

THIS AGREEMENT is made on the _____ day of _____ Two Thousand and _____

BETWEEN:

(1). **HFFFFFFF KENYA** a company limited by guarantee and incorporated in the Republic of Kenya whose address is Post Office Box Number **KLLLL, XXXXXX** (the “Vendor”); **AND**

(2). _____ (the “Purchaser”).

WHEREAS:

The Vendor is registered as proprietor as lessee of all that piece of land more particularly described in Schedule 1 (the “Land”);

The Vendor intends to develop the Land by building or causing to be built a number of residential units thereon as shown in or substantially shown in the plan annexed hereto (the “Plan”);

The Vendor has agreed with the Purchaser for the sale to the Purchaser by way of sub-lease of the residential unit numbered _____ (the “Unit”) on the Plan (to the specifications or substantially to the specifications set out in Schedule 3) for the residue of the now unexpired term of 99 years from 1st December 1999 less the last 10 days thereof (the “Term”) for the consideration of KShs _____ payable in the manner set out in this Agreement.

This Agreement **WITNESSES** and it is **HEREBY AGREED** as follows:

Construction and Conditions Precedent

Subject to the provisions of this Clause 1, the Vendor shall develop or shall procure that the Vendor shall develop the Land as shown or substantially shown in the Plan (the “Development”).

The Vendor may at its option elect not to commence the Development unless and until it has entered into agreements (similar to this Agreement) for the sale of not less than **OIIO** residential units in aggregate, of which **TR** shall be duplex units and **RR** shall be penthouse units.

In the event that the Vendor fails, for whatsoever reason, to sign and exchange the number of agreements for sale referred to in the foregoing sub-clause **byPPst December DFED**, the Deposit (hereinafter defined) shall be refunded to the Vendor together with any interest as may have been earned thereon.

Payments

The Purchaser shall effect the following payments by way of stand premium:

On or before the execution of this Agreement, the sum of KShs _____ (being 20% of the Purchase Price) by way of deposit (the “Deposit”), such deposit to be held by the Vendor's Advocate on the terms set out in **Clause 2.3** and to be released by them to the Vendor upon the Vendor notifying the Vendor's Advocate in writing of the satisfactory completion of the 1st Stage Works;

Upon completion of the 2nd Stage Works (as hereinafter defined), the sum of KShs _____ (being a further 20% of the Purchase Price) (the “2nd Payment”);

Upon completion of the 3rd Stage Works (as hereinafter defined), the sum of KShs _____ (being a further 20% of the Purchase Price) (the “**3rd Payment**”);

Upon completion of the 4th Stage Works (as hereinafter defined), the sum of KShs _____ (being a further 20% of the Purchase Price) (the “**4th Payment**”); and

Upon completion of the Unit, the balance of the Purchase Price together with the Initial Provisional Service Charge and the Purchaser’s share of the Apportionments (together the “**Final Payment**” and together with the 2nd Payment, the 3rd Payment and the 4th Payment called the “**Staged Payments**”).

The Staged Payments shall be made by the Purchaser to the Vendor's Advocate in full, without set off and in cleared funds within 7 days of being notified by the Vendor that the relevant Stage Works have been completed and the said payments shall stand unconditionally released to and for the use of the Vendor.

The Deposit, forfeiture and refund of payments

If the Purchaser shall fail to comply with any of the provisions of this Agreement, including provision as to payment of all sums due to the Vendor, the Vendor may give to the Purchaser 21 days’ notice in writing specifying the default and requiring the Purchaser to remedy the same before the expiry of the said notice.

If the Purchaser shall not comply with the same then the Vendor shall be entitled (but not bound) to rescind this Agreement and the Deposit shall be absolutely forfeited to the Vendor.

The Vendor shall, upon the occurrence of the events specified in the foregoing sub-clauses, be entitled to enter into any agreement it deems fit for the sale of the Unit and (after bringing into account the Deposit so forfeited) any deficiency arising on such resale (provided the same is contracted within 6 months of such default) and any expenses incurred by the Vendor as a result of such release be paid by the Purchaser to the Vendor as liquidated damages and any increase in the purchase price shall belong to the Vendor absolutely.

Upon concluding an agreement for the resale of the Unit in accordance with the foregoing sub-clause, any Staged Payments made by the Purchaser shall, after deducting any amount payable by way of liquidated damages to the Vendor under the foregoing sub-clause, be refunded to the Purchaser free of interest.

Grant of sub-lease

Upon payment and in consideration of the Purchase Price in full to the Vendor's Advocate (receipt by whom shall constitute an absolute discharge to the Purchaser), the Vendor shall grant and the Purchaser shall accept a sub-clause over the Unit in the form contained in Schedule 2 (the “Sub-lease”).

Completion

Completion shall take place at the offices of the Vendor's Advocate on the Completion Date when the Vendor shall deliver or shall procure the delivery of the following to the Purchaser:-

The Sub-lease duly executed by the Vendor in favour of the Purchaser;

A valid clearance certificate from the City Council of Nairobi, if required;

A duly completed Stamp Duty Valuation Form;

The consent of the Commissioner of Lands in respect of the Lease, if required.

On or before the Completion Date, the Purchaser shall pay the Apportionments (as more particularly set out in clause 6) to the Vendor's Advocate.

Upon receipt by the Vendor's Advocate of the Apportionments and the Initial Management Fee (as defined in the Lease) in cleared funds, the Vendor shall give possession of the Unit to the Purchaser.

Apportionments

All rents, taxes and other sums payable to government, municipal or other local authorities in respect of the Land shall be apportioned as at the Completion Date and the Purchaser's share of the same shall be payable at the same time as the Final Payment.

Management Company and Management Fees

The Vendor shall, prior to the Completion Date, cause a company (the "**Manager**") to be incorporated for the purpose of performing the Services (as defined and contained in the Lease) against payment of the Service Charge (as defined in the Lease).

The Manager shall at Completion, save for one share, be wholly-owned and controlled by the Vendor.

Time of the Essence

Time shall be of the essence as regards the obligations of the Purchaser hereunder.

Delays in payment

In the event that any payment of any sums due from the Purchaser under this Agreement being delayed beyond the dates stipulated herein and in the event that the Vendor does not elect to rescind this Agreement in accordance with clause 3, the Purchaser shall pay to the Vendor interest on any amount due and not paid at the Late Payment Rate (as hereinafter defined). The Late Payment Rate shall apply only in the event of delays in payment by the Purchaser.

Liability for Construction, Retention and Reporting of Latent Defects

In all matters relating to the carrying out of construction of the Unit (including, without limitation, finishes and workmanship) and in all authorisations and variations, the decision of the Vendor's architects responsible for the construction of Forest View shall be final and upon issue by such architect of a certificate of final completion, the Vendor shall be deemed to have carried out its obligations as far as construction is concerned and the Purchaser shall have no claims for any alleged faulty, defective or incomplete work (save for any latent defects for which the relevant contractor engaged by the Vendor in relation to the Unit may be liable to the Vendor pursuant to the relevant contract entered into between the Vendor and such contractor).

The Vendor warrants to the Purchaser that it shall retain an amount equal to ___ % of the construction cost of the unit for a period of _____ months following the completion of the Unit (the "**Retention Period**") as security for any potential latent defects.

The Purchaser shall during the Retention Period inform the Vendor of any alleged latent defects in the Unit as soon as the Vendor knows them. The Vendor shall carry no liability whatsoever to the Vendor in respect of latent defects brought to the attention of the Vendor after the expiry of the Retention Period.

Failure by the Vendor to complete

In the event that the Vendor fails to complete the sale on the Completion Date due to a default by the Vendor (or by the architect or contractor employed by the Vendor in respect of the Development), then the remedy of the Purchaser (subject to the Purchaser having complied with all its obligations under this Agreement) shall be either specific performance or a claim in damages (which damages are hereby limited to the liquidated sum of the Deposit together with any Staged Payments made to the date of the suit).

Application of the Law Society Conditions of Sale (1989 Edition)

The Sale is subject to the Law Society Conditions of Sale (1989 Edition), to the extent the same are not inconsistent with or stand varied or excluded by this Agreement.

Applicable Law and Arbitration

This agreement and its performance shall be governed and construed in all respects in accordance with the laws of Kenya.

Any dispute arising out of or in connection with this Agreement shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 14 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom.

Such arbitration shall be conducted in Nairobi in accordance with the rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995 or any modifications or replacements thereof.

To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the parties.

Completion

Any notice or other communication to be given by any party to this Agreement shall be in writing and shall be deemed duly served if delivered personally or sent by hand delivery, facsimile transmission or by registered post to the address at the address or (as the case may be) the facsimile number of that party set opposite its name below or such other address (or facsimile number) as the party to be served may have notified (in accordance to the provisions of this Clause) for the purposes of this agreement:-

For the Vendor;

For the Purchaser;

Any notice or other communication:

delivered by hand shall be deemed to have been given upon delivery at the relevant address;

if sent by registered post 10 days after posting and;

if sent by facsimile at the time of dispatch subject to confirmation of uninterrupted transmission by a transmission report provided that any fax dispatched after 1700 hours (at the place at which such fax is to be received) on any day shall be deemed to be received at 0930 hours on the addressee's next business day provided that a hard copy shall also be delivered in some other manner thereafter;

Miscellaneous

Costs

Each party shall bear its own Advocate's costs. The Purchaser shall be responsible for stamp duty and registration fees payable in respect of the Lease.

Enduring nature of Agreement

This Agreement shall continue to be in force and effect notwithstanding completion for as long as may be necessary.

Transfer and assignment of Agreement

The Purchaser may not transfer or assign its rights under this Agreement without the prior written consent of the Vendor. The Vendor may withhold its consent at its sole and absolute discretion without assigning any reason therefor.

Definitions and Interpretation

In this Agreement:

"1st Stage Works"	means the completion of the ground floor slab (and in the case of a penthouse unit, the ground floor slab shall be deemed to be the slab relating to the duplex units on which the penthouse will be built);
"2nd Stage Works"	means the completion of the first floor slab;
"3rd Stage Works"	means the completion of the roof (which in the case of a duplex unit shall mean the roof erected on the penthouse unit situated above such duplex unit);
"4th Stage Works"	means the completion of external doors and windows relating to each unit;
"Completion"	means the date on which actual completion takes place;
"Completion Date"	means 30 days after the Vendor has sent to the Purchaser a letter confirming that the authority to occupy the Unit has been granted by any relevant municipal authority;
"Final Completion"	means the completion of the Unit as certified by an architect's certificate of final completion to that effect;
"Initial Provisional Service Charge"	means KShs _____;
"Late Payment Rate"	means the aggregate rate per annum of the rate charged from time to time to the Vendor by its bankers for an overdraft facility, plus a margin of 2%;
"Purchaser's Advocate"	means _____ of _____;
"Vendor's Advocate"	means _____ of _____;

In this Agreement:-

Expressions in the singular shall include the plural and in the masculine shall include the feminine and vice versa and references to persons shall include corporations and vice versa.

References to any statute or statutory provision shall be construed as references to such statute or statutory provision as respectively amended or re-enacted or as their operation is modified by any other statute or statutory provision (whether before or after the date of this Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and shall include subordinate legislation made under the relevant statute;

References to recitals, clauses and schedules are references to recitals and clauses of and schedules to this Agreement;

The headings used in this Agreement are inserted for convenience only and shall not affect its construction or interpretation;

The Schedules form part of this Agreement.

Schedule 1 The Land

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first hereinbefore written.