**JOINT VENTURE AGREEMENT**

**DATED 2019**

**BETWEEN**

**XXXXXXXXXXXXXXX**

**(AS THE “LANDOWNER”)**

**-AND-**

**ZZZZZZZZZZZZ LIMITED**

**(AS THE “DEVELOPER”)**

**-RELATING TO-**

**CONSTRUCTION OF THIRTY-EIGHT (38) RESIDENTIAL UNITS ON LAND REFERENCE NUMBER \_\_\_\_\_\_/\_\_\_\_\_\_/\_\_\_\_\_, NAIROBI**

**(THE “LAND”)**

**Drawn By:**

**CM Advocates LLP**

I & M Bank House, 7th Floor

2nd Ngong Avenue

P.O. Box 22855-00505

**Nairobi.**

[**www.cmadvocates.com**](http://www.cmadvocates.com)

**JOINT VENTURE AGREEMENT**

**THIS JOINT VENTURE AGREEMENT** (this **“Agreement**”) is entered into this ……….……………..... day of ……………………….………. Two Thousand and Nineteen **BY AND BETWEEN**: -

1. **XXXXXXXXXXX**, a resident of Nairobi within the Republic of Kenya and of Post Office Box Number \_\_\_\_\_\_\_\_\_\_\_\_\_-\_\_\_\_\_\_\_, Nairobi (hereinafter referred to as the “**Landowner***”* which expression shall where the context so admits include her heirs, executors, administrators, legal and personal representatives and assigns) of the first part; **AND**
2. **ZZZZZZZZZZZZZZZZZ**, a private limited liability company incorporated in Kenya and of Post Office Box Number \_\_\_\_\_\_\_/\_\_\_\_\_\_\_, Nairobi (hereinafter referred to as the **“Developer**”) which expression shall where the context so admits include its successors and assigns) of the other part.

The Landowner and the Developer are individually referred to as “Party” and collectively asthe “Parties”).

**WHEREAS: -**

1. The Landowner is the current registered proprietor as Grantee from the Government of the Republic of Kenya of the Land (a term defined below).
2. The Developer is desirous of entering into a joint venture arrangement with the Landowner which will involve development of Units (a term defined below) on the Land in accordance with the Plans (a term also herein defined) on a joint venture arrangement and in accordance with the terms and conditions of this Agreement (hereinafter referred to as the **“Project”**).
3. The Developer is an established real estate developer in Kenya with huge experience in construction projects in Kenya.
4. Following consultations and discussions, the Parties have agreed to enter into this Agreement whereby the Landowner shall provide the Land and the Developer shall provide the financial resources necessary to undertake the Project on a joint venture basis.
5. Pursuant to Recitals (B), (C) and (D) above the Parties have agreed to enter into this Agreement in order to define the terms and conditions that shall govern their joint venture relationship.

**THEREFORE**, in consideration of mutual promises, representations, covenants and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following terms and conditions and to be bound thereby:-

1. **DEFINITIONS AND INTERPRETATION**
   1. **Definitions**

In this Agreement including its Recitals and Schedules (unless the context otherwise requires) the following words and expressions have the following meanings:

* + 1. **“Agreement**”shall mean this Agreement, its Recitals, Annexures and Schedules;
    2. “**Applicable Laws**” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in Kenya, including statutes, rules, regulations, directions, by-laws, notifications, ordinances, international air transport treaties and protocols, and judgments having force of law, or any final interpretation by a court of law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement;
    3. **“Applicable Permits”** means the Notification of Approval for change of user of the Land from single dwelling unit to multi dwelling units from the County Government of Nairobi and the National Land Commission or any other relevant authority, architectural, structural, civil engineering and environmental approvals including an environmental impact assessment license from the National Environmental Management Authority, construction and other approvals permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws required from the National Construction Authority and the GoK and any other approvals required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any deed or document;
    4. **“Day”** means any day, other than a Saturday, Sunday or gazetted public holiday in Kenya, on which banks are normally open for ordinary business in Nairobi, Kenya;
    5. **“Confidential Information”** means all information in whatever form including, without limitation, any information relating to customers, suppliers, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine – readable medium and whether disclosed to the other Party for purposes of the Joint Venture Agreement or otherwise howsoever;
    6. **“Consultants”** means the Project Architect, the Project Manager, Structural Engineer and other professional consultants engaged by the Land Owner or the Developer in the implementation of the Project;
    7. **“Conditions Precedent”** means the conditions precedent set out in Clause 2;
    8. **“Construction Documents”** means the Plans, the Applicable Permits, approval of change of user of the Land and any other legal documents required in the lawful implementation of the Project;
    9. **“Developers’ Advocates”** means Messrs. CM Advocates LLP, I & M Bank House, 7th Floor, P.O. Box 22588-00505, Nairobi;
    10. **“Effective Date”** means the date of this Agreement**;**
    11. **“GoK”** means the central or county government of the Republic of Kenya or any relevant government agency;
    12. **“Ground Breaking Date”** means a date falling One Hundred and Eighty (180) days from the Effective Date or at least sixty (60) days after the Developer has procured the Construction Documents, whichever is later, when the Developer shall commence the construction phase of the Project;
    13. "**Insured Risks**" means all the necessary insurance required and procured or to be procured by the Developer in connection with the Project**;**
    14. **“Intellectual Property Rights”** means trade and service marks (whether registered or unregistered), registered designs, design rights, copyright, know-how, confidential information, trade or business names and any other similar protected rights in any country (together with the right to apply for any of the above, if applicable);
    15. **“Land”** means of ALL THAT piece of Land known as Land Reference Number \_\_\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ and situate in the City of Nairobi within Nairobi County and measuring approximately Nought Decimal One Nought Nine Eight (0.1098) of a hectare or thereabouts comprised in a Grant registered at the Land Titles Registry at Nairobi as Number I.R. \_\_\_\_\_/\_\_\_\_ (the **“Grant”**) which said piece of Land is held by the Land Owner as grantee from the Government of the Republic of Kenya for the residue unexpired of the term of Ninety Nine (99) years from the First day of July One Thousand Nine Hundred and Ninety Three (01.07.1993) subject to the payment in advance on the First day of January in each year of the revisable annual rent of Kenya Shillings Eight Thousand One Hundred and Seventy Five (KShs. 8,175/-) **AND SUBJECT** also to (a) the Government Lands Act (Chapter 280 Laws of Kenya (repealed) (b) the Land Act (Number 6 of 2012) (c) the Land Registration Act (Number 3 of 2012) and (d) the Special Conditions contained in the Grant.
    16. **“Landowner’s Advocates”** means Messrs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
    17. **“Management Company”** means the management companies to be incorporated by the Parties in accordance with Clause 5.7 for purposes of providing the common services in the estate to be developed on the Land and to also acquire the reversionary interest in the Land after transfer of all the Units in the Project to their owners thereof;
    18. **“NEMA”** means the National Environment Management Authority;
    19. **“Plans”** meansthe building plans, architectural drawings and designs of the Project as prepared by the Project Architect and approved by the Parties and subsequently approved by the relevant planning authorities;
    20. **“Project Architect”** refers to such architect or firm of architects that may be appointed by the Developer in accordance with the terms of this Agreement as the Project Architect;
    21. “**Project**” means the construction of Thirty-Six (36) Two (2) Bedroomed, Three (3) Bedroomed and Four (4) Bedroomed residential apartments/housing units and Two (2) Pent Houses within the Land or such higher or lower number of units as shall be approved by the relevant authorities, as well as the usual amenities and conveniences set out in the Plans as may be approved by the relevant planning authorities;
    22. **“Project Cost**" means the total cost of the Project including construction cost (both on site and off site works), consultants’ fees, costs associated with obtaining relevant approvals from the Nairobi City County authorities, Environmental Impact Assessment Licence from the National Environmental Management Authority, approvals costs from the National Construction Authority and any other governmental authorities, Project related disbursements, contingencies, Project management costs, all applicable taxes and any other sums which in the Developer’s reasonable opinion need to be incurred in order to complete the Project;
    23. **"Special Purpose Vehicle"** in this Agreement also abbreviated as SPV means a limited liability company to be incorporated in the Republic of Kenya pursuant to the provisions hereinbelow and through which the Project will be undertaken and the Parties herein shall hold shares in the Special Purpose Vehicle in the agreed ratio as per this Agreement;
    24. **“Term”** means the period of time computed in accordance with Clause 4.2 or such other period as may be agreed between the Parties; and
    25. “**Units**” means the residential units to be erected on the Land as well as other usual amenities and conveniences set out in the Plans and "Unit" shall refer to one such unit.
  1. **Interpretation**

In this Agreement, unless the context otherwise requires, any reference to:

* + 1. words and phrases, the definitions of which are contained in or referred to in the Agreement shall be construed as having the meanings thereby attributed to them;
    2. the singular includes the plural and *vice versa*;
    3. a person includes reference to a body corporate or other legal entity;
    4. any written law includes that law as amended or re-enacted from time to time;
    5. any Agreement or other document includes that Agreement (including this Agreement) or document shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated from time to time in writing by the parties thereto in accordance with the law to which that agreement or document is subject and the particular conditions (if any) of such agreement or document;
    6. a clause or schedule is to the relevant clause or schedule of this Agreement; and
    7. any party includes that party’s successors and assigns.
  1. **Clause Headings**

Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

1. **CONDITIONS PRECEDENT**
   1. The validity and effectiveness of this Agreement is conditional upon the fulfilment or waiver (if capable of waiver) of the following Conditions Precedent: -
      1. there being no restrictions or regulations of the Republic of Kenya, or of other Government bodies and/or regulatory authorities introduced between the date hereof and the end of the Term which would render this Agreement contemplated herein illegal or unenforceable or contrary to Government policy;
      2. all the necessary regulatory approvals for the transaction contemplated herein being obtained from the Companies and Lands registry and/or other relevant authorities;
      3. the terms of this joint venture agreement being approved by the Board of Directors of the Developer; and
      4. there being a clean and valid title for the Land free from any encumbrances or legal challenges whatsoever including land rent and land rates.
   2. Should any Party become aware of anything, which will or may prevent any of the conditions set out in Clause 2.1 above from being fulfilled, it shall forthwith disclose the same to the other Party.
2. **GENERAL INTENT**
   1. The main business of the SPV shall be to procure the acquisition of the Property, the Construction Documents, the implementation by the Developer of the Project in accordance with the approved designs and specifications and sale and or the transfer of the Landowner’s and Developer’s Units, all in accordance with the terms of this Agreement. Accordingly, unless wherein permitted, no Party shall use the SPV for any other purposes whatsoever without written consent of the other.
   2. For the avoidance of doubt, the Parties hereby agree that the Developer shall use the SPV as the vehicle through which it shall implement the Project, sell its allocated share of the Units to end buyers and collect the sale proceeds thereof.
3. **COMMENCEMENT AND DURATION**
   1. This Agreement shall come into force on the date hereof and shall remain in force for the Term unless the Parties otherwise agree in writing.
   2. The Project Completion Period shall be Thirty-Six (36) months from the Ground Breaking Date and after all approvals and Applicable Permits have been obtained. The Developer shall get an additional grace period of six (6) months after the expiry of the Project Completion Period to complete the Project in case of any unforeseen circumstances.
4. **INCORPORATION OF THE SPV AND TRANSFER OF THE LAND TO THE SPV**
   1. The Landowner and the Developer shall jointly incorporate the SPV for purposes of implementation of the Project in accordance with the provisions of this Agreement and which shall operate with the aim of bringing into effect every aspect of this joint venture.
   2. The Landowner and the Developer shall agree on a name for the SPV within seven (7) days from the date of execution of this Agreement and the costs of incorporating the SPV shall be borne by the Developer as part of the Project costs.
   3. The Parties agree and intend that the Developer shall hold approximately Seventy Percent (70%) while the Landowner shall hold Thirty Percent (30%) of the authorized and issued share capital in the SPV.
   4. The directorship and shareholding in the SPV shall be effected through the following process:-
      1. At incorporation of the SPV, ninety percent (90%) of the share capital shall be allotted to the Landowner to enable the Landowner transfer the Land to the SPV and the Developer’s Advocates shall obtain exemption from stamp duty;
      2. Upon transfer of the Land to the SPV, the Developer shall be allotted ten percent 10% of the authorized and issued share capital in the SPV.
      3. Once the Developer obtains the construction documents and after ground breaking, the Developer’s Advocates shall restructure the SPV to the agreed ratio being allotment of Thirty percent (30%) of the share capital to the Landowner or her Nominee and Seventy Percent (70%) of the authorized and issued share capital to the Developer.
      4. The Developer will be entitled to nominate two (2) directors whilst the Landowner shall be entitled to nominate one (1) director to the Board of Directors of the SPV.
      5. In the event the Developer fails to commence the project within the timelines stated above the Developer shall on demand by the Landowner transfer the shares allotted to it in the SPV to the Landowner at no cost to the Landowner. Further, the Developer and its nominees shall unconditionally resign as directors in the SPV.
      6. The principal business of the SPV shall be confined to the design, construction, development, and sale of the Project and such other related conveniences connected therewith project.
   5. For the avoidance of doubt, the Parties hereby agree that the Developer’s Advocates shall be responsible for the preparation and registration of all deeds and documents relating to the Transfer of the Land to the SPV and obtaining approvals for Change of User.
   6. **Signatories of the SPV Bank Account**

The signatories of the SVP Bank Account shall be such directors of the SPV as shall be nominated by the Developer from time to time. The said SPV Bank Account shall be operated by the said directors exclusively.

* 1. **Incorporation of the Management Company**

The Parties shall on or before the completion of the construction phase of the Project incorporate or cause the incorporation of the Management Company with such nominal share capital as may be agreed upon by the Parties. Unless otherwise resolved by the Parties, for each Unit sold or transferred to a buyer or any of the Parties, there shall be issued, transfer or allotted one (1) share in the Management Company, and such share and the title documents for such Unit shall be inseparable.

1. **CUSTODY OF TITLE**
   1. Upon the successful registration of the SPV and issuance of a professional undertaking in the terms acceptable to the Land Owner or the Land Owner’s Advocates, the Land Owner or the Land Owner’s Advocates shall release the original Certificate of Title for the Land to the Developer’s Advocates who shall hold the same on stakeholders’ terms pending successful registration of the Land in the name of the SPV.
   2. Once the Land has been registered in the name of the SPV, the Land Owner’s Advocates will hold the original Certificate of Title for the Land on stakeholders’ terms and shall release the same to the Developer’s Advocates, upon receipt of a suitable irrevocable professional undertaking from the Developer’s Advocates, to enable them undertake Change of User pursuant to clause 5.5.
2. **PARTIES’ CONTRIBUTION AND COMPENSATION** 
   1. **Parties’ Contribution**

In addition to the Parties’ obligations under clause 9, the Parties hereby agree that their respective contributions to the project shall be as follows:-

* + 1. The Landowner shall cede its rights in and user of the Land to the Parties for use in the implementation of the Project.
    2. The Developer shall provide all the resources required for the purpose of implementation of the Project including financing the cost of procuring the Construction Documents, setting up the SPV, transferring the land to the SPV, hiring of the Consultants and financing the construction works and full implementation of the Project.
  1. **SHARING OF THE UNITS**

The Parties have agreed that the Units in the Project shall be shared out as follows:-

* + 1. The Land Owner will be entitled to the following Ten (10) Units and relevant parking spaces:

1. All Eight (8) Units on the 2nd and 8th Floor of the Project which comprising of the following:
2. Two (2) Four Bedroomed Units measuring Two Thousand Five Hundred and Fifty (2,550) square feet each, valued at approximately Kenya Shillings Twenty Five Million (KShs. 25,000,000/-) each;
3. Two (2) Three Bedroomed Units measuring Two Thousand One Hundred and Forty (2,140) square feet each, valued at approximately Kenya Shillings Twenty One Million (KShs. 21,000,000/-) each;
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. One (1) Three (3) Bedroomed Unit on the 3rd Floor of the Project measuring Two Thousand and Twenty (2,020) square feet , valued at approximately Kenya Shillings Twenty Million (KShs. 20,000,000/-) and One (1) Three (3) Bedroomed Unit on the 3rd Floor of the Project measuring Two Thousand One Hundred and Forty (2,140) square feet, valued at approximately Kenya Shillings Twenty One Million (KShs. 21,000,000/-)

PROVIDED THAT the Developer will hold the Three (3) Bedroomed Unit on the 3rd Floor measuring Two Thousand and Twenty (2,020) square feet at a value of Kenya Shillings Fifteen Million (KShs. 15,000,000/-) (the **“Collateral”**) as security for the Landowners repayment of the advancements referred to in clause 9.2 (ii) and clause 9.2 (iii) of this Agreement.

* + 1. The Developer shall be entitled to the rest of the Units in the Project and the Developer shall be at liberty to start selling its Units in the Project for purposes of raising the requisite funding for completion of the Project.
    2. In case approvals are not obtained from the necessary authorities for the construction of the Thirty-Eight (38) Units and lesser units are made, the sharing of the Units will be reduced on pro rata basis as per the square footage.
    3. In case approvals are obtained from the relevant authorities for additional Units, the parties hereby agree that they shall be entitled to the units in the ratio of 25% to 75% in favour of the Land Owner and the Developer respectively.
    4. The Parties agree that should the Developer require additional financing, the Developer may bring on board an investor or investors to inject monies towards the Project and such investor shall not be allotted shares in the SPV but shall enter into a separate agreement with the Developer for compensation for their contribution to the Project. For the avoidance of doubt the Landowner’s share of the units shall not be affected by such an agreement or arrangement between the Developer and the Investor.
  1. For the avoidance of doubt, the Parties hereby agree that the Landowner’s Advocates shall be responsible for the preparation and registration of all deeds and documents relating to the sale of the Units.

1. **REPRESENTATIONS AND WARRANTIES**

Each party hereby represents and warrants to the other party as follows:-

* + 1. It has all requisite power and authority to execute and deliver to enter into this Agreement and to perform its obligations hereunder and in respect of the Developer, it has taken all necessary corporate action required to authorize the execution, delivery and performance of its obligations under this Agreement and to consummate the transactions contemplated thereunder.
    2. That neither the execution or delivery by the party of this Agreement or any ancillary agreement or document hereto to which it is a party, nor the consummation of the transactions contemplated hereunder or thereunder, will (a) violate any agreement, commitment, judgement or order to which it is bound or (b) contravene any law or regulation applicable to it.
    3. The Developer further represents and warrants that it is properly registered under Kenyan law and it has the financial and technical capacity to carry out the Project to its completion and that it is not facing any claims whatsoever by any third party or government, is not insolvent or facing winding up proceedings.
    4. As of the date of this Agreement, to the best of the Landowner’s knowledge and belief, the Landowner has a valid title to the Land from the Lands registry;
    5. There is no encumbrance registered against the title for the Land;
    6. As at the date of this Agreement and to the best of the Landowner’s knowledge and belief, there is no adverse claim on the Land, dispute regarding ownership, boundary, easement, rights of way or any other such matters;
    7. There are no restrictions or regulations of the Republic of Kenya, or of other Government bodies and/or regulatory authorities which would render the Agreement contemplated herein illegal or unenforceable or contrary to Government policy;
    8. The warranties furnished in writing under this Agreement to the other Party in relation to this Agreement is correct and accurate and either Party will immediately disclose in writing to each other any event or circumstance which may arise or become known to him/them after the date of this Agreement and prior to completion which is inconsistent with any of the warranties or which had it occurred on or before the date of this Agreement would have constituted a breach of the warranties or which is material to be known by the Party; and
    9. There are no proceedings pending or, to their knowledge, threatened and there is no existing basis for any such proceedings against or affecting them by or before any court, arbitrator or other governmental authority which, if adversely determined, individually or in aggregate might be reasonably expected to materially and adversely affect its properties, assets, business, prospects, profits or condition or its ability to perform their obligations under this Agreement.

1. **OBLIGATIONS** 
   1. **The Land Owner’s Obligations** 
      1. To offer all due assistance to the Developer and the Consultants for purposes of efficient implementation of the Project.
      2. If any claim on the ownership of the Land or a boundary dispute arises in respect of the Land, to fully defend and discharge the same provided that the costs thereof shall be fully borne by the Landowner;
      3. To execute a transfer of the Land in favour of the SPV. To this effect, she shall:-
2. Ensure that Land Rent and Rates over the Land are paid;
3. Obtain all the relevant Land Rent and Land Rates Clearance Certificates;
4. Obtain the Consent to Transfer; and
5. Obtain the Capital Gains Tax Acknowledgment Slip.
   * 1. Indemnify and keep indemnified the Developer from any and all claims from the previous Consultants and furnish evidence of payment of the arrears, if any and/or a document securing payment of the arrears to the satisfaction of the Developer;
     2. Execute all such deeds and documents as shall be necessary to bring into effect every aspect of this Agreement; and
        + 1. To furnish vacant possession of the Land before the Ground Breaking Date free from any encumbrance.
   1. **Obligations of the Developer** 
      1. **Financial Obligations** 
         1. To finance the cost of obtaining all Applicable Permits for implementation of the Project including Change of User of the Land from the National Land Commission/ Ministry of Lands and if necessary, procure the extension or renewal of the Change of User approval from the County Government of Nairobi and ensure that the Change of User is completed as contemplated in this Agreement;
         2. Subject to clause 6.3 (a) above, to advance to the Landowner the sum of Kenya Shillings Five Million (KShs.5,000,000/-) as follows: Kenya Shillings Three Million Five Hundred Thousand (Kshs.3,500,000.00) within sixty (60) days from the Ground Breaking Date. The balance thereof in the sum of Kenya Shillings One Million Five Hundred Thousand (Kshs.1,500,000.00) shall be paid in eight (8) equal monthly installments commencing the second month after the Ground Breaking Date;
         3. To further advance to the Landowner the sum of Kenya Shillings One Hundred Thousand (KShs.100,000/-) per month as from the Ground Breaking Date , subject to the Landowner delivering vacant possession of the Land to the Developer, which sum shall be utilized by the Landowner to pay her rent in lieu of which the Developer shall rent a residential apartment to the Landowner and the rent due per month shall be considered as an advancement by the Developer to the Landowner repayment of which shall be secured by the Collateral;
         4. To provide the finances necessary for the successful completion of the Project. The Developer shall not charge or use the title for the property as collateral for loan;
         5. To bear the cost of incorporation of the Management Company; and
         6. To be responsible for the wages and fees of all Project staff and Consultants hired and retained in relation to the implementation of the Project.
      2. **Approval of Project Implementation Obligations**
         1. To prepare the Project Plan the design and architectural drawings and to ensure that the Project designs and specifications have been agreed upon by the Parties before seeking the requisite development approvals;
         2. To obtain all Construction Documents including Applicable Permits and NEMA approval for the Project;
         3. To finalize the implementation of the Project within the agreed timeframes as set out in the Project Plan;
         4. To organize and take the lead for all the activities leading to the commencement and implementation of the Project;
         5. To procure the performance of all such duties envisaged in the Project Plan in respect of the Project or that are ancillary to the achievement of the overall objectives of the Project;
         6. To ensure the Project has adequate arrangements relating to the Construction Documents required in the implementation of the Project.
      3. **Construction Obligations**
         1. To appoint Consultants for the Project and manage them in the course of implementation of the Project;
         2. To develop the Project in accordance with the Construction Documents including the Plans as well as the provisions of this Agreement PROVIDED that the Developer may make minor changes in the development of the Project without the consent from the Landowner;
         3. To exercise its reasonable endeavours to procure and ensure that the implementation of the Project is completed as soon as practically possible and in any event within the timelines set out in this Agreement or Project Plan;
         4. To be the point of contact between the Consultants and the Landowner as well as the buyers of the Units; and
         5. To procure compliance by the Landowner with any notices served by any planning authority and give all notices required by any enactment or regulation of any statutory or other authority or of any public service company which has any jurisdiction with regard to the works or with whose system the same are or will be connected.
      4. **Sale of Units**
         1. To sell its Designated Units without requiring written authorization of the Landowner or her advocates;
         2. At the request of the Landowner, to assist the Landowner to sell the Landowner’s units and release the sale proceeds to the Landowner; and
         3. To prepare and implement appropriate marketing strategies and activities in relation to the sale of its Designated Units and shall liaise with its Advocates to ensure that the buyers are issued with appropriate transactional documents; and
         4. After the sale or transfer of all the Units, to transfer the revisionary interest in the Land together with the Landowner to the Management Company.
   2. **Joint Responsibilities**
   3. The Parties shall execute all such deeds and documents and do all such acts as shall be necessary to bring into effect every aspect of this Agreement;
   4. The Parties shall develop and execute a joint strategy for dealing with the relevant registry authorities including but not limited to the Lands Registry in connection with obtaining the various lands consents, approvals, permits and registration of the Land as envisaged in this Agreement. In the event that any cost is required to be incurred in the aforesaid process such cost shall be borne by Developer unless otherwise provided in this Agreement; and
   5. Agreeing on the purchase price for the Units in the Project.
6. **TAXES**
   1. All taxes in connection with the implementation of the Project shall be borne by the Parties through the SPV in their respective ratios.
   2. All taxes in relation to the sale of the Units including stamp duty shall be borne by the end purchasers of the Units.
7. **COMPLIANCE WITH OTHER LAWS AND CODE OF CONDUCT**

The Developer shall, at its expense, obtain and renew, in accordance with any Applicable Laws or regulations from time being in force, all Applicable permits, licences and authorizations required for the performance of its obligations under this Agreement.

1. **NON-SOLICITATION**

Each Party undertakes to the others that it shall not during the subsistence of this Agreement and for a period of Twenty- Four (24) months thereafter either on its own account or in conjunction with any other person hire, solicit or attempt to solicit or entice away from the employment of any other Party, any employee of any other Party who was involved in the provision of any services under this Agreement.

1. **INDEMNITY**
   1. Subject to clause 13.2 below, each party hereby agrees to indemnify and hold the other harmless, from and against all claims, liabilities, losses, damages and expenses incurred (including any legal costs or penalties and liabilities awarded or imposed by a court of competent jurisdiction or expenses properly incurred) by the other Party pursuant to any breach or non-observance by the Party in breach of any of its/his obligations or representations under this Agreement provided that neither party will be liable as aforesaid to the extent that any such losses are determined to have resulted directly from the proven negligence or willful misconduct of the other Party.
   2. All parties acknowledge and agree that their obligations hereunder shall be in addition to any rights or remedies that the innocent party may have at law or under this Agreement.
2. **INSURANCE** 
   1. The Developer shall be responsible for and shall procure or cause any sub-contractors to obtain and maintain with a reputable insurance company such insurance policies as may be necessary to cover the risks or liability which may arise in the course of the implementation of the Project.
3. **INTELLECTUAL PROPERTY RIGHTS**
   1. All Intellectual Property Rights owned by a Party as at the date of this Agreement shall remain vested in that Party and no Party shall by virtue of this Agreement acquire any ownership or other interest in the others’ Intellectual Property Rights.
   2. Intellectual Property Rights jointly developed or funded by the Parties for purposes of or pursuant to this Agreement shall be owned jointly by the Parties as co-owners of equal undivided shares, and each Party shall be entitled to exploit any such Intellectual Property Rights without reference to the other Party but may only license such Intellectual Property Rights with the written consent of the other Party such consent not to be unreasonably withheld or delayed.
4. **CONFIDENTIALITY**
   1. Each Party undertakes to the other that it will not and will procure that its officers, employees, professional advisers and agents will not, during the period of this agreement, and after its termination (for whatever reason):-
5. use or divulge to any person nor publish or disclose or permit to be published or disclosed, any secret or confidential information relating to any other Party which it has received or obtained, or may receive or obtain, (whether or not, in the case of documents, they are marked as confidential) except in the proper course of the performance or implementation of its obligations hereunder; and/or
6. other than as required by disclosing party, retain, duplicate or remove from the premises of such party, any information relating to such Party in whatever form (whether written, or recorded in some other form, or oral) which is supplied such party to it or which comes to its notice during the period of this agreement
   1. The obligations of this Clause shall not apply to any information which:-
7. the recipient can reasonably demonstrate is in the public domain otherwise than by breach of this agreement by the disclosing party or by any person subject to an obligation of confidentiality;
8. which is already known to the recipient (as evidenced by its written records) at the date of disclosure and was not acquired directly or indirectly form the disclosing party;
9. which is required to be disclosed by law pursuant to a court order after reasonable attempts have been made via legal remedies, to prevent such disclosure; or
10. which is disclosed to or by any adviser to any of the parties to the extent required for the proper execution of their work.
    1. For the purposes of this clause 16 “information” includes, without limitation, the following:
       1. information concerning the affairs or property of the Company or another Part or any business, property or transaction in which the other Party may be or may have been concerned or interested;
       2. the names and addresses or any customer, dealer, supplier or distributor of a Party;
       3. information on the terms of this agreement; and
       4. information relating to the business methods of any of the Parties.
11. **PUBLIC ANNOUNCEMENTS**
    1. No Party shall make any announcement or other disclosure to the public concerning the existence of the Agreement except as expressed or implied in this Agreement;
    2. If any announcement is required, the Landowner shall, to the extent practicable and permitted by applicable law and/or regulation, consult and discuss the form and content of the announcement with the Parties prior to the announcement being made; and
    3. For the avoidance of doubt, nothing in this Clause or Agreement shall be deemed to inhibit or restrain any Party from making such public announcements as may be necessary in the interests of its business or as may be required under any law or Applicable Permits.
12. **NO AGENCY OR PARTNERSHIP**
    1. Nothing contained in this Agreement shall create or be deemed to create a partnership or agency between the Parties and none of the Parties shall enter or have authority to enter into any agreement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind any of the other Parties.
    2. All Parties shall ensure that their employees, agents and/or representatives shall not carry on any negotiations or enter into correspondence on behalf of the other Parties to this Agreement, or use the name of such other Parties in any media or printed matter, nor shall any Party or its employees, agents and/or representatives have, or purport to have, authority to execute legal documents, enter into legal agreements or otherwise in any way bind the other Parties to this Agreement or create or incur any legally binding commitments or liabilities or any kind of nature on behalf of such other parties.
13. **ASSIGNMENT**

This Agreement or any rights or benefits hereunder shall not be assignable, transferable or divisible, whether in whole or in part by a Party, without the prior written consent of the other parties provided that such consent shall not be unreasonably delayed or denied.

1. **DISPUTE RESOLUTION**
   1. Should any dispute arise between the Parties hereto with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the Parties to such dispute shall in the first instance attempt to resolve such dispute by amicable negotiation.
   2. Should such amicable negotiations fail to achieve a resolution within forty five (45) days, either party may refer the dispute to mediation and such mediation shall take place in accordance with the Nairobi Centre for International Arbitration – Mediation Rules as shall be obtaining at the time of the dispute.
   3. Should such mediation fail to achieve a resolution within thirty (30) days or such other time as may be agreed between the parties, either Party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms: -
      1. such arbitration shall be resolved under provisions of the Kenyan Arbitration Act 1995 (as amended from time to time);
      2. the tribunal shall consist of one arbitrator to be agreed upon between the Parties failing which such arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch upon the application of any Party;
      3. the place and seat of arbitration shall be Nairobi and the language of arbitration shall be English;
      4. the award of the arbitration tribunal shall be final and binding upon the Parties to the extent permitted by law and any Party may apply to a court of competent jurisdiction for enforcement of such award. The award of the arbitration tribunal may take the form of an order to pay an amount or to perform or to prohibit certain activities; and
   4. notwithstanding the above provisions of this Clause, a party shall be entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.
2. **FORCE MAJEURE**
   1. **Definition of Force Majeure**

For the purposes of this Agreement, **“Force Majeure”** means an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party’s performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation or governmental restraint.

* 1. **Performance excused**

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Agreement.

* 1. **Duty to mitigate**

A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimise the consequence of any event of Force Majeure.

* 1. **Notification**

A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than twenty one (21) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

* 1. **Consultation**

Not later than fourteen (14) days after the Developer, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

1. **CO-OPERATION AND FURTHER ASSURANCE**
   1. The Parties recognize that this Agreement cannot reasonably take into consideration all matters or circumstances that may arise during the implementation of the Project. In this regard, should a situation not addressed by this Agreement arise, then the Parties shall cooperate to resolve it bearing in mind the completion timelines for the Project and to develop a mechanism for the resolution of similar issues arising in the course of the implementation of the Project. Any mechanism so developed shall be appended to this Agreement and be adopted as a part of this Agreement.
   2. Each Party undertakes to do all such assurances, acts, deeds and things at any time and from time to time as shall be required to implement the Project as provided for in this Agreement and shall also execute such agreements, memoranda and documents as are contemplated under this Agreement or as may be required by the other parties in order to give effect to the provisions of this Agreement or the intentions of the Parties as set out in this Agreement.
2. **TERMINATION**

# The Parties shall have no ground for terminating this JVA except where:

* + 1. the parties agree unanimously by way of written agreement to terminate this Agreement; or
    2. there is occurrence of a Force Majeure act/event; or
    3. the Developer is not able to finish the Project as per this Agreement; or
    4. the Developer encounters issues with the Property which the Landowner is not willing or capable of resolving promptly.

# Each Party shall be obligated to issue the other Party with a thirty (30) days’ written termination notice upon the occurrence of the events specified in clause 23.1 above.

* 1. In the event that this JVA is terminated pursuant to clause 23.1 above, the Landowner shall compensate the Developer for the cost of any infrastructure built by the Developer on the Land Owner’s instructions pursuant to the terms of this JVA in such amount as shall be mutually agreed in writing by the Developer and the Landowner or, failing agreement, as shall be determined by the Arbitrator as provided for in Clause 20 above.
  2. Each Party shall return to the other Party any documents in its possession which belong, contain or record any of the Confidential Information of the other Party.
  3. Subject as provided in this clause, and except in respect of any accrued rights, none of the Parties shall be under any further obligations to the other Party.

1. **NOTICES**
   1. Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and in the English language.
   2. Except as specifically provided elsewhere in this Agreement, all notices required or permitted to be given under this Agreement shall be in writing and shall be sufficient if properly addressed and shall be deemed to have been properly served if:
      1. It is hand delivered to the other party’s registered office or residential address during normal working day, and during working hours with a copy to the party’s Advocates;
      2. sent by email, upon receipt of transmission confirmation by the sender;
      3. If sent by prepaid post or registered mail within fourteen (14) working days from the date of posting using the correct address herein.
      4. Notwithstanding anything contained in this Agreement, any notice that is intended to be served to a party under this Agreement be deemed to have been duly and validly served if it is also sent by email and hand delivery to the intended receipt’s advocates.
   3. Either party may change its address by notice in writing to the other party.
2. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with Kenyan law.

1. **AMENDMENT**

No amendment or variation of this Agreement shall be of any force or legal effect unless reduced to writing and signed by all parties and their duly authorized representatives.

1. **NO WAIVER**

No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either Party under, or pursuant to, this Agreement shall constitute a waiver by that Party of that or any other right, power or remedy.

1. **INVALID CLAUSES**

If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction the legality and enforceability of the other provisions shall not be affected nor shall it affect the enforceability of that provision in relation to any others person or in any other jurisdiction. The Parties shall substitute and negotiate in good faith, if necessary, new provisions under reasonable terms and conditions and in compliance with the intentions of the Parties contained herein to replace the invalid, illegal or unenforceable provision and if such terms shall be agreed, this Agreement shall be amended accordingly.

1. **COSTS**

Except as otherwise provided in this Agreement, each Party shall bear its own costs in connection with:-

1. the negotiation, preparation, completion and implementation of this Agreement; and
2. preparation of any subsequent agreements, deeds of variation, indemnities and all other documents required to give effect to the terms of this Agreement.
   1. Except as expressly provided under this Agreement or agreed between the Parties in writing, each Party shall be responsible for meeting all costs and expenses incurred in the fulfillment of its specific obligations under this Agreement.
3. **ENTIRE AGREEMENT**
   1. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all other agreements statements representations or warranties made by or between the Parties or any of them concerning the subject matter herein.
   2. This Agreement constitutes legally valid, binding obligations of the of the party enforceable against it in accordance with its terms and each such ancillary agreement or document to which it is a party will constitute its legal, valid and binding obligations enforceable against it in accordance with its terms.

**IN WITNESS WHEREOF** the Parties hereto have signed this agreement the day and year first hereinabove written.

**SIGNED** by the Landowner )

**XXXXXXXXXX** )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) **XXXXXXXXXXXX**

in the presence of: - )

)

)

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)

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………………………………….. )

**ADVOCATE**

**Certificate of Attestation**

**I CERTIFY** that **XXXXXXXXXXX** appeared before me on the ……………. day of …………………… 2019 and being known to me, acknowledged the above signature or marks to be hers and that she had freely and voluntarily executed this Agreement and understood its contents.

………………………………….…………………..

**Advocate of the High Court of Kenya**

**SEALED** with the Common Seal of the Developer)

**ZZZZZZZZZZZZZZZZZZZZ** )

in the presence of: )

)

Director: )

Name: )

Signature: )

)

Director/Secretary: )

Name: )

Signature )

)

**Before me: -** )

)

)

)

)

**Advocate**  )

**Certificate of Attestation**

I **CERTIFY** that ………………………………, a Director and ………………………………………… another Director/Company Secretary of the Developer appeared before me on the ……………. day of ……………………, 2016 and being known to me/identified to me by………. acknowledged the above signatures or marks to be theirs and that they had freely and voluntarily executed this Agreement and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

**Drawn By:**

**CM Advocates LLP**

I & M Bank House, 7th Floor

2nd Ngong Avenue

P.O. Box 22588-00505

**Nairobi.**