

THIS AGREEMENT is made the _____ day of _____

BETWEEN

[] and [] both of P. O. Box Number _____, Kenya (the “**Vendors**”); and
[] and [] both of P. O. Box Number _____ in the said Republic (the “**Purchasers**”).

WHEREAS

The Vendors are the beneficial controlling shareholders of the Company hereinafter defined and undertake and agree to procure the compliance by the Company of the matters referred to herein.

It is intended that the Company shall become registered as a proprietor as lessee from the Government of Kenya for the term of Ninety-nine (99) years from the First day of February 1954 of the Property free of encumbrances.

The Vendors have agreed that they shall sell the Shares to the Purchasers and the Purchasers shall purchase the Shares subject to the terms and conditions herein.

IT IS AGREED as follows:

Interpretation

In this Agreement:

“Business Day” shall mean any day upon which banks are open for the provision of their full range of usual services in Nairobi;

“Companies Act” means the Companies Act (Cap 486);

“Company” means a company incorporated in Kenya wholly owned by the (Company Number C.....) and having a share capital of Shs [] divided into [] shares at Shs [] each [] of which have been issued;

“Completion” means the completion of this Agreement as more particularly described in clause 7;

“Consideration” means the sum of

“Deposit” means the sum equal to 10% of the Consideration, being

“Interest Rate” means 8 per centum per annum;

“Purchasers’ Advocates” means Messrs Advocates of, Nairobi;

“Property” means the plot of land known as Plot 1706 Malindi, details of which are in the Schedule annexed to this Agreement;

“Shares” means the entire issued share capital of the Company;

“KShs” means shillings in the currency of the Republic of Kenya;

“Vendors’ Advocates” means Messrs, Nairobi;

“Warranties” means the warranties, indemnities and representations by the Vendors in clause 8;

“Warranty Claim” means any claim made by the Purchasers for any breach of Warranties.

All references in this Agreement to a statutory provision shall be construed as including references to:

all statutory instruments or orders made pursuant to a statutory provision; and

any statutory provisions of which a statutory provision is a consolidation, re-enactment or modification.

Clause headings in this Agreement are for ease of reference only and do not affect the construction of any

provision herein.

Agreement for sale and preconditions of sale

Subject to sub-clause 2.2 and the terms and conditions of this Agreement, the Vendors shall sell as beneficial owner and the Purchasers shall purchase all the Shares and free from all liens, charges and encumbrances and with all rights attaching to them.

Completion is conditional upon:

the Vendors holding good title to the Shares in their names to the reasonable satisfaction of the Purchasers;
the Warranties remaining true and accurate and not misleading in any material respect at Completion as if repeated at Completion and at all times between the date of this Agreement and Completion;

the Company being registered as a proprietor as lessee from the Government of Kenya for the term of Ninety-nine (99) years from the first day of February 1954 of the Property free of encumbrances.

Drop-Dead date

In the event that the conditions set out in clause 2.2 shall not have been completed within Twenty-four (24) months after the date of signing this Agreement or such later date as may be agreed in writing between the parties, or unless all or any of the conditions in clause 2.2 shall have been waived in writing by the Purchasers before such date, then either the Purchasers or the Vendors may at any time thereafter upon, having given not less than Twenty-one (21) days notice in writing of their intention so to do, rescind this Agreement whereupon the Vendors' Advocates shall forthwith return to the Purchasers' Advocates the Deposit, following which the parties' obligations under this Agreement shall lapse thenceforth and be null and void.

Deposit and Consideration

Immediately upon execution of this Agreement the Purchasers shall pay the Deposit to the Vendors' Advocates in cleared funds including any bank charges, to be held by the same as stakeholders;

The balance of the Consideration being shall be paid upon Completion to the Vendors' Advocates in cleared funds including any bank charges.

Completion

Completion shall take place at the offices of the Vendors' Advocates on the seventh Business Day after the conditions set out in sub-clause 2.2 have been fulfilled or duly waived.

Upon Completion the parties shall attend at the offices of the Vendors' Advocates and the Vendors shall deliver to the Purchasers;

Signed Share transfers in respect of all the issued Shares in the Company in favour of the Purchasers jointly;

The relevant Share certificates (if any) for the Shares of the Company being so transferred;

Letters of resignation in a form reasonably acceptable to the Purchasers duly executed by the directors of the Company;

Board Minutes duly appointing the Purchasers as the new directors of the Company;

Letter of resignation duly executed (if requested) from the Company's auditors, in a form reasonably acceptable by the Purchasers;

The Company's seal together with all the relevant statutory books of the Company;

All title documents and papers pertaining to the Property in the possession of the Vendors;

The relevant Form D duly signed by the Company's auditors.

Upon receipt of the documents listed above the Purchasers shall forthwith pay the Vendors' Advocates the completion moneys being the balance of the Consideration as provided in clause 4.2 hereof.

Conditions of sale

The Property shall be sold subject to the Law Society Conditions of Sale 1989 in so far as they are not inconsistent with or amended by the provisions of this Agreement;

The Purchasers are deemed to have inspected the Property and to have satisfied themselves as to its state and condition;

The Property is sold subject to any quasi-easements, rights or way and overriding interests (if any) and the statutes, reservations, stipulations and conditions contained in or implied by or on the title to the Property as contained or referred to in the Grant referred to in the Schedule hereto but otherwise free from all encumbrances and charges.

Warranties and Indemnity by the Vendors

The Vendors hereby jointly and severally warrant to the Purchasers that at Completion;

There will be no pledge, lien or other encumbrances on, over or affecting the Shares and there is and at Completion will be no agreement or arrangement to give or create any such encumbrances and no claim has been or will be made by any person to be entitled to any of the foregoing.

The Vendors shall be entitled to transfer the full legal and beneficial ownership of the Shares to the Purchasers on the terms of this Agreement without the consent of any third party.

The Company shall have in its possession, or under its control, all duly stamped deeds and documents of title to the Property.

There shall be no option, or agreement for sale, mortgage (whether specific or floating), charge, lien, lease agreement or lease condition, restrictive covenant, easement or other encumbrance in respect of the Property save for any on the title to the Property.

The Company will have not traded since its incorporation nor have any debtors or creditors excluding any costs (including legal costs) incurred in the formation of the Company.

Each of the Warranties is without prejudice to any warranty or undertaking and, except where expressly stated, no clause contained in this Agreement governs or limits the extent or application of any other clause.

Conduct of Warranty Claims

The Purchasers shall promptly notify the Vendors in writing of any litigation or arbitration proceedings which comes to their notice whereby it transpires that the Vendors are, or may become, liable in respect of any Warranty Claim.

Subject to clause 8.3, the Purchasers shall procure that the Company shall, at the expense of the Vendors, take such action to contest any litigation or arbitration which could give rise to a Warranty Claim as the Vendors may reasonably require.

The Vendors shall provide to the Company, to the reasonable satisfaction of the Purchasers, indemnities in respect of all the costs and expenses of any action taken pursuant to clause 8.2.

Any claim under the Warranties must be submitted to the Vendors within three (3) months of the date of

Completion failing which any right to such claim shall be deemed to have lapsed and no liability shall in any manner attached to the Vendors and such Warranties shall be treated as null and void.

Communications

All communications between the parties with respect to this Agreement shall be delivered by hand or sent by facsimile transmission (with confirmation posted within 24 hours).

Communications shall be deemed to have been received:

If delivered by hand: on the day of delivery;

If sent by facsimile transmission: at the time of the transmission.

Communications addressed to the Vendors shall be marked for the attention of _____ at the Vendors' Advocates.

Communications addressed to Purchasers shall be marked for the attention of _____ at _____ the Purchasers' Advocates.

In proving service:

By delivery by hand: it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee;

By facsimile transmission: it shall be necessary only to prove that the communication, or letter of confirmation, was contained in an envelope, which was duly addressed and posted in accordance with this clause.

Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties with respect to all matters which are referred to.

This Agreement binds each party's personal representatives, successors and assigns.

Invalidity

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

Proper law and jurisdiction

The construction, validity and performance of this Agreement shall be governed by the Laws of Kenya and (subject to the provision for arbitration herein contained) the parties hereby submit to the jurisdiction of the High Court of Kenya.

Costs

Each party shall bear and pay their respective advocates' costs charges and expenses for the preparation, completion and carrying into effect of this Agreement save and except that all stamp duty payable in respect of the transfer of the Shares shall be payable by the Purchasers together with all costs and disbursements pertaining to filing of all forms at the Company Registry.

The costs of formation of the Company shall be borne by the Purchasers and paid at Completion.

Arbitration

Any dispute arising between the parties hereto and all claims or matters in such dispute not otherwise mutually settled between the parties shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within Fourteen (14) days of the notification of such dispute by either party to the other, upon application by either party to the Chairman for the time being of Chartered Institute of Arbitrators (Kenya Branch).

Every award made under this clause shall be subject to and in accordance with the provisions of Arbitration Act 1995 (Act No. 4 of 1995) or other Act or Acts for the time being in force in Kenya in relation to arbitration.

To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the parties and they hereby agree to be so bound by the decision of such arbitrator.

Any arbitration proceedings shall take place in Nairobi.

SCHEDULE

IN WITNESS WHEREOF the Vendors and the Purchasers have duly executed this Agreement on the day and year first above written.

SIGNED by the Vendors in the presence)
of:)

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SIGNED by the Purchasers in the)
presence of:)

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