**SALE AGREEMENT**

**DATED \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_**

**-Between-**

**TOFAUTI LIFESTYLE LIMITED**

**(AS THE “VENDOR”)**

**-And-**

**KUSH GUPTA T/A IMPEX VYAPAR**

**(AS THE “PURCHASER”)**

**-Relating to the sale of-**

**TOWN HOUSE NUMBER 76**

**ERECTED ON PROPERTY REGISTERED AS LAND REFERENCE NUMBER 12825/209 (ORIGINAL NUMBER 12825/198/13)**

**(AS THE “PROPERTY”)**

**Drawn By:**



**HEAD OFFICE**

**PAMSTECH HOUSE, 4TH FLOOR**

**WOODVALE GROOVE, WESTLAND**

**P. O. Box 2497 – 00606**

**Nairobi**

[www.nka.co.ke](http://www.nka.co.ke)

**Our Ref: NK-1401/01/C/INEZA/16/2020/16**

**SALE AGREEMENT**

**THIS AGREEMENT FOR SALE** is made this ­­­\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ Two Thousand and\_\_\_\_\_

**BETWEEN**:

1. **TOFAUTI LIFESTYLE LIMITED** a limited liability company incorporated in Kenya of Post Office Box Number 16885-00100, Nairobi, Kenya (the “**Vendor**” which expression shall where the context so admits include its successors and assigns) of the one part; and
2. **KUSH GUPTA trading as IMPEX VYAPAR** of Post Office Box Number 63169 - 00619, Nairobi (the “**Purchaser**” which expression shall where the context so admits include her personal representatives and assigns) of the other part.

## WHEREAS:-

1. The Vendor is registered as proprietor of the Fee simple interest of ALL that parcel of Land known as Land Reference Number 12825/209 (Original number 12825/195/13) as more particularly described in the Schedule I hereunder (hereinafter referred to as ‘the Land’).
2. The Vendor is in the process of developing on the Land approximately **one hundred and twenty four (124)** semi-detached townhouses in the form of five bedroom, four bedroom, three bedroom and two bedroom townhouses together with pathways, driveways, parking areas, gardens, swimming pool and other ancillary amenities to be known as **Ineza** (the “Estate ”)in accordance with the Building Plans.
3. The Purchaser is desirous of taking ownership of a three bedroomed town house in the Development known as Townhouse No. 76 which for identification purposes only delineated and marked 76 on the Plan to be registered at the Registry of Documents at Nairobi (“the Townhouse”) together with the right to use two parking space, the compounds, the gardens and other facilities subject to the terms and conditions of this agreement and by way of a long term Lease and for a consideration of the lease premium/Purchase Price and subject to the other terms and conditions hereinafter contained.
4. The Lease shall be in a standard form to be prepared by the Vendor’s Advocates and the costs of preparation and registration thereof shall be borne by the Purchaser.
5. The Vendor shall cause a limited liability Estate management company and Three limited liability Court Management Companies to be incorporated for the management of the Estate (hereinafter jointly called the “**Management Company”)** for the purpose of managing and maintaining the Estate, to the intent that each Purchaser be allotted One share in a Court management Company, the court management companies shall hold all the shares in the Estate Management Company and the Estate Management Company shall hold the reversionary interest in the said land on behalf of the Purchasers,.
6. The Vendor is in the process of procuring a change of user over the Property to multi – dwelling units (the land reference number of the Property may change upon issuance of the new Grant endorsed with the change of user)

**NOW THIS AGREEMENT WITNESSETH:**

1. **Definitions and Interpretations**
   1. In this agreement and in the Schedules hereto, the following words and expressions (save where the context requires otherwise) bear the following meanings:-
      1. **“Architect”** means the architect engaged by the Vendor to construct and erect the Townhouses and develop the Estate;
      2. **“Building Plans”** means drawings, floor plans ( including specifications relating to the construction of the Property), bills of quantities and other documents prepared by the Vendor and the Vendor’s Architect and approved by the appropriate County Authority (ies) as the same may be supplemented, replaced, added to or revised by the Vendor from time to time as provided herein) showing and describing the works to be carried out by or under the direction of the Vendor;
      3. **“Certificate of Practical Completion”** means the certificate issued by the Architect to the effect that, in the Architect’s opinion, the Works have reached a stage where they can be used for the purpose for which they were built;
      4. **"Common Parts"** meaning assigned in the Lease;
      5. **“Completion Date”** means 18 months from the estimated Commencement Date or the twenty first (21st) day after the County Government of Kiambu grants and issues the Certificate of Occupation of the Estate, whichever shall be the later date;
      6. **“Defects Liability Period”** means Six (6) months from the date of issuance of the Certificate of Practical Completion;
      7. **“Estimated Commencement Date”** means 1st September 2020
      8. **“Estimated Completion Date”** means 28th day of February, 2022;
      9. **‘Estate’** means the entire residential estate comprising of One Hundred and Twenty Four (124) semi-detached Townhouses, gardens, estate roads and common amenities;
      10. **“Insured Risks”** means loss or damage by fire lightning explosion aircraft (including articles dropped from aircraft) riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes, tanks and other apparatus and impact by road vehicles;
      11. “**Lease**” means a lease or a sub- lease for the Premises;
      12. **“Premises”** means all that Three bedroom town house erected on the Land, a known as **Unit Number 76** Described in the floor plans registered at the Registry of Documents in Nairobi as Volume……..……… Folio……………… and File……………….;
      13. **“Purchase Price”** means the sum of **Kenya Shillings Twenty Million only (Kshs. 20,000,000)** payable as provided for herein under;
      14. **“Purchaser’s Advocates”** Disha Ananand of Mobile Phone Number 0756787798 and Email Address; dishaanand21@gmail.com
      15. **“Vendor’s Advocates”** means Namasaka & Kariuki Advocates, Pamstech House, 4th Floor and of P.O. Box 2497-00606, Nairobi;
      16. **“Share Price”** means the sum of **Kenya Shillings Five Thousand (Kshs. 5,000.00)** being the value of one (1) share in the Court Management Company payable by the Purchaser to the Vendor under the provisions of clause 9;
      17. **‘Service Charge’** means the sum of **Kenya Shillings** **Twelve Thousand** (**Kshs. 12,000.00)** (or such other amount as the Management Company shall prescribe from time to time) per month payable by the Purchasers being contribution towards the collective account/fund for the use and account of the Management Company in accordance with the provisions of the Lease.
      18. **Vendor’s Appointed Agents”**  means Messrs HassConsult Limited, ABC Place, Waiyaki Way and of Post office Box 14090 – 00800 Nairobi;
      19. **“Works”** means the development of the Land as described in the Building Plans;
      20. The expression **"the Vendor"** includes its successors in title and assigns; and
      21. The expression **"the Purchaser"** where the Purchaser is not a limited liability company includes the personal representatives and permitted assigns of the Purchaser and where the Purchaser is a limited liability company includes its successors in title and assigns.
   2. In this Agreement, unless where the contexts does not so admit:-
      1. words importing the singular number also include the plural number and vice-versa;
      2. words importing the masculine gender include the feminine gender and the neuter gender; and
      3. Where there are two or more persons included in the expression "the Purchaser", covenants and agreements expressed to be made by the Purchaser shall be deemed to be made by such persons jointly and severally and any act default or omission by the Purchaser shall be deemed to mean any act default or omission by anyone or more of such persons.
   3. The headings and clauses and sub clauses are for convenience only and shall not affect its construction and unless otherwise stated the references to clauses and sub clauses are to clauses and sub clauses of this agreement.
2. **Agreement To Sell And Purchase**
   1. The Vendor shall sell and the Purchaser shall purchase the Premises at the Purchase Price in accordance with the terms of this Agreement.
   2. The sale of the Premises is subject to the Law Society Conditions of Sale (1989 Edition) in so far as they are not inconsistent with the terms and conditions of this Agreement or specifically hereby excluded.
   3. The Premises is sold with vacant possession to be granted upon the full Purchase Price Closing Costs and all outgoings including interest having been paid in full by the Purchaser and the Vendor being entitled to the unconditional release of the same.
   4. The Premises is sold subject to:
      1. The covenants, terms, conditions, stipulations, restrictions and rights as shall be provided and reserved in the Lease;
      2. The Acts Special Conditions and other matters (if any) contained in the Certificate of Title;
      3. The legislation, reservations, stipulations, conditions and other covenants referred to or implied in the title to the Land;
      4. All subsisting easements, quasi-easements and rights of way (if any); and
      5. Any provisional liability or assessment for road or sewerage charges;

**BUT** otherwise free from encumbrances.

1. **The Works**

The Vendor shall:

* 1. procure, at its own cost and expense, all approvals consents licences permits necessary or relevant to the carrying out of the works from any local or other competent authority which may from time to time be necessary to enable the Vendor lawfully to commence and to carry out the Works and each and every stage or phase of the Works;
  2. carry out and complete or cause to be carried out at its own cost risk and expense the Works in a proper and workmanlike manner in accordance with the Building Plans using materials and workmanship of the quality and standard therein specified provided that where and to the extent that approval of the quality and materials or the standard of workmanship is a matter for the opinion of the Architect such quality and standards shall be to the reasonable satisfaction of the Architect;
  3. use all reasonable endeavours to carry out the Works to such a stage as would entitle the Architect to issue the Certificate of Practical Completion and the County Government of Kiambu to issue an Occupation Certificate not later than the Estimated Completion Date provided that if the carrying out of the Works in such manner is delayed beyond the Estimated Completion Date and in the opinion of the Architect such delay is attributable to factors beyond the control of the Vendor including but not limited to exceptionally adverse weather conditions, riots, civil commotion, strikes or lockouts affecting any persons employed by or behalf of the Vendor in relation to the works, inability to secure such goods or materials as are necessary to the proper carrying out of the works or delays in obtaining the same caused by the Vendor’s contractors or suppliers, procedures and delays involving the obtaining of any necessary licences permits approvals or consents in relation to the Works, the Vendor shall be entitled to an extension of time as shall be deemed by the Architect to be necessary for the works to be carried out to a stage where the Certificate of Practical Completion and the said Occupation Certificate can be issued and the Vendor shall not be liable to the Purchaser for any loss or inconvenience suffered by the Purchaser as a result of such delay and the Purchaser shall not be entitled to a reduction of the purchase Price payable;
  4. insure the Estate against the Insured Risks (to the extent that insurance is available against such risks) and such other risks as may be reasonable in the opinion of the Architect and shall when so requested produce to the Purchaser all policies and receipts for premiums; and
  5. Comply with all the requirements and recommendations of the insurers and shall not do or permit to be done anything that could cause any policy of insurance on or in relation to the Estate to become void or voidable wholly or in part.
  6. The Vendor shall have the right to substitute materials as near thereto as possible of the same quality or as near thereto as possible in each respect in lieu of those that may be contained or referred to in the Building Plans or other information provided to the Purchasers by the Vendor if in the Vendor’s absolute and sole discretion the Vendor deems it expedient so to do and to make reasonable modifications to the said Building Plans in such manner as may be necessary as a result of the use of such substituted materials as aforesaid or in accordance with the requirements of any competent authority.
  7. During the course of construction of the Estate the Purchaser shall not interfere with the construction of the Premise or the Estate in any manner and will not give or issue any instructions to any of the persons working on the Land. The Purchasers shall only visit the Land at the time and in a manner specified by the Vendor subject to the contractor undertaking the development of the Estate first having approved such visits. The Purchaser acknowledges and agrees that any visitation made on the Land by the Purchaser or the Purchaser’s servants agents invitees or representatives shall be entirely at risk of the Purchaser and the Purchaser’s servants, agents, invitees or representatives (as the case may be) and the Vendor shall have no liability to any such person for any loss, damage, injury or fatality suffered or incurred by any such person and the Purchaser further acknowledges and accept on the Purchaser’s behalf and on behalf of the Purchaser’s servants agents invitees and representatives that the Vendor has no operational control of the Land for as long as the Vendor’s contractor is in possession of the Land and further the Purchaser shall indemnify and hold harmless the Vendor from any loss, damage, injury or fatality suffered or incurred by the Purchaser or the Purchaser’s servants, agents, invitees or representatives on the Land.

1. **Inspection of the Building Plans** 
   1. The Purchasers admit that they have inspected the Building Plans and the Land and accept that they shall be deemed to have full knowledge of the location and properties of the Land and the Works to be carried out by the Vendor.
   2. The Purchaser admits that he/she/it enters into this Agreement as a result of his/her/their/it own inspection of the Building Plans and not in reliance upon any representation or warranty written or oral or implied by or on behalf of the Vendor.
2. **Variations to the Works**

The Vendor reserves the right to make any additions variations or substitutions to the Works including the alteration or substitution of any materials or goods to be used in connection with the Works if the Architect shall deem such alteration or variation to be necessary provided that such alterations variations or substitution shall not materially alter the Works or the quality of goods and materials as described in the Building Plans.

1. **Defects Liability**
   1. It shall be the responsibility of the Purchaser to inspect the Town house at any time after the issue of the Certificate of Practical Completion and to bring to the attention of the Vendor any shrinkage faults or defects in the Town house.
   2. The Vendor shall at its own cost and expense make good any defects shrinkages or faults which appear in the Town house within the Defect Liability Period, if in the opinion of the Architect, such defect shrinkages faults are due to the workmanship or materials not in accordance with the building plans within twenty eight days (28) days of the Vendor receiving notice of the defects shrinkages or faults from the Purchaser.
   3. The Vendor shall have the right to enter the Town house with its servants, agents, workmen, tools and equipment upon giving the Purchaser 24 hours’ notice for the purpose of carrying out such works as are referred to in clause 5.2 above.
   4. The Purchaser hereby agrees they shall have no claims for any alleged fault shrinkage or defect in the Town house howsoever arising upon the expiry of the Defect Liability Period.
2. **Architect’s Decision Final**

In all matters relating to the carrying out of the Works standard of workmanship and in authorising any variations the decision of the Architect shall be final and shall not be challenged under any provision of this agreement and upon the issue of both the Certificate of Practical Completion as well as Occupation Certificate. The Vendor shall, subject to clause 5.2 be deemed to have discharged its obligations as far as the works are concerned in full.

1. **Granting Of A Sub-Lease**
   1. In consideration of the Purchase Price the Vendor shall sell to the Purchaser the Premises by way of Lease.
   2. The Lease shall be in the form or substantially in the form of the Vendor’s standard draft Lease and no material amendments will be acceptable.
   3. The Purchaser shall assume the right of the Vendor to grant the Lease and shall not require any evidence of or raise any unreasonable objection requisition or inquiry in respect of the Vendor’s title to the Land.
2. **Payment of the Purchase Price** 
   1. All amounts payable towards the settlement of the Purchase Price shall be paid to the Vendor or the Vendor’s appointed agents directly by way of Real Time Gross Settlement (RTGS) into the following account:

**Account Name: HassConsult Limited**

**Bank: ABSA Bank Kenya PLC**

**Branch:  ABC Premier Life Centre**

**Account Number: 2035726554**

**SWIFT Code: BARCKENX**

* 1. The Purchasers shall pay to the Vendor the Purchase Price as provided in Schedule One hereto.
  2. In the event any monies herein above reserved thereof remains unpaid by the Purchaser seven (7) days after the due date for payment of the same (or if the Purchaser are being financed the undertaking is not issued on the date provided) Interest shall begin to accrue at the rate there percent (3%) per month on such outstanding amount computed from the due date (and in case the Purchaser are being financed the date when the undertaking was due) until payment in full thereof both days inclusive. The Purchaser hereby agrees that the said rate of interest payable on the Purchaser’s breach of the Purchaser’s obligations under this Agreement represents a fair and reasonable interest rate acceptable to the Purchaser in consideration of the loss to be suffered by the Vendor resulting from any breach by the Purchaser of the Purchaser’s obligations herein.
  3. The sale is net of taxes (other than capital gains tax). Payment of the Purchase Price shall be made without any withholding, deductions or set-off of any amount from or against any payment due to the Vendor. For the avoidance of doubt, in the event that any competent taxing authority shall require that a tax be levied on the Purchase Price (other than capital gains tax on the sale which, if applicable, shall be for the account of the Vendor) the result of which is to reduce the net return of the Vendor pursuant to this Agreement the Purchaser shall in addition to the Purchase Price pay amounts equal to the tax so levied.
  4. Time shall be of essence with respect to the timelines set herein above;

1. **Shares In The Management Company** 
   1. Following the registration of the Lease and after the leases of all the Other Premises have been registered the Vendor shall transfer or procure the issuing of the Share to the Purchasers.
   2. The Purchasers hereby undertakes and covenants that in the event the Purchasers shall hereafter sell the Premises such sale shall always be subject to the Purchasers also transferring the Purchaser’s Share to the new purchaser or other transferee of the Premises.
2. **Management Company**
   1. The Vendor shall cause the Estate Management Company and the Court Management Companies to be incorporated for the purpose of managing the Estate on behalf of the owners against payment of the service charge (as defined in the Lease);
   2. The Estate shall be managed in accordance with the rules and regulations (if any) promulgated from time to time by the board and the Articles of Association of the Management Company.
3. **Service Charge And Other Costs** 
   1. The Purchaser shall pay the Vendor’s Advocates legal fees plus VAT thereon as well as a proportion of the costs of forming the Management Companies (and the Holding Company (if applicable)) stamp duty and bank charges on the Agreement for Sale the Lease and share transfer costs, cost of reversion electricity and water meter installation costs registration costs and all other incidental costs and disbursements as provided in Schedule Two hereto and the Vendor’s Advocates shall thereafter arrange for the stamping and registration of the Lease at the Lands Office. The Vendor’s Advocates Legal Fees plus Vat shall be payable upon execution of the sale agreement by the Purchaser.
   2. In the event that the Government Valuer values the Premises for the purposes of stamp duty at higher value than the Purchase Price then the Purchaser shall pay such additional stamp duty assessed on the Lease of and such payment shall be made by the Purchaser to the Vendor’s Advocates within seven (7) days of demand.
   3. It is specifically agreed by the Purchaser that one of the terms of the said Lease by way of which the Premises shall be transferred to the Purchaser are that the Purchaser shall pay to the Vendor make an advance Three (3) months deposit on Service charge of **Kenya Shillings Thirty Six Thousand only (Kshs. 36,000.00)** on or before the Completion Date and in any case before the Purchaser is given possession of the Premises and the Purchaser’s share of all expenses incurred and on account of the upkeep and maintenance of the grounds of the Estate and buildings thereon including shared costs of all the common areas and staff employed for the upkeep and security and utility bills relating to the common areas and a proportion of the service charge items shall be more particularly included in the Lease together with a proportionate estimated share of all expenses in respect of common services including land rent and rates apportionments. In that regard, the initial estimated service charge shall be **Kenya Shillings Twelve Thousand only (Kshs. 12,000.00)** per month payable Three (3) months in advance being required to be made on or before the Completion Date).
   4. The stamping and registration of any Charge shall be undertaken by the Vendor’s Advocates but at the Purchaser’s cost and such stamping and registration shall only take place after the Purchaser have paid the attendant costs as provided in Schedule Two hereto.
4. **Reversionary Interest**
   1. The Parties agree that the Vendor will subject to the payments required from the Purchaser and the owners of the Other Premises as provided herein being paid in full begin the process of the transfer of the reversion expectant in the Property to the Estate Management Company within six (6) months of the last of the leases to the Other Premises being registered to the respective present and future purchasers thereof and the last of the shares in the court Management Companies being transferred accordingly. The Purchasers shall pay a proportion of the costs of transferring the reversionary interest.
5. **Special Conditions**
   1. The Vendor’s obligations and duties in respect of the carrying out and completion of the Estate and the Premises (and any additional works that may be required to be completed) shall be limited to the contractual obligations and duties contained in this Agreement and any claim by the Purchaser against the Vendor in tort is excluded.
   2. Any error, omission, misdescription misstatement or innocent misrepresentation whether contained in the Building Plans any other information given by the Vendor to the Purchaser in this Agreement the Lease or otherwise shall not invalidate this Agreement or annul the sale nor affect the obligations of the parties under this Agreement nor shall the Purchaser have the right to demand any compensation or damage as a result thereof, so long as the Vendor has made all efforts to mitigate the effect of such error, omission, misdescription misstatement or innocent misrepresentation whether contained in the Building Plans or any other information given by the Vendor to the Purchaser in this Agreement or the Lease Agreement or otherwise.
   3. The Purchaser shall fully and effectively (on a full and unqualified indemnity basis) indemnify and hold harmless the Vendor from and against any loss, cost, claim, demand, expense, proceeding and/or damage suffered or incurred by the Vendor arising in any way out of or in connection with any breach of or failure by the Purchaser to observe and perform the Purchaser’s duties and obligations under or pursuant to this Agreement.
   4. The Purchaser shall not transfer or assign their rights under this Agreement without the prior written consent of the Vendor and the Purchaser shall not without the written consent of the Vendor charge assign transfer mortgage put a caveat or restriction or encumbrance or otherwise deal with Land or the Premises.
   5. The Vendor may assign or transfer or otherwise deal with their rights in this Agreement or its interest in the Land the Estate or in the Premises in any manner whatsoever without the written consent of the Purchaser and in the event the Vendor transfers the Land the Estate or the Premises to such other transferee the Vendor shall inform the Purchaser of the same by way of written notice signed by the Vendor and the transferee. Thereafter the Purchaser shall execute a deed of novation of this Agreement with the Vendor and such other transferee and the Lease shall then be granted by such transferee.
   6. Upon execution of the Lease if there shall be any inconsistency between the provisions of this Agreement and the provisions of the Lease, the provisions of the Lease shall prevail.
6. **Completion**
   1. For purposes of completion, the Purchaser agrees that the Vendor’s Advocates shall attend to the stamping and registration of the Lease. The Purchaser accepts and understands that the process of registration at the Lands Office is not within the control of the Vendor or the Vendor’s Advocates who shall not be responsible for any delays in registration and the consequences thereof.
   2. The Purchaser shall execute the Lease and a share transfer form (if required) in triplicate and return the same to the Vendor’s Advocates within fourteen (14) days from the date of its delivery to the Purchaser’s Advocates.
   3. On or before the Completion Date the Purchasers shall deliver to the Vendor’s Advocates;
7. Certified copy of the Purchaser’s ID or the Certificate of Incorporation where the Purchaser is corporate entity;
8. Certified copies of Purchaser’s PIN Certificate;
9. Certified copies of PIN Certificate of each of the persons witnessing the affixing of the seal of the Purchaser;
10. Certified copy of the Kenya National Identity Card/Passport of the Purchaser or of each of the persons witnessing the affixing of the seal of the Purchaser;
11. Three (3) colour passport size photographs of the Purchaser or each of the persons witnessing the affixing of the seal of the Purchaser;
12. Stamp duty payment slip (if applicable);
13. Evidence of payment of the Closing Costs;
    1. The Vendor’s Advocates shall subject to compliance by the Purchaser with his obligations under this Agreement and upon registration of the Lease forward to the Purchaser’s Advocates the duly registered Lease together with other documents in the Vendor’s Advocate’s custody relating to the Premises.
    2. Within Fourteen (14) days of receipt by the Vendor’s Advocate of the duly registered Sub-Lease from the Lands Registry, the Vendor/Vendor’s Advocate shall deliver to the Purchasers/Purchaser’s Advocates the following documents:-
       1. Original and one counterpart of the duly stamped and registered Lease in respect of the Premises in favour of the Purchaser or their nominee;
       2. certified copy of the Head Title showing the registration of the Lease in favour of the Purchaser;
       3. certified copy of the Certificate of Occupation from the County Government of Kiambu;
       4. Certified copy of consent to Lease the Town house ;
       5. Certified copies of valid rates and rents clearance certificates valid for the current year of registration;
       6. stamp duty valuation form duly executed by the Vendor’s Advocates and stamped by the Government Valuer;
       7. Certified copies of the receipts in respect of payment of land rates and land rents;
       8. A share certificate in the name of the Purchaser;
       9. Copies of the Certificate of Incorporation, as well as the Memorandum and Articles of Association in respect of the Vendor and the Management Company; and
       10. The Original stamp duty declaration and pay in slip in respect of the registered Lease.
       11. Certified copy of NEMA License for the development
       12. Certified copies of the floor plan in respect to the Town house and Building plans in relation to the Property duly approved and Registered in the Registry of Documents

The documents listed in clauses 15.5 (a) to 15.5 (l) (both inclusive) are hereinafter referred to as the **“Completion Documents”**.

1. **Vacant Possession**
   1. The Purchaser shall only be entitled to possession of the Town house upon completion and provided that the Purchaser:
2. has paid entire Purchase Price and any other incidentals payable under this Agreement; and
3. has no arrears outstanding from the instalments payable up to the date of taking possession.
   1. The Purchaser hereby agrees that they will not without the prior written consent of the Vendor take or attempt to take possession of the said Town house. However, the Vendor shall give vacant possession of the Town house to the Purchaser when the Purchaser pays the entire purchase price the stamp duty and all the costs and disbursements stipulated in this Agreement, provided the Vendor provides the Purchaser with all bills and receipts of such expenses.
   2. Subject to Clause 16.1 and 16.2 above, the Vendor may at its own discretion and prior to handover of vacant possession, grant the Purchaser a right of access and use of the Town house under the terms and conditions of the License Agreement.
   3. The Purchaser shall not interfere with the carrying out of the Works in any manner and shall not give or issue any instructions to the Architect or to any other person engaged in the carrying out of the works whether directly or through agent.
   4. Risk for the Property shall pass to the Purchaser on the Completion Date notwithstanding that the Purchaser may not have taken possession of the Property PROVIDED that if the Purchaser is granted access (albeit limited access) under the License Agreement prior to the Completion Date for any reason whatsoever, including being allowed to commence with fitting out of the Property, then Risk shall pass to the Purchaser on that earlier date that limited access/possession is granted.
4. **Failure To Complete**
   1. If the Purchaser fails to fulfil his obligations under this Agreement including the obligation to complete the same and pay the Purchase Price as aforesaid and the apportioned outgoings and any other sum payable hereunder (and time shall be of the essence for the obligations which the parties hereby agree and declare to be a fundamental term of the Agreement) then:
      1. The Vendor shall be entitled to serve a notice in writing upon the Purchasers to make such payment in full within Twenty One (21) days from the date upon which such notice is served on the Purchaser. If the Purchaser shall fail to make such payment before the expiry of the said notice then the Vendor shall be entitled at its sole discretion either to extend such period for payment or to rescind this Agreement by notice in writing to the Purchaser.
      2. In the event the Vendor shall extend the time for payment the Purchaser shall pay the Vendor interest at the Rate of 3% per month on any moneys due under this Agreement remaining unpaid at the rate specified herein computed from the date such payment is due until the date of payment in full both days inclusive and for the avoidance of doubt the Purchaser hereby agree that such interest shall automatically start accruing immediately any payment which is due is not paid on the due date.
   2. If the Vendor terminates this agreement under or pursuant to clause 17.1.1. it is hereby agreed that:
      1. the Purchaser shall forfeit Ten Percent (10%) of the Purchase Price payable under Clause 9 being the agreed liquidated damages.
      2. the Vendor shall be at liberty to negotiate with any other party for the sale and purchase of the Town house on such terms and conditions as may be agreed between the Vendor and such other party and in the event that the Vendor shall enter into an agreement for the sale of the Town house with such other party and shall receive payment of the Purchase Price in full (hereinafter called “the New Agreement”) the Vendor shall return to the Purchaser such part of the Purchase Price as shall have been paid by the Purchaser as at the date of termination without interest (less the deposit forfeited by the Purchaser) and after deduction therefrom of all costs charges and expenses incurred by the Vendor in connection with the negotiation and granting of the rights under the New Agreement any other sums which may be lawfully due from the Purchaser to the Vendor including interest which shall notwithstanding rescission nevertheless continue to be paid by the Purchaser on the unpaid balance of the Purchase Price until the execution of the New Agreement and payment of the Purchase Price payable thereunder.
      3. the Purchaser shall not be entitled to any profit made by the Vendor under the terms of the New Agreement.
   3. If the Vendor fails to comply with its obligations under this Agreement the Purchaser may without any prejudice to their rights and remedies provided under the law;
      1. give the Vendor twenty one (21) days’ notice in writing to comply with its obligations and such notice shall specify the default and require the Vendor to make it good within twenty one (21) days of such notice (time being of the essence) and if the Vendor then fails to comply with the notice, the Purchaser may at their own discretion rescind this Agreement and seek such legal redress as may be suitable or appropriate. The Vendor shall further refund the purchase price or any part thereof paid by the Purchaser within Twenty One (21) of notification of the rescission.
      2. If the Vendor fails to maintain the required rate of construction progress due to factors not covered under clause 2.4 or Clause 15 of this Agreement, the Vendor he shall without prejudice to any other right or remedy available under the law, pay a delayed completion penalty to the Purchaser at the rate of Five percent (5%) per annum of the Purchase Price of the Unit. The delayed construction penalty shall be prorated monthly for every month completion delays and or the works remains incomplete.
5. **Force Majeure**
6. 1. Neither Party shall be liable in respect of any delay in performing, failure to perform, or failure to adequately perform any of his or its obligations hereunder in consequence of any act, cause or event which;
      1. was not caused or precipitated by his or its negligence; and
      2. could not have been prevented by his or its reasonable diligence, including without limitation;
      3. any act of God;
      4. any war or hostilities (whether war be declared or not);
      5. any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions;
      6. any actions or inactions of any government or any agency or department;
      7. any act of terror;
      8. any storms, floods or other inclement, weather, earthquakes, subsidence, epidemics or other natural physical disasters; and
      9. fire, accident, explosion.

(Hereinafter called a “**Force Majeure Event**”) for so long as and to the extent that the effects of the Force Majeure Event continue.

1. **Restriction on Resale or Assignment**

19.1 Prior to the completion of the purchase and registration of the Lease in favour of the Purchaser, the benefit of this Agreement is personal to the Purchaser and the Purchaser shall not assign, charge, underlet, share, part with or otherwise in any way whatsoever dispose of or deal with their interest under this Agreement or any part thereof or any share therein without the prior written consent of the Vendor.

19.2 In case of consent by the Vendor as provided for under Clause 16.1, the Purchaser shall procure the following to the satisfaction of the Vendor;

19.2.1. A novation agreement the terms of which shall be approved and be acceptable to the Vendor and the Vendor’s Advocates) is entered into with the New Purchasers (the “Novation Agreement”) in respect of this Agreement pursuant to which the Purchasers shall extinguish all its rights and obligations under this Agreement and transfer such rights and obligations to the New Purchasers; and

19.2.2. all costs, charges and expenses incurred by the Vendor including without limitation the Vendor’s advocates legal fees in connection with the Resale shall be payable by the New Purchaser upon execution of the novation agreement.

1. **Agreement not to operate as a demise**

This agreement shall not operate or be deemed to operate as a demise of the Town house.

1. **Dispute Resolution**
   1. If a dispute arises out of or in connection with this agreement, including any question as to its existence, interpretation, validity or termination the parties shall seek to resolve the matter in dispute by good faith negotiations between them and failing agreement after 21 days from the commencement of such negotiations the parties agree to immediately refer the dispute to arbitration.
   2. The arbitration shall be conducted by a single arbitrator who shall be an Advocate of not less than five (5) years standing appointed by the Chairman of the Kenya Chapter of the Chartered Institute of Arbitrators and agreed on by the Protagonists.
   3. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the Kenya Chapter of the Chartered Institute of Arbitrators and subject to and in accordance with the provisions of the Arbitration Act, 1995 subject to parties meeting their appointed advocates costs as during the Arbitration process.
   4. To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the parties.
2. **Miscellaneous Provisions**
   1. No delay in exercising or omission to exercise any right, power or remedy available to the Purchaser or the Vendor under this Agreement shall impair any such right, power or remedy or be construed as a waiver thereof or as acquiescence in default nor shall any action of the Purchasers or the Vendor in respect of any default or any acquiescence in any default affect or impair any right, power or remedy of the Purchasers or the Vendor in respect of any other default;
   2. The rights and remedies provided for herein or in any document to be executed pursuant hereto shall be in addition and without prejudice to any other rights or remedies arising by operation of statute, common law or otherwise;
   3. This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.
3. **Notices**

Any notice under this agreement shall be in writing and any notice to the Purchasers shall be sufficiently served if addressed to the Purchasers sent by registered post to the Purchasers’ last known address in Kenya and any notice to the Vendor shall be sufficiently served if sent to the Vendor by registered post to its registered office and any notice sent by registered post shall be deemed to have been served within seven (7) days following the day on which it is posted.

1. **Amendment**

No amendment to this Agreement shall be effective unless signed in the same manner as this Agreement.

1. **No Warranty**

The Parties confirm that they have willingly entered into this Agreement without any undue influence or representation or warranty except as provided in this Agreement.

1. **Entire agreement**

This Agreement constitutes the whole Agreement between the parties hereto and no variations thereof shall be effective unless made in writing and signed by all the parties. This Agreement supersedes and replaces any Agreement whatsoever that may have subsisted between the parties hereto in any way relating to the subject matter hereof.

1. **Warranty**

The vendor Warrants and confirms that the Property is not on a buffer zone, road reserve or public land and its ownership thereof is not subject to any challenge whatsoever and shall indemnify the Purchaser as a result of breach of this warranty.

**SCHEDULE ONE**

* + - 1. **The Property** Town house Number **76 measuring 1422.33 square feet** erected on **LR No. 12825/209.**
      2. **Purchase Price** Kenya Shillings **Twenty Million Only (Kshs. 20,000,000.00).**

2.1. **Deposit** An initial sum of **Kenya Shillings One Million, Six Hundred Thousand (Kshs.1, 600,000/-)** only being the booking fee of Eight percent (8%) of the Purchase Price (receipt of which the vendor acknowledges) shall be paid on or before execution of the Letter of Offer/Reservation Form by the Purchaser to the Vendor’s appointed agent who shall confirm official receipt of the same.

2.2. **Balance of Purchase Price** The balance of the Purchase Price being **Eighteen Million, Four Hundred Thousand (Kshs. 18,400,000.00)** shall thereafter be paid by the purchaser to the vendor’s appointed agent on or before completion./ as follows:

* + 1. On or before the execution of this sale agreement the Purchaser shall pay a sum of **Kenya Shillings Two Million, Four Hundred Thousand (Kshs.2,400,000/-)** being twelve percent (12%) of the Purchase Price;
    2. On or before 31st December, 2020, the Purchaser shall pay a further sum of **Kenya Shillings Two Million Eight Hundred Thousand (Kshs.2,800,000/-)** being fourteen percent (14%) of the Purchase Price;
    3. On or before 31st March, 2021, the Purchaser shall pay a further sum of **Kenya Shillings Two Million Eight Hundred Thousand (Kshs.2,800,000/-)** being fourteen percent (14%) of the Purchase Price;
    4. On or before 30th June, 2021, the Purchaser shall pay a further sum of **Kenya Shillings Two Million Eight Hundred Thousand (Kshs.2,800,000/-)** being fourteen percent (14%) of the Purchase Price;
    5. On or before 30th September, 2021, the Purchaser shall pay a further sum of **Kenya Shillings Two Million Eight Hundred Thousand (Kshs.2,800,000/-)** being fourteen percent (14%) of the Purchase Price;
    6. On or before 31st December, 2021 the Purchaser shall pay a further sum of **Kenya Shillings Two Million Eight Hundred Thousand (Kshs.2,800,000/-)** being fourteen percent (14%) of the Purchase Price;
    7. The final instalment on the Purchase Price of **Kenya Shillings One Million, Five Hundred and Sixteen Thousand (Kshs.2, 000,000/-)** only being Ten percent (10%) of the Purchase Price shall be paid on or before the Completion Date.

**SCHEDULE TWO**

**TOWN HOUSE NO. 76**

**SALE AND PURCHASE OF TOWN HOUSE NUMBER 76 AT INEZA**

**PRICE KSHS.20, 000,000.00**

|  |  |  |
| --- | --- | --- |
|  | **PARTICULARS:** | **AMOUNT IN KSHS.** |
|  | 1. Legal fees payable calculated at 1% of the purchase price............................................................................... 2. V.A.T on the Legal Fees @14%....................................... 3. **Total……………………………………………………………** | 200,000.00  28,000.00  **228,000.00** |
|  | Stamp duty on the Sale Agreement | 500.00 |
|  | Stamp duty on the Lease to be calculated @ 4% of the Value to be assessed by the Government Valuer | TBA |
|  | Bank Charges on payment of Stamp duty. | 500.00 |
|  | Registration and Valuation incidentals. | 25,000.00 |
|  | Consent to lease | 4,000.00 |
|  | Registration cost for the registration of the floor plan | 1,000.00 |
|  | Apportioned share in the formation of the Management Company | 5,000.00 |
|  | Apportioned share in the transfer and registration of the Reversionary Interest and the general restructuring of the management company | 20,000.00 |
|  | Purchase of One (1) share in the Court Management Company | 5,000.00 |
|  | Water and Electricity meter deposit | 10,000.00 |
|  | Three month’s deposit on service charge at the rate of Kshs12,000./- per month. | 36,000.00 |
|  | Initial service charge | 36,000.00 |
|  | Disbursements | 15,000.00 |
| **TOTAL:** exclusive of stamp duty on the Transfer | | **386,000.00** |

*\* Stamp duty amount is 4% of the Purchase price but subject to valuation by the Government Valuer.*

**IN WITNESS WHEREOF** the Vendor and the Purchaser have set their respective hands hereunto the day and year first hereinbefore written.

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

**TOFAUTI LIFESTYLE LIMITED** )

in the presence of: )

)

)

Director: )

)

)

)

**PP/ID NO. ……………………………………....**  )

**PIN. ……………………………………………...** )

**SIGNATURE. …………………………………...** )

)

**CERTIFICATION**

“I …………………………………………… an Advocate of the High Court of Kenya of Admission Number ……………………………….. and Practising Certificate Number ……………………………………… certify that I was present and saw the Directors/Secretary of the Vendor **TOFAUTI LIFESTYLE LIMITED** duly affix its Common Seal to this Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Advocate**

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

**KUSH GUPTA t/a IMPEX VYAPAR** )

)

)

)

)

)

)

)

**PP/ID NO. ……………………………………....**  )

**PIN. ……………………………………………...** )

**SIGNATURE. …………………………………...** )

**in the presence of:** )

**CERTIFICATION**

“I …………………………………………… an Advocate of the High Court of Kenya of Admission Number ……………………………….. and Practising Certificate Number ……………………………………… certify that I was present and saw the Purchaser **KUSH GUPTA t/a IMPEX VYAPAR** duly execute this Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Advocate**

###### Drawn By:

****

(**Our Ref: NK-1401/01/C/INEZA/16/2020/16)**