failure to pay is caused by an administrative or technical error and in either case payment is made within 7 (seven) business Days of its due date.

Insolvency

Any corporate action, legal proceeding or other procedure or step is taken in relation to winding-up the Grantee, including the appointment of a liquidator or a receiver, administrative receiver, administrator, judicial manager or other similar officer in respect of the Grantee or any of its assets.

12.1.2. Unlawfulness

If it is or becomes unlawful for the Grantor to perform any of its obligations Under the Agreement.

12.1.3. Other obligations

Either Party committing a breach of any of the provisions of the Agreement, and remaining in breach within 14(Fourteen) calendar days of receiving a notice from the other Party calling upon the defaulting Party to remedy the breach.

12.2. On and at any time after the occurrence of an Event of Default the Grantor may-

12.2.1. in respect of the Event of Default mentioned in 12.1.1, without notice to the Grantee, lock the gate(s) of the Farm or otherwise do all that is necessary to prevent to the Grantee and its workmen from entering or exiting the Farm until such time that payment is received. Provided that nothing contained in this 12.2.1. shall be regarded as a prejudice to the Grantors from exercising their rights, power and discretions which accrue to them in terms of the Law consequent to the occurrence of an Event of Default.

12.2.2. in any other case:

12.2.2.1 claim damages;

12.2.2.2 claim specific performance: or

12.2.2.3 exercise all or any rights which they might hold in terms of the Law

13. CESSION

The Grantee shall not be entitled, except with the prior written consent of the Grantors and which consent the Grantors shall provide at its sole and absolute discretion, to cede all or any of its entitlements under the Right to a third Person.

14. TERMINATION

14.1. This Agreement shall terminate –

14.1.1. by mutual consent of the Parties, to the terms and conditions as the parties may in terms hereof agree; or

14.1.2. forthwith upon the occurrence of the Event of Default referred to under 12.1.3; or

14.1.3. forthwith upon the withdrawal or cancellation of the Environmental Clearance Certificate; or

14.1.4. by the election of either Party in terms of 12.2.2.1 above or

14.1.5. effluxion of time.

14.2. after Termination, whatever the reason may be, the Grantee shall –

14.2.1. demolish all structures and remove the materials from the Farm;

14.2.2. dismantle all plant and machinery and remove same from the Farm;

14.2.3. clear and remove all debris and litter;

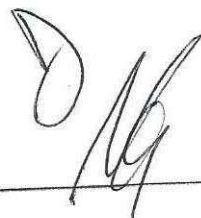
14.2.4. to the extent that it is possible and feasible, rehabilitate the areas affected by the Mining;

14.2.5. Rehabilitate excavations and open holes on the ground surfaces created by the Grantor in the process of Mining; and

14.2.6. do all such acts as may be required by the terms and conditions (if any) of the Environmental Clearance Certificate.

15. FORCE MAJEURE

15.1. The obligations of either Party shall be suspended to the extent and for the period that performance thereof is prevented by any cause whether foreseeable or not, beyond the reasonable control of the affected party ("Disruption Event"). Provided that-



15.1.1. this 15.1 shall not be applicable to an obligation to pay any amount of money due on the date of the Disruption Event; and

15.1.2. the Party affected by the Disruption Event shall resume performance as soon as reasonably possible after the end of the Disruption Event.

15.2. The Party affected by the Disruption Event shall promptly give notice to the other Party of the occurrence or imminence of the Disruption Event and the extent of the suspension of performance and expected duration thereof.

16. **ARBITRATION**

16.1. Save in respect of those provisions of this Agreement which provide for their own remedies any dispute arising from or in connection with this Agreement shall be resolved by arbitration, which arbitration shall be conducted in accordance with the following provisions:

16.1.1. the arbitration shall be presided over by a suitably qualified independent person who shall be agreed upon between the Parties, failing agreement within 5 (five) Business Days of the arbitration being demanded, either Party shall be entitled to require the appointment of an arbitrator by the President of the Law Society of Namibia.

16.1.2. the arbitration shall be conducted in an informal manner and according to such procedure as shall be laid down by the arbitrator.

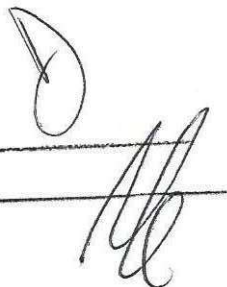
16.2. The decision/award of the arbitrator, given in writing and fully supported by reasons, shall be final and binding on the Parties and shall be carried into effect by the Parties.

17. **COMPLIANCE WITH TERMS OF ANY STATUTE, BY-LAWS OR REGULATIONS**

Without in any way derogating from the obligations imposed upon the Parties in terms of this Agreement, the Parties will, in addition, be obliged to conform to all Law affecting the Right.

18. **DOMICILIUM CITANDI et EXECUTANDI**

18.1. The Parties choose as their *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement (collectively the "Notice") the following addresses:



The Grantors: KRUMHUK TRADING CC
BOX 2630
WINDHOEK

The Grantee: SANDWORX CC
BOX 11588
WINDHOEK

Provided that a Party may from time to time change any address to any other physical address, postal address, or email address within Namibia by written notice to the other Party to that effect. Such change of address will be effective 7(seven) calendar days after receipt by the other Party of change of domicillium.

18.2 Notwithstanding any provision to the contrary a notice actually received by a Party, although not at or in terms of the chosen domicilium in terms of 18.1, shall be regarded aa adequate notice for purpose of his Agreement.

19. COOPERATION

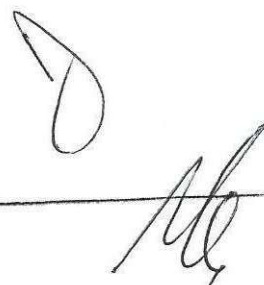
19.1. The Parties hereby undertake to each other to-

19.1.1. do and to procure the doing by other persons, all such acts; and

19.1.2. pass, and to procure the passing of all such resolutions (if applicable).

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. NOVATION

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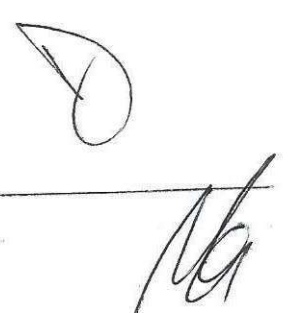
The Parties hereby agree that this Agreement shall supersede all previous agreements (whether in writing or not) made between the Parties (if any) in respect of the use of the Right by the Grantee and accordingly this Agreement constitutes a novation of any previous agreement(s) in respect of the Subject Matter.

21. **GENERAL**

- 21.1. The Parties agree that this Agreement constitutes the entire contract between them with regard to the Subject Matter and that there are no other conditions, stipulations, warranties or representations whatsoever made, other than such as may be included herein or in any subsequent written document signed by the Parties.
- 21.2. No Party shall be bound by any express or implied term, representation, warranty, undertaking or the like, not recorded in this Agreement.
- 21.3. No addition to, variation or consent to cancellation of this Agreement including this 21.3 and no extension of time, waiver or realisation or suspension of any provisions or terms of this Agreement including this 21.3 shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.
- 21.4. Each party hereto warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 21.5. Each provision in this Agreement is severable, the one from the other, and if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

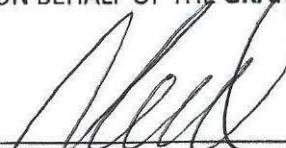
22. **GOVERING LAW AND JURISDICTION**

This Agreement shall be governed by, construed and interpreted in accordance with the Laws of Namibia and each of the Parties irrevocably agree that the High Court of Namibia shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement.

A large handwritten signature is located at the bottom right of the page. It consists of a stylized, cursive name that appears to be 'D' followed by a large, bold signature, possibly 'Ng'.

SIGNED at КРАМНИК On 09 APRIL 2021.

ON BEHALF OF THE GRANTOR:



NIKOLAI GILCK (Managing Director)

AS WITNESS: _____

SIGNED at КРАМНИК on 9/04 2021.

ON BEHALF OF THE GRANTEE:



DEHAN LANDSBERG (Managing Member)

AS WITNESS: _____

