

LOAN AGREEMENT

Memorandum of Agreement
entered into by and between

Identity Number / Born on _____
_____ [marital status]

Postal Address: _____

Physical Address: _____

Email Address: _____

Cell / Tel No.: _____

(hereinafter called the “**Lender**”)

AND

CLOUD RETIREMENT DEVELOPMENT CC

Registration Number CC/2020/00499

Herein represented by **CARSTEN MOHLE** in his capacity as duly authorized member

Postal Address: P.O. Box 25392

Physical Address: Coetzeestreet 28

Email Address: info@wolke9.com.na

Cell / Tel No.: 00264 81 127 3130

(hereinafter called the “**Borrower**”)

[Collectively referred to as “**Parties**” and individually as “**Party**”, as the context may require]

WHEREAS the Lender has agreed to lend and advance the Loan Amount to the Borrower on the terms and conditions set out in this agreement.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1. **“Agreement”** means the agreement set out in this document and any annexes and schedules hereto;

1.1.2. **“Attorneys”** means Engling, Stritter and Partners, situate at No. 12, Love Street, Email: aschnugh@englinglaw.com.na (for attention: Mrs A Schnugh);

1.1.3. **“Business Day”** means any day other than a Saturday, Sunday and officially recognized public holiday in Namibia, in terms of the Public Holidays Act, No. 26 of 1990;

1.1.4. **“Designated Account”** means the bank account of the Attorneys, being:

Bank Name:	Nedbank Namibia Limited
Account Name:	Engling, Stritter and Partners
Account Number:	110 004 375 08
Branch:	461 617 (Main Branch)
Swift code:	NEDSNANX
Reference:	[ERF NO. CLOUD 9]

1.1.5. **“Effective Date”** means the date when this Agreement becomes effective, being the Signature Date;

1.1.6. **“Event of Default”** means any event or circumstance specified as such in 10 (*Events of Default*) below;

- 1.1.7. **“Law”** means any law (including common or customary law) or statutory, constitutional, decree, judgment, treaty, regulation, directive, by-law, order or any other legislature proclaimed by any government, local government, statutory or regulatory body or court;
- 1.1.8. **“Loan Amount”** means the amount of N\$ _____ (_____
_____ Namibia Dollars), being the amount borrowed by the Borrower from the Lender;
- 1.1.9. **“Loan”** means the loan extended by the Lender to the Borrower, in accordance with the terms and conditions contained in this Agreement;
- 1.1.10. **“Namibia”** means the Republic of Namibia;
- 1.1.11. **“Option Agreement”** means the agreement entered into between the Lender and the Borrower, whereby the Borrower grants the Lender the option to purchase the Property;
- 1.1.12. **“Option to Purchase”** means the option granted by the Borrower to the Lender to purchase the Property, as set out in the Option Agreement;
- 1.1.13. **“Parties”** means collectively the Lender and the Borrower and **“Party”** means either of them as the context may require;
- 1.1.14. **“Property”** means:
- Certain: Erf No. _____, Cloud Nine
Situate: in the Municipality of Omaruru
Registration Division “C”, Erongo Region
Measuring: _____ square meters
Held by: Deed of Transfer No. T

- 1.1.15. **“Purchase Price”** means the purchase price payable by the Lender to the Borrower, for the purchase of the Property, as more fully set out in the Memorandum of Sale Agreement entered into between the Parties on or about _____;
- 1.1.16. **“Repayment Date”** means the date when the Loan is repayable by the Borrower to the Lender, as more fully set out in 5 (*Repayment*) below; and
- 1.1.17. **“Signature Date”** means the date of signature of this Agreement, by the Party signing last in time, provided that all Parties have signed.
- 1.2. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.3. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in this 0 (*Interpretation and Definitions*), effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.4. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively on the first and inclusively of the last day unless the last day falls on a day other than a Business Day, in which case the last day shall be the next subsequent Business Day;
- 1.5. 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 or supplemented;
- 1.6. no provision of this Agreement constitutes any stipulation for the benefit of any person who is not a Party;
- 1.7. a reference to a Party includes that Party's successors-in-title and permitted assigns;

- 1.8. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.9. expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in the annexes or schedules to this Agreement which do not themselves contain their own definitions to the extent that there is any conflict between the annexes and schedules to this Agreement and the provisions to this Agreement, the provisions of this Agreement shall prevail;
- 1.10. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this 1 (*Interpretation and Definitions*);
- 1.11. the rule of construction that, in the event of ambiguity, the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply;

2. **RECORDAL**

- 2.1. The Borrower is the registered owner of the Property and is responsible for the construction and installation of certain infrastructure on the Property, for which he requires a loan for the Loan Amount from the Lender.
- 2.2. The Lender has agreed to lend and advance the Loan Amount to the Borrower, subject to the terms and conditions set out in this Agreement.
- 2.3. The Borrower has granted the Lender the Option to Purchase, which upon being exercised by the Lender, will serve as repayment of the Loan, as more fully set out in 5 (*Repayment*) below.

3. **THE LOAN**

The Parties record and agree that the Lender lends to the Borrower, who borrows from the Lender, the Loan Amount on the terms and subject to the conditions contained in this Agreement.

4. **PAYMENT OF CAPITAL AMOUNT**

4.1. On the Effective Date the Loan Amount shall be paid by electronic fund transfer, free of bank charges, commission or exchange, by the Lender into the Designated Account of the Attorneys, for disposal of the Borrower.

4.2. The Borrower may from time to time instruct the Attorneys to transfer the Loan Amount or any portion thereof into its bank account, if and when required by the Borrower.

5. **REPAYMENT**

5.1. The Loan Amount shall be repaid by the Borrower to the Lender in the form of transfer of the Property into the name of the Lender at the Windhoek deeds office upon the Lender exercising his/her Option to Purchase in the manner set out in the Option Agreement.

5.2. Upon registration of the transfer of the Property into the name of the Lender at the Windhoek deeds office, the Loan shall be deemed repaid in full and the Lender shall have no further claim against the Borrower in terms of this Agreement.

6. **DURATION**

This Agreement shall commence on the Effective Date and shall terminate on the Repayment Date, or on such date as the Borrower has repaid the Loan Amount in full to the Lender, whichever occurs first.

7. REPRESENTATION AND WARRANTIES

The Borrower makes the representations and warranties set out in this 7 (*Representation and Warranties*) as at the Effective Date, the Signature Date and the Repayment Date and acknowledges that the Lender has entered into this Agreement in reliance on these undertakings, representations and warranties, each of which is material and a material representation inducing the Lender to enter into this Agreement on the terms and conditions thereof:

- 7.1. the Borrower is not prohibited from entering into this Agreement;
- 7.2. the Borrower is not in breach of or in default under any other agreement to which it is a party or which is binding on it or any of its assets;
- 7.3. all material information (as supplemented from time to time) that has been or will hereafter be made available to the Lender by the Borrower or any of his representatives in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein not misleading in light of the circumstances under which such statements were or are made;
- 7.4. the Borrower agrees to supplement such information from time to time so that the same remains correct and acknowledges that the Lender is acting in reliance on the accuracy of information supplied to it without independent verification;
- 7.5. all actions required to be taken in order:
 - 7.5.1. to enable the Borrower to lawfully enter into, exercise his rights under and perform and comply with its obligations under this Agreement;
 - 7.5.2. to ensure that the obligations of the Borrower under this Agreement (including, without limitation, the payment of all amounts due)are enforceable, legal and valid;

7.6. the execution or delivery of this Agreement by the Borrower and any exercise by the Borrower of his rights and performance of his obligations thereunder do not and will not:

7.6.1. conflict with any agreement, mortgage bond, deed or other instrument to which it is a party or which is binding upon it or any of its assets;

7.6.2. conflict with any applicable Law which is binding on the Borrower;

8. **SECURITY**

As security for the repayment of the Loan, the Borrower undertakes to sign all documents and take all actions required to transfer the Property into the name of the Lender, as soon as reasonably possible after the Lender exercising his/her Option to Purchase in the manner set out in the Option Agreement.

9. **RENUNCIATION**

The Borrower expressly renounce the benefits of the *exception non numerate pecunia, non causa debiti, error calculi*, revision of accounts and no value received and confirm that it understands the meaning of these exceptions and the effect of its renunciation.

10. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this 10 (*Events of Default*) is an Event of Default.

10.1. **Borrower's obligations**

10.1.1. The Borrower does not comply with any provision of this Agreement and/or the Option Agreement, including failure to inform the Lender of any change in Control of the Borrower (including any change to its members).

10.1.2. No Event of Default under clause 10.1.1 will occur if the failure to comply is capable of remedy and is remedied (to the satisfaction of

the Lender) within 5 (five) Business Days of the earlier of (i) the Lender giving notice to the Borrower of such Default or (ii) the Borrower becoming aware of the failure to comply.

10.2. **Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in this Agreement or any other document delivered by or on behalf of the Borrower under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

10.3. **Insolvency**

10.3.1. The Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

10.3.2. The value of the Assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).

10.3.3. A moratorium is declared in respect of any indebtedness of the Borrower.

10.4. **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

10.4.1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;

10.4.2. a composition, compromise, assignment or arrangement with any creditor of the Borrower;

10.4.3. the appointment of a liquidator or a receiver, administrative receiver, administrator, judicial manager or other similar officer in respect of the Borrower; or

10.4.4. enforcement of any security over any assets of the Borrower,

or any analogous procedure or step is taken in any jurisdiction, provided that this 10.4 shall not apply to any winding-up application of the Borrower which the Lender is satisfied (acting reasonably) results from frivolous or vexatious proceedings and is being contested in good faith and with due diligence by the Borrower within 20 (twenty) Business Days of the earliest date upon which the Borrower is firstly legally entitled or able to do so by filing papers in court or in the relevant forum to defend or object to such winding-up petition and then until such time as the matter is finally ruled upon by the applicable court .

10.5. **Disposal of assets**

The Borrower sells, transfers, exchanges or otherwise disposes or purports to sell, transfer, exchange or otherwise disposes, in any one transaction or a series of related transactions, of the major portion of its business or Assets (including the Property) without the prior written consent of the Lender.

10.6. **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any Asset of the Borrower.

10.7. **Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

10.8. **Repudiation**

The Borrower repudiates this Agreement or evidences an intention to repudiate this Agreement.

10.9. **Unenforceability**

Any of the obligations of the Borrower under this Agreement are not, or cease to be, legal, valid, binding and enforceable.

10.10. **Seizure**

All or a material part of the undertaking, Assets, rights or revenues of the Borrower are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government or governmental authority without the payment of compensation equivalent to their full value.

11. **CONSEQUENCES OF AN EVENT OF DEFAULT**

On and at any time after the occurrence of an Event of Default the Lender may notwithstanding and in addition to any other rights it may have under and in terms of this Agreement, by notice to the Borrower:

- 11.1. declare that all or part of the Loan, and all other amounts accrued or outstanding under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable;
- 11.2. enforce any right held by it under this Agreement;
- 11.3. require the Borrower to provide cash cover acceptable to the Lender equal to all or any part of the amounts due (or which may become due) under this Agreement; and/or
- 11.4. enter into any arrangement which the Lender may consider fit in respect of any amount outstanding under the Loan and in relation to which the Lender shall have the right to apply the proceeds of such arrangement towards the settlement of the amount outstanding under the Loan.

12. **ASSIGNMENT OF RIGHTS**

The Parties shall not pledge, assign, transfer, make over hypothecate or in any way alienate or encumber all or any of its rights, benefits, interest and/or obligations under this Agreement to any person without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

13. **DOMICILIA AND NOTICES**

13.1. The Parties hereby choose *domicilium citandi et executandi* for all purposes under this Agreement and incidental thereto, including the giving of notices and the serving of any process, at the respective addresses set out on page 1 of this Agreement.

13.2. Any notice to any Party shall be addressed to such Party at its domicilium aforesaid and either be sent by prepaid registered post or be delivered by hand or sent by electronic mail.

13.3. Any Party shall be entitled, by written notice to the other, to change its domicilium to any other address in Namibia. Provided that the change shall become effective only two (2) weeks after service of the notice in question, and that such other address is not a post office box or poste restante.

13.4. Any notice given in terms of this Agreement which:-

13.4.1. is delivered by hand during normal business hours at the then applicable domicilium of the addressee shall for all purposes be deemed to have been received by the addressee at the time of delivery;

13.4.2. is dispatched by prepaid registered post addressed to the then applicable domicilium of the addressee shall be deemed, until the contrary is proved, to have been received by the addressee on the 14 (fourteen) business days after the date of dispatch; or

13.4.3. is sent by electronic mail, shall be deemed to have been received by the addressee on the next business day following the date of dispatch.

14. **APPLICABLE LAW AND JURISDICTION**

- 14.1. This Agreement will in all respects be governed by and construed under the Laws of Namibia.
- 14.2. Subject to the provisions of this Agreement, the Parties hereby consent and submit to the non-exclusive jurisdiction of the Courts of Namibia in any dispute arising from or in connection with this Agreement.

15. **GENERAL**

- 15.1. This Agreement constitutes the whole of the Agreement between the Parties hereto relating to the matters dealt with in this Agreement 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.
- 15.2. No variation, addition, deletion, or agreed cancellation including those pertaining to this 15.2 will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto.
- 15.3. No waiver of any of the terms and conditions of this Agreement, including this 15.3, will be binding or effectual for any purposes unless in writing and signed by or on behalf of the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any Party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise or any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 15.4. Any consent or approval required to be given by any Party in terms of this Agreement will, unless specifically otherwise stated, not be unreasonably withheld or delayed.
- 15.5. 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.

16. **COSTS**

The Borrower shall bear the costs of or incidental to the drafting, preparation and negotiating of this Agreement.

17. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts (including faxed or scanned copies thereof), each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement as at the Date of Signature of the Party last signing one of the counterpart. The Parties undertake to take whatever steps may be necessary to ensure that all counterparts are duly signed by both of them without delay.

SIGNED AT _____ this the _____ day of _____ 2024

AS WITNESSES:

1. _____

2. _____

LENDER

SIGNED AT _____ this the _____ day of _____ 2024

AS WITNESSES:

1. _____

2. _____

BORROWER