

Dated as of the \_\_\_\_\_ day \_\_\_\_\_, [ ♦ ]

**ROSSLYN SUITES LIMITED**  
(as **Vendor**)

- and -

[\*]

(as **Purchaser**)

---

**AGREEMENT FOR LEASE**

in respect of Apartment Number [ ♦ ] on the [ ♦ ] Floor of Block [ ♦ ],  
in the development known as [ ♦ ] constructed on the property known as  
Land Reference Number [ ♦ ]

---

**DRAWN BY:**  
O&M LAW LLP  
Advocates  
Park Place, 4th Floor,  
Junction of Limuru Road &  
2nd Parklands Avenue  
P.O Box 49393 - 00100  
NAIROBI

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20[ ♦ ]

**BETWEEN:**

1. **ROSSLYN SUITES LIMITED** (Company Number CPR/2010/19746), a private company incorporated with limited liability in the Republic of Kenya and having its registered office situate at Nairobi for the purposes hereof of Post Office Box Number 44502-00100, Nairobi Kenya (hereinafter referred to as the **Vendor** which expression shall, where the context so requires, include the Vendor's successors in title and assigns); and
2. The person(s) details of which are set out below shall hereinafter be referred to as the **Purchaser** which expression shall, where the context so requires, include the Purchaser's personal representatives and assigns:

ITEM	DETAILS
<b>Name of the Purchaser</b>	[♦]
<b>ID Number/Passport Number/Company Number</b>	[♦]
<b>PIN Number</b>	[♦]
<b>P.O. Box No</b>	[♦]
<b>Physical Address:</b>	[♦]
<b>Telephone Number:</b>	[♦]
<b>Email Address:</b>	[♦]

**WHEREAS:**

- (A) Rosslyn Property Holdings Limited (Company Number CPR/2014/167322) (hereinafter referred to as **RPHL**) is the registered proprietor as lessee from the Government of the Republic of Kenya of the Property (as hereinafter defined).
- (B) The Vendor is a wholly owned subsidiary of RPHL.
- (C) The Vendor is in the process of acquiring the Property from RPHL and the Vendor and RPHL have entered into an agreement for sale in respect of the Property dated 27<sup>th</sup> September, 2017 pursuant to which, following the completion of the subdivision and amalgamation process as aforesaid, the Property will be transferred by RPHL to the Vendor.
- (D) The Vendor has commenced or will commence the construction of the Residential Development (as hereinafter defined) on the Property.
- (E) The Sale Property (as hereinafter defined) will form part of the Residential Development.
- (F) The Vendor has agreed to grant the Lease (as hereinafter defined) to the Purchaser and the Purchaser has agreed with the Vendor to take up the Lease upon the terms and conditions hereinafter contained.
- (G) The purpose of this Agreement is to, *inter alia*, record the agreements reached between the Vendor and the Purchaser in relation to the purchase of the Sale Property, payment of the Lease Premium (as hereinafter defined) and grant of the Lease.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement (including the recitals above and Schedules) except where the context otherwise requires the following words and expressions shall have the following meanings:

1.1.1 **Approved Documents** means the Sale Property Plan and the Specifications as the same may be supplemented, replaced, added to or revised by the Vendor from time to time as provided herein;

1.1.2 **Architect** means such person as the Vendor may from time to time appoint as the architect for the Residential Development;

1.1.3 **Architect's Certificate** means a certificate issued by the Architect of practical completion of the Sale Property and partial or sectoral completion of Block [♦] and so much of the Residential Development as gives in the Architect's opinion sufficient access to the Sale Property for the purposes of the Purchaser being able to occupy the Sale Property;

1.1.4 **Business Day** means any day (other than Saturday, Sunday, national day or gazetted public holiday in Kenya) on which banking institutions in Kenya are generally open for the conduct of banking business;

1.1.5 **Block [♦]** means the building forming part of the Residential Development and known as Block [♦] which building for purposes of identification is delineated and marked as Block [♦] on the Residential Development Plan;

1.1.6 **Car Park Spaces** means [♦] car parking spaces in the Residential Development;

1.1.7 **Competent Authority** means the Government of the Republic of Kenya, the National Land Commission, the relevant county government, agencies, state corporations and other bodies having statutory or regulatory competence to promulgate rules and regulations having the force of law touching and concerning the Property and the Residential Development and the transactions and matters contemplated and referred to in this Agreement;

1.1.8 **Completion Date** means the date falling ten (10) days after the Property Completion Date but if such day is not a Business Day then on the immediately succeeding Business Day or such other date as the parties may agree in writing;

1.1.9 **Completion Notice** shall have the meaning ascribed to it in clause 2.5;

1.1.10 **Contractor** means such person(s) as the Vendor may from time to time appoint as the contractor(s) for the Residential Development;

1.1.11 **Defect** shall the meaning ascribed to it in clause 2.6;

- 1.1.12 **Defects Liability Period** shall have the meaning ascribed to it in clause 2.6;
- 1.1.13 **Encumbrances** includes any charge (whether formal or informal) or other interest in the nature of a security interest, trust arrangement, right of way, right of support, right of light, profit, easement or restrictive covenant;
- 1.1.14 **Estate Management Structure** means the management structure in relation to the Residential Development and the [♦] Estate details of which are more particularly set out in Annexure Two;
- 1.1.15 **First Payment** means the sum of [♦] that was paid by the Purchaser to the Selling Agent pursuant to the Reservation Form and was held by the Selling Agent and released to the Vendor in accordance with the terms of this Agreement;
- 1.1.16 **Forfeiture Amount** means the sum of [♦] representing fifteen percent (15%) of the Lease Premium;
- 1.1.17 **Initial Provisional Service Charge** shall be the sum being an amount equivalent to twelve (12) months of the service charge that shall be payable by the Purchaser under the Lease;
- 1.1.18 **Initial Service Charge Deposit** shall be service charge deposit to be held and utilized in accordance with the terms of the Lease and being the sum equivalent to six (6) months of service charge;
- 1.1.19 **Land Laws** means together the Land Act (Act No. 6 of 2012, Laws of Kenya) and the Land Registration Act (Act No. 3 of 2012, Laws of Kenya) any subsidiary legislation, rules and regulations promulgated thereunder and any practice directions issued pursuant to the Land Act and the Land Registration Act;
- 1.1.20 **Lease** means a sub-lease in respect of the Sale Property to be granted by the Vendor to the Purchaser for the unexpired residue of the term of [♦] ([♦]) years from [♦] less the last ten (10) days with effect from the Lease Commencement Date the lease being in or substantially in the form set out in the Schedule and which will be in substantially the same form as the leases to be granted to other purchasers of homes in the Residential Development;
- 1.1.21 **Lease Commencement Date** means the date (being a date after the Completion Date) when the Vendor's Advocates notify the Parties in writing that the following events have occurred:
- 1.1.21.1 the Lease has been duly executed by the Parties;
- 1.1.21.2 the Purchaser has satisfied all his payments obligations under this Agreement ; and
- 1.1.21.3 the Lease Premium in full has been received by the Vendor;
- 1.1.22 **Lease Premium** means the sum of Kenya Shillings [♦] (K.Shs. [♦]);

- 1.1.23 **New Purchaser** means any person to which the Purchaser as beneficial owner wishes to assign the benefit and transfer the obligations of the Purchaser under this Agreement after the date of this Agreement but prior to the Completion Date;
- 1.1.24 **Parties** means together the Vendor and the Purchaser;
- 1.1.25 **Property** means **ALL THAT** parcel of land situate in the City of Nairobi containing by measurement [♦] hectares or thereabouts and being the property known as Land Reference Number [♦] comprised in a Certificate of Title registered in the Land Registry Nairobi as [♦] which said piece of land with the dimensions abutments and boundaries thereof are delineated on the plan annexed to the aforesaid Certificate of Title and more particularly on Land Survey Plan Number [♦] deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red AND HELD by the Lessor for a term of [♦] SUBJECT to the Acts Special Conditions and other matters as are notified by the Memorandum endorsed thereon;
- 1.1.26 **Property Completion Date** means the date of issuance by the Architect of the Architect's Certificate;
- 1.1.27 **Property Owners Company** shall have the meaning ascribed to it in clause 6.3.1;
- 1.1.28 **Rate of Interest** means the rate that is three percent (3%) per month;
- 1.1.29 **Registrar** means such registrar appointed pursuant to the Land Registration Act or such other official acting in such capacity pursuant to the Land Laws or any other laws in Kenya;
- 1.1.30 **Residential Development** means the proposed residential development together with related amenities and facilities to be constructed on the Property and to be known as [♦] which residential development and the construction thereof has been more particularly identified and detailed in the Residential Development Plan;
- 1.1.31 **Residential Development Plan** means the development plan in relation to the Residential Development which plan has been annexed hereto for purposes of identification as Annexure Four;
- 1.1.32 **Residential Management Company** shall have the meaning ascribed to it in clause 6.3.2;
- 1.1.33 **Reservation Form** means the reservation form dated [♦] executed by the Purchaser and the Selling Agent in respect to the sale and purchase of the Sale Property;
- 1.1.34 **Sale Property** means Apartment Number [♦] on the [♦] Floor of Block [♦] comprised in the Residential Development which property is further identified on the Sale Property Plan and in the Lease;
- 1.1.35 **Sale Property Plan** means the floor plans in respect of Block [♦] which floor plans are annexed hereto for purposes of identification as Annexure Three;
- 1.1.36 **Selling Agent** means Hass Consult Limited for the purposes hereof of [♦];

- 1.1.37 **Signature Date** means the date of this Agreement;
- 1.1.38 **Specifications** means the specifications of the works to be carried out by the Vendor in relation to the Sale Property which specifications are more particularly detailed in Annexure One;
- 1.1.39 **Enaki Town** shall have the meaning ascribed to it in clause 6.1; and
- 1.1.40 **Vendor's Advocates** means O&M Law LLP Advocates, 4<sup>th</sup> Floor, Park Place, Junction of 2<sup>nd</sup> Parklands Avenue and Limuru Road, of P.O Box 49393-00100, Nairobi.

## 2. DEVELOPMENT OF THE SALE PROPERTY

- 2.1 It is hereby acknowledged by the Parties that the Vendor has by its Contractor begun or will begin the construction of the Residential Development substantially in accordance with the Approved Documents and the Residential Development Plan.
- 2.2 Notwithstanding any other provision in this Agreement, the Vendor shall have the right:
- 2.2.1 to substitute materials and/or items as nearly as may be of the same quality and appearance in lieu of those contained or referred to in the Approved Documents and if it is deemed expedient by the Architect to ensure that the construction of Block [◆] is not unduly delayed or where the materials and/or items are not readily available or cannot be obtained without an extra burden (logistical, financial or otherwise) to the Vendor, to vary the works relating to the Block [◆] in such manner as may be necessary as a result of the use of such substituted materials and/or items;
- 2.2.2 to make such revisions, variations or modifications to the Approved Documents as the Vendor may require in the Vendor's sole discretion and which either:
- 2.2.2.1 will not affect the external façade of the Sale Property or Block [◆] to a material extent; or
- 2.2.2.2 which the Vendor believes will improve the quality of accommodation or general appearance of Block [◆] and/or the Sale Property; or
- 2.2.2.3 are required for the purpose of obtaining any necessary licences or permissions or complying with any Restriction or any proper demand made by or requirement of any Competent Authority.
- 2.2.3 to make such revisions, variations or modifications to the Residential Development Plan as the Vendor may require in the Vendor's sole discretion.
- 2.3 The Purchaser acknowledges that the construction of the Residential Development will be undertaken in phases and accordingly, the Purchaser hereby irrevocably

acknowledges and accepts that some of the facilities and amenities which will be constructed on the Property which comprise the Residential Development may not be available until completion of the construction of the entire Residential Development.

- 2.4 The Vendor will, prior to the Completion Date, comply with such requirements as should permit the relevant Competent Authority to issue an occupation certificate for the Sale Property following the carrying out and completion of the works relating to the Sale Property.
- 2.5 Subject to the provisions of this Agreement, the Vendor or the Vendor's Advocates shall notify the Purchaser of the anticipated Property Completion Date not less than thirty (30) days prior to the anticipated Property Completion Date (the **Completion Notice**) and the Vendor shall immediately upon the occurrence of the Property Completion Date, notify the Purchaser in writing of the occurrence of the Property Completion Date and provide to the Purchaser a copy of the Architect's Certificate.
- 2.6 The Vendor will (as between the Vendor and the Purchaser) ensure that there are remedied and put right within a reasonable time any material defects in the Sale Property (other than those relating to works undertaken by the Purchaser in fitting out the Sale Property and other than those defects which shall arise from normal shrinkage and drying out of plaster and/or timber or which shall comprise deterioration of decoration occasioned by ordinary wear and tear) (a **Defect** and the term **Defects** shall be construed accordingly) which shall appear within a period of six (6) months from (and including) the Completion Date (the **Defects Liability Period**) **PROVIDED ALWAYS** that:
- 2.6.1 The Purchaser shall have notified the Vendor of the Defect prior to the expiry of the Defects Liability Period with the intent that the Vendor shall only be bound to remedy those Defaults that are notified to the Vendor within the Defects Liability Period; and
- 2.6.2 The Defects shall be of such nature as the Vendor is entitled to require the Contractor to remedy or put right under the Vendor's building contract for the Residential Development.
- 2.7 It is hereby acknowledged and agreed by the Parties that:
- 2.7.1 the obligation of the Vendor to remedy any Defects pursuant to the provisions of clause 2.6 shall be the sole remedy available to the Purchaser with respect to any Defects that are identified during the Defects Liability Period; and
- 2.7.2 notwithstanding any delays in the satisfaction by the Purchaser of its/his obligations hereunder, including without limitation the date on which the Purchaser first occupies the Sale Property, the Defects Liability Period shall commence on the Completion Date.
- 2.8 Notwithstanding the grant of the Lease, the Vendor shall have the right with servants, agents, workmen and independent contractors and their plant, machinery and materials to enter the Sale Property upon issuance of at least forty-eight (48) hours prior

notice (save in cases of emergency when no notice shall be required to be given) for the purpose of carrying out such works as are referred to in clause 2.6.

### **3. AGREEMENT TO SALE AND PURCHASE**

- 3.1 The Vendor hereby agrees to sell and the Purchaser hereby agrees to purchase the Sale Property at the Lease Premium free from Encumbrances subject to and conditional upon the terms of this Agreement.
- 3.2 The consideration for the sale and transfer of the Sale Property from the Vendor to the Purchaser shall be the Lease Premium which shall be paid by the Purchaser to the Vendor in accordance with the provisions of section 4 of this Agreement.
- 3.3 The Vendor's interest in the Sale Property shall be transferred to the Purchaser by way of the grant of the Lease.
- 3.4 Subject to the payment by the Purchaser of the Lease Premium in full in accordance with the terms of this Agreement and the satisfaction by the Purchaser of its/his other obligations under this Agreement, the Vendor shall commencing from the Lease Commencement Date, grant the Lease to the Purchaser subject to and conditional upon the terms contained in the Lease. The Lease shall be in or substantially in the form set out in the Schedule. The Vendor's Advocates are hereby authorised by the Vendor and the Purchaser, prior to the Completion Date, to complete any blanks in the form of the Lease attached hereto.
- 3.5 The Lease shall be completed at the offices of the Vendor's Advocates on the Completion Date. The Purchaser hereby undertakes that upon receipt of the Completion Notice, he/it shall execute the Lease and satisfy all its payment obligations under this Agreement in the manner and on the dates specified in the Completion Notice.
- 3.6 The Purchaser hereby agrees and confirms that if there are any delays by the Purchaser in the execution of the Lease and provided that such delays subsist for a period that exceeds thirty (30) days from the Completion Date, then the Vendor shall be entitled in its sole discretion to either:
- 3.6.1 upon issuance of a notice in writing to the Purchaser, rescind this Agreement and upon such rescission the provisions of clauses 7.1.2 to 7.1.5 shall apply; or
- 3.6.2 extend the period within which the Purchaser shall be required to execute the Lease provided that the Purchaser shall pay to the Vendor a penalty in the sum of Kenya Shillings Two Thousand Five Hundred (K.Shs 2500/=) for each day that shall lapse from the Completion Date to the date that the Purchaser executes the Lease provided always that the Vendor may in its sole discretion rescind this Agreement at any time after granting an extension pursuant to this clause 3.6.2 in which case the provisions of clause 3.6.1 shall apply.
- 3.7 The Purchaser hereby acknowledges and agrees that:

- 3.7.1 It/he shall not be entitled to possession of the Sale Property until the Lease Commencement Date; and
- 3.7.2 Notwithstanding the date on which the Purchaser first occupies the Sale Property:
  - 3.7.2.1 the obligation of the Purchaser to pay Service Charge shall commence on the Lease Commencement Date;
  - 3.7.2.2 the Initial Provisional Service Charge and the Initial Service Charge Deposit shall be paid by the Purchaser simultaneously with the payment of the last instalment of the Lease Premium as provided in this Agreement; and
  - 3.7.2.3 All risk in the Sale Property shall pass to the Purchaser on the Completion Date.

#### 4. THE LEASE PREMIUM

- 4.1 The Lease Premium shall be paid by the Purchaser to the Selling Agent (who shall receive such amounts for and on behalf of the Vendor) in the following manner:

[♦]

- 4.2 It is hereby acknowledged by the Purchaser that:

- 4.2.1 upon the execution of this Agreement, the First Payment paid by the Purchaser to the Selling Agent under the Reservation Form shall be released unconditionally to the Vendor and shall be applied towards partial satisfaction of the Purchaser's obligation hereunder to pay the Lease Premium; and

- 4.2.1.1 following the Signature Date, all payments received by the Selling Agent hereunder in respect of the Lease Premium shall be released by the Selling Agent to the Vendor to be utilised by the Vendor in the construction of the Residential Development.

- 4.3 The Purchaser agrees that payments due under clause 4.1 shall be paid by Real Time Gross Transfer (**RTGS**) (or, in the case of an international transfer, by SWIFT) to such bank account as the Selling Agent shall in writing notify the Purchaser. Immediately upon the Purchaser effecting any payment by RTGS (or, in the case of an international transfer, by SWIFT) pursuant to the terms of this Agreement, the Purchaser shall deliver to the Selling Agent proof of such payment (such as a remittance advice by the Purchaser's bankers).

- 4.4 Time shall be of the essence in respect of all the Purchaser's obligations hereunder.

- 4.5 The Purchaser hereby acknowledges and agrees that:

- 4.5.1 the Initial Provisional Service Charge specified in this Agreement is an estimate based on the costs for the provision of the Services (such term as is defined in the Lease) as at the Signature Date. The Purchaser further

acknowledges and accepts that as at the Completion Date, there may be changes to the amounts payable by the Purchaser in respect of the Initial Provisional Service Charge and the Initial Service Charge Deposit to cater for any increases in the costs necessary for the provision of the Services. Notwithstanding the estimated amounts specified in this Agreement, the Purchaser shall pay the amount of the Initial Provisional Service Charge and the Initial Service Charge Deposit notified by the Vendor to the Purchaser simultaneously with the payment of the last instalment of the Lease Premium as provided in this Agreement; and

4.5.2 he/it shall pay the following fees, costs and disbursements in the following manner:

4.5.2.1 the sum of Kenya Shillings [♦] (K.Shs. [♦] )being the legal fees, disbursements and VAT (the **Legal Costs**) payable to the Vendor's Advocates for drawing this Agreement and the Lease which amounts shall be paid to the Vendor's Advocates in full on the Signature Date. The Legal Costs are broken down as follows;

(a) the sum of Kenya Shillings [♦] (K.Shs. [♦] ) being legal fees;

(b) the sum of Kenya Shillings [♦] (K.Shs. [♦]) being the office disbursements; and

(c) the sum of Kenya Shillings [♦] (K.Shs. [♦]) being the VAT on both the legal fees and office disbursements.

4.5.2.2 The following costs shall be paid by the Purchaser on the Signature Date;

(a) the sum of Kenya Shillings [♦] (K.Shs. [♦]) being the costs for incorporation of the Property Owners Company and the Residential Management Company and the transfer and allotment of shares in the Property Owners Company to the Purchaser; and

(b) the sum of Kenya Shillings [♦] (K.Shs. [♦]) being the costs and disbursements for the installation of a water meter, electricity meter and generator meter in the Sale Property.

4.5.2.3 the following sums shall be paid by the Purchaser to the Vendor's Advocates on or before the date specified in the Completion Notice:

(a) sum of Kenya Shillings [♦] (K.Shs. [♦]) being the estimated stamp duty costs and registration costs in respect of the Lease. The Purchaser acknowledges that the stamp duty payable on the Lease is subject to valuation by the Government Valuer and the amount estimated in this Agreement is subject to change at the time that a valuation

of the Sale Property is undertaken by the Government Valuer;

- 4.5.3 The Vendor's Advocate shall undertake the registration of the Lease subject to the satisfaction by the Purchaser of its obligations under this Agreement. If at the Completion Date or thereafter, the costs in relation to stamp duty, registration charges and disbursements shall increase, the Purchaser shall be required to make the requisite additional payments to cover the increase in costs.

## **5. INTEREST ON LATE PAYMENTS**

- 5.1 If the Purchaser is in breach of the Purchaser's obligations to pay the Lease Premium, the Service Charge Deposit and/or the Initial Service Charge in the manner provided in this Agreement, then at the Vendor's election:

5.1.1 the Vendor may (in its discretion) grant the Purchaser additional time to effect payment in which event the Purchaser shall pay interest at the Rate of Interest on the amount due and payable from (and including) the due date for payment until payment of the sum outstanding (together with all accrued interest) in full and such interest shall accrue from day to day and be computed on the basis of a 365-day year and compounded monthly; or

5.1.2 the Vendor may (in its discretion) (but without prejudice to any other available right or remedy in favour of the Vendor) if payment (together with accrued interest thereon) in cleared funds shall not have been effected within seven (7) days of the due date for payment or such longer period as the Vendor may determine (during which time interest calculated in accordance with the provisions of sub-clause 5.1.1 shall accrue) to treat such non-payment as a fundamental breach by the Purchaser of the Purchaser's obligations under this Agreement and the provisions of Section 7 shall thereafter apply.

- 5.2 The Purchaser hereby agrees that the Rate of Interest payable on the Purchaser's breach of its payment obligations under this Agreement represents a fair and reasonable pre-estimate of the loss to be suffered by the Vendor resulting from the Purchaser's breach of the Purchaser's payment obligations hereunder.

## **6. MANAGEMENT STRUCTURE**

- 6.1 The Purchaser acknowledges that the Residential Development is part of an integrated mixed-use development known as [♦] that shall also comprise of a commercial development, retail development, hotel and botanical garden to be developed on properties that are adjacent to the Property (the **Enaki Town**).
- 6.2 To facilitate the effective management of the Residential Development and the Estate there shall be established various management companies as detailed in the Estate Management Structure to manage the different components of the Estate in the manner more particularly set out in the Estate Management Structure. Each of the

management companies detailed in the Estate Management Structure shall enter into appropriate agreements with each other in relation to the management of the Estate.

6.3 The Vendor will procure:

- 6.3.1 the incorporation of a limited liability company (hereinafter referred to as the **Property Owners Company**) to the intent that upon completion of the grant and registration of the Lease and the leases for all the other purchasers of residential homes erected on the Property there shall be allotted or transferred to the Purchaser, in accordance with the terms of the Lease, one (1) ordinary share in the share capital of the Property Owners Company. The reversionary interest in the Property will be transferred to the Property Owners Company in accordance with the terms of the Lease; and
- 6.3.2 the incorporation of a limited liability company to undertake the management of the Residential Development and the Retained Parts (such term as is defined in the Lease) within the Residential Development (the **Residential Management Company**).

## 7. TERMINATION OF THIS AGREEMENT

- 7.1 If the Vendor makes the election referred to in sub-clause 5.1.2 the Vendor shall without prejudice to its other rights and remedies be entitled to rescind this Agreement in which event:
- 7.2 the Vendor shall be entitled to immediately forfeit and retain the Forfeiture Amount by way of agreed liquidated damages;
- 7.3 the Vendor shall thereupon be at liberty to proceed to negotiate with any other person to require such other person to purchase the Sale Property on such terms and conditions as may be agreed between the Vendor and such new purchaser and in the event that such other person shall enter into an agreement in writing with the Vendor (hereinafter called the **New Agreement**) and make all payments due under the New Agreement the Vendor shall, subject to sub-clause 7.1.3, pay to the Purchaser the payments made on account of the Lease Premium as shall have been paid pursuant to Section 4 (save for the amounts specified in clauses 3.6.2.1 and 4.5.2.1 which shall be forfeited absolutely) after deduction therefrom of all costs, charges and expenses incurred by the Vendor and the Vendor's Advocates in connection with the negotiation and granting of the rights under the New Agreement and any other sums which may be lawfully due from the Purchaser to the Vendor;
- 7.3.1 the Vendor shall after exercise of its rights under sub-clause 7.1.1 be entitled to retain all monies paid to the Vendor on account of the Lease Premium until such time as the Vendor shall enter into the New Agreement and in the event that the Vendor shall incur a loss by reason of diminution of the lease premium payable under the New Agreement the Purchaser shall pay to the Vendor by way of agreed liquidated damages an amount equal to the loss together with the expenses incurred by the Vendor in respect of the New Agreement and together with all other sums payable by the Purchaser pursuant to the provisions of sub-clause 7.1.2 (hereinafter collectively referred to as the **Actual Loss**) and the Vendor shall be entitled to set-off

the Actual Loss from the balance of the monies retained by the Vendor on account of the Lease Premium and any shortfall in satisfaction of the Actual Loss shall forthwith become payable by the Purchaser to the Vendor without demand and shall represent an agreed liquidated debt lawfully due and payable by the Purchaser to the Vendor;

- 7.3.2 if the New Agreement realizes a profit this shall be retained by the Vendor; and
- 7.3.3 without prejudice to the Vendor's rights under sub-clause 7.1.3 the Vendor shall be entitled to recover by action any amounts found to be due to the Vendor in the event of there being any deficiency.

## 8. GENERAL PROVISIONS

- 8.1 The Sale Property will be sold with vacant possession by the Vendor which will be granted to the Purchaser on the Lease Commencement Date in accordance with the terms of this Agreement.
- 8.2 The benefit of this Agreement is personal to the Purchaser and the Purchaser shall not assign, charge, underlet, share, part with or otherwise in any way whatsoever dispose of or deal with its interest under this Agreement or any part thereof or any share therein without the prior written consent of the Vendor. The Vendor shall require, inter alia, that the following conditions are satisfied prior to the issuance of its consent:
- 8.2.1 in the case of a sale of the Sale Property by the Purchaser, as beneficial owner, to a New Purchaser (a **Resale**) the Purchaser procuring the following to the satisfaction of the Vendor:
- 8.2.1.1 that the Resale is undertaken through the Selling Agent and no other person;
- 8.2.1.2 a novation agreement (the terms of which shall be approved and be acceptable to the Vendor and the Vendor's Advocates) is entered into with the New Purchaser (the **Novation Agreement**) in respect of this Agreement pursuant to which the Purchaser shall extinguish all its rights and obligations under this Agreement and transfer such rights and obligations to the New Purchaser;
- 8.2.1.3 an administrative fee in respect of the Resale is paid by the Purchaser in the following manner:
- (a) an amount that is equivalent to three percent (3%) of the consideration payable by the New Purchaser on the Resale is paid to the Vendor; and
- (b) an amount that is equivalent to two decimal five percent (2.5%) of the consideration payable by the New Purchaser on the Resale is paid to the Selling Agent;

- 8.2.1.4 the lease premium specified in the Lease issued to the New Purchaser is of an amount that is equivalent to the Lease Premium specified in this Agreement as being due and payable to the Vendor; and
  - 8.2.1.5 all costs, charges and expenses incurred by the Vendor including without limitation the Vendor's Advocates legal fees in connection with the Resale shall be payable by the Purchaser upon execution of the Novation Agreement.
- 8.3 The Purchaser agrees and confirms that:
- 8.3.1 any condition or warranty whatsoever as to the condition of the Sale Property or the fitness for any purpose is hereby excluded;
  - 8.3.2 it enters into this Agreement solely as a result of searches, survey and inspection it has carried out and on the basis of the terms of this Agreement and not in reliance upon any representation either written or oral or implied or made by or on behalf of the Vendor; and
  - 8.3.3 this Agreement constitutes the whole and only agreement between the parties relating to the sale and purchase of the Sale Property and supercedes and extinguishes any prior agreements, undertakings, representations, warranties and arrangements of any nature whatsoever whether or not in writing relating to the Sale Property or its sale and purchase.
- 8.4 Notwithstanding the execution of the Lease, this Agreement shall remain in force with regard to any obligations or restrictions hereunder not provided for in the Lease provided that the Vendor shall not be liable to the Purchaser for any failure on the part of the Vendor to observe and perform the obligations contained in this Agreement to carry out and complete defective works save those in respect of which the Purchaser has given notice to the Vendor as provided in clause 2.6.
- 8.5 If any tax (including value added tax or sales tax) shall be chargeable in respect of any moneys payable under this Agreement the Purchaser shall pay in addition to the amounts otherwise payable the amount of the tax so chargeable.
- 8.6 All payments by the Purchaser hereunder or pursuant hereto shall be made in cleared funds, without and free from any set-off, counter-claim or deduction whatsoever.
- 8.7 If any term or condition of this Agreement shall to any extent be found or held to be invalid or unenforceable, the parties shall negotiate in good faith to amend such term or condition so as to be valid and enforceable and to be construed with the interests of the parties as contained herein.
- 8.8 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.

- 8.9 The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the laws of Kenya.
- 8.10 Any dispute, controversy or claim arising out of or relating to this Agreement or a termination hereof (including without prejudice to the generality of the foregoing, whether as to its interpretation, application or implementation), 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 other written request for such consultation. If within fifteen (15) Business Days following the date on which such notice is given the dispute cannot be resolved amicably, the dispute, controversy or claim shall be submitted to arbitration in accordance with clause 8.11.
- 8.11 Should any dispute, controversy or claim as is referred to in clause 8.10 arise between the parties and the consultation process referred to in clause 8.10 shall have not resolved such dispute, the dispute shall upon application by any party be referred to arbitration by a single arbitrator to be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch upon the written request of either party. The arbitration shall be conducted in accordance with the rules or procedures for arbitration under the Arbitration Rules, December, 2012 published by the Chartered Institute of Arbitrators, Kenya Branch. The decision of the arbitrator shall be final and binding on the parties and may be made an order of a court of competent jurisdiction.
- 8.12 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 Laws that it has executed this Agreement with the intention to bind itself or to the contents hereof.

## 9. NOTICES

- 9.1 Any notice, demand or other document to be given or made by one party to any other shall be in writing and shall be delivered as follows:

9.1.1 **in the case of a notice to the Vendor, to:**

Postal Address: [◆]

Physical Address: [◆]

E-mail Address: [◆]

or such other postal address, physical address or e-mail address as the Vendor shall have specified by giving ten (10) Business Days prior written notice to the Purchaser;

9.1.2 **in the case of a notice to the Purchaser, to:**

Address: [◆]

Physical Address: [◆]

E-mail Address: [◆]

or such other postal address, physical address or e-mail address as the Purchaser shall have specified by giving ten (10) Business Days prior written notice to the Vendor.

- 9.2 Save as otherwise expressly provided herein, any notice, demand or document to be given or made by one party to this Agreement to the other shall be deemed made:
- 9.2.1 if made by e-mail when the e-mail is received by the party during normal business hours on a Business Day) provided that the appropriate acknowledgement of proper transmission is obtained by the sender;
  - 9.2.2 when left during normal working hours on a Business Day at the physical address provided above in respect of each party; or
  - 9.2.3 seven (7) Business Days after posting by registered post provided that proof is given that the notice, demand or document was properly addressed adequately stamped and put into the post by registered post.

## 10. FORCE MAJEURE

- 10.1 The Vendor will not 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 (i) was not within the control of the Vendor, (ii) was not caused or precipitated by the Vendor's negligence; or (iii) could not have been prevented by the Vendor's reasonable diligence, including without limitation:
- 10.1.1 any act of God;
  - 10.1.2 any war or hostilities (whether war be declared or not);
  - 10.1.3 any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions;
  - 10.1.4 any suits, administrative actions, judicial actions, strikes, lockouts, industrial disputes or actions of any such nature;
  - 10.1.5 any actions or proceedings of or by any government or other Competent Authority or any agency or subdivision thereof or any omission of or by any government or other Competent Authority or any agency or subdivision thereof;
  - 10.1.6 any non-performance of its obligations by any third party contracted with by the Vendor in connection with its obligations under this Agreement;
  - 10.1.7 any act of terror;
  - 10.1.8 any storms, floods or other inclement weather, earthquakes, subsidence, epidemics or other natural physical disasters; and
  - 10.1.9 fire, accident, explosion, or shortage or non availability of labour, power or water or products and articles required in connection with construction of

the Residential Development or movements in currency exchange rates which are material in the opinion of the Vendor.

**IN WITNESS WHEREOF** this Agreement has been duly executed by the parties as of the day and year first before written.

**THE SCHEDULE**

**Form of the Lease**

**EXECUTION**

THE VENDOR:

SEALED with the Common Seal of	]
<b>ROSSLYN SUITES LIMITED</b>	]
in the presence of:	]
	]
	]
-----	]
DIRECTOR	]
	]
	]
-----	]
DIRECTOR/SECRETARY	]
	]
Before me	]
	]
	]
	]
ADVOCATE	]

I CERTIFY THAT the above named ..... and ..... being the director(s) and/or company secretary of **ROSSLYN SUITES LIMITED** appeared before me on the .....day of.....20.....and being known to me/being identified by ID/PP Numbers ..... and .....acknowledged the above signatures or mark to be theirs and that they had freely and voluntarily executed this instrument and understood its contents.

-----  
 Signature and Designation of  
 Person Certifying

**THE PURCHASER:**

SIGNED by [*]	] -----
	]
in the presence of:	]
	]
	]
-----	]
	]
ADVOCATE	]

I CERTIFY ..... appeared before me on the  
.....day of.....20..... and being known to me/being identified  
by\*.....acknowledged the above signature(s) or mark(s)  
to be his/hers and that he/she had freely and voluntarily executed this instrument and  
understood its contents.

-----  
Signature and Designation of  
Person Certifying

**DRAWN BY:**

O & M Law LLP  
Advocates  
4<sup>th</sup> Floor, Park Plaza  
At the Junction of Limuru Road  
and 2<sup>nd</sup> Parklands Avenue  
P.O. Box 49393-00100  
**NAIROBI**

**ANNEXURE ONE**

**Specifications in relation to the Sale Property**

**ANNEXURE TWO**

**The Estate Management Structure**

**ANNEXURE THREE**

**The Sale Property Plan**

**ANNEXURE FOUR**  
**The Residential Development Plan**