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DUTY N\$108 800-00  
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Deeds Office,  
Windhoek  
Registrar of Deeds

**CANCELLED**  
I.T.O. Reg 53(8) Act 47/1937  
This.....  
Consent filed with EC..... 2140 2012  
Deeds Office,  
Windhoek  
Registrar of Deeds

ISSUED FOR INFORMATION ONLY

BN 6774-2011

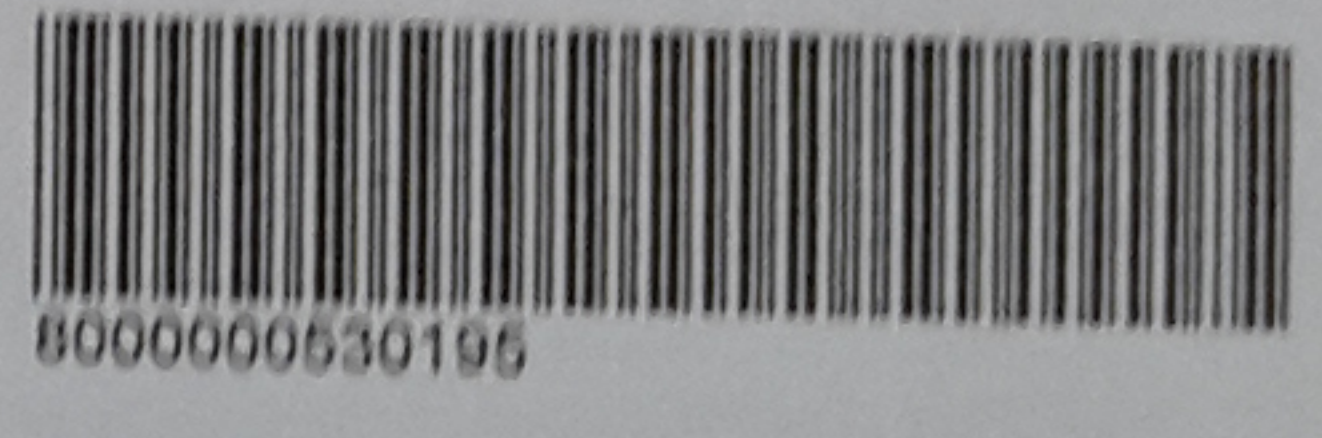
**GENERAL NOTARIAL BOND**

Protocol No: 623/2011



BE IT HEREBY MADE KNOWN:

THAT on the 10<sup>th</sup> day of OCTOBER 2011, before me,



**LINDA ERASMUS**

notary public, duly sworn and admitted, residing and practicing at WINDHOEK,  
Namibia, personally came and appeared

**HENNER DIEKMANN**

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he being duly authorized thereto by a power of attorney signed at WINDHOEK on the 10<sup>th</sup> day of OCTOBER 2011 by

**NU DIAMOND MANUFACTURING (PROPRIETARY) LIMITED**

**Company No : 2007/254**

having its principal place of business at 74 Nickel Street, Unit No 5, Prosperita, Windhoek, Republic of Namibia  
("the Mortgagor")

AND THE APPEARER, on behalf of the Mortgagor, declared the Mortgagor to be truly and lawfully indebted and held and firmly bound to and in favour of

**MANNHEIM INVESTMENTS (PROPRIETARY) LIMITED**

**Company No : 2006/321**

("the Mortgagee")

its order, successors in title and assigns

in the sum of **U\$2,800,000.00 (TWO MILLION EIGHT HUNDRED THOUSAND US DOLLARS)** ("the capital") howsoever arising from and being a loan agreement.

AND THE APPEARER, on behalf of the Mortgagor, renounced the legal exceptions *non numeratae pecuniae, non causa debiti, errore calculi*, revision of accounts, no value received, with the force and effect of which he declared the Mortgagor to be fully acquainted, and all other exceptions which could or might be taken to the Mortgagee's claim for payment of all or any of the amounts secured under this notarial bond, and hereby promised and undertook to pay to the Mortgagee the capital owing on demand.

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AND AS SECURITY for the payment of:

- (i) the capital;
- (ii) all interest claimable from the Mortgagor in terms of this notarial bond;
- (iii) the costs of preserving and realizing the movable assets hypothecated under this notarial bond, fire insurance premiums and cost of notice;

and also such other costs, charges, life assurance or endowment premiums, expenses and future debts generally, which may be claimable from the Mortgagor under this notarial bond, and which other costs, charges, life assurance or endowment premiums, expenses and future debts generally are secured up to an amount not exceeding the capital and the additional sum of **U\$560,000.00 (FIVE HUNDRED AND SIXTY THOUSAND US DOLLARS)** ("the additional sum"), the Appearer, on behalf of the Mortgagor, declared to bind generally the Mortgagor and all the Mortgagor's movable assets as set out in annexure "A" attached hereto, and such as the Mortgagor now possesses or may at any time in the future become possessed of without any exception ("the movable assets"), submitting them all and the choice thereof to constraint and execution as the law directs.

AND THE APPEARER, on behalf of the Mortgagor, declared to bind the Mortgagor to the following terms and conditions, namely:

**1. Interest**

- 1.1** The capital outstanding from time to time bears interest at a rate of 10% (ten percent) per annum reckoned from date of registration of this bond and calculated monthly in advance.
- 1.2** All amounts other than capital owing to or claimable by the Mortgagee in terms of this notarial bond will bear interest at the rate then applicable to the capital outstanding reckoned from the date on which such amounts become owing or claimable until the date on which they are paid.

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**1.3** Any interest unpaid by the due date thereof will be capitalized and will thereafter form portion of the amount outstanding.

**2. Place of payment**

**2.1** All moneys which become payable under this notarial bond are to be made in US Dollars to the Mortgagee at Windhoek or wherever else the Mortgagee at any time in writing directs.

**2.2** Each payment received will be appropriated firstly to any indebtedness of the Mortgagor under this notarial bond other than capital and interest, then towards interest, and the balance, if any, will thereafter be appropriated to the capital, notwithstanding any allocation made by the Mortgagor of such payment.

**3. Continuing covering security** This notarial bond is a continuing covering security for all and any sum or sums of money which are now or may in the future be owing to or claimable by the Mortgagee from the Mortgagor, including future debts generally, under this notarial bond. The Mortgagee may advance sums of money or may re-advance to the Mortgagor under security hereof the capital or such portion thereof as may have been previously repaid, provided that the aggregate of all advances does not at any time exceed the amount of the capital.

**4. Other security** The security afforded to the Mortgagee in terms of this notarial bond is not in substitution for but is in addition to and without prejudice to any other security or securities or preference of whatsoever kind which at any time exists in favour of the Mortgagee in respect of the indebtedness of the Mortgagor.

**5. Further bonds** The Mortgagor shall not, without the prior consent of the Mortgagee in writing first had and obtained, pass any further bond or bonds over any of the Mortgagor's property, whether movable or immovable.

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## 6. Payment of rentals and charges

6.1 The Mortgagor is bound and obliged to pay promptly on due date:

6.1.1 all rentals payable in respect of the cutting and polishing factory and any other premises of whatsoever nature leased by the Mortgagor and in which the Mortgagor at any time carries on business or in which the Mortgagor at any time cuts and polishes diamonds;

6.1.2 all charges in respect of sanitation, water and electricity and any other dues, charges or levies of whatsoever nature payable by the Mortgagor to any landlord or local or other competent authority, in respect of any premises contemplated in clause 6.1.1, and on demand to produce receipts for such payments to the Mortgagee;

6.1.3 all amounts payable in respect of movable assets purchased by the Mortgagor in terms of any credit or other agreement.

6.2 Should the Mortgagor fail to pay any amount contemplated in clause 6.1.1, 6.1.2 or 6.1.3 on due date, the Mortgagee is entitled but not obliged to pay such amount on behalf of the Mortgagor and any amount so paid is to be refunded by the Mortgagor to the Mortgagee on demand.

7. **Right of inspection** The Mortgagee and/or the Mortgagee's duly authorized agent has the right at all reasonable times to inspect the movable assets and any premises in which the Mortgagor carries on business or in which the Mortgagor at any time cuts and polishes diamonds.

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## 8. Maintenance and insurance

- 8.1 The Mortgagor shall keep and maintain the movable assets in a good, fit and proper state of repair to the satisfaction of the Mortgagee, and the Mortgagor shall insure and keep the movable assets insured for a sum and with an insurance company approved by the Mortgagee against risk of loss or damage from fire, theft and such other risk which the Mortgagee at any time in writing directs and shall cede the relevant policy or policies to the Mortgagee as collateral security for all indebtedness under this notarial bond.
- 8.2 Should the movable assets not be insured or should any insurance not be maintained, the Mortgagee is entitled but not obliged to insure and/or pay the premiums on behalf of the Mortgagor, and any money so disbursed is to be refunded by the Mortgagor to the Mortgagee on demand.
- 8.3 All moneys received under any insurance contemplated in this condition are in the sole discretion of the Mortgagee to be applied either in partial or full payment of the indebtedness of the Mortgagor under this notarial bond, whether or not any such indebtedness is due and payable or in the restoration, under such conditions as the Mortgagee may lay down, of that which has been damaged or destroyed by any cause covered by such insurance.

## 9. Books of account

- 9.1 The Mortgagor shall keep and maintain such accounting records as are necessary fairly to present the state of affairs and business of the Mortgagor and to explain the transactions and financial position of the business of the Mortgagor, including:

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- 9.1.1 records showing the assets and liabilities of the Mortgagor;
  - 9.1.2 a register of fixed assets;
  - 9.1.3 records containing entries of all moneys received and paid out;
  - 9.1.4 records of all diamonds sold and purchased;
  - 9.1.5 statements of the annual stocktaking of movable assets.
- 9.2 All such books of account, together with all receipts, invoices, vouchers and any other documents pertaining thereto, shall at all times be available for inspection and investigation by the Mortgagee and/or the Mortgagee's duly authorized agent.
- 9.3 The Mortgagee is entitled at all times during normal business hours to extract from the accounts, records and books of account contemplated in clauses 9.1 and 9.2 all such details as the Mortgagee may wish to extract, and to make copies of all such documents as the Mortgagee may wish to copy.
- 9.4 The Mortgagor shall at all times comply with all relevant laws, by-laws and other regulations of whatsoever nature applicable to the Mortgagor, to the premises in which the Mortgagor carries on business or in which the Mortgagor at any time cuts and polishes diamonds.
- 10. Inventories** For so long as this notarial bond subsists the Mortgagor shall be obliged to maintain a stock of diamonds to the minimum value of U\$2,100,000.00 at the premises in which the Mortgagor cuts and polishes the diamonds and the Mortgagor shall be obliged to submit to the Mortgagee at the end of each and every month commencing on the last day of the month succeeding the month during which this notarial bond is registered or on such other dates as may be agreed between the Mortgagee and the Mortgagor in writing, an inventory reflecting the stocks comprising the polished and unpolished diamonds in the possession of the Mortgagor, together with the cost price thereof. The inventory is to be in such form as may from time to time be stipulated by the Mortgagee or the Mortgagee's duly authorized agent.
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**11. Schedule of debtors**

- 11.1** For so long as this notarial bond subsists the Mortgagor shall submit to the Mortgagee at the end of each and every month commencing on the last day of the month succeeding the month during which this notarial bond is registered or on such other dates as may be agreed between the Mortgagee and the Mortgagor in writing, a schedule of all amounts owing to the Mortgagor on the relevant date by all persons, companies, firms, associations and other legal *personae* whomsoever and wheresoever without restriction, including, without limiting the generality of the foregoing, any right or claim which the Mortgagor has from time to time against any surety, co-principal debtor, guarantor, mortgagor and/or pledgor or other person in respect of the claims.
- 11.2** The schedule is to reflect the amount so owing by each and every debtor and the last known address of each and every debtor.
- 12. Notice to landlords and waiver**
- 12.1** The Mortgagor shall give written notice of this notarial bond to the landlords of all premises in which the Mortgagor carries on business or in which the Mortgagor cuts and polishes diamonds, and shall obtain from such landlord waivers to the reasonable satisfaction of the Mortgagee in respect of any hypothec or right of retention which any such landlord or landlords may have in respect of the movable assets in such premises.
- 12.2** A copy of every notice so given is to be delivered to the Mortgagee, together with the waivers so signed by such landlords.
- 12.3** Notwithstanding the provisions of this clause, the Mortgagee is entitled to give any notice as is contemplated in this clause and has furthermore the right to obtain any such waivers as the Mortgagee may deem fit.
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**13. Disposal and removal of assets**

**13.1** For so long as this notarial bond subsists the Mortgagor shall not, other than in the ordinary course of business or with the prior written consent of the Mortgagee:

**13.1.1** hypothecate, alienate, pledge, otherwise dispose of or give up possession of the movable assets or any portion thereof;

**13.1.2** remove, or cause or permit to be removed the movable assets or any portion thereof from the premises in which the Mortgagor carries on business or in which the Mortgagor at any time cuts and polishes diamonds and more specifically keep a stock of diamonds to the minimum value of U\$2,100,000.00 at the premises.

**13.2** The Mortgagor is entitled in the ordinary course of business and with the prior written consent of the Mortgagee to sell or dispose of any redundant or out-of-date machinery, plant or equipment. Should the proceeds of any such sale or disposition not be used by the Mortgagor in the acquisition of new machinery, plant or equipment, then such proceeds shall, unless otherwise agreed to in writing by the Mortgagee, be applied in reduction of the indebtedness of the Mortgagor to the Mortgagee under this notarial bond notwithstanding that such indebtedness is not yet due and payable.

**14. Breach** Should the Mortgagor:

**14.1** fail to pay any amount payable under this notarial bond on due date or commit a breach of any term or condition of this notarial bond and fail to pay such amount or to remedy such breach within 7 (seven) days of the date of delivery of written notice calling upon the Mortgagor so to do;

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**13. Disposal and removal of assets**

**13.1** For so long as this notarial bond subsists the Mortgagor shall not, other than in the ordinary course of business or with the prior written consent of the Mortgagee:

**13.1.1** hypothecate, alienate, pledge, otherwise dispose of or give up possession of the movable assets or any portion thereof;

**13.1.2** remove, or cause or permit to be removed the movable assets or any portion thereof from the premises in which the Mortgagor carries on business or in which the Mortgagor at any time cuts and polishes diamonds and more specifically keep a stock of diamonds to the minimum value of U\$2,100,000.00 at the premises.

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**14. Breach** Should the Mortgagor:

**14.1** fail to pay any amount payable under this notarial bond on due date or commit a breach of any term or condition of this notarial bond and fail to pay such amount or to remedy such breach within 7 (seven) days of the date of delivery of written notice calling upon the Mortgagor so to do;

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- 14.2** advertise or in any other manner make known the Mortgagor's intention to sell or dispose of all or any portion of the movable assets, other than in the ordinary course of business or with the prior written consent of the Mortgagee;
- 14.3** allow a judgment of any competent court against the Mortgagor to remain unsatisfied for a period of 7 (seven) days;
- 14.4** commit any act of insolvency as defined in the Insolvency Act 24 of 1936, or any act which would found an application for liquidation under the Companies Act 61 of 1973;
- 14.5** compromise or attempt to compromise with any creditor or creditors;
- 14.6** be placed under judicial management by any competent court; or
- 14.7** should the direct or indirect control of the Mortgagor pass without the prior written consent of the Mortgagee,

then and in any such event the Mortgagee or the Mortgagee's duly authorized agent is entitled forthwith and without any notice and without prejudice to any rights which the Mortgagee may have in law:

- 14.8** to claim and recover from the Mortgagor the full amount of the Mortgagor's indebtedness to the Mortgagee;

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**14.9** to enter in and upon all or any of the premises in which the Mortgagor carries on business or in which the Mortgagor at any time cuts and polishes diamonds, and to take and retain possession as pledgee of all or any of the movable assets of the Mortgagor and to retain such possession for so long as the Mortgagee deems fit, and/or at the option of the Mortgagee, to sell and dispose of any of the movable assets in such manner and upon such terms as the Mortgagee or the Mortgagee's duly authorized agent decides, and to convey valid title to the purchaser(s) or transferee(s) thereof and to collect all moneys due and owing to the Mortgagor by trade debtors, and for the purpose aforesaid, this notarial bond is to operate irrevocably and *in rem suam* as a power of attorney in favour of the Mortgagee, who is to have power of substitution and delegation to do all or any of the acts in terms of this clause, and without in any way restricting the generality of this provision;

**14.9.1** to sue any or all trade debtors of the Mortgagor in the name of either the Mortgagee or the Mortgagee's duly authorized agent or the Mortgagor, as the Mortgagee thinks fit, and for the purposes of such action this notarial bond will, if the Mortgagee so elects, operate as a cession in the Mortgagee's favour;

**14.9.2** to sign and complete all forms, declarations, powers of attorney, agreements and the like, as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be, of the movable assets;

**14.9.3** to have the movable assets hypothecated under this notarial bond excused by legal process;

**14.9.4** to do any of the aforesaid things separately or conjointly and in such order and at such times as the Mortgagee or the Mortgagee's duly authorized agent thinks fit, and to add to the Mortgagee's claim under this notarial bond any costs and expenses of doing any of the above things.

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- 15. Indulgences** Any extension or leniency of time that may be granted by the Mortgagee to the Mortgagor for payment of any amount or the performance of any obligation under this notarial bond is not to be construed as a novation or waiver of, and will not otherwise affect any of the Mortgagee's rights under this notarial bond.
- 16. Non-variation** No agreement varying any of the terms or conditions of this notarial bond will be of any force or effect unless executed in the presence of and attested by a notary public and, should the Mortgagee so require, registered in the relevant deeds registry at the cost of the Mortgagor.
- 17. Certificate of indebtedness** The nature and amount of any indebtedness of the Mortgagor in terms of this notarial bond may at any time be determined and proved by a written certificate purporting to have been signed by any director, member or manager for the time being of the Mortgagee, whose capacity or authority it will not be necessary to prove, which certificate will be binding on the Mortgagor and be *prima facie* proof, in any legal proceedings against the Mortgagor, of the contents thereof and of the fact that such amount is due and payable.
- 18. Domicilium citandi et executandi and notices**
- 18.1** The Mortgagor selects as the Mortgagor's *domicilium citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this notarial bond and for the purposes of legal proceedings, the following addresses:
- Physical address:** 74 Nickel Street, Unit No 5, Prosperita, Windhoek
- Postal address:** P.O. Box 25505, Windhoek
- or such other address as may be substituted by notice given as required.

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The Mortgagor is entitled from time to time to vary the Mortgagor's *domicilium citandi et executandi* by written notice to the Mortgagee to any other address within the Republic of Namibia which is not a post office box or *poste restante*.

18.2 Any notice addressed to the Mortgagor at the Mortgagor's physical or postal address is to be sent by prepaid registered post, or delivered by hand.

18.3 A notice will be presumed, unless the contrary is proved, to have been given:

18.3.1 if posted by prepaid registered post, 5 (five) days after the date of posting thereof;

18.3.2 if hand delivered during business hours on a business day, on the day of delivery.

19. **Jurisdiction** The Mortgagor consents in terms of section 45 of the Magistrates' Courts Act 32 of 1944 to the Mortgagee taking any legal proceedings for enforcing any of the Mortgagee's rights under this notarial bond for recovery of moneys secured under this notarial bond, in the magistrate's court for any district having jurisdiction in respect of the Mortgagor by virtue of section 28(1) of the aforesaid Act. The Mortgagee is nevertheless, at the Mortgagee's option, entitled to institute proceedings in the High Court of Namibia.

20. **Costs** The Mortgagor shall pay all legal expenses, stamp duty, costs and charges in preparing and registering this notarial bond and the costs of cancellation thereof, and in general all costs, including costs between attorney and client and collection commission, which may arise out of or as a consequence of any claim or demand made, or legal proceedings instituted against the Mortgagor in terms of this notarial bond.

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