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DR WEDER, KAUTA & HOVEKA INC  
LEGAL PRACTITIONERS NOTARIES CONVEYANCERS

THE EXPERIENCE YOU NEED  
THE RESULTS YOU WANT

**PRESIDENT'S LINKS ESTATE PROPRIETARY LIMITED**

-and-

*[the investor]*

-and-

**THE COMPANY**

**(herein represented by Andrew Bernard van Schalkwyk, solely in his capacity as agent and trustee for a private company not yet incorporated and in terms of section 42 of the Companies Act, 28 of 2004)**

**[SALE OF SHARES AND SUBSCRIPTION AGREEMENT – PROJECT INVESTMENT]**

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

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## 1. DEFINITIONS AND INTERPRETATION

- 1.1. The headings to the clauses and annexes to this Agreement are for the reference purposes 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.
- 1.2. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1. **“Act”** means the Companies Act 28 of 2004;
- 1.2.2. **“Agreement”** **“this Agreement”**, **“herein”**, **“hereof”** and **“hereunder”** may be used interchangeably and each means the Sale of Shares and Subscription Agreement contained in this document;
- 1.2.3. **“Architects”** means Waldo Krogh trading as Lötter Krogh Architects in Association with Desmond Howard Architect;
- 1.2.4. **“Attorneys”** means Dr. Weder, Kauta & Hoveka, currently of Shop 208, 1<sup>st</sup> Floor, Platz Am Meer, Waterfront, Swakopmund;
- 1.2.5. **“Auditor”** means Wouter van Wijk of WBM Chartered Accountants, Walvis Bay;
- 1.2.6. **“Claims”** means all sums of whatsoever nature and howsoever arising and owing to the Seller by the Company on the Registration Date;
- 1.2.7. **“Closing Date”** means the first business day after the First Advance has been paid;;
- 1.2.8. **“Company”** means a private company still to be incorporated, and herein represented by Andrew Van Schalkwyk, solely in his capacity as the agent and trustee for a private company not yet incorporated, in terms of section 42 of the Companies Act 28 of 2004;
- 1.2.9. **“Conditions Precedent”** means the conditions precedent provided for in 3 (*Conditions Precedent*);
- 1.2.10. **“Construction Agreement”** means a construction agreement, substantially similar to the agreement annexed hereto as **Annexure “B”**, concluded or to be concluded between the Company and the construction contractor nominated by the Seller;
- 1.2.11. **“Documents of Title”** means –

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SELLER	SELLER's Witnesses
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- 1.2.11.1. the original share certificate in respect of the Shares together with duly executed share transfer forms in respect thereof, duly completed, currently dated and signed by the Seller, so as to enable the Investor to have the relevant Shares registered in its name;
- 1.2.11.2. a certified copy of a resolution of the directors of the Company passed in accordance with the Company's articles of association –
- 1.2.11.2.1. approving the transfer of the Shares pursuant to this Agreement;
- 1.2.11.2.2. appointing, with effect from the Closing Date, such directors as the Investor may nominate to the board of the Company; and
- 1.2.11.2.3. noting the resignations of the directors, auditors and/or officers contemplated in clause 6.1.2
- 1.2.11.3. a written cession by the Seller of the Claims (if any) to the Investor;
- 1.2.12. **“Effective Date”** means notwithstanding the Signature Date, the date upon which the Conditions Precedent are either fulfilled or waived;
- 1.2.13. **“First Advance”** bears the meaning ascribed thereto in clause 5.3.2;
- 1.2.14. **“First Subscription Date”** means the first business day after the quantity surveyor (as defined in the Construction Agreement) has certified in writing that the building being constructed on the Property in accordance with the Construction Agreement is 50% (fifty percent) complete;
- 1.2.15. **“Golf Course”** bears the meaning ascribed thereto in clause 2.2
- 1.2.16. **“Initial Deposit”** bears the meaning ascribed thereto in clause 5.3.1;
- 1.2.17. **“Investor”** means [NAME OF INVESTOR – APPLICANT ON WEBSITE];
- 1.2.18. **“Liquidated Damages”** means an amount of N\$500'000.00 (five hundred thousand Namibia Dollar) as further provided for in clause 13.4;
- 1.2.19. **“Parties”** collectively means the Investor, the Seller and the Company, and **“Party”** means, as the context requires, each or any one of them;
- 1.2.20. **“Project”** bears the meaning ascribed thereto in clause 2.1

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- 1.2.21. **“Project Documents”** collectively means the –
- 1.2.21.1. Construction Agreement;
- 1.2.21.2. Property Sale Agreement;
- 1.2.22. **“Project Maturity Date”** means the date upon which the Seller confirms in writing that –
- 1.2.22.1. all the statutory requirements to proceed with the commencement of construction of the Golf Course, forming part of the Project, have been completed;
- 1.2.22.2. the Auditor having certified in writing that sustainable investments and financing have been obtained/secured by the Seller for purposes of implementation of the Project;
- 1.2.22.3. the Quantity Surveyor certifying in writing that the residential phase of the Project is sustainable; and
- 1.2.22.4. the commencement of the residential phase of the Project, which shall not be before the Ministry of Urban and Rural Development (or its successor Ministry) approving of the sale of the Project Property to the Seller;
- 1.2.23. **“Property”** means the meaning ascribed thereto in the Property Sale Agreement;
- 1.2.24. **“Property Sale Agreement”** means an immovable property sale agreement, substantially in the form contained in **Annexure “C”** hereto, concluded or to be concluded between the Company and the Seller;
- 1.2.25. **“Purchase Price”** means the purchase price provided for in clause 5 (*Purchase Price*) below;
- 1.2.26. **“Registration Date”** means the date upon which the Shares are registered into the name of the Investor;
- 1.2.27. **“Residency Permit”** means a renewable Work Visa, of 5 (five) years or longer linked to the Company and affording the Investor the right to reside and work for the Company in Namibia, issued by the Ministry of Home Affairs and Immigration;
- 1.2.28. **“Quantity Surveyor”** means Koot Potgieter of JH Potgieter Quantity Surveyors;

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- 1.2.29. **“Second Advance”** bears the meaning ascribed thereto in clause 5.3.3;
- 1.2.30. **“Second Subscription Date”** means the first business day after the certificate of practical completion (defined in the Construction Agreement) in respect of the building being constructed on the Property in terms of the Construction Agreement has been issued;
- 1.2.31. **“Seller”** means President’s Links Estate (Proprietary) Limited, a private company having limited liability, registered and incorporated in accordance with the applicable laws, with registration number 2020/0869;
- 1.2.32. **“Shares”** means all of the issued share capital of the Company;
- 1.2.33. **“Signature Date”** means, subject to 19 (*Signature*), the date of signature of this Agreement by the Party signing last in time, provided that all of the Parties have then signed the Agreement;
- 1.2.34. **“Subject Matter”** collectively means the Claims and the Shares;
- 1.2.35. **“Submission Date”** means the date upon which the application for the Residency Permit is submitted, which date shall occur when the Seller, in its discretion, has received sufficient completed applications from other investors;
- 1.2.36. **“Subscription Price”** means 40% (forty per centum) of the Total consideration less the initial deposit being the total amount payable for the Subscription Shares to be subscribed for and issued in accordance with Part B of this Agreement, this will be reconciled upon completion of the construction to secure the maximum tax benefit for the Investor;
- 1.2.37. **“Subscription Shares”** means 200 (two hundred) ordinary shares with a par value of N\$1.00 each in the authorised unissued share capital of the Company;
- 1.2.38. **“Total Consideration”** means the sum of the Purchase Price and the Subscription Price, being N\$ TOTAL SELLING PRICE (SELLING PRICE IN WORDS Namibia Dollar);
- 1.2.39. **“Town Planning Procedures”** means the procedures set forth in **Annexure “D”**; and
- 1.2.40. **“VAT”** means value added tax payable and as defined in the Value Added Tax Act 10 of 2000.
- 1.3. Any reference in this Agreement to –

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- 1.3.1. “**assets**” includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.3.2. “**authorisation**” includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.3.3. “**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 co-operate 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 the action or is reasonable to omit taking an action, provided that any actions or omissions required to be undertaken:
- 1.3.3.1. shall at all times be commercially reasonable as regards all Parties; and
- 1.3.3.2. shall not be such as to result in a breach of fiduciary duty or contravention of any law;
- 1.3.4. “**business hours**” shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon Namibian Standard Time;
- 1.3.5. “**days**” shall be construed as calendar days unless qualified by the word “business”, in which instance a “**business day**” will be any day other than a Saturday, Sunday or a recognised public holiday in Namibia;
- 1.3.6. “**determines**” or “**determined**” means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- 1.3.7. “**directly**” or “**indirectly**” means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- 1.3.8. “**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;
- 1.3.9. “**laws**” means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any

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- government body; and the common law, and “**law**” shall have a similar meaning;
- 1.3.10. “**material**” and “**materially**” means, when used as an adjective in conjunction with an event, condition, circumstance, effect or other item that there is a substantial likelihood that a reasonable person will in the matter concerned, attach importance to the event, condition, circumstance, effect, or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in this Agreement;
- 1.3.11. “**N\$**” means Namibia Dollars, the lawful currency of Namibia;
- 1.3.12. “**Namibia**” means the Republic of Namibia;
- 1.3.13. “**ordinary course of business**” with reference to the relevant person in respect of any transaction involving such person, in the ordinary course of such person’s business, as conducted by such person, in accordance with past practice and undertaken by such person in good faith and not for the purposes of evading or avoiding any covenant, restriction or undertaking in this Agreement;
- 1.3.14. “**other**” and “**otherwise**” shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible;
- 1.3.15. “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.3.16. “**shall**” and “**will**” and “**must**” used in the context of any obligation or restriction imposed on a Party have the same meaning.
- 1.4. Unless inconsistent with the context and save where the contrary is expressly indicated:
- 1.4.1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in this 1 (*Definitions and Interpretation*), effect shall be given to it as if it were a substantive provision of this Agreement;
- 1.4.2. where 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 day which is not a business day, in which case the last day shall be the next succeeding business day;
- 1.4.3. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a business day, the relevant day for performance shall be the subsequent business day;

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- 1.4.4. any reference in this Agreement to a provision of law is to the provision as at the Signature Date and as amended or re-enacted from time to time;
- 1.4.5. any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be amended, varied, novated, reinstated or supplemented;
- 1.4.6. defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.4.7. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.4.8. in the event of an incorrect clause reference, the clause number shall be inferred from the context of the referring clause;
- 1.4.9. the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply; and
- 1.4.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.5. Unless inconsistent with the content, an expression which denotes:
- 1.5.1. any one gender includes the other genders; and
- 1.5.2. the singular includes the plural and *vice versa*.
- 1.6. The annexes to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such annexes, to the extent that there is a conflict between the annexes to this Agreement and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 1.7. This Agreement shall inure for the benefit of and be binding on and enforceable by the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's executor, administrators, trustees, permitted assigns or liquidators, as the case may be.

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- 1.8. A reference in this Agreement to a certified copy of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or other person authorised to certify the document, of the party delivering the document.

## 2. BACKGROUND

- 2.1. The Seller owns or has the right to acquire land measuring approximately 148 hectares, located in the local authority area of Walvis Bay (the “**Project Property**”) upon which the Seller is prepared to develop a mixed-use development to be known as “**THE PRESIDENT’S LINKS ESTATE**” (the “**Project**”);
- 2.2. The Project will consist of (i) approximately 630 (six hundred and thirty) erven for the construction thereon of houses, villas, apartments, penthouses, commercial buildings, retirement units and timeshare opportunities, each of which shall constitute a sub-project (the “**Sub-Projects**”) and (ii) an 18 (eighteen) hole Louis Oosthuizen signature Golf Course designed by Peter Matkovich (the “**Golf Course**”);
- 2.3. In terms of the Project Documents concluded or to be concluded between the Company and the Seller the Company has secured the right to undertake and implementation of a specified Sub-Project and for which funding is required;
- 2.4. The Seller aims to attract and promote foreign investment into (i) the Sub-Projects (and thereby the Project) specifically and (ii) the Republic of Namibia generally by offering foreign investors the opportunity to introduce foreign assets with which to acquire all of the Sellers shares and other interests in the Company and thereby enabling a foreign investor to partake in and benefit from the Sub-Project allocated to the Company in terms of the Project Documents.
- 2.5. The Investor is a foreign national, desirous of investing in the business opportunity presented by the Seller, and to do so through the introduction of foreign assets.
- 2.6. The Seller is prepared to assist and support the Investor, the latter having undertaken to acquire the Company and implement a Sub-Project, to prepare, submit and prosecute an application for a Residency Permit in accordance with the applicable laws.
- 2.7. The marketing presentation for the Project and its Sub-Projects are available for inspection at the offices of DR WEDER, KAUTA & HOVEKA INC., SHOP 208, 1<sup>ST</sup> FLOOR, PLATZ AM MEER WATERFRONT, SWAKOPMUND;
- 2.8. The status and progress of the Project is summarized in **Annexure “E”**.

## 3. CONDITIONS PRECEDENT

- 3.1. The rights and obligations of the Parties in terms of this Agreement other than those contained in clauses 1 (*Definitions and Interpretation*); this 3 (*Conditions Precedent*),

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5.3.1, 8 (*Warranties and Representations*), 9 (*Sellers Project Undertakings*), **Error! Reference source not found.** (*Securing Investment and Subscription Prices*), 12 (*Residency Permit Application*), 13 (*Breach*), 15 (*Domicilium and Notices*), 17 (*Governing Law and Jurisdiction*), 18 (*General*), and 19 (*Signature*) all of which shall be of immediate force and effect, are subject in their entirety to the fulfilment and/or waiver (as the case may be) of the following Conditions Precedent, namely that:

- 3.1.1. the Investor has -
- 3.1.1.1. made the Initial Deposit; and either
- 3.1.1.2. provided the guarantee in terms of clause 13.1.1; or
- 3.1.1.3. made payment in accordance with clause 13.1.2;
- within the timeline provided for in clause 13.1;
- 3.1.2. subject to the prior fulfilment of the condition in clause 3.1.1,
- 3.1.2.1. the Investors application for the Residency Permit is approved within 6 (six) months of the Submission Date;
- 3.1.2.2. the Project Maturity Date has occurred;
- 3.1.2.3. the Seller has confirmed in writing that 65% (sixty five percent) of the erven in phase 1 of the Project have been sold; and
- 3.1.2.4. the Seller has raised a loan with which to finance the development of the Project upon such terms and conditions as the Seller may accept;
- on or before 31 December 2022; and
- 3.1.3. the Project Documents have been concluded and become unconditional in accordance with their terms, save any condition that this Agreement become unconditional, within 14 (fourteen) days of the fulfilment of the condition in clause 3.1.2.
- 3.2. The Parties acknowledge that the Conditions Precedent referred to in 3.1 have been incorporated in this Agreement for the benefit of the Parties and it has been agreed that any one of these Conditions Precedent may only be waived by the Parties, in writing and then subject to such terms and conditions as the Parties may decide.
- 3.3. The Parties shall co-operate and use their best endeavours to achieve fulfilment of the Conditions Precedent.

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- 3.4. If any of the Conditions Precedent are not fulfilled or waived, subject to 3.2, within the period provided or within such 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 3.1 above, shall cease to be effective and:
- 3.4.1. subject to 3.4.2 below and save in respect of a breach of 3.3 above, no Party shall have any right or claim against the other arising Agreement; and
- 3.4.2. 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*.

## **PART A: SALE OF SUBJECT MATTER**

### **4. PURCHASE AND SALE**

- 4.1. The Seller hereby sells and cedes to the Investor, who purchases and accepts cession of, as one indivisible transaction the Subject Matter, subject to the further terms and conditions contained in this Agreement.
- 4.2. Notwithstanding the Signature Date and the date upon which the Subject Matter is delivered to the Investor, the Subject Matter is sold with effect on and as from the Effective Date. All risk in and benefits attaching to the Subject Matter shall be deemed to have passed to the Investor on the Registration Date.

### **5. PURCHASE PRICE AND PAYMENT**

- 5.1. The consideration payable by the Investor to the Seller for the Subject Matter shall be the sum of, the deposit and 60% (sixty per centum) of the Total Consideration, excluding VAT (if any), which shall be charged at the applicable rate.
- 5.2. The Purchase Price shall exclude all applicable taxes and stamp duty or other costs (if any) related to the transfer of the Shares into the name of the Investor.
- 5.3. The Purchase Price shall be paid to the Seller as follows;
- 5.3.1. An initial deposit in the amount of N\$100'000.00 (One Hundred Thousand Dollars) within 10 days of the Signature Date (the "**Initial Deposit**"), which is refundable only in the event that the Residency Permit is not granted;
- 5.3.2. On the first business day after the granting of the Residency Permit or the Effective Date (whichever is the later), the first advance, in an amount equal to 30% (thirty percent) of the Total Consideration (the "**First Advance**"), shall be payable to the Seller;

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- 5.3.3. On the first business day after (i) the quantity surveyor (as defined in the Construction Agreement) has certified in writing that the Property has been serviced and (ii) the Subject Matter has been transferred to the Investor the second advance, in an amount equal to 30% (thirty percent) of the Total Consideration (the “**Second Advance**”), shall be payable to the Seller.
- 5.4. All and any payments to be effected in terms of this Agreement shall be made at Swakopmund free of exchange and all bank charges, without any deduction or set off at the offices of the Attorneys, except as may otherwise be indicated herein.
- 5.5. The Purchase Price shall be apportioned as follows:
- 5.5.1. the Claims, if any, shall be taken over at their face value; and
- 5.5.2. the Shares shall be taken over at the Purchase Price less the sum, if any, attributable to the Claims and other permissible deductions,
- and shall be paid to the Seller.

## 6. IMPLEMENTATION

- 6.1. On the Closing Date the Seller shall, in respect of the Subject Matter, delivery:
- 6.1.1. the Documents of Title;
- 6.1.2. to the extent so required by the Investor, the written resignations:
- 6.1.2.1. with effect from the appointments in clause 1.2.11.2.2 becoming effective, of all the directors of the Company as at the Closing Date, save for any directors nominated by the Investor as contemplated in clause 1.2.11.2.2, confirming that they waive all claims, whether in contract or in delict, actual or contingent, that they, in their capacity as directors, may have had against the Company up until the Closing Date;
- 6.1.2.2. with effect from the Closing Date, of the Auditors;
- 6.1.2.3. with effect from the Closing Date, of the public officer, company secretary and any other officer of the Company, it being specifically agreed that these resignations are from formal appointments as officers of the Company only, and not from posts of employment with the Company, if applicable;
- 6.1.3. certified copies of resolutions of the shareholders of the Company electing, with effect from the Closing Date, such directors as may have been

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nominated for that purpose by the Investor by means of written notice to the Seller; and

6.1.4. the memorandum of association and articles of association, the registration certificate (or the certificate of incorporation, as the case may be) and (to the extent to which they exist), share certificates, registers and records of the Company (including all such records as exist only in electronic form, which shall be copied onto such devices or memory storage disks or drives as the Investor may reasonably require), or alternatively place the Investor or the Investor's representative in effective control of all the records, registers and documents of the Company.

6.2. The Seller shall, subject to 6.1 above having been complied with, instruct the Attorneys to:

6.2.1. attend to or cause the registration of the Shares into the name of the Investor;

6.2.2. attend to or cause the cancellation of the original Share certificate(s) of the Seller;

6.2.3. attend to or cause the issuing of share certificates to the Investor, reflecting its shareholding in the Company; and

6.2.4. attend to note the out and out cession of the Claims (if any) in the books of the Company.

## 7. COSTS

7.1. The Investor shall be responsible, on demand by the Attorneys to pay all costs incurred in respect of the transfer of the Subject Matter into the Investor's name, as well as stamp duty (or any other taxes of whatsoever nature that arise) and all other costs incidental thereto.

7.2. If any taxes of whatsoever nature are or become payable on the sale and transfer of the Shares and/or cession of the Claims, the Investor shall be liable therefore.

## 8. WARRANTIES AND REPRESENTATIONS

8.1. Each of the Parties hereby warrants to and in favour of the other that –

8.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

8.1.2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

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- 8.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
- 8.1.3.1. contravene any law or regulation to which that Party is subject;
- 8.1.3.2. contravene any provision of that Party's constitutional documents;  
or
- 8.1.3.3. conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and
- 8.1.4. to the best of its knowledge and belief after due enquiry, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all its obligations in terms of this Agreement;
- 8.1.5. it is entering into this Agreement as principal (and not as agent or in any other capacity);
- 8.1.6. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
- 8.1.7. no other party is acting as a fiduciary for it; and
- 8.1.8. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
- 8.2. The Seller hereby gives the following warranties to and in favour of the Investor, which warranties are, unless inconsistent with or otherwise indicated by the context, given as at the Closing Date and it is on the strength of such warranties that the Investor has entered into this Agreement, namely:
- 8.2.1. the Seller (or its nominee) shall be the registered and beneficial owner of the Subject Matter;
- 8.2.2. the Company is incorporated as Company with limited liability according to the laws of Namibia;
- 8.2.3. no steps have been taken for the deregistration of the Company;
- 8.2.4. the Claims, if any, have no fixed terms for repayment;
- 8.2.5. the Seller has the right, power and authority to dispose of the Subject Matter in terms of this Agreement, free from any option or charges whatsoever and to transfer same to the Investor and to otherwise comply with this Agreement;
- 8.2.6. the Project Documents are valid and enforceable;

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- 8.2.7. the Company will not have any promissory notes, bills of exchange, bills of sale or other securities issued or negotiated by it outstanding;
- 8.2.8. the Company will not have any liabilities other than the Claims or obligations in terms of the Project Documents;
- 8.2.9. the Company will not have employees or commitments to members other than the Claims hereinbefore referred to, officers or employees or former members, officers or employees and that there will be no fees or other remuneration, pensions, or leave pay outstanding to any member, officer or employee;
- 8.2.10. the Company will not be engaged in any litigation, nor will any lawsuits or arbitration proceedings be pending or threatened against the Company;
- 8.2.11. the Company will not have received any expropriation notice nor will any such notice be intimated or threatened;
- 8.2.12. the Company complied with all the requirements of the Act, Income Tax Act 24 of 1981, Value Added Tax Act 10 of 2000, Local Authorities Act 23 of 1992 and any other statute or regulations, which may be applicable to the Company;
- 8.2.13. no person has or will have any right to obtain, including but without limitation, any option or right of first refusal, or right of pre-emption in respect of any of the Subject Matter;
- 8.2.14. the Seller has not taken any steps prior to the Signature Date and nor shall it take any such steps subsequent to the Signature Date, as to either wind - up or liquidate the Company; and
- 8.2.15. the Seller has to the best of its knowledge and belief made a full and complete disclosure to the Investor of all information relating to the Company, which would be material to the Investor in relation to its decision to acquire the Subject Matter and in so doing the Property, and in relation to the Purchase Price;
- 8.3. Each of the representations and warranties given by the Parties in terms of clause 8.1 above shall –
- 8.3.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
- 8.3.2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

8.3.3. *prima facie* be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.

## 9. SELLERS PROJECT UNDERTAKINGS

- 9.1. The Seller, as developer and sponsor of the Project, shall make its best endeavours to –
- 9.1.1. proceed with and carry out the Project in a timely and cost-effective manner;
  - 9.1.2. cause the completion of all engineering design work by the Engineer and architectural designs by the Architects;
  - 9.1.3. cause the Quantity Surveyor to prepare the final costing for the Project;
  - 9.1.4. prepare and submit the urban layout of the Project Property for the approval of the Walvis Bay local authority;
  - 9.1.5. amend the environmental impact assessment to incorporate Portion 2;
  - 9.1.6. conduct site water purification test work at the Walvis Bay Water and Waste department using the Theys Water Engineering Demonstration plant to confirm the test results provided on water samples;
  - 9.1.7. contract Matko57, the Golf course design and construction Company of Peter Matkovich and Louis Oosthuizen, to complete the master plan for the Golf Course; and
  - 9.1.8. complete the application for the Residency Permit.

## 10. INVESTOR TO NOTIFY THE AUTHORITIES

The Investor shall, after the Registration Date, cause the necessary returns and information to be forwarded to the Registrar of Companies and any other authority having jurisdiction, recording the change in control of the Company provided for in this Agreement.

## **PART B: SUBSCRIPTION**

### 11. SUBSCRIPTION FOR SHARES

11.1. For the purposes of providing the Company with the necessary funding to fulfil its obligations in terms of the Project Documents, the Company and the Investor agree that the Investor shall introduce foreign capital into Namibia with which to fund the Company.

11.2. Subject to clause 11.1, the Company and the Investor agree that on the -

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PURCHASER	PURCHASER's Witnesses
Agent	



- 11.2.1. First Subscription Date the Seller shall subscribe, in cash, for 100 (one hundred) Subscription Shares at an amount equal to 50% (fifty percent) of the Subscription Price which shall be used by the Company towards fulfilment of its payment obligations in terms of the Construction Agreement; and
- 11.2.2. Second Subscription Date the Seller shall subscribe, in cash, for 100 (one hundred) Subscription Shares at an amount equal to the balance of the Subscription Price which shall be used by the Company towards fulfilment of its remaining payment obligations in terms of the Construction Agreement.
- 11.3. All payments for subscription shares shall be free of exchange and without any set-off, withholding or deduction.
- 11.4. Against receipt by the Company of payment for the relevant Subscription Shares, as contemplated in clause 11.1, the Company shall allot and issue the applicable Subscription Shares to the Investor and cause the securities register of the Company to be updated to reflect the Investor as the registered holder of such Subscription Shares.
- 11.5. The Company and the Investor acknowledge that any duty payable on the creation and issue of the Subscription Shares pursuant to this Agreement shall be borne and paid for by the Investor.

## **PART C: RESIDENCY PERMIT**

### **12. RESIDENCY PERMIT APPLICATION**

- 12.1. The Investor shall within 30 (thirty) calendar days from Signature Date, provide the following documentation and/or information to the Seller, in respect of the application for the Residency Permit:
- 12.1.1. a completed and signed Application Form, hereto attached as **Annexure "A"** (the "**Application Form**");
- 12.1.2. the supporting documentation as prescribed in the Application Form; and
- 12.1.3. any further documents, as may be required by the applicable authorities and requested in writing by the Seller from time to time.
- 12.2. The Seller shall commence the Residency Permit Application process on behalf of the Investor as soon as reasonably possible after the:
- 12.2.1. Signature Date for submission on the Submission Date;
- 12.2.2. Fulfilment of the clause 13.1; and
- 12.2.3. Receipt of the documents in clause 12.1 above.

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- 12.3. The Company shall be liable for the payment of the fees and costs associated with the Residency Application and issue of the Residency Permit.

#### **PART D: GENERAL**

#### **13. SECURING THE PURCHASE PRICE AND SUBSCRIPTION PRICE**

- 13.1. As security for payment of the First Advance, the Second Advance, the Subscription Price and, where applicable the Liquidated Damages, as they become due, the Investor shall, within 30 (thirty) days of the Signature Date, either
- 13.1.1. deliver to the Attorney one or more irrevocable bank guarantee which –
- 13.1.1.1. (i) is issued by a bank or other financial institution and (ii) the terms and conditions of which will be acceptable to the Attorney;
- 13.1.1.2. secures payment of the First Advance, the Second Advance and the Subscription Shares on the due dates for payment in terms of this Agreement; and
- 13.1.1.3. makes provision for the payment Liquidated Damages; or
- 13.1.2. in the alternative to the guarantee provided for in clause 13.1.1, deposits an amount equal to the Total Consideration less the Initial Deposit, into one of the trust accounts of Attorney, the details of which are set forth below.

**Account Name:** Dr. Weder, Kauta & Hoveka Inc  
**Bank Name** Bank Windhoek Ltd  
**Account No.** 102 664 3801  
**Branch Name** Independence Avenue  
**Branch Code** 481 972  
**SWIFT Code:** BWLINANX

**Account Name:** Dr. Weder, Kauta & Hoveka Inc  
**Bank Name** First National Bank Ltd  
**Account No.** 620 1677 2578  
**Branch Name** Commercial Suite, Windhoek  
**Branch Code** 281 972  
**SWIFT Code:** FIRNNANX

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PURCHASER	PURCHASER's Witnesses
Agent	

Account Name: **Dr. Weder, Kauta & Hoveka Inc**  
 Bank Name **Standard Bank Ltd**  
 Account No. **421 814 799**  
 Branch Name **Maerua Mall**  
 Branch Code **086 872**  
 SWIFT Code: **SBNMNANX**

Account Name: **Dr. WK & H Inc Inv Ac cito Sect 26(1)**  
 Bank Name **Bank Windhoek Ltd**  
 Account No. **8022720621**  
 Branch Name **International Banking Services**  
 Branch Code **483-272**  
 SWIFT Code: **BWLINANX**

13.2. The Investor authorises the Attorney, in terms of Section 26(3) of the Legal Practitioners' Act 15 of 1995, to invest any amount paid by him in terms clause 12.1.2, into a one-day interest bearing call account.

13.3. The Parties hereby agree and mandate the Attorney cause the necessary funds to be released from the trust account and/or called up from the guarantee (provided issued in terms of clause 13.1.1) and to be paid to the Seller or the Company (as the case may be) to fulfil the payment obligations contained in clauses 5.3.2, 5.3.3 and 11.2 on the relevant payment dates.

13.4. For purposes of this Agreement, the Parties agree that (i) the amount of loss or damages likely to be incurred by the Seller in the event of the Investors breach of its obligations are incapable or difficult to precisely estimate, and that (ii) the amount of **N\$500'000.00** (Five hundred thousand Namibia Dollar) is therefore an agreed upon pre-determination of damages and bears a reasonable relationship to, and is not plainly or grossly disproportionate to the probable loss likely to be incurred by the Seller in connection with any failure by the Investor to perform its obligations in terms of this Agreement.

#### 14. **BREACH**

Should any Party breach any provision of this Agreement and fail to remedy such breach within 10 (ten) days after receiving written notice from the other Party ("**Aggrieved Party**") requiring such remedy, then the Aggrieved Party shall be entitled, without prejudice to its other rights under this Agreement and/or in law (including any right to claim damages), to immediately cancel this Agreement or claim immediate specific performance, and in each case with or without claiming

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damages. In the event that the Agreement is cancelled due to a breach by the Investor, the Seller shall be liable to pay the Seller the Liquidated Damages.

## 15. DOMICILIUM AND NOTICES

### 15.1. Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing.

### 15.2. Addresses

The address and e-mail address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Agreement is:

15.2.1. in the case of the Seller:

Physical: 149 Sam Nujoma Drive, Walvis Bay, Namibia

Email: andrew@thepresidentslinks.com.na

Attention: Andrew van Schalkwyk

15.2.2. in the case of the Investor:

Physical: [from webforms]

Email: [from webforms]

Attention: [from webforms]

or any substitute address or e-mail address or department or officer as the Party may notify to the other Party, by not less than 5 (five) business days' notice.

### 15.3. Domicilia

15.3.1. Each of the Parties chooses its physical address provided under or in connection with 15.2 (*Addresses*) as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be served.

15.3.2. Any Party may by written notice to the other Parties change its *domicilium* from time to time to another address, not being a post office box or a *poste restante*, in Namibia, provided that any such change shall only be effective on

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PURCHASER	PURCHASER's Witnesses
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the 14<sup>th</sup> (fourteenth) day after deemed receipt of the notice by the other Parties pursuant to 15.4 (*Delivery*).

#### 15.4. **Delivery**

15.4.1. Any communication or document made or delivered by one person to another under or in connection with the Agreement will:

15.4.1.1. if by way of e-mail sent to the e-mail address provided for in 15.2 (*Addresses*) above, be deemed to have been received on the date of transmission provided that the e-mail is received;

15.4.1.2. if delivered by hand, to the physical address provided for in 15.2 (*Addresses*) above be deemed to have been received at the time of delivery; and

15.4.1.3. if by way of courier service to the to address provided for in 15.2 (*Addresses*) above, be deemed to have been received on the seventh business day following the date of such sending,

and provided, if a particular department or officer is specified as part of its address details provided under 15.2 (*Addresses*), if such communication or document is addressed to that department or officer.

15.4.2. Notwithstanding anything to the contrary herein contained a written notice or communication received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen legal address.

#### 15.5. **Notification of address and e-mail address**

Promptly upon the change of address or e-mail address pursuant to 15.2 (*Addresses*) or changing its own address or fax number, the applicable Party shall notify the other Parties.

#### 15.6. **English language**

Any notice or other document given under or in connection with the Agreement must be in English.

### 16. **ESCALATION CLAUSE**

16.1. In the event of a significant delay or price increase of material, equipment, energy or labour occurring during the implementation of this Agreement, through no fault of the Seller, the Total Consideration or contract requirements shall be equitably increased. A change in price of material, equipment, labour or energy shall be deemed to be significant if the price or cost thereof increases by 15% or more between the Signature

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PURCHASER	PURCHASER's Witnesses
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Date and the First Subscription Date. The amount of the increase of the Total Consideration shall be capped at 10% of the original Total Consideration as on the Signature Date.

## 17. GOVERNING LAW AND JURISDICTION

- 17.1. This Agreement shall be governed by, construed and interpreted in accordance with the laws of Namibia.
- 17.2. Each Party hereto irrevocably agrees that the High Court of Namibia shall have jurisdiction and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and for such purposes, irrevocably submit to the non-exclusive jurisdiction of such Court.

## 18. GENERAL

### 18.1. Whole Agreement

- 18.1.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.
- 18.1.2. This Agreement supersedes and replaces any and all agreements between the Parties and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

### 18.2. Variation to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement, including this 18.2 will be of any force or effect unless in writing and signed by all of the Parties.

### 18.3. No indulgences

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, including this 18.3 shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude him/her from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement including this 18.3 will not constitute or be deemed to be a waiver hereof, nor will any single or partial

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exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

#### 18.4. **No Waiver or suspension of Rights**

No waiver, suspension or postponement by any Party of any rights arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

#### 18.5. **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

#### 18.6. **No Assignment**

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior signed written consent of the other, save as otherwise provided herein.

#### 18.7. **Costs**

18.7.1. Each Party shall bear its own costs in connection with the negotiation, preparation, printing and execution of this Agreement and any other documents referred to in this Agreement, including any such costs in relation to a permitted transfer of any rights under this Agreement.

18.7.2. Should any Party institute ("**Innocent Party**") legal proceedings against the other Party ("**Guilty Party**"), it is agreed between the Parties that the Innocent Party shall be entitled to claim its legal costs from the Guilty Party on the scale as between Attorney and Own Client.

#### 18.8. **Cooperation**

The Parties hereby undertake to:

18.8.1. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing all such acts; and

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

18.8.2. pass and to procure a passing of all necessary resolutions to the extent that same may lie within such Parties' powers,

as may be required to give effect to the import and intent of this Agreement or contract pursuant to the provisions of this Agreement.

#### 18.9. **Independent Advice**

Each Party acknowledges that it has been free to secure independent legal advice as to the nature and effect of all the provisions of this Agreement and that /it has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

#### 18.10. **Remedies**

No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law. Each remedy shall be cumulative and in addition to every other remedy given under this Agreement or under any existing or future law. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

#### 18.11. **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

### 19. **SIGNATURE**

19.1. This Agreement is signed by the Parties on the dates and at the places indicated below.

19.2. This Agreement may be executed in counterparts (including facsimile or electronic scanned copies exchange via electronic mail or otherwise), each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts or the facsimile/electronic copy, as the case may be.

19.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

19.4. The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall have his signature of this Agreement verified by a witness.

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	



.....  
 Signed at \_\_\_\_\_ on this )  
 the \_\_\_\_\_ day of \_\_\_\_\_ 20 )  
 for and on behalf of **The President's Links** )  
**Estate (Pty) Ltd:** )

) Signature -----

Name (block capitals) -----

**Authorised Director**

Signed at \_\_\_\_\_ on this )  
 the \_\_\_\_\_ day of \_\_\_\_\_ 20 )  
 for and on behalf of **The Investor:** )

) Signature -----

Name (block capitals) -----

Signed at \_\_\_\_\_ on this )  
 the \_\_\_\_\_ day of \_\_\_\_\_ 20 )  
 for and on behalf of the Company, a private )  
 company not yet incorporated, in terms of )  
 section 42 of the Companies Act 28 of 2004: )

) Signature -----

Name (block capitals) ANDREW BERNARD  
 VAN SCHALKWYK -----

**Solely as agent and trustee in terms of section 42 of the Companies Act, 28 of 2004**

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	



ANNEXURE "A" – APPLICATION FORM

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

ANNEXURE "B" – CONSTRUCTION AGREEMENT

---- *To be initialed*

SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

ANNEXURE "C" – PROPERTY SALE AGREEMENT

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

ANNEXURE "D" – TOWNSHIP PLANNING PROCEDURE

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SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	

ANNEXURE "E" – STATUS AND PROGRESS SUMMARY

---- *To be initialed*

SELLER	SELLER's Witnesses
PURCHASER	PURCHASER's Witnesses
Agent	