

# **TENANCY AGREEMENT**

**DATED 1<sup>ST</sup> JUNE 2020**

**-BETWEEN-**

**EMKAY BUILDERS LIMITED  
(THE “LANDLORD”)**

**-AND-**

**CBMI (KENYA) CONSTRUCTION COMPANY LIMITED  
(THE “TENANT”)**

**-RELATING TO -**

**HOUSE NUMBER 1  
KAPUTEI COURT, LAVINGTON ESTATE  
ON LAND REFERENCE NO. 3734/393  
NAIROBI**

**Drawn By: -**

**CM Advocates®**

I & M Bank House, 7<sup>th</sup> Floor

2<sup>nd</sup> Ngong Avenue

P.O. Box 7879-00200

**Nairobi.**

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

## **TENANCY AGREEMENT**

**THIS TENANCY AGREEMENT** is made the First day of June, Two Thousand Twenty **BETWEEN:**

- (1) **EMKAY BUILDERS LIMITED** of Post Office Box Number 39703-00623, Nairobi, Nairobi in the Republic of Kenya (hereinafter called the “**Landlord**”) which expression shall where the context so admits include her personal representatives and assigns of the one part; and
- (2) **CBMI(KENYA) CONSTRUCTION COMPANY LIMITED c/o ZHOU LIANG** of **Passport no. E94080520 of Post Office Box Number 26604-00100**, Nairobi (hereinafter called the “**Tenant**”) which expression shall where the context so admits include his personal representatives and assigns of the other part.

**WHEREAS: -**

- (A) The Landlord is the registered proprietor of ALL THAT property known as House Number 1, erected on L.R. No. 3734/393 Kaputei Court, Lavington, Nairobi (hereinafter referred to as “the Premises”).
- (B) The Landlord has erected or caused to be erected on the Land several Apartments with the usual conveniences.
- (C) The Landlord has agreed to let and the Tenant has agreed to Agreement the Premises (a term hereinafter defined) for the Term at a monthly Rent and upon the terms and conditions set forth in this Agreement.

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1. DEFINITIONS**

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings: -

- (a) “**Business Day**” means any day (other than Sunday) on which commercial banks in Nairobi, Kenya are open for the conduct of banking business;
- (b) “**Commencement Date**” means the First Day of June, Two Thousand Twenty;
- (c) “**Interest**” means the rate of Ten percent (10%) of the outstanding balance after the 5<sup>th</sup> day of becoming due whether formally demanded or not;
- (d) “**Land Act**” means the Land Act (Act No.6 of 2012);
- (e) “**Land Laws**” means together the Land Act and the Land Registration Act any subsidiary legislation, rules and regulations promulgated thereunder and any practice directions issued pursuant to the Land Act and the Land Registration Act;
- (f) “**Land Registration Act**” means the Land Registration Act (Act No. 3 of 2012);
- (g) “**Premises**” means all that House number 1 in the building erected on Land Reference number 3734/393;
- (h) “**Rent**” means the sum of Kenya Shillings Two Hundred and Sixty Thousand (Kshs. 260,000/-) per month payable as per the provisions of Clause 3; and

- (i) **“Term”** means the minimum period of one years commencing from 1<sup>st</sup> June, 2020.
- 1.2. References to any right of the Landlord to have access to the Premises shall be construed as extending to any superior Landlord, any charge of the Premises and all persons authorized by the Landlord, superior Landlord and charge.
- 1.3. References to "consent of the Landlord" or words to similar effect mean consent in writing signed by or on behalf of the Landlord.
- 1.4. References to any clause or schedule without further designation shall be construed as a reference to the clause or schedule of this Agreement so numbered.
- 1.5. Words importing one gender shall be construed as importing any other gender.
- 1.6. Words importing the singular shall be construed as importing the plural and vice versa.
- 1.7. Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.
- 1.8. Save as otherwise stated references to numbered clauses and schedules are references to the clauses and schedules in this Agreement which are so numbered.
- 1.9. The clause and schedule headings do not form part of this Agreement and shall not be taken into account in its construction and interpretation.

## **2. GRANT OF LEASE**

The Landlord grants and Leases to the Tenant the Premises for the Term and subject to all rights, easements, privileges, restrictions, covenants and stipulations of whatever nature affecting the Premises and excepting and reserving to the Landlord, her servants, agents and licensees a similar right whether before or after the execution of this Agreement.

## **3. RENT**

- 3.1. The rent payable in respect of the Premises shall be a monthly rent of **Kenya Shillings Two hundred and sixty thousand (Kshs. 260,000/-)** and the same shall become due and payable from the Commencement Date without any deductions whatsoever, and on or before the 5<sup>th</sup> day of the new month.
- 3.2. The rent payable shall escalate at the rate of five percent (5%) annually. The rate will be reviewable on lease renewal.

### **3.3. DEPOSIT**

- (a) On commencement of this Agreement, the Tenant shall pay a security deposit equivalent to two (2) months' rent for the Premises amounting to **Kenya Shillings Five Hundred and Twenty Thousand (Kshs. 520,000/-)** which amount shall be retained by the Landlord throughout the Term as security for the due performance by the Tenant of the covenants agreements restrictions stipulations and provisions herein contained.
- (b) The Deposit shall be refunded to the Tenant without interest at the expiry or sooner determination of the Term herein and after payment by the Tenant of all sums then owing by the Tenant to the Landlord and the discharge by the Landlord of all obligations of the Tenant hereunder.

3.4. Rent security deposit paid of Kenya Shillings Five Hundred and Twenty Thousand (Kshs. 520,000/-) shall not be utilised as rent payment during the last months and or at any time of the tenancy term whatsoever.

3.5. All payments payable under this clause shall be made directly to the Landlord's nominated bank account whose details are as follows: -

**Account Name : Apricot Property Solutions Ltd**  
**Account Number : 0048628004**  
**Bank Name : Diamond Trust Bank Kenya Ltd**  
**Branch Name : Courtyard Branch**  
**Bank Code : 63-041**

3.6. In the event of transfer or cease of work in Kenya necessitating relocation of the Tenant, the Tenant shall give the Landlord a two months' written notice and upon expiration of the said notice, this tenancy agreement and anything herein contained shall cease and become void without prejudice to any claim either party may have against the other.

#### **4. THE TENANT'S COVENANTS**

The Tenant covenants with the Landlords and Property Managers:

- (a) To pay the Rent on the days and in the manner set out in Clause 3 above, not to exercise or seek to exercise any right or claim to withhold Rent or any right or claim to legal or equitable set off and, if so required by the Property Managers, to make such payments by banker's order to the bank and account which the Property Managers may from time to time nominate.
- (b) To pay all electricity, water conservancy and telephone user charges, if any in respect of the Premises throughout the Term of this Agreement or up to the date of its sooner determination.
- (c) Having satisfied itself on taking possession of the Premises that it is in good order, to be responsible for the full maintenance of it throughout the Term of this Agreement and on relinquishing the Premises to hand it back in the same condition as when taken over fair wear and tear and damage by fire not attributable to negligence or misuse on the part of the Tenant, its employees, guest or servants excepted.
- (d) To insure its personal and household belongings and indemnify the Landlord & Property Managers against any action, claim or demand arising from any loss, damage, theft or injury to the Tenant or Tenant's family, licensee, invitees or servants.
- (e) To ensure that the internal plumbing, immersion heaters, window locks, fastenings and other ancillary apparatus are in good order before taking possession of the Premises and thereafter throughout the Term of this Agreement carry out or cause to be carried out all running repairs necessary.
- (f) To repair the Premises and keep them in repair excepting damage caused by an Insured Risk other than where the insurance money is irrecoverable in consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority.

- (g) At least fourteen (14) days prior to the termination of this Agreement (howsoever it shall be terminated) to varnish the floor, paint with two coats of the best vinyl paint (and in case of wall and ceiling, at least two coats of plastic emulsion paint), as shall be deemed necessary after a joint inspection between the tenant and the Landlord or his appointed agent, all parts of the interior and terrace of the Premises as are usually painted to such specification and colour as the Landlord or his appointed agent shall in writing approve **PROVIDED THAT** Rent shall be payable up to the date all necessary work repairs and cleaning are completed and thereafter approved and passed by the Landlord or his authorized agent or agents.
- (h) To permit the Landlord, Property Managers and their agent or agents and all persons duly authorized by the Landlord and Property Managers with all necessary apparatus, appliances, machinery and materials to enter upon the Premises at all reasonable times upon giving reasonable notice for the purpose of examining the state and condition of the Premises or of taking inventories of the Landlords fixtures therein or of doing such work and things as may be properly required for any repair or renewal either of the Premises or of the electricity or water or drainage lines under any part of the Premises.
- (i) To pay for the replacement of or make good repair or restore to the reasonable satisfaction of the Landlord and Property Managers, all such articles of fixtures, fittings, furniture and effects as shall be broken, lost, damaged or destroyed during the tenancy.
- (j) To execute any repairs lawfully required to be done by the Tenant before the expiration of two (2) calendar months' notice given in writing by the Landlord or her authorized agent or agents and if the Tenant shall within such time fail to execute such work the Landlord or Property Manager may execute or cause such work to be executed and recover the cost thereof from the Tenant but without prejudice to the Landlord's right of re-entry set out in this Agreement.
- (k) To permit the Landlord, Property Manager or their agent or agents at any time during the last two (2) months of the Term of this Agreement to enter into and upon the Premises or any part of the Premises and to affix or exhibit upon any part or parts of the Premises a signboard or notice for re-letting the same and to permit intending Tenants or others with written authority from the Landlord, Property Manager or their agent or agents at all reasonable times to enter into and upon the Premises and to view the same.
- (l) To report immediately in writing to the Property Managers or their authorized agent or agents any apparent defects that may develop in the structure of the Premises.
- (m) To report immediately in writing to the Property Managers or their authorized agent or agents any signs of infestation by white ants, bees or other destructive insects or any wet or dry rot in the Premises and should the Tenant fail to report as aforesaid then the Tenant shall be liable for the cost of rectifying the additional damage due to such failure.
- (n) Not without the previous written consent of the Property Manager or their authorized agent or agents to make any alterations attach fixtures or erect additional structures in or upon the Premises or drive any nails screws or other fastenings into the floors, walls, ceiling or woodwork of the Premises.
- (o) Not to transfer, charge, assign, sub-let or part with or share possession of the Premises or any part of it without the prior written consent of the Property Manager.

- (p) Not to paint or exhibit in any window or upon any external part of the Premises any trade, professional or business notice or advertisement whatsoever.
- (q) Not to do or permit or suffer to be done anything in or upon the Premises or the garden or grounds surrounding the same which may at any time be or become a nuisance or annoyance to the Tenants or occupiers of any adjacent premises.
- (r) To keep all roofs including the roof valleys, gutters and down pipes clear of any vegetation living or dead or of anything which may interfere with the free run-off of rain water.
- (s) Not to do or permit to be done anything whereby the Landlord's policy or policies of insurance of the said Premises against loss or damage by fire or any other risks may become void or voidable or whereby the rate of premium for any insurance may be increased and to repay to the Landlord all sums paid by the Landlord by way of increased premium and all expenses incurred by her in or about any renewal of any such policy or policies where the payment of such sums or any of them shall have been rendered necessary by a breach or non-observance of this covenant and all such payments shall be added to the rent reserved and be recoverable as Rents.
- (t) To pay the fees and disbursements of the Landlord's / Property Managers advocates and all other costs and expenses incurred by the Landlord / Property Manager in relation to the preparation, execution and stamping of this Agreement.
- (u) To yield up the Premises furniture and fittings at the expiration or sooner determination of the Term hereby created in good repair, order and condition in accordance with the Tenant's covenants contained in this Agreement and with all locks keys and fastenings complete.
- (v) To be responsible for and to keep the Landlord and Property Managers fully indemnified against all damages, losses, cost, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Landlord or Property Managers arising directly or indirectly out of any act, omission or negligence of the Tenant or any person at the Premises expressly or impliedly with the Tenant's authority or out of any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this Agreement.
- (w) To use only electricity or gas cookers and not to use charcoal or paraffin or other means of cooking in the Premises;
- (x) Not to bring or keep any pet, animal, fish, bird or reptile in the said premises or any part of the Estate;
- (y) To refrain from placing any safe or heavy article in the premises without the Landlord's written consent being first had and obtained;

## **5. THE LANDLORD'S COVENANT**

The Landlord covenants with the Tenant: -

- (a) To pay the land rent or any rate or tax which may be levied on the said Property by the Government of Kenya or any other statutory authority subject to the Landlord's right of recovery.
- (b) To keep the external walls, roof and structure of the Premises in a proper state of repair and maintenance.
- (c) That the Tenant paying the Rent and performing and observing in the several covenants on its part and the conditions contained in this Agreement shall peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person or agents rightfully claiming under or in trust for the Landlord.

## **6. PROVISOS**

- (a) If and whenever during the Term the Rent or any part of it is outstanding for five (5) days after becoming due whether formally demanded or not the Tenant shall pay to the Landlord interest on the rent payable at the Interest Rate until payment in full.
- (b) If the Rent is outstanding for Fifteen (15) days after becoming due whether formally demanded or not the Tenant, his agent's servants and guests will be denied access to the Premises and the Landlord shall also have the right to disconnect electricity and water for the Premises.
- (c) If there is a breach by the Tenant of any covenant or other term of this Agreement, the Landlord may re-enter the Premises or any part of them at any time and even if any previous right of re-entry has been waived and then the Term will absolutely cease but without prejudice to any rights or remedies which may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Agreement including the breach in respect of which the re-entry is made.
- (d) The Tenant may terminate the tenancy hereby created by giving the Landlord or her duly appointed agent two (2) months' notice in writing of such wish to terminate or make a payment of two (2) month's Rent in lieu of such notice.
- (e) This Tenancy Agreement shall automatically terminate upon determination of the Term. However, upon the written request of the tenant made at least two (2) months before the expiration of the term and if there shall not at the time of such request be any breach or non-observance of any of the covenants on the part of the Tenant, the Landlord will grant to the Tenant a lease of the Premises for a further term to be agreed upon between the parties from expiration of the Term upon such terms and conditions as shall be agreed between the parties.

- (f) No liability shall attach in respect of any breach of any positive covenant (other than covenants for the payment of Rent) on the part of the Landlord or the Tenant contained or implied in this Agreement so long as they are prevented from performing the covenant by statutory restrictions, non-availability of Labour or materials or matters beyond their control except that if breach of any positive covenant occurs, the Landlord or Tenant as the case may be shall remedy the breach immediately conditions permit and in the event of any breach on the part of the Tenant not having been remedied before the expiration or sooner determination of the Term the Tenant shall forthwith upon the expiration or sooner determination of the Term pay to the Landlord such an amount as is necessary to remedy the breach.
- (g) Each of the Tenant's covenants shall remain in full force notwithstanding that the Landlord shall have temporarily waived or released any such covenant.
- (h) This Agreement embodies the entire understanding of the parties relating to the Premises and to all matters dealt with by any of the provisions of this Agreement.
- (i) Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered personally or by post, email or facsimile to the addresses shown below or to such other address as the recipient may have notified to the other party in writing. Proof of posting or dispatch shall be deemed to be proof of receipt: -
  - (i) in the case of a letter, on the third business day after posting;
  - (ii) in the case of an email, immediately the email is sent and there is no notification of a delivery failure; and
  - (iii) in the case of a facsimile on the business day immediately following the date of dispatch.

**THE LANDLORD:**

**Emkay Builders Ltd**

Address: P.O. Box 39703-00623, Nairobi

Email: rajesh@emkaybuilders.co.ke | mohan@emkaybuilders.co.ke

**THE PROPERTY MANAGER:**

**Apricot Property Solutions Ltd.**

Address: P.O. Box 38228-00623, Nairobi

Email: veeral@apricotproperty.com | anjay@apricotproperty.com

Mobile: 0722835333 | 0733814666

**THE TENANT:**

**CBMI (KENYA) CONSTRUCTION COMPANY LIMITED**

Address: P.O. Box 26604-00100, Nairobi

Email: hanxin@cbmi.com

Mobile: 0719775315



**7. IT IS HEREBY AGREED BETWEEN THE LANDLORD AND TENANT AS FOLLOWS:**

- 7.1 The Landlord or his authorized agents retain the right to enter the demised Premises to carry inspections and will first obtain permission of the Tenant to enter, such permission not to be unreasonably withheld and the tenant will also during the last months of the tenancy permit any person or persons to enter and inspect the Premises at reasonable times and upon production of an order to view from the Landlord or authorized agents.
- 7.2 If the rent shall at any time during the period of the tenancy become more than seven (7) days in arrears, whether legally demanded or not or if the tenant shall omit to perform or to observe any of the covenants herein contained then the Landlord or his authorized agents retain the right to terminate the tenancy and assume possession of the Premises immediately and take whatever action they think fit to recover the arrears of rent provided that the Landlord will first give to the Tenant Seven (7) days' notice of the breach of this Agreement and the proposed redress, which if not complied with by the Tenant within Seven (7) days, then the Landlord may take without further notice to the Tenant, whatever lawful action he thinks fit to recover the arrears of rent and/or obtain the redress required.
- 7.3 The parties agree that if the Tenant commits any act of bankruptcy, then the Landlord may terminate this Agreement by giving the Tenant not less than Two (2) months' notice, in writing. Similarly, if the Landlord is in breach of the terms of this Agreement, the Tenant may terminate this Agreement by giving the Landlord not less than Two (2) months' notice, in writing.
- 7.4 All notices in this Agreement:
- (a) shall be in writing; and
  - (b) shall either be delivered by hand or sent by pre-paid registered post to the last known address of the parties.
- 7.5 No failure delay relaxation or indulgence on the part of the Landlord in exercising the powers or rights conferred upon him in terms of this Agreement shall operate as a waiver of such powers or rights nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other powers or rights under this Agreement.
- 7.6 Any dispute difference or question which may arise between the parties to this Agreement or any of them touching upon the construction of this Agreement shall be referred to the decision of a single arbitrator to be agreed between the parties or in default of agreement within Fourteen (14) days to be appointed at the request of either of the parties by the Chairman for the time being of the Institute of Chartered Arbitrators – Kenya Branch in accordance with and subject to the provisions of the Arbitration Act (Cap 49 Laws of Kenya) or any statutory modification or re-enactment thereof for the time being in force. Any Arbitration will take place in Nairobi and will be conducted in English.
- 7.7 Each of the Parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) that he/it has executed this Agreement with the intention of binding himself/itself fully to the contents hereof.
- 7.8 The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the Laws of Kenya and the Parties hereby submit to the jurisdiction of the Courts of Kenya.

- 7.9 The terms of this Agreement supersede and replace any verbal or written agreement between the parties.
- 7.10 No modification and/or variation of this Agreement is effective unless it is in writing and signed by both parties.
- 7.11 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

## 8. ACCEPTANCE

The Tenant accepts this Agreement subject to its covenants, conditions, restrictions and stipulations.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the day and year hereinbefore mentioned.

**SEALED with the COMMON SEAL  
of the LANDLORD  
EMKAY BUILDERS LIMITED**

**In the presence of:**

\_\_\_\_\_  
)  
)  
)  
)  
)  
)  
)  
) ID/No. \_\_\_\_\_  
) PIN No. \_\_\_\_\_

**In the presence of:**

\_\_\_\_\_  
)  
)  
)  
)  
)  
)  
)  
) ID/No. \_\_\_\_\_  
) PIN No. \_\_\_\_\_

**Advocate**

)

### **Certificate of Attestation**

I **CERTIFY** that the above-named \_\_\_\_\_, being the Landlord herein appeared before me on the ..... day of ....., 2021 and being known to me/identified by ID No. .... acknowledged the above signature or mark to be hers and that she had freely and voluntarily executed this Agreement and understood its contents.

.....

**Advocate of the High Court of Kenya**

**SIGNED** by the said Tenant,

)

**In the presence of:**

)

\_\_\_\_\_

)

)

) \_\_\_\_\_

) \_\_\_\_\_

) ID/No. \_\_\_\_\_

) PIN No. \_\_\_\_\_

**In the presence of:**

)

\_\_\_\_\_

)

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) \_\_\_\_\_

) \_\_\_\_\_

) ID/No. \_\_\_\_\_

) PIN No. \_\_\_\_\_

**Advocate**

)

**Certificate of Attestation**

I **CERTIFY** that the above-named \_\_\_\_\_, being the Tenant herein appeared before me on the ..... day of ..... 2021 and being known to me/identified by ID No. .... acknowledged the above signature or mark to be his and that he had freely and voluntarily executed this Agreement and understood its contents.

.....

**Advocate of the High Court of Kenya**

**Drawn by: -**

**CM Advocates®**

I & M Bank House, 7<sup>th</sup> Floor

2<sup>nd</sup> Ngong Avenue

P.O. Box 7879-00200

**Nairobi.**