

# DEED OF SALE

## MEMORANDUM OF AGREEMENT

concluded and entered into by and between

### NATIONAL HOUSING ENTERPRISE (Constituted under Act 5 of 1993)

No. 7 General Murtala Muhammed road, Eros  
P.O. Box 20912  
Windhoek, Republic of Namibia

Tel: +264-61-292 7111  
Fax: +264-61-292 7271

(Herein represented by \_\_\_\_\_ in her /  
his capacity as \_\_\_\_\_  
\_\_\_\_\_ of the said  
company and duly authorized thereto)

Acting by virtue of the powers granted in terms of Section 10 of the National  
Housing Enterprise Act 5 of 1993

**(Herein referred to as the SELLER)**  
on the one part

AND

\_\_\_\_\_  
(full names and surname)

\_\_\_\_\_  
(Identity number)

\_\_\_\_\_  
(marital status)  
of

PO Box \_\_\_\_\_

Cell: \_\_\_\_\_

**(Herein referred to as the PURCHASER)**

on the other part

Should the Purchaser be –

- (a) a **Juristic Person**, it will be necessary –
  - (i) to furnish the full names and official capacity of the person authorized to execute this Agreement on behalf of such **Juristic person** and to furnish a valid copy of an authorizing resolution.
  - (ii) in an event of any other **Juristic Person** than a registered company, a certified copy of the constitutive documents of such **juristic person**.
- (b) a **NATURAL PERSON**, the full names and date of birth must be furnished; and if a FEMALE, her marital status and previous surname if any.
- (c) a **PARTNERSHIP**, the full names of every partner must be furnished.

**WHEREAS:**

The **SELLER** agrees to sell to the **PURCHASER** who agrees to buy the undermentioned property (hereinafter called the PROPERTY) upon the following terms and conditions:

**1. DESCRIPTION OF THE PROPERTY:**

**CERTAIN** ERF: .....

**SITUATE** in the Municipality of \_\_\_\_\_  
 Registration Division \_\_\_\_\_  
 Region \_\_\_\_\_

**MEASURING:** .....Square Meters

**HELD** by Deed of Transfer No. ....

SUBJECT to the conditions contained therein, together with all fixtures and fittings of a permanent nature.

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

2.1. The purchase price of the PROPERTY is the sum of (.....), which shall be payable as set out in clauses 2.1.1 or 2.1.2 should the PROPERTY not be financed by the SELLER but by other financial institution. It being recorded that where the SELLER is again the financier, the SELLER shall apply a mortgage bond on the property for a minimum repayment period of [20] twenty years, being the period within which the PURCHASER shall be required to have amortized the mortgage bond, on a monthly basis from date of transfer of the property to the PURCHASER.

### **2.1.1. CASH**

Cash price to be paid immediately upon the date of signing of this deed of sale and to be held in a trust account nominated by the SELLER for onward payment to the SELLER on the date of transfer of the property to the PURCHASER. Should the PURCHASER fail to pay the purchase price in cash upon date of signing of the deed of sale, and fail to provide acceptable guarantee as provided for under 2.1.2 below, interest of (.....%) per annum will be charged every month that the purchase price remains outstanding until date of payment. In the instance that the PURCHASER fails to pay the purchase price upon date of signing of the deed of sale and persists in such non-payment beyond a period of one month, the SELLER shall be entitled to cancel the deed of sale and demand retransfer of the property to the SELLER where the property had already been transferred to the PURCHASER.

**OR**

### **2.1.2. PAYMENT BY MEANS OF BANK GUARANTEE**

2.1.2.1. The bank guarantee shall be issued in favour of the SELLER within **30 days** from the date of conclusion of the deed of sale and such bank guarantee shall be deemed to be immediately payable to the SELLER

upon the date of transfer of the PROPERTY to the PURCHASER. Should the SELLER not have received a bank guarantee within **30** days of conclusion of the deed of sale in favour of the SELLER, and without any good cause shown by the PURCHASER to forthwith provide the guarantee, the SELLER shall cancel the deed of sale, immediately.

- 2.1.2.2. The guarantee is to be worded materially in accordance with the following:

*“the guarantee is issued in favour of the NATIONAL HOUSING ENTERPRISE for credit of (.....) for the payment in the amount of (.....), plus interest thereon (in the event of the bank guarantee being received after 30 days from the date of sale) at a rate of \_\_\_\_\_% per annum calculated from \_\_\_/\_\_\_\_\_/\_\_\_\_20 until date of the registration of the transfer, both dates included, to be paid electronically into the SELLER’S bank account held at \_\_\_\_\_, **ACCOUNT NUMBER:** \_\_\_\_\_, **BRANCH CODE:** \_\_\_\_\_ upon registration of the transfer from the SELLER to the PURCHASER”.*

### 3. POSSESSION DATE

Possession of the PROPERTY shall be given to the PURCHASER and the PURCHASER shall be obliged to take possession thereof, on the date of transfer of the PROPERTY into the name of the PURCHASER from which date the PURCHASER shall be liable for all municipal rates and taxes and/or fees payable on the PROPERTY, and from which date the PROPERTY shall be the sole risk of the PURCHASER, regardless of whether the PURCHASER takes immediate occupation.

### 4. MORTGAGE BOND AND INTEREST RATE

Notwithstanding anything that may appear contrary in this Agreement, the PURCHASER shall only be entitled to take transfer of the PROPERTY in

his/her own name against simultaneous registration of a first Mortgage Bond over the PROPERTY in favour of the SELLER for the outstanding amount at the time and interest in terms of this Agreement. It being recorded that a mortgage bond shall be registered against the title deed of the property which lies in favour of the PURCHASER to secure repayment of all outstanding moneys due to the SELLER. Parties agree that where the PURCHASER paid the purchase price in cash or via a bank guarantee which subsequently the NHE redeemed no registration of a mortgage bond in favour of the NHE shall be applicable.

## 5. TRANSFER AND COSTS

- 5.1. Being the SELLER'S prerogative to do so, the SELLER hereby appoints \_\_\_\_\_ Tel: \_\_\_\_\_ as conveyancers to affect all conveyancing work in connection with the transfer of the PROPERTY to the PURCHASER. The PURCHASER shall pay transfer duty, stamp duty and all expenses of transfer, including conveyancer's charges together with the costs of registration of a bond (if any).
- 5.2. Transfer of the PROPERTY into the name of the PURCHASER shall be given and taken as soon as possible after the PURCHASER has fulfilled its obligations under this deed of sale and when requested to do so, but the SELLER is not compelled to, nor does the SELLER guarantee to give transfer immediately after the PURCHASER has fulfilled all its obligations herein, but shall only be obliged to give transfer thereof within a reasonable period.
- 5.3. The intentional delay of the registration of the transfer of the PROPERTY by the PURCHASER not fulfilling any required aspects of the deed of sale shall result in a breach of the deed of sale and subsequent cancellation of the deed of sale.
- 5.4. The PURCHASER hereby acknowledges that it is fully aware of the legal obligation upon it to pay all transfer duties to the Receiver of Revenue within a period of 6 (six) months as from date of entering into this deed of sale, failing which there shall be accrual to such transfer duties penalty tax payable by the

PURCHASER and it shall be the PURCHASER's exclusive obligation to request the SELLER's attorneys to make due arrangements for the payment thereof to the Receiver of Revenue within such stated period of time or to make his arrangements for the payment thereof. The PURCHASER can at any point in time after entering into this deed of sale request the SELLER's attorneys to deposit the correct amount of the transfer duties with the Receiver of Revenue provided that the PURCHASER provides the said attorneys with sufficient funds to do so.

## **6. VOETSTOOTS**

- 6.1 The improvements on the PROPERTY are sold voetstoots and the SELLER shall not be liable for any defects, patent, latent or otherwise in the PROPERTY nor for any damage occasioned to or suffered by the PURCHASER by reason of such defect. The Purchaser admits having inspected the PROPERTY to his satisfaction and that no guarantees or warranties of any nature were made by the SELLER or its agent regarding the condition or quality of the PROPERTY or any fit-for purpose undertakings.
- 6.2 The PURCHASER herewith expressly acknowledges that no guarantee, representations or undertakings were given or made to him in respect of any attributes of the PROPERTY.

## **7. SANITATION, WATER AND ELECTRICITY**

The PURCHASER shall be liable for the payment of the basic tariff for sanitation services, basic tariff for water, electricity services and refuse removal, as from the date of transfer and the SELLER shall be liable to settle the account in full for the rates and taxes charges on the PROPERTY before transfer.

## **8. CANCELLATION**

- 8.1. Should the PURCHASER, fail to pay the full purchase price referred to in Clause 3, or fail to furnish acceptable guarantee to the SELLER, immediately

upon conclusion of the deed of sale whether property had at already been registered into the PURCHASER'S name, and where PROPERTY was marked to be financed by another financial institution other than the SELLER, the SELLER shall without prejudice and with reservation of its all other rights at law be entitled forthwith, to cancel this deed of sale and immediately demand that the PURCAHSER vacate the PROPERTY within seven days (7) days after being issued with a written notice to vacate, in a case where the PURCHASER had taken occupation of the PROPERTY. The SELLER shall not incur any liability to the PURCHASER due to it having cancelled this deed of sale on good cause and in good faith, or at the instance of the PURCHASER's non-performance in accordance with the terms and conditions of the deed of sale.

- 8.2. Upon the expiration of the vacation notice stipulated in 8.1 the PURCHASER shall immediately vacate the PROPERTY and give the SELLER peaceful and legal possession thereof, and the SELLER shall be entitled to alienate through a subsequent sale of the PROPERTY to any other client it may deem suitable.
- 8.3. The SELLER shall furthermore be entitled to claim a penalty amount (whichever might be the highest) from the PURCHASER, which may be at the option of the SELLER – in an instance where the PURCHASER'S conduct and failure to honour the terms and conditions of the deed of sale which became subsequently cancelled may have directly brought about such penalty.
- 8.4. The SELLER shall return all such sums of money as the PURCHASER may have paid under this deed of sale as a consideration for the payment of the purchase price or interest on it where legally such payments are refundable.
- 8.5. Provided further that the SELLER hereby reserves the right to claim damages from the PURCHASER and it may where it has money due to the PURCHASER in its possession set off any claim of damages aforesaid.

## 9. **INDULGENCES**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this deed of sale; accordingly, that party shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

## **10. INSURANCE**

In an instance where the SELLER is the financier, it shall be required upon the conclusion of this deed of sale that the PURCHASER signs out for two forms of insurance, one covering certain damages that may be caused to the property and one covering the mortgage bond repayment in case where the PURCHASER passes on to settle any mortgage amount then outstanding. The combined premiums for the said insurance shall be deductible together with the monthly mortgage bond installments due to the SELLER by the PURCHASER, and the SELLER shall in turn pay over the insurance premiums to an approved insurance company being the insurer. Should the PURCHASER fall into arrears on its monthly mortgage repayments, it shall be taken that the PURCHASER shall correspondingly be in arrears on its insurance premiums and such default may be a breach in terms of the insurance contract which can lead to a loss of insurance cover. The SELLER shall issue an insurance letter or contract specifying and confirming the monthly premium, the nature of insured risks taken on the PURCHASER'S behalf that the insurance company would be obliged to honour in an event of an insured risk having occurred and subsequent to the submission of a valid claim by the PURCHASER.

## **11. LENDING RATES**

The loan facility advanced by the SELLER to the PURCHASER in terms of the deed of sale and the mortgage bond registered in favour of the SELLER are subject to the prime lending rates issued from time to time by the Bank of Namibia. In the above instance, it shall be necessary in line with the monetary policy and directives issued by the Bank of Namibia from time to time for the SELLER to adjust interest rates applicable on the loan mortgage financing advanced to the PURCHASER in terms of this deed of sale. The SELLER may reflect such adjusted rates on the monthly statements issued to the PURCHASER.



Notwithstanding the above, the prime lending rate applicable at the time of the conclusion of this deed of sale and which shall be applicable to it until such time changes have been announced by the Bank of Namibia and adopted by the SELLER in its discretion is:.....%

## **12. DEBIT ORDER**

The PURCHASER, upon signing this deed of sale in case where the SELLER is the financier shall be obliged to sign a funds collection mandate form to authorize the SELLER to collect from the PURCHASER's bank account every month any amounts due to the SELLER and payable by the PURCHASER, until all amounts due shall have been fully paid. In an event the PURCHASER has no sufficient funds in its bank account to fulfill the agreement of the debit order, its mortgage bond shall then be in arrears and the SELLER may take legal steps to recover all amounts then owing to the SELLER.

## **13. DOMICILIUM**

13.1 All notices intended for the PURCHASER shall be sent by registered mail to:

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which address is selected as the *domicilium citandi et executandi* and any such notices shall be deemed to have been duly delivered to the Purchaser 5 (FIVE) days from date of posting thereof by the SELLER or his agent.

13.2 The SELLER chooses *domicilium citandiet executandi* for any action which may flow from this Agreement at:

7 General Murtala Muhammed Avenue, Eros

Tel: +264-61-276 100

Fax: +264-61-276 120

or at any other address of which the SELLER shall from time to time inform the PURCHASER in writing. The SELLER further agrees that a letter sent by registered mail to P O BOX 20192, WINDHOEK shall be deemed to have been

received by the addressee within 7 (SEVEN) days from the date on which it was posted.

#### **14. FINANCIAL INTELLIGENCE INFORMATION**

The parties to this agreement acknowledge that the conveyancer appointed is obliged in terms of the Financial Intelligence Act 13 of 2012 to provide the Bank of Namibia with any and all necessary documentation and / or information to enable it to collect, assess and analyze financial intelligence data, which lead or relate to money laundering and the parties agree to fully co-operate with the conveyancer and each other, if needs be, to provide all or any information and / or documentation required to be compliant with the duties imposed under this Act.

#### **15. JURISDICTION**

12.1. For the purpose of resolving any dispute, arising from this deed of sale, the parties may institute action either in the High Court of Namibia or the Magistrate's Court provided that the parties hereby consent to the jurisdiction of the magistrate's court for the relevant district being a competent court and with jurisdiction over the parties in that each of them either resides, carries on business, or is employed within its area of jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction.

12.2. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to section 45 of the Magistrates' Courts Act 32 of 1944 or any amendment thereof provided that the SELLER shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the magistrate's court.

#### **16. WHOLE AGREEMENT AND VARIATION**

16.1. No agreement varying, adding to, deleting from or canceling this agreement, and no waiver whether specifically, implicitly or by conduct of any right to



enforce any term of this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

16.2. The parties agree that this Deed of Sale constitutes the entire contract between them and that there are no other conditions, stipulations, warranties or representations whatsoever made, other than such as may be included herein and signed by the parties hereto.

**THIS DONE AND SIGNED** at ..... on this ..... day ..... of ..... 2021 on behalf of the SELLER in the presence of the undersigned witnesses:

**WITNESSES:**

- 1. \_\_\_\_\_  
\_\_\_\_\_  
**On behalf of the SELLER (NHE)**
- 2. \_\_\_\_\_

**THIS DONE AND SIGNED** at ..... on this ..... day ..... of ..... 2021 by the PURCHASER in the presence of the undersigned witnesses:

**WITNESSES:**

- 1. \_\_\_\_\_  
\_\_\_\_\_  
**On behalf of the PURCHASER**
- 2. \_\_\_\_\_  
\_\_\_\_\_  
**SPOUSE**