**ASSIGNMENT OF PURCHASE AND SALE AGREEMENT**

**DATED 20...**

**………………………………….**

**(THE “ASSIGNOR”)**

**AND**

**…………………………………….**

**(THE “ASSIGNEE”)**

**IN RESPECT OF**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ASSIGNMENT OF INTEREST IN THE PURCHASE OF LAND REFERENCE NUMBER …………………………………….**

**(THE “PROPERTY”)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Drawn By:**

**ASSIGNMENT OF PURCHASE AND SALE AGREEMENT**

**THIS ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** (the “**Agreement”** is made on this ……….. day of ……………………. Two Thousand and ………., **BETWEEN**:

1. **…………………………….**of Post Office Box Number ……………. in the Republic of Kenya (hereinafter referred to as the “**Seller**” which expression shall, where the context so requires, include the Assignor’s Personal representatives, heirs and permitted assigns) of the first part; and
2. **…………………………….**of Post Office Box Number ………………….in the Republic of Kenya (hereinafter referred to as the “**Assign0r**” which expression shall, where the context so requires, include the Assignor’s Personal representatives, heirs and permitted assigns) of the other part.
3. **…………………………….**of Post Office Box Number ………………….. in the Republic of Kenya (hereinafter referred to as the “**Assignee**” which expression shall, where the context so requires, include the Assignor’s Personal representatives, heirs and permitted assigns) of the last part.

Seller, Assignor and Assignee are sometimes referred herein, collectively, as the “**Parties**”

**WHEREAS**:

1. Seller and Purchaser have entered into a Purchase and Sale Agreement (“**Purchase Agreement**”), dated ……. Day of ………………, 20…., for the sale of the property described in the Purchase Agreement (“**Property**”) and known as Land Reference Number and more particularly described in the Purchase Agreement.
2. The Parties desire to enter into this Assignment to, among other things, assign the Purchaser’s rights and interests in the Purchase Agreement to Assignee and to evidence Assignee’s assumption of Purchaser’s obligations and liabilities under the Purchase Agreement.

**NOW, THEREFORE,** for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Definitions and Interpretation**

* 1. **Definitions**
     1. “**Assignee’s Advocates**” means ……………...
     2. “**Assignor’s Advocates**” means ……………….
     3. “**Assignment Consideration**” means a sum of Kenya Shilling ………………. (KShs. …………………../=) all inclusive.
     4. “**Agreement**” means the Sale Agreement dated ……………………………… under which the Assignor is offered to the purchase the Property for a sum of Kenya Shillings …………………(KShs………..)
     5. “**Property**” means ALL THAT Property comprised in Land Reference Number……………….. together with the building, structures and fixtures erected and being thereon.
     6. “**Vendor**” means the registered proprietor of the Property.
  2. **Interpretation**

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

1. words importing the singular number only shall include the plural number also and vice versa and words importing the masculine gender includes the feminine and neuter gender and vice versa;
   * 1. the expression “person” shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or unincorporate);
     2. Clauses shall be construed as references to Sections and Clauses of this Agreement;
     3. the word “tax” shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including, without limitation, value added tax, stamp duty, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and “taxation” shall be construed accordingly and the expression “competent taxing authority” means, in respect of any state or administrative division thereof, any governmental or local authority, monetary agency or central bank having power to collect or levy taxes;
     4. indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
     5. costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof.
   1. Headings to sections are for convenience only and shall not affect the construction or interpretation of this Agreement.
   2. In this Agreement any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
2. **Assignment of Purchase Agreement**

Purchaser hereby assigns and transfers to Assignee all of Purchaser’s right, title, claim and interest in and to the Purchase Agreement, the Property, and all sums paid or deposited into escrow or to Seller by Purchaser in connection with the Purchase Agreement.

1. **Assumption**

Assignee hereby acknowledges and agrees to all of the terms of the Purchase Agreement and accepts the foregoing assignment and assumes and agrees to perform all obligations of Purchaser under the Purchase Agreement, in accordance with the terms thereof.

1. **No Release.**

The assignment and assumption set forth in Clauses 1 and 2 above shall not release Purchaser from the obligation of Purchaser or Assignee to perform in accordance with the terms of the Purchase Agreement. Purchaser acknowledges that, notwithstanding such assignment and assumption, Purchaser shall remain primarily obligated under the Purchase Agreement and Purchaser and Assignee shall be co-obligors under the Purchase Agreement with joint and several liability for the performance of all obligations of Purchaser set forth thereunder, including, without limitation, the indemnification obligations of Purchaser set forth in the Purchase Agreement.

1. **Amendment to Purchase Agreement.**

The Purchase Agreement is hereby amended in the following manner:

1. The term “Purchaser” as used in the Purchase Agreement is amended to mean Purchaser and/or Assignee.
2. All exhibits to the Purchase Agreement, as so amended, shall be signed and delivered by Seller and Assignee in accordance with the terms of the Purchase Agreement.
3. **Representations and Warranties Of Assignee.**

Assignee hereby represents and warrants to Seller that each and every representation and warranty made by Purchaser in the Purchase Agreement is true and correct with respect to Assignee as of the date of the Purchase Agreement and the Completion Date (as defined in the Purchase Agreement) and such representations and warranties apply fully to this Assignment and shall survive the Deed (as defined in the Purchase Agreement). In particular, and without any limitation or affect upon the other representations and warranties made by Purchaser and Assignee under the Purchase Agreement, as amended hereunder, Assignee hereby represents and warrants to Seller that neither Assignee, nor any of his personal representatives, heirs or assignors which representation and warranty shall also survive the Completion and the delivery of the Deed (as defined in the Purchase Agreement) to Assignee. Purchaser acknowledges and agrees to be bound by the disclaimer of representations and warranties contained in the Purchase Agreement, which acknowledgment and agreement and disclaimer shall survive the Deed.

1. **Confidentiality**

Each of the Parties shall treat as strictly confidential the provisions of this Deed, the process of negotiations and all information about the other Party obtained or received by it as a result of the negotiations, entering into or performing its obligations under this Deed and shall not publish or otherwise disclose to any other person such information except where:-

* + 1. it is required during any court proceedings or by the provisions of any law, statute or by any regulatory or governmental body having jurisdiction over it.
    2. such disclosure is to its professional advisers in relation to the negotiation, entry into or performance of this Deed or any matter arising out of the same; or
    3. the information has come into the public domain through no fault of that party.

1. **Arbitration**
   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 Deed, the Parties to such dispute shall in the first instance attempt to resolve such dispute by amicable negotiation.
   2. Should such negotiations fail to achieve a resolution within thirty (30) days, 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 Law Society of Kenya 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
      5. notwithstanding the above provisions of this clause, a Party is 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. **General**
   1. Payment of any amounts payable hereunder by the Assignee shall be made free and clear of and without any set-off counterclaim or deduction whatsoever.
   2. No failure or delay to exercise any power, right or remedy by a Party shall operate as a waiver of that right, power or remedy and no single or partial exercise by that party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
   3. Each of the provisions of this Deed is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
   4. No amendment or variation to this Deed shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
   5. The construction, validity and performance of this Deed shall be governed by and construed in accordance with the laws of Kenya.
   6. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Land Act that it has executed this Deed with the intention to bind itself to the contents hereof.
3. **Entire Agreement**

This Deed contains the whole agreement and understanding between the Parties relating to the transaction contemplated in this Deed and supersedes all previous agreements (if any) whether written or oral between the parties in respect of such matters.

1. **Governing Laws**

This Deed shall be governed by and construed in accordance with Kenyan law and the Parties submit to the exclusive jurisdiction of Kenyan courts.

**IN WITNESS WHEREOF** this Deed has been duly executed by the Parties hereto as of the day and year first above written.

**SIGNED** by the Seller, )

in the presence of: )................................................................

Name. **………………..**

)I.D./Passport No....................................

)PIN No.....................................................

**Advocate** )

**Certificate of Attestation**

I……………………………………… hereby certify that I was present and witnessed **……………………..** appear before me on the ……………. day of …………………… 20……….. and being known to me/identified to me by ……………………………………………………………. acknowledged the above signature or mark to be his/hers/theirs and that he/she/they freely and voluntarily executed this Agreement and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

**SIGNED** by the Assignor,)

in the presence of: )................................................................

Name. **………………..**

)I.D./Passport No....................................

)PIN No.....................................................

**Advocate** )

**Certificate of Attestation**

I……………………………………… hereby certify that I was present and witnessed **……………………..** appear before me on the ……………. day of …………………… 20……….. and being known to me/identified to me by ……………………………………………………………. acknowledged the above signature or mark to be his/hers/theirs and that he/she/they freely and voluntarily executed this Agreement and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

**SIGNED** by the Assignee,)

in the presence of: )................................................................

) Name **………………………..**

)I.D./Passport No....................................

)PIN No.....................................................

**Advocate** )

**Certificate of Attestation**

I……………………………………… hereby certify that I was present and witnessed **……………………..** appear before me on the ……………. day of …………………… 20……….. and being known to me/identified to me by ……………………………………………………………. acknowledged the above signature or mark to be his/hers/theirs and that he/she/they freely and voluntarily executed this Agreement and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

**Drawn By:**