**JOINT VENTURE AGREEMENT**

**DATED 20..**

**-BETWEEN-**

**…………………………………**

**(THE “LAND OWNER”)**

**-AND-**

**………………………………………**

**(THE “DEVELOPER”)**

**-RELATING TO-**

**DEVELOPMENT OF ……………. (…..) APARTMENTS ON PROPERTY COMRPISED IN**

**TITLE NUMBER: …………………..**

**(THE “PROPERTY”)**

###### Drawn By:-

**JOINT VENTURE AGREEMENT**

**THIS JOINT VENTURE AGREEMENT** (the **“Agreement**”) is entered into this ……….……..day of…………….…………………., 20…. **BY AND BETWEEN**:-

1. **………………………..**, of Post Office Box Number ……………….., Nairobi (hereinafter referred to as the **“Land Owner**” which expression shall where the context so admits include the Land Owner’s personal representatives and assigns) of the first part; AND
2. **…………………………**, a private limited liability company incorporated in the Republic of Kenya and for purposes hereof 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 Land Owner and the Developer are hereinafter individually referred to as the “Party” and collectively as the “Parties”.

**WHEREAS:-**

1. The Land Owner is the registered absolute proprietor of the Property (a term defined below).
2. The Developer’s core business is real estate development in Kenya, including but not limited to joint venture real estate development, and is desirous of partnering with the Land Owner in the construction and completion within and on the Property of approximately ….. (…) apartments being made up of …………… ………….. bedroomed apartments each with a plinth area of ………….. meters (………….m2) with ample parking and other common facilities and amenities or such higher or lower number of apartment as shall be approved by the Nairobi City County.
3. The Developer has presented to the Land Owner that it has the requisite skills, competencies and financial resources to develop the Property as stated in Clause (B) above on a joint venture basis.
4. Following negotiations, the Parties have agreed to contribute their respective skills, resources and assets and enter into a joint venture arrangement for purposes of implementation of the Project (as herein defined).
5. The Parties wish to record their mutual agreement and to define their rights and obligations in relation to the proposed joint venture implementation of the Project and further set out and outline the terms and conditions that shall govern their relationship as contained in this Agreement.

**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:-

# DEFINITIONS AND INTERPRETATION

* 1. **Definitions**

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

* + 1. **“Affiliate”** shall mean, with respect to a Party, an entity which directly or indirectly controls, is controlled by, or is directly or indirectly under common control with such Party;
    2. **“Agreement”** shall mean this Agreement and its Schedule, including its recitals;
    3. **“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 the 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;
    4. **“Applicable Permits”** means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document;
    5. **“Board”** means the board of directors of the Joint Venture Company;
    6. **“Business Day”** means any day, other than a Sunday or gazetted public holiday in Kenya, on which banks are normally open for ordinary business in Nairobi, Kenya;
    7. **“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 this Agreement or otherwise howsoever;
    8. **“Completion”** means completion of the Project;
    9. **“Conditions Precedent”** means the conditions set out in Clause 2;
    10. **“Construction Documents”** means the Approved Building and Architectural Plans, all reports, sketches, drawings, models and information prepared by or on behalf of the Architect in connection with the Project;
    11. **“Consultants”** means the Project Manager, Interior Designer, Quantity Surveyor, Electrical Engineer, Project Architect, Mechanical Engineer, Structural Engineer, Financier, Parties Advocates and other professional consultants who shall be engaged by the Developer for purposes of execution and the implementation of the Project;
    12. **“Joint Venture Company”** means a limited liability company to be incorporated in the Republic of Kenya pursuant to the provisions of Clause 5 and the Parties herein shall hold shares in the Joint Venture Company proportionate to their contribution;
    13. **“Developer’s Advocates”** means ……………..;
    14. **“Director”** means a director appointed to the Board of the Joint Venture Company;
    15. **“Estate”** means the Units, fixtures, fittings, drive-ways, perimeter wall, security houses, swimming pools, common gardens and other facilities and amenities that shall be developed and erected on the Property by the Developer**;**
    16. “**Insured Risks**” means fire, lightning, explosion, riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and overflowing of water pipes, tanks and other apparatus, impact by road vehicles and such other risks as the Parties may from time to time in their absolute discretion think fit**;**
    17. **“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);
    18. **“Financier”** means a person or institution who advances financing to the Joint Venture Company or to any other Party herein in connection with the Project;
    19. **“Management Company”** means one or more management companies which shall be incorporated by the Parties for purposes of managing the Estate and providing common services and which shall also hold the reversionary interest in the Property after the registration of leases for all the units in the Estate;
    20. **“NEMA”** means the National Environment Management Authority;
    21. **“Owner’s Advocates”** means …………………..;
    22. **“Parties”** means the Land Owner and the Developer;
    23. “**Party**” shall be construed to refer to either the Land Owner or the Developer as the context may require. For purposes of this Agreement, the Current Shareholders shall be construed as a single Party and their liability under this Agreement shall be joint and several;
    24. **“Plans”** means the building plans, architectural drawings and designs of the Project as prepared by the Project Architect and approved by the Parties;
    25. **“Project”** means the construction and erection of seventy two (72) apartments, or such other higher or lower number as may be approved by the Nairobi City County, consisting of ………… …………. bedroomed apartments with a plinth area of…………….meters (………….m2) and related amenities and facilities on the Property in accordance with the Plans to be undertaken and implemented in accordance with the terms and conditions of this Agreement;
    26. **“Project Architect”** means the Architect who shall oversee the Project or such other architect or firm of architects that may be appointed by the Developer in relation to the Project;
    27. **“Project Units”** means the seventy two (72) apartments (or such lower or higher number as may be approved by the Nairobi City County (NCC)) to be constructed and erected by the Developer on the Property as per the terms of this Agreement;
    28. **“Property”** means the land comprised in Title Number: …………………….., measuring approximately …………………. Hectares or thereabouts;
    29. **“Shares”** means authorised share capital with which the Joint Venture Company is incorporated with and as shall be agreed between the Parties;
    30. **“Term”** means the period of time computed in accordance with Clause 3 or such other period as may be agreed between the Parties; and
    31. “**Units**” means the apartments in the Project and “Unit” shall refer to one apartment in the Project.
  1. **Interpretation**

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

* + 1. the singular includes the plural and *vice versa*;
    2. a person includes reference to a body corporate or other legal entity;
    3. any written law includes that law as amended or re-enacted from time to time;
    4. any Agreement or other document includes that Agreement or other document as varied or replaced from time to time;
    5. a Clause or Schedule is to the relevant clause or schedule of this Agreement ;
    6. 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.

# PARTIES’ AGREEMENT

The Parties hereby agree to enter into a joint venture and implement the Project on a joint venture basis and in accordance with the terms and conditions set out in this Agreement.

# CONDITION PRECEDENT

The validity of this Agreement is conditional upon the fulfillment or waiver of the following conditions precedents:-

* + 1. There being a clean and valid title document for the Property free from any encumbrances or legal challenges whatsoever and the understanding that any disputes or issues related to the Property would be the responsibility of the Land Owner.
    2. The Landowner ensuring that vacant possession of the Property is handed over to the Joint Venture Company.
    3. The user of the Property allowing for high density development in accordance with plans approved by the Nairobi City County and the special conditions set therein.
    4. The Land Owner and the Developer agreeing to jointly incorporate a joint venture company that will implement the development and construction of the Project.
    5. All the necessary regulatory approvals for the transaction contemplated herein being obtained from the Companies and Lands registry and/or other relevant authorities by the Developer or parties’ co-operation.

# COMMENCEMENT AND DURATION

* 1. This Agreement shall come into force on the date hereof, subject to the terms and conditions hereof, and shall remain in force for the Term unless the Parties agree otherwise in writing.
  2. The construction of the Project shall commence with a ground breaking ceremony to be held ………… (…..) months from the date hereof or such other date and time as the Parties may agree in writing subject to the Property being transferred to the Joint Venture Company and the Developer obtaining all the Applicable Permits for the Project.
  3. The expected completion date of the construction of the Project will be approximately ……………….(….) months from the ground breaking date: provided that the Developer shall get an additional grace period of ….. (..) months to complete the construction of the Project in case of any unforeseen circumstances.

1. **PROJECT**
   1. The Parties hereby agree that their only business under this Agreement shall be the implementation of the Project in accordance with the provisions of this Agreement.
   2. For purposes of the joint venture arrangement contemplated in this Agreement, the Land Owner shall contribute the Land which is worth an estimated value of Kenya Shillings ………….. (KShs………………………..) and the Developer shall contribute Kenya Shillings ………………….. (KShs………) being made up of technical skills and financial resources required to develop the Estate.
   3. The Estate shall comprise of ……….. (…. ) apartments, or such higher or lower number as approved by Nairobi City County, being made up of ………… …………bedroomed apartments each with a plinth area of …… square meters (……m2).
   4. The Estate shall comprise of the Units together with perimeter walls, a security gate, drive ways, common gardens, parking spaces, refuse house and other fixtures and fittings developed by the Developer whose further particulars are set out in the Plans.
   5. The Developer shall have the liberty at its sole and absolute discretion to engage a financier to finance the Project on behalf of the SPV with the Property being utilized to secure such financing and if the Developer chooses to do so, it shall forthwith notify the Landowner in writing and the Landowner will not unreasonably decline; provided that the engagement of such a financier shall not change or alter the parties' compensation as contained in this Agreement.
   6. It is hereby agreed and declared that there are no other objectives for the joint venture other than those set out in this Agreement and accordingly the Parties shall not represent that this Joint Venture includes or extends to or relates to any other development, land or business venture.
2. **INCORPORATION OF THE JOINT VENTURE COMPANY**
   1. The Land Owner and the Developer shall jointly incorporate a joint venture company for purposes of implementation of the Project in accordance with the provision of this Agreement and which shall operate with the aim of bringing into effect every aspect of this Agreement.
   2. The Land Owner and the Developer shall agree on a name for the joint venture company within seven (7) days from the date of execution of this Agreement and the costs of incorporating the joint venture company shall be borne by the Developer as part of the Project costs.
   3. The Parties agree and intend that the Developer shall hold ………………. per cent (..%) while the Land Owner shall hold ……………. per cent (………….%) of the shares in the Joint Venture Company being proportionate to their Unitary compensation as provided under Clause 7.
   4. The directorship and shareholding in the Joint Venture Company shall be effected through the following process;
      1. At incorporation of the Joint Venture Company, ……….. (……..) of the share capital shall be allotted to the Land Owner and his/her family member(s) to enable the Land Owner transfer the Property to the Joint Venture Company and the Parties Advocates obtain exemption from stamp duty for the transfer; and
      2. Upon transfer of the Property to the Joint Venture Company, the Parties Advocates shall restructure the joint venture company through the resignation of the Land Owner’s family member(s) as director and or shareholder, appointing the Parties’ representatives as stated under Clause 6.8 as directors and allotting …….. per cent (………) of the share capital to the Land Owner and ………. per cent (………) of the share capital to the Developer.
   5. The Parties agree that the Developer shall be mandated to open and operate a bank account for the Joint Venture Company and the Developer’s representatives shall be the sole signatories to the bank account.
   6. The Joint Venture Company is to be run in such a manner as to honour provisions contained in this Agreement and the Parties hereto shall enter into a Shareholders Agreement within seven (7) days of incorporation of the Joint Venture Company to define their respective rights, obligations and board constitution thereunder. Control and management of the joint venture company shall vest in the Board. Subject always to the provisions of this Agreement, the Board shall determine the general policy of the Joint Venture Company and the scope of its activities and operation.
   7. The Directors of the Joint Venture Company shall be the persons stated below or their alternates:-
      * 1. …………………….;
        2. …………………….;
   8. The Developer shall be mandated to appoint a Managing Director to the Joint Venture Company who shall manage its day to day operations and oversee the construction and implementation of the Project.
   9. Upon incorporation of the joint venture company, the Parties shall procure that the joint venture company executes a Deed of Adherence, agreeing to be a Party to this Agreement and give effect to the commitments contained in this Agreement which are binding or intended to be binding on it.
3. **COMPENSATION**
   1. In consideration of entering into this JVA, the Parties have agreed that the Land Owner’s contribution to the JVA will be Kenya Shillings ………… (KShs…………….) which will be paid up as Kenya Shilling ……….. (KShs…………..) upon ground breaking by the Developer and the balance thereof paid as Unitary compensation as stated under Clause 7.2.
   2. After the implementation of the Project, the resultant Units shall be shared out between the Land Owner and the Developer in proportion to their shareholding in the joint venture company with the Landowner being entitled to ……. (….) Units each valued at an estimated value of Kenya Shillings …….. (KShs…………….) and the Developer being entitled to ……… (..) Units each valued at an estimated value of Kenya Shillings …………(KShs…………….).
   3. The Developer shall have the right to either sell or not sell its Units immediately after the execution of this Agreement in order to finance part of the Project construction costs.
   4. For the avoidance of doubt the Developer’s Advocates shall be responsible for the preparation and registration of the corresponding deeds and documents relating to both the Land Owner designated Units and the Developer designated Units, provided at all times the conveyancing documents relating to the sale and/or transfer shall be standardised and shall be in the form and substance acceptable to the Board.
   5. The Parties agree that the sale of all the Units shall be handled by the Joint Venture Company and the Developer’s Advocates.
   6. All distributions under this Clause 7 shall be subject to applicable tax, including without limitation, any withholding taxes, capital gains, stamp duty all of which shall be payable by the Party to whom the distribution is made or due. In order to give effect to the foregoing, the Parties agree that the joint venture company shall be entitled to retain proceeds of sales (as applicable) or defer transfer of any Unit(s) to the extent necessary to satisfy and discharge the tax obligations and liabilities of the joint venture company arising from the distribution of the Units contemplated under this Agreement.
   7. Upon completion of the distributions as provided under this Clause, the Parties agree that the Land Owner shall transfer all his shares in the joint venture company to the Developer, and thereafter shall have no claim whatsoever with regard to the joint venture company or the Developer designated Units.
   8. The Parties shall, and hereby undertake, to pass such resolutions, take such actions, execute and do all such acts and things to give effect to the foregoing to facilitate the distributions as provided in this Clause 7 above.
4. TRANSACTION DOCUMENTS
   1. The Parties agree that the joint venture company shall appoint the Developer’s Advocates to handle for and on behalf of the joint venture company the legal transactional work for sale and transfer of the Units (including for purposes of effecting the distribution to the Parties as envisaged under Clause 7 above such services to include without limitation preparation of offer letters, sale agreements, long term leases and undertaking the valuation, stamping and registration of the relevant leases for the Units at the Land Office, on such terms applicable

for such legal services in accordance with prevailing advocates remuneration order or such other terms agreed with the Parties Advocates in writing on the understanding that, with respect to such legal services, the purchasers and/or the transferees of any such Units (including the Parties hereof for purposes of giving effect to clause 7 above) shall be responsible for paying the relevant legal fees for the legal services so rendered.

* 1. In order to give effect to the intent of the Parties under this Agreement, the Land Owner shall deliver or cause to be delivered, immediately upon execution of this Agreement, the original title documents for the Property, an executed and undated Transfer and relevant clearances and consents to transfer the Property in favour of the joint venture company, and subsequently for the Parties Advocates to hold in escrow for and on behalf of the joint venture company.
  2. The Developer’s Advocates shall hold such title documents on such terms and not release them to any of the Parties or any other person whomsoever or use it in any way save, to the extent necessary, for purposes of carrying out for and on behalf of the joint venture company transactions for transfer of the Units to the purchasers thereof (including pre-sales (if any)) or transfers to the Parties pursuant to the distribution contemplated under Clause 7 above as it may be instructed by the joint venture company from time to time.
  3. The Developer’s Advocates shall also be mandated to hold the Plans, Occupation Certificate, NEMA License and such consents and approvals of the Project on behalf of the joint venture company and each of the Parties shall have access to these documents from the Parties Advocates and none of the Parties shall collect any of these documents from the Parties Advocates office without the consent of the other Party.

1. **CAPITAL GAINS TAX**

Any capital gains tax payable on the transfer of the Property to the Project Company shall be paid by the Land Owner.

1. **CO-OPERATION**

The Parties hereby agree to enter into this joint venture for the purposes of achieving the principal objectives set forth in this Agreement and each Party undertakes to the other that it shall at all times during the Term and thereafter act in good faith and use its best endeavors to ensure the achievement of the said objectives.

1. **CONSULTANTS FOR THE PROJECT**

The Developer will be responsible for appointing and managing the Consultants.

# REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant to each other that:

* + 1. The Developer is a properly constituted company incorporated according to the Laws of Kenya;
    2. The Developer has powers to enter into this Agreement and to perform its obligations hereunder and has taken all necessary corporate action required to authorize the execution, delivery and performance of this Agreement;
    3. The Land Owner has a valid title deed and other title documents from the Lands registry and all other regulatory approvals mentioned or envisaged in this Agreement and has full and unrestricted power to authorize the execution, delivery and performance of this Agreement ;
    4. The information furnished to the other Party by or on behalf of each Party in relation to this Agreement is correct and accurate and will remain correct and accurate in all material respects during the Term;
    5. 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;
    6. The execution, delivery and performance of this Agreement will not violate the laws of Kenya, or any contract or agreement binding upon it;
    7. All consents, approvals, registrations or authorizations required to enable them lawfully to enter into this Agreement and perform their right and obligations hereunder have been obtained or made and are in full force and effect; and
    8. This Agreement constitutes legally valid, binding and unconditional general obligations of the Parties enforceable against them in accordance with the terms hereof.

# OBLIGATIONS

* 1. **Obligations of the Land Owner**

The obligations of the Land Owner shall include:-

* + 1. To clear any outgoings such as land rates and land rent (where applicable) for the Property up to the date of this Agreement;
    2. To deposit with the Parties Advocates the original title document for the Property upon execution of this Agreement for purposes of the transferring the Property to the Joint Venture Company and thereafter, safe custody and processing the sub-leases of the Project Units;
    3. To offer all due assistance to the Parties’ Advocates for the efficient transfer of the Property to the joint venture company and in obtaining exemption from stamp duty on the transfer of the Property;
    4. To offer all due assistance for the efficient appointment of the Directors under Clause 6.8. above;
    5. To offer all due assistance for the efficient implementation of the Project and to refrain from interference with any processes and procedures thereto and comply with the provision and obligations of Parties Representatives;
    6. To dispose of all its Units through the Joint Venture Company; and
    7. Avail a clean and unencumbered title to the Property together with all relevant documents.
  1. **Obligations of the Developer** 
     1. **Financial Obligations** 
        1. To obtain the approvals, plans and consents for implementation of the Project;
        2. To finance the cost of engaging the Consultants;
        3. To provide the finances necessary to oversee the successful construction and completion of the Project;
        4. To bear the cost of incorporation of the Management Company;
        5. To bear the cost of transferring the Property to the Joint Venture Company and obtaining the exemption from stamp duty; and
        6. To finance the marketing and sale of the Project Units.
     2. **Approval of Project Implementation Obligations**
        1. To prepare the design and architectural drawings;
        2. To prepare the structural drawings;
        3. To obtain architectural and Structural approvals from the relevant municipal council or county government;
        4. To obtain NEMA approval;
        5. To make applications for Access; and
        6. To prepare infrastructural designs.
     3. **Construction Obligations**
        1. To appoint and retain or procure the appointment by the joint venture company of competent Consultants to the Project.
        2. To organize and take the lead for all the activities leading to the commencement and implementation of the Project upon the Land Owner handing over vacant possession of the Property to the joint venture company.
        3. To develop the Project in accordance with the approved building Plans, Applicable Laws and Applicable Permits and provisions of this Agreement.
        4. To generally monitor, review and report on the progress of the Project to the Board.
        5. To be the point of contact between the Project Consultants or third parties with the joint venture company.
  2. To procure compliance by the joint venture company with 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.
  3. **Obligations of the Joint Venture Company**

1. To lease and or sell the Units and register the respective leases at the Lands Registry.
2. To enter into undertakings and other obligations under any Act of parliament as may be reasonable in the circumstances if it is necessary to do so to procure the grant of any Planning Approval.
3. To enter into such agreements or deeds as owner of the Property as may be required to enable the objects of the Joint Venture to be met in such form as may be reasonable in the circumstances.
4. To sign any agreements for lease and execute leases in respect of the Units comprised in the Project and sign such contracts and execute transfers and such other deeds as may be necessary in pursuance of the Project.
5. To make such claims, bring or be party to such actions or proceedings and do such acts, matters and things in consequence as may be necessary to enable or be consistent with enabling the joint venture objects to be attained.
   1. **Obligations of the Management Company**
      1. To manage the units constructed under the Project and for that purpose charge the owners of the Units service charge and other incidental expenses;
      2. To own and manage the reversionary interest in the Property;
      3. To allot proportionate shares in the Management Company to purchasers of the Units; and
      4. To manage all the common areas and meet the expenses of the Estate.

# JOINT RESPONSIBILITIES

* 1. The Parties and the Parties’ Advocate 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 land’s consents, approval, permits and registration of the premises 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 the joint venture company.
  2. The Parties shall incorporate a Management Company with obligations as set out in Clause 13.5 above.

# TAXES

1. All taxes for the Joint Venture Company shall be the responsibility of the Joint Venture Company.
2. All taxes in relation to the Units themselves like stamp duty shall be borne by the Parties in the case of transfer of the Units as provided under Clause 6.1 or by their nominees or by the end purchasers of the Units and all fiscal income and other taxes levied on any Party in respect of its remuneration resulting from its respective Units hereunder or otherwise shall be such Party’s sole responsibility.

# PARTIES REPRESENTATIVES

* 1. Each of the Parties shall appoint a party representative(s) for communication purposes.
  2. Each of the Parties appoints the following persons as their first Party Representatives:-
     1. For the Land Owners:- ……………….

Email: …………………………………

* + 1. For the Developer:- ……………………..

Email: ……………………………………………

* 1. Each of the Parties may remove or replace its representative(s) by written notice to the other Party which notice shall state the name of the replacement Party Representative for such Party PROVIDED that a Party shall not leave the position of Party Representative vacant for more than thirty (30) days.
  2. All communication between the Parties in connection with this Agreement shall, in the first instance, be sent to the respective Parties’ Representatives. The Parties Representatives shall ensure the availability of effective channels of real time communication in order to discuss the progress of the project on a regular basis. The Parties Representatives are hereby authorised by the Party appointing them to make binding decisions in connection with this Agreement which decisions shall be capable of enforcement by the other Party. Any general complaints, problems and disputes relating to the progress of this Agreement, the interpretation of this Agreement or otherwise shall be referred to the Parties Representatives in the first instance.
  3. The Parties Representative shall have project update meetings every month during the Project construction period on the fifth (5th) day of every month and at such venue and time as the Parties may agree from time to time.

# COMPLIANCE WITH OTHER LAWS AND CODE OF CONDUCT

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

# 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 solicit or attempt to solicit or entice away from the employment of the other Party, any employee of the other Party who was involved in the provision of any services under this Agreement or employ any such person.

# INDEMNITY

* 1. Subject to Clauses 19.2 and 19.3 below, the Parties hereby agree to indemnify and hold each 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 obligations or representations under this Agreement.
  2. Neither Party shall, however, be liable under the foregoing indemnity to the extent that any such losses are determined to have resulted directly from the proven negligence or willful misconduct of the other Party to this Agreement.
  3. Both Parties acknowledge and agree that their obligations hereunder shall be in addition to any rights that they may have at law or otherwise.
  4. Where any Party is entitled to claim any indemnity under this Agreement, it shall have the right upon giving the Joint Venture Company at least twenty-one (21) days’ notice in writing to offset the value of such indemnity against any other amounts owing to the Joint Venture Company from such Party under this Agreement.

# INSURANCE

The Joint Venture Company shall obtain and maintain with a reputable insurance company, an insurance policy covering all the Insured Risks and the following;

# such insurance as may be necessary to cover all liability which either Party may incur in respect of any workmen’s compensation, personal injury, death, loss or damage to property, plant, materials and equipment howsoever caused or arising out of or in the course of performance of this Agreement; and

* + - 1. such other comprehensive insurance covering all usual public and private risks associated with the provision of the services and facilities contemplated herein.

# 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.

# CONFIDENTIALITY

* 1. Each receiving Party undertakes at all times to keep confidential and not to disclose to any third party without the disclosing Party’s prior written consent any Confidential Information relating to the disclosing Party, its Affiliates or customers. Each Party accepts that such information is valuable and secret, and that unauthorised disclosure of such information would be likely to cause the affected Party unquantifiable loss and damage.
  2. Each receiving Party agrees that it shall not copy or use in any way any Confidential Information except to the extent necessary for the purposes of achieving the objectives of this Agreement. Unless otherwise provided herein, the furnishing of any Confidential Information hereunder shall not constitute the granting of any right or licence to copy or use in any way such information.
  3. Each receiving Party agrees that it shall only disclose the disclosing Party’s Confidential Information to those of its employees, professional advisors, agents and/or sub-contractors who need to know such information and who have signed a written agreement with the receiving Party, either as a condition of employment or in order to obtain the Confidential Information, agreeing to be bound by terms and conditions substantially similar to those contained herein. Each receiving Party also agrees to advise each such person, before he or she receives access to the Confidential Information, of the obligations of the receiving Party under this Agreement.
  4. Each receiving Party agrees that it shall take all reasonable steps to safeguard the disclosing Party’s Confidential Information including at a minimum, those steps that it takes to protect its own Confidential Information, and that it shall be responsible to the disclosing Party for any disclosure or misuse of Confidential Information which results from a failure to comply with the terms of this Clause.
  5. For the purposes of this Agreement, Confidential Information shall not include any information which:
     1. is already known to the receiving Party or is publicly available at the time of disclosure;
     2. is disclosed to the receiving Party by a third party who is not in breach of an obligation of confidentiality;
     3. becomes publicly available after disclosure through no act of the receiving Party;
     4. was or is developed independently by the receiving Party without use of any of the disclosing Party’s Confidential Information and without breach of this Agreement ; or
     5. is required to be disclosed by law, provided however, that if the receiving Party receives summons or similar document requiring it to disclose the disclosing Party’s Confidential Information, the receiving Party shall promptly notify the disclosing Party so that the disclosing Party can take appropriate action to suppress the disclosure of its Confidential Information or else ensure that its Confidential Information is disclosed under confidentiality provisions only.
  6. All Confidential Information reduced to writing and furnished to the receiving Party by the disclosing Party shall remain the property of the disclosing Party and shall be returned to it immediately upon termination of this Agreement or upon the disclosing Party’s request, together with any and all copies thereof.
  7. Each receiving Party acknowledges that:-
     1. in dealing with the Confidential Information, it shall form its own conclusion and opinion and shall not rely on the conclusions or opinions of the disclosing Party;
     2. the disclosing Party assumes no responsibility for any interpretation, opinion or conclusion which a receiving Party may form as a result of examining the Confidential Information; and
     3. any opinions expressed in the Confidential Information are based on the knowledge and approach of the persons forming the opinion at the date that the opinion was formed and may cease to be appropriate in the light of subsequent knowledge and circumstances.
  8. This obligation of confidentiality shall survive the termination of this Agreement for whatever reason.

# PUBLIC ANNOUNCEMENTS

* 1. The Joint Venture Company shall not make any announcement or other disclosure to the public concerning the existence of the Agreement envisaged herein or any ancillary matter or the existence of contents of any documents produced in furtherance of the joint venture agreement between the Parties.
  2. If any announcement is required, the constituted board of directors of the Joint Venture Company shall, to the extent practicable and permitted by applicable law and/or regulation, consult and discuss the form and content of the announcement prior to the announcement being made.

# 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. Both 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 Party to this Agreement , or use the name of such other Party in any media or printed matter, nor shall either 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 Party to this Agreement or create or incur any legally binding commitments or liabilities or any kind of nature on behalf of such other party.

# ASSIGNMENT

This Agreement or any rights or benefits hereunder shall not be assignable, transferable or divisible in whole or in part by a Party without the prior written consent of the other Party provided that any Party may assign this Agreement to its Affiliate or successor in the event of a merger, reorganization, consolidation or sale of business PROVIDED FURTHER that such Affiliate or successor (as the case may be) is not a competitor of the other Party.

# DISPUTE RESOLUTION

* 1. Any dispute, controversy or claim arising out of or relating to this Agreement or termination hereof, or the interpretation, breach or validity hereof, shall be resolved by way of consultation held in good faith between the Parties. Such consultation shall begin immediately after one Party has delivered to the others written request for such consultation. If within thirty (30) days following the date on which such notice is given the dispute cannot be resolved, the dispute, controversy or claim shall be submitted to arbitration on request of any Party by written notice to the other Party.
  2. The arbitration shall be conducted by a single arbitrator of not less than five (5) years standing to be appointed by the Parties jointly and failing agreement within fifteen (15) Business Days to be appointed at the request of any Party by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch.
  3. The place of arbitration shall be Nairobi, Kenya and the language of arbitration shall be English.
  4. The arbitration shall be conducted in accordance with the Arbitration Act, 1995, as amended from time to time.
  5. The award of the arbitrator shall be final and binding upon the Parties to the greatest extent permitted by law and the Parties shall use their best endeavours to ensure that the arbitration is completed within three (3) months of submission pursuant to Clause 24.2 above.
  6. Notwithstanding the foregoing provisions of this clause, a Party shall be entitled to seek preliminary injunctive relief or interim or controversy measures from any court of competent jurisdiction pending the final decision or award of the arbitrators.
  7. Each of the Parties irrevocably waives any immunity in respect of its obligations under this Agreement that it may acquire from the jurisdiction of any court of any legal or arbitral process for any reason including, but not limited to, service of notice, attachment prior to judgment or attachment in aid of execution.
  8. Any arbitration in terms of this Clause 26 (including any legal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
  9. For the avoidance of doubt, the provisions of this Clause 26 will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

# FORCE MAJEURE

# Neither Party shall be liable in respect of any delay in performing, failure to perform, or failure to adequately perform any of its obligations hereunder in consequence of any act, cause or event which:-

* 1. is not within its control;
  2. was not caused or precipitated by his or its negligence; and
  3. could not have been prevented by his or its reasonable diligence, including without limitation:
  4. any act of God;
  5. any war or hostilities (whether war be declared or not);
  6. any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions;
  7. any judicial actions, strikes, lockouts, industrial disputes or actions of such nature;
  8. any actions or inactions of any government or any agency or department;
  9. any act of terror;
  10. any storms, floods or other inclement, weather, earthquakes, subsidence, epidemics or other natural physical disasters; and
  11. fire, accident, explosion or shortage of labour

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

# The Party which claims that a Force Majeure Event has prevented it from fulfilling any of his or its obligations under this Agreement shall, within fourteen (14) days of the occurrence of a Force Majeure Event, notify the other Party (the “Force Majeure Notice”) of the Force Majeure Event in sufficient detail including the nature and effect of the Force Majeure Event. Similarly, Such Party shall notify the other Party when the Force Majeure Event ceases.

* 1. The performance of this Agreement shall be excused only during the inability of a Party to perform its obligations under this Agreement by Force Majeure but for no longer period, and the cause thereof shall be remedied so far as possible with reasonable dispatch, provided that the other Parties may terminate this Agreement if such conditions continue for a period of twelve (12) months or more.

# LIABILITY

No Party shall be liable to the other for any incidental, consequential, special or punitive damages of any kind or nature that results from a judgment error made in good faith. However, each of the Parties shall be liable for any willful misconduct or the failure to act in good faith as contemplated in this Agreement.

# FURTHER ASSURANCE

Each Party undertakes to execute or use reasonable endeavours to procure the execution of such agreements, memoranda and documents and to do or use reasonable endeavours to procure the doing of such things as may be required to give effect to the provisions of this Agreement or the intention of the Parties as set out in this Agreement.

# AUTHORITY TO EXECUTE

Each Party warrants to the other Parties that all necessary corporate and individual actions to authorise the execution of this Agreement have been taken by such Party.

# TERMINATION

* 1. **Termination by the Land Owner**

The Landowner may terminate this JVA by giving a Three (3) months written notice to the Developer if;-

* + 1. there is occurrence of a Force Majeure act/event; and
       1. the joint venture company and or the Developer is not able to finish the Project as per this Agreement;
  1. **Termination by the Developer**

The Developer may terminate this JVA forthwith by giving a Three (3) months written notice to the Land Owner if;-

* + 1. there is occurrence of a Force Majeure act/event;
    2. the Developer encounters issues with the Property which the Land Owner is not willing or capable of resolving promptly;
    3. the Developer fails to obtain the financing for the project implementation costs; or
    4. if the Land Owner commits any act of bankruptcy or becomes legally incapacitated.

# CONSEQUENCES OF TERMINATION

* 1. In the event that this JVA is terminated by the Land Owner pursuant to Clause 31.1 above, the Developer shall cause the Property to be discharged from any encumbrances registered against the Property as security for the project implementation costs and the Parties Advocates shall revert the ownership of the Property to the Land Owner subject to the Land Owner compensating the Developer for the cost of any infrastructure built by the Developer on the Property pursuant to the terms of this JVA in such amount as shall be mutually agreed in writing by the Developer and the Proprietors or, failing agreement, as shall be determined by the Arbitrator as provided for in Clause 26 above.
  2. In the event that this JVA is terminated by the Developer pursuant to Clause 31.2 above, the Land Owner shall compensate the Developer for the cost of any infrastructure built by the Developer on the Property pursuant to the terms of this JVA in such amount as shall be mutually agreed in writing by the Developer and the Proprietors or, failing agreement, as shall be determined by the Arbitrator as provided for in Clause 26 above and the Parties Advocates shall transfer the Property to the Land Owner.
  3. Each Party shall return to the others any documents in its possession which belong, contain or record any of the Confidential Information of the other Party.
  4. 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 others.

# 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. Any such notice or other communication shall be addressed as provided in Clause 31.3 below and, if so addressed, shall be deemed to have been duly given or made as follows:-
     1. if sent by personal delivery, upon delivery at the address of the relevant Party;
     2. if sent by prepaid post, seven (7) Business Days after the date of posting provided that proof is given that the notice was properly addressed and duly dispatched by post; and
     3. if sent by facsimile or electronic mail, when dispatched provided electronic confirmation of such transmission is obtained and a hard copy of such notice is forthwith sent by prepaid post as above;
     4. provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication it shall be deemed to be given or made at start of normal working hours on the next Business Day.
  3. The addresses referred to in clause 33.2 are:
     1. In the case of a notice given to the Land Owner.

Physical Address: ………………………………..

Postal Address: P.O. Box …………….., Nairobi

Email: [………………………………………….](mailto:cedrickinyanjui@yahoo.com)

**Attention: ……………………………………...**

* + 1. In the case of a notice given to the Developer :

Physical Address: …………………………….

Postal Address: ………………….., Nairobi

Email: [……………………………………..](mailto:kabiru@adventis-africa.com)

**Attention: ……………………………..**

* + 1. A Party may notify the other Parties to this Agreement of a change of its/their name, address, facsimile or electronic mailing address for the purposes of Clause 31.3 (a) and (b) above provided that such notification shall only be effective on:-
       1. the date specified in the notification as the date on which the change is to take place; or
       2. if no date is specified or the date specified is less than ten (10) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.
    2. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
    3. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

# SEVERABILITY

Each of the provisions of this Agreement 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.

# AMENDMENT

No amendment or variation to this Agreement 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.

# COSTS

* 1. 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 .
  2. 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.

# GOVERNING LAW AND JURISDICTION

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

# NO WAIVER

No waiver, alteration, variation or addition to this Agreement shall be effective unless made in writing and executed by the Parties in the same manner as this Agreement PROVIDED THAT a letter from one Party to the others and endorsed or otherwise confirmed by the others in writing shall be binding upon the Parties.

# 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 other 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.

# ENTIRE AGREEMENT

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 same.

**IN WITNESS WHEREOF** the Parties hereto have signed this Agreement the day and year first here-above written.

**SIGNED** by the Land Owner,)

**……………………** )

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

) **………………………………..**

)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**

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

**………………………. LIMITED** )

in the presence of: )

Director: )

Name: )

Signature: )

)

Director/Secretary: )

Name: )

Signature )

)

Before me:- )

)

)

**Advocate**  )

**Certificate of Attestation**

I…………………………………………………………………hereby certify that I was present and witnessed ………………………………………a Director and………………………………………… another Director/Company Secretary of the Developer duly witness the affixation of the Developer’s Seal on this Agreement and that they understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

**Drawn By: -**