IN THE MATTER OF THE LAND ACT, No. 6 of 2012

IN THE MATTER OF THE LAND REGISTRATION ACT, No. 3 of 2012

LEASE NUMBER: I.R _____

(ISSUED UNDER THE REGISTRATION OF TITLES ACT, CAP 281, (NOW REPEALED))

CHARGE Please do not date

Date of issue: 20

The Chargor: [redacted] of P.O. Box [redacted], Nairobi.

The Bank: [redacted] **BANK LIMITED** a limited liability company incorporated in Kenya with a licence to provide banking services and for purposes hereof of P.O. Box, [redacted] Nairobi.

Principal Amount: Kenya Shillings Five Million Five Hundred Thousand (KShs. 5,500,000.00) or the equivalent thereof in whatever currency denominated.

WHEREAS:

(A) The Chargor is registered as proprietor as lessee of ALL THAT cottage Number D8 erected on Property Land Reference Number [redacted] (Original Number [redacted]) more particularly described in the Schedule (subject to the matters stated in the Memorandum endorsed on the document of title in respect of the said cottage and described in the Memorandum hereunder) together with the fixtures, fittings, additions and improvements from time to time forming part of the cottage (together the "**Premises**").

(B) The Bank has agreed, at the request of the Chargor, to make or continue from time to time to make loans or advances or to grant any financial facilities or other accommodation or to grant time for so long as it may think fit to, or to forbear to sue or demand immediate payment from, the Chargor or any person whose liabilities and obligations have been guaranteed by the Chargor.

(C) The Chargor in consideration of the matters referred to in Recital (B) above has agreed to create a legal charge (being this Charge) over the Premises to secure the Principal Amount on the terms and conditions contained herein.

THIS CHARGE witnesses as follows:

1. **Covenant to Pay**

The Chargor covenants with the Bank to pay to the Bank on the Seventh (7th) day after the date of this Charge the principal money and interest secured by this Charge (the Chargor hereby acknowledges that this shall be the "date specified for repayment" within the meaning and for all purposes of Section 56(2) of the Land Registration Act) and if the amount secured by this Charge is not demanded on the date specified for repayment to pay to the Bank on a date three months after the date of service of written demand by the Bank to the Chargor all money and discharge all obligations and liabilities, whether actual or contingent, now or hereafter due, owing or incurred to the Bank by the Chargor or for which the Chargor is or may become liable in whatever currency denominated whether on any current or other account or otherwise in any

manner whatsoever (whether alone or jointly and in whatever style, name or form and whether as principal or surety) including all liabilities in connection with negotiable instruments, drafts, payment orders, foreign exchange transactions, swap arrangements, issuing, confirming, accepting, endorsing or discounting any notes or bills or bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Chargor or in the course of the Bank's business with the Chargor or otherwise in the discharge of all other liabilities howsoever incurred together with interest to the date of payment at such rates and upon such terms determined in accordance with the provisions of this Charge as may from time to time be agreed and all commissions and other banking, fees and charges payable to the Bank in accordance with the Bank's tariff and similar instrument from time to time and, on a full indemnity basis, all legal and other costs and expenses which the Bank may incur in enforcing or seeking to enforce payment of such monies and liabilities and in relation to the preparation, execution and enforcement of this Charge provided however that:-

(a) no payment by the Chargor to the Bank shall be treated as being a payment on account of principal unless all interest due or deemed to be due or accrued has been paid; and

(b) all payments due to be made by the Chargor hereunder whether of principal interest or otherwise shall be made without any set-off counterclaim or restriction and free and clear of and without deduction whether for or on account of any present or future taxes or otherwise. If at any time whether now or in the future any applicable law, regulation or regulatory requirement or any competent taxing authority requires the Chargor to make any deduction or withholding in respect of taxes from any payment due under this Charge for the account of the Bank the sum due from the Chargor in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding the Bank receives a net sum equal to the sum which the Bank would have received had no such deduction or withholding been required to be made and the Chargor shall indemnify the Bank against any losses or costs incurred by the Bank by reason of such deduction or withholding.

2. **Interest**

a) The Chargor shall pay commission, fees and other usual bank charges as well as interest up to the date of payment (as well after as before any demand, judgement, incapacity, death or bankruptcy of the Chargor) on all the monies and liabilities from time to time due and payable hereunder such interest to be calculated at the rate or rates set out in any facility letter, letter of commitment, loan agreement, letter of variation or other agreement exchanged with the Bank or at such other rate or rates (not exceeding any maximum permitted by law) from time to time agreed with the Bank and in the absence of such agreement at such rate or rates as the Bank may, in its sole and absolute discretion, from time to time determine **PROVIDED THAT** the bank shall give the Chargor at least thirty (30) days' notice of the change in the rate of interest payable. It is hereby acknowledged and agreed by the Chargor that service of the notice of variation shall be deemed to have been adequately served as required by the Land Act, 2012 if done by sending the notice by post to the address of the Chargor or by way of a general notice to the Bank's customers by way of advertisement placed by the Bank in a newspaper with national circulation or by way of a notice or notices placed at the branches or business premises of the Bank or by electronic mail to the address provided by the Chargor.

b) If the Chargor defaults in making any payments hereunder or exceeds the authorised limit for the banking facilities the Chargor shall pay interest on that excess sum or any portion remaining unpaid from the due date of such payment until actual payment thereof at such rate or rates over and above the rates specified in Clause 2(a) above as agreed with the Bank in writing or in the absence of such agreement at such rate or rates as the Bank may in its sole and absolute discretion (within the limits permitted by law) from time to time determine.

c) Interest payable hereunder shall be calculated on daily cleared balances and debited monthly by way of compound interest according to the usual mode of the Bank but without prejudice to the right of the Bank to determine the methods of calculating the applicable interest and to require payment of such interest when due.

d) The Bank shall not be required to seek the consent of the Chargor or any principal debtor (as the case may be) prior to any change in the rate and method of calculating the interest so payable and the failure by the Bank to seek such consent from the Chargor or other principal debtor as aforesaid shall not prejudice in any way howsoever the recovery by the Bank of interest charged subsequent to any such change.

e) The statement of the Bank as to the rate, mode or amount of interest payable shall, in the absence of manifest error, be conclusive.

3. **Secured Obligations**

The amount secured by this Charge shall be the aggregate of the Principal Amount, all interest from time to time due or payable to the Bank and all costs, taxes, liabilities, obligations, charges and expenses incurred by the Bank from time to time in relation to this Charge.

4. **Charging Clause**

The Chargor as beneficial owner hereby:

(a) charges the Premises to the Bank as a continuing security for the payment and discharge in full of all money, obligations and liabilities covenanted to be paid or discharged or otherwise secured by this Charge; and

(b) applies to the Land Registrar and/or authorises the Bank and its agents to register the security created by this Charge in accordance with the provisions of the Land Registration Act and the Land Act to the satisfaction of the Bank.

5. **Pay all Charges and Expenses**

The Chargor covenants with the Bank to pay and discharge on demand and on a full indemnity basis and this Charge shall constitute security for:

(a) all costs, charges and expenses incurred or suffered by the Bank in the preparation, completion, stamping, registration, enforcement, protection or improvement of this Charge and any supplemental or collateral mortgages, charges, assignments, guarantees and other securities or in obtaining or attempting to obtain payment or discharge of the money, obligations and liabilities secured by this Charge;

(b) any money paid or liabilities incurred by the Bank in connection with the maintenance, repair or insurance of the Premises and any sums which the Bank may consider it expedient to advance or pay for rents, rates, taxes, duties, charges, assessments, impositions and outgoings payable in respect of the Premises or by their owner or occupier; and

(c) interest as provided in Clause 2 on all costs, charges, expenses and other sums payable under this clause from the earlier of the date of payment by the Bank or the date of demand until payment in full.

6. **Covenants by the Chargor**

In addition to the agreements by the Chargor implied by Section 88 of the Land Act the Chargor covenants with the Bank that, during the continuance of this Charge, the Chargor shall:

(a) keep all buildings forming part of the Premises and all roads, passageways, pipes, wires, cables, drains and sanitary and water apparatus and all fixtures, fittings, additions and improvements in good and substantial repair and in good working order and condition and shall not pull down, remove, sell or otherwise dispose of any of them without the prior written consent of the Bank except in the ordinary course of use, repair, maintenance or improvement it being agreed that, if the Chargor is at any time in default in complying with this covenant, the Bank shall be entitled, but not bound, to repair and maintain them with power for the Bank, its agents and employees to enter the Premises for that purpose or for the purpose of inspection and the Chargor hereby authorizes the Bank at any time and from time to time during the continuance of this Charge to instruct a surveyor or valuer to inspect and report on the Premises and the Chargor shall meet the cost and expenses of such inspection and reports;

(b) where the Premises are used for agricultural purposes, cultivate and farm them in accordance with good agricultural practices and permit the Bank, its agents and employees to enter the Premises for the purpose of inspecting their state of cultivation and condition and if notified by the Bank of any defects or matters the Chargor shall make good the same in a proper manner and to the satisfaction of the Bank within the space of Three (3) months next after every such notice;

(c) observe and perform all environmental laws (including without limitation the provisions of the Environmental Management and Coordination Act, 1999), regulations, directions and codes of practice and all covenants and stipulations from time to time affecting the Premises or the mode of the user or enjoyment of the same and not without the prior consent in writing of the Bank enter into any onerous or restrictive obligations affecting any part of the Premises or suffer or omit to be done any act, matter or thing whereby any provision of any Act of Parliament, order or regulation from time to time in force affecting the Premises is infringed;

(d) insure and keep insured at the Chargor's cost, with insurers approved by the Bank and in the joint names of the Chargor and the Bank or, at the option of the Bank, with the interest of the Bank noted on the policy, the buildings forming part of the Premises and all fixtures, fittings, additions and improvements against loss or damage by fire, lightning, earthquake, storm, flood, explosion, riot and civil commotion, aircraft and such other risks as the Bank may from time to time specify to their full insurable value

to the satisfaction of the Bank and if the Chargor becomes aware of any threatened or actual cancellation of the policy the Chargor shall promptly inform the Bank in writing and take such remedial action as will ensure that the insurance remains in place;

(e) deposit with the Bank the Chargor's policies of insurance and duly pay all premiums and other money necessary for effecting and keeping up the Chargor's insurances and deliver to the Bank at least seven (7) days before the expiry of any policy the receipt for the payment of the premium to renew that policy it being agreed that the Chargor shall pay any excess amount and all money payable under any policy of insurance effected by the Chargor shall be paid by the insurers directly to the Bank or, if not so paid, shall be held on trust for the Bank to be applied, at its option, in replacing, restoring or reinstating the property or assets destroyed, damaged or lost or in reduction of the money, obligations and liabilities secured by this Charge and, if default shall be made by the Chargor at any time in effecting or keeping up any insurance, in depositing the policies or delivering the receipt for any premium, the Bank shall be entitled, but not bound, to take out or renew that insurance in any sum which it may consider expedient;

(f) deposit with the Bank and permit it to hold and retain all deeds and documents of title relating to the Premises and such other documents relating to the Premises as the Bank may from time to time require;

(g) if (and upon receipt of the Bank's written consent) the Premises are subdivided or partitioned, comply with the terms given by the Bank for such subdivision or partition (as the case may be);

(h) observe and perform or procure the observance and performance of the covenants and stipulations from time to time affecting the Premises or the mode of user or enjoyment of the Premises and shall not, without the prior written consent of the Bank, enter into any onerous or restrictive obligations affecting any part of the Premises or make any structural or material alteration to the Premises or do or suffer or omit to be done any act, matter or thing whereby any provision of any law, order or regulation from time to time in force affecting the Premises may be infringed;

(i) not without the prior written consent of the Bank create or attempt to create or permit to subsist any charge or mortgage upon or permit any lien or other encumbrance whatsoever to arise on or affect any part of the Premises;

(j) not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Bank of the security hereby created nor permit any person (other than the Bank) to become entitled to any proprietary right or interest (including without limitation the overriding interests set out in Section 28 (b) to (j) of the Land Registration Act) which might affect the value of the Premises or any part thereof;

(k) procure and provide to the Bank within fourteen (14) days of the happening of an event which shall give rise to a spousal overriding interest as set out in Section 28(a) of the Land Registration Act, a consent to this Charge from the spouse/s in a format approved by the Bank;

(l) punctually pay and indemnify the Bank and any receiver against all existing and future rents, rates, taxes, duties, charges, assessments, impositions and outgoings, whether imposed by agreement, statute or otherwise payable in respect of the Premises or by their owner or occupier;

(m) immediately upon receipt by the Chargor, provide full particulars to the Bank of any notice, schedule, list, claim or demand or other requirement whatever affecting or which may affect any part of the Premises or the interests of the Bank and shall take such remedial action as the Bank may require;

(n) ensure that no person (other than the Chargor) shall during the subsistence of this Charge and without the prior consent in writing of the Bank be registered as the proprietor of the Premises or any part thereof or any interest therein;

(o) if the Premises consist of a leasehold interest and the term granted to the Chargor is for any reason extended, forthwith at the request of the Bank and cost of the Chargor, deliver to the Bank a replacement or further charge over the new or extended leasehold term containing such terms as the Bank may require;

(p) procure that all occupiers and managers of the Premises shall not carry on any illegal or immoral activities on the Premises and, without prejudice to the generality of the foregoing, shall not commit any offence thereon under the provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994;

(q) comply with and observe and procure that all occupiers and managers of the Premises comply with and observe all the covenants, agreements, conditions, restrictions, stipulations and provisions contained in any facility letter, letter of commitment or other agreement exchanged with the Bank on, before or after the date of this Charge and in the event of any conflict between the covenants, agreements, conditions, restrictions, stipulations and provisions contained in the facility letter or such other agreement and this Charge the covenants, agreements, conditions, restrictions, stipulations and provisions contained in this Charge shall prevail;

AND it is hereby agreed that any monies expended by the Bank or its agents or any receiver appointed hereunder in inspecting, valuing, repairing or in performing any other matter covered by this clause shall be monies properly incurred and shall be payable by the Chargor on demand and shall otherwise be secured by this Charge.

7. Events of Default

Without prejudice to the obligations of the Chargor to make payment on the date and in the manner stipulated in Clause 1 or the right of the Bank to demand payment in the manner stipulated in Clause 1, all money, obligations and liabilities secured by this Charge shall immediately become due and payable and the Chargor shall provide cash cover on demand for all contingent liabilities of the Chargor to the Bank and for all notes or bills confirmed, accepted, endorsed or discounted and all bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Chargor on the occurrence of any of the following events:

(a) if the Chargor fails to pay when demanded any sum due and owing to the Bank or fails to comply with any term or condition of any facility from the Bank or fails to perform or discharge any obligation or liability of the Chargor to the Bank;

(b) if the Chargor fails to observe or commits any breach of the undertakings and covenants contained in this Charge, any loan agreement, facility letter or other agreement or obligation relating to the borrowing or if any representation, warranty or undertaking from time to time made to the Bank by the Chargor is or becomes incorrect or misleading;

(c) if the Chargor makes a material misrepresentation to the Bank regarding her marital status or fails to notify the Bank of any spousal overriding interest in the Premises existing at the time of execution of this Charge or of the happening of an event which gives rise to a spousal overriding interest as set out in Section 28(a) of the Land Registration Act;

(d) if the Bank receives notice or there is an attempt by the Government, the head lessor or any other competent or interested person to challenge, terminate, impair, suspend or forfeit the Chargor's title and/or interest to the Premises or the title and/or interest of the Chargor to the Premises shall for any reason be challenged, terminated, impaired, suspended or forfeited;

(e) if a management order is made under section 187 of the Agriculture Act (Chapter 318 of the Laws of Kenya) (the "Agriculture Act") in respect of all or any part of the Premises or an order is made under Sections 185, 186 or 186A of the Agriculture Act or any similar enactment to purchase or compulsorily acquire all or any part of the Premises;

(f) if the Chargor, without the prior written consent of the Bank, creates, attempts to create or permits to arise any charge, mortgage, lien or other encumbrance over any part of the Premises;

(g) if an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver or receiver and manager is appointed over any of the property or assets of the Chargor;

(h) if any final judgment or order is made against the Chargor and is not complied with within seven (7) days or if any decree, order, warrant or process is issued or other action is taken whereby a distress, attachment or execution is or may be levied or enforced upon or against any of the property or assets of the Chargor;

(i) if the Chargor commits any act of bankruptcy, dies or becomes of unsound mind;

(j) if the Chargor, without the prior consent in writing of the Bank, ceases or threatens to cease to carry on the business carried on by the Chargor on the date hereof;

(k) if any guarantee, indemnity, right of subrogation or other security for the amounts secured by this Charge (or any part thereof) fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or becomes in jeopardy, invalid or unenforceable;

(l) if any license, authorization, consent or registration at any time necessary or desirable to enable the Chargor to comply with the Chargor's obligations to the Bank hereunder is revoked, withheld or materially modified or fails to be granted or perfected or ceases to remain in full force and effect;

(m) if the Chargor is participating or is deemed to be participating in illegal activities money laundering, cheque kiting or corrupt activities or is charged or convicted of such activities by any court of competent jurisdiction;

(n) if any cheques or other negotiable instruments of the Chargor are dishonoured by the Bank or other institution for lack of funds whether the Chargor is charged in a court of law or not;

(o) if any of the above events occurs in relation to any person who guarantees or gives an indemnity or provides security in respect of any of the money, obligations or liabilities secured by this Charge or if any such person gives notice terminating his liability under the relevant guarantee, indemnity or security; or

(p) if an event occurs which in the Bank's sole opinion has a material adverse effect on the Chargor and/or the ability of the Chargor to perform his obligations under this Charge.

AND the Chargor hereby covenants immediately to notify the Bank in writing of the occurrence of any of the events of default specified in this clause or of the occurrence of any event which with the lapse of time or giving of notice would or may constitute any of the same.

8. **Bank's Remedies**

At any time after the occurrence of any of the events specified in Clause 7, the Bank may serve notice on the Chargor in accordance with Section 90 of the Land Act demanding payment of the money secured by this Charge or demanding performance or observance of a covenant, express or implied in the Charge, and if the Chargor does not comply with the notice served under Section 90 of the Land Act the Bank may exercise the following remedies in accordance with the Land Act:-

(a) sue the Chargor for any money due and owing under this Charge;

(b) appoint a receiver of the income of the Premises;

(c) lease or sub-lease the Premises;

(d) enter into possession of the Premises;

(e) sell the Premises.

9. **Statutory Power of Sale**

9.1 If the Bank shall wish to exercise its power to sell the Premises, the Bank shall prior to exercising such right serve on the Chargor (with a copy to such persons as are prescribed by Section 96(3) of the Land Act) a written notice to sell the Premises and shall not proceed to complete any contract for the sale of the Premises until at least Forty (40) days have elapsed from the date of service of such notice.

9.2 In exercising its statutory power of sale of the Premises, the Bank and/or the receiver shall comply with the following terms and conditions:-

(a) the Bank and/or the receiver shall appoint a valuer to carry out a forced sale valuation of the Premises;

(b) the sale by the Bank and/or the receiver of the Premises may be:-

i) of the whole or part of the Premises;

ii) subject to or free of any charge or other encumbrance having priority to this Charge;

iii) by way of subdivision or otherwise;

iv) by private contract at market value;

v) by public auction with a reserve price;

vi) for a purchase price payable in one sum or by installments; or

vii) subject to any other conditions that the Bank shall think fit having due regard to the duty imposed on the Bank pursuant to section 97(1) of the Land Act.

c) the purchase money received shall be applied in the order of priority set out in Section 101 of the Land Act, that is:-

i) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the Premises;

ii) second, in discharge of any prior charge or other encumbrance subject to which the sale was made;

iii) third, in payment of all costs and reasonable expenses, properly incurred and incidental to the sale or any attempted sale;

iv) fourth, in discharge of the Principal Amount, interest and other charges, including any money advanced to a receiver in respect of the Premises; and

v) fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the Charge; and

(d) the sale shall be carried out in accordance with the provisions of the Land Act and the Land Registration Act.

9.3 At any time before the Bank exercises its power of sale:-

(a) the Chargor or any other person entitled to discharge the charge may discharge the charge by paying to the Bank the amount secured by this Charge at the time of payment; and

(b) the Chargor may apply for relief in accordance with Section 103 of the Land Act.

10. **Receiver's Commission**

The parties hereby agree that the commission to which a receiver is entitled by virtue of Section 92(7) of the Land Act shall be (unless otherwise provided by law) at the rate not exceeding ten per cent of the gross amount of all monies received.

11. **Chargor not to part with Possession**

The Chargor shall not sell, transfer, lease, agree to lease, accept surrenders of leases, charge or part with the possession of any part of the Premises without the prior written consent of the Bank and the provisions of section 88 (f) and section 88(g) of the Land Act, 2012 shall not apply to this charge.

12. **Further Advances**

This Charge being a continuing security, the Bank may make further advances and give credit to the Chargor on a current or continuing account and such further advances shall, in accordance with section 82 of the Land Act, 2012, rank in priority to any subsequent charge of the Premises. Such further advances shall be secured hereunder as if they had formed part of the original principal sum secured herein and shall be subject to all the terms and conditions hereof save the further advances shall bear interest at such rate or rates and be repayable in such manner as may be separately agreed upon between the Bank and the Chargor.

13. **Right of Consolidation**

It is hereby acknowledged and agreed by the Chargor that there shall be no restriction on the right of the Bank of consolidating mortgage or charge securities and the Bank hereby reserves the right to consolidate all mortgages and charges which the Bank may from time to time hold from the Chargor on any account whatsoever and it is hereby declared that neither the Premises nor any other property of the Chargor which at any time during the continuance of this security is subject to a mortgage or a charge in favour of or vested in the Bank shall be redeemed or discharged except on payment not only of the monies hereby or thereby secured but also of all monies secured by every such mortgage or charge (including this Charge).

14. **Application of Rent monies**

If at the time of entry into possession or receipt of the rents and profits of the Premises by the Bank or by any receiver appointed by the Bank the Premises or any part thereof shall be let furnished under a tenancy which is or becomes binding on the Bank then and in any and every such case the Bank or such receiver shall be entitled to receive and apply the whole of the rent reserved by such tenancy as if it were rent of the Premises and neither the Bank nor any such receiver shall be required or bound to make any apportionment of such rent in respect of any furniture or chattels of the Chargor provided under the terms of such tenancy and maintained at the Premises.

15. **Bank's right to remove Furniture or Chattels**

If upon entry by the Bank into possession of the Premises or any part thereof such property shall contain any furniture or chattels of the Chargor which the Chargor shall refuse or fail to remove within twenty-eight (28) days of the Chargor being required in writing by the Bank so to do then and in any and every such case the Bank shall thereupon be deemed appointed as the agent of the Chargor (without assuming any of the duties or obligations of an agent as provided by law) with full authority at the Chargor's expense to remove store preserve sell and dispose of such furniture and chattels in such manner in all respects as the Bank shall think fit and to apply the proceeds of any sale or disposal towards the satisfaction and discharge of the amount secured by this Charge provided that the Bank shall not sell such furniture or chattels pursuant to the powers conferred on the Bank hereunder until after the expiration of twenty-eight (28) days period referred to above.

16. **Security not to confer on Bank any right in equity to any Furniture or Chattels**

The provisions of Clauses 14 and 15 above shall not operate to confer on the Bank any right in equity to any of the furniture or chattels of the Chargor and shall accordingly not be construed to create any charge or other security interest thereon or otherwise so as to constitute this Charge an instrument under the Chattels Transfer Act (Chapter 28 of the Laws of Kenya).

17. **Application of Monies**

Any money received by the Bank or any receiver in the exercise of any powers conferred or implied by this Charge shall (unless otherwise specified in the Land Act or any other provision of law) be applied in or towards satisfaction of the money, obligations and liabilities secured in such order as the Bank, in its absolute discretion, may determine and the Bank shall be entitled to credit any money so received to a suspense account for so long and in such manner as the Bank may determine from time to time.

18. **Indemnity**

The Chargor agrees to indemnify, on demand, both the Bank and any receiver against all losses, actions, claims, expenses, demands and liabilities, whether in contract, tort or otherwise, now or hereafter incurred by the Bank or any receiver or by any manager, agent, officer or employee for whose liability, act or omission the Bank or the receiver may be answerable, for anything done or omitted in the exercise or purported exercise of the powers conferred or implied by this Charge or occasioned by any breach by the Chargor of any of the Chargor's covenants or other obligations to the Bank.

19. **Bank not liable to account as Mortgagee in Possession**

Unless otherwise provided by law, neither the Bank nor any receiver shall be liable to account as mortgagee in possession in respect of any part of the Premises or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee in possession might be liable.

20. **Representations and Warranties**

20.1 The Chargor represents and warrants to the Bank that:

a) this Charge constitutes valid and legally binding obligations of the Chargor enforceable in accordance with its terms;

b) neither the making of this Charge nor the compliance with its terms will conflict with or result in a breach of any of the terms conditions or provisions of or constitute a default or require any consent under any indenture, mortgage, charge, agreement or other instrument or arrangement to which the Chargor is a party or by which the Chargor is bound or violate any of the terms or provisions of any judgment, decree or order or any statute, rule or regulation applicable to the Chargor or the businesses undertaken by the Chargor;

c) the Chargor is not engaged in nor to the best of the Chargor's knowledge threatened by any litigation, arbitration or administrative proceedings the outcome of which might materially affect the Chargor's business prospects or financial condition or make it improbable that the Chargor will be able to observe or perform the Chargor's obligations under this Charge;

d) the conditions and circumstances under Section 106 (3) of the Land Act are not prevailing and/or in existence at the time of creation of this Charge;

e) no event or circumstance which constitutes or which with the giving of notice lapse of time or the making of a determination would constitute an event of default as set out in Clause 7 above has occurred and is continuing;

f) the Chargor has disclosed her marital status to the Bank and whether or not the Premises are the matrimonial home/property of the Chargor; and

g) save as otherwise disclosed to the Bank in writing, there are no overriding interests noted on any title to the Premises or otherwise affecting the Premises.

20.2 The representations and warranties in Clause 20.1 above shall be deemed repeated by the Chargor on and as of each day the amounts secured by this Charge remain outstanding to the Bank.

21. **No Right to Further** Advances

Upon demand being made by the Bank for payment of the amounts secured by this Charge or upon the said amount for any other reason becoming immediately payable, the Bank shall be under no obligation to make any further advances or grant any further facility to the Chargor.

22. **Protection of Third** Parties

No purchaser or other person shall be bound or concerned to see or inquire whether the right of the Bank or any receiver to exercise any of the powers conferred by this Charge has arisen or not or be concerned with any notice to the contrary or with the propriety of the exercise or purported exercise of those powers.

23. **Continuing Security**

This Charge shall be a continuing security and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account or (where the Chargor is an individual) the death bankruptcy or incapacity of the Chargor.

24. **Other Security**

This Charge is in addition to and shall not merge with or otherwise prejudice or affect any other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, mortgage or other security (whether created by the deposit of documents or otherwise) now or hereafter held by or available to the Bank and shall not in any way be prejudiced or affected by them or by their invalidity or by the Bank now or hereafter dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any of them or any rights which it may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.

25. **Exercise of Rights**

The failure to exercise or delay in exercising a right or remedy provided by this Charge or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and the Chargor expressly agrees and covenants with the Bank that the Chargor shall not plead limitation under the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment. No single or partial exercise of a right or remedy provided by this Charge or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy.

26. **Rights Cumulative**

The rights, powers and remedies provided in this Charge are cumulative and are not nor are they to be construed as exclusive of any rights, powers and remedies provided by law.

27. **Right to Debit the Chargor's Account**

The Bank may, at any time and without notice or demand, debit any current or other account of the Chargor with the payment of any sums which may become due to the Bank under the provisions of this Charge.

28. **Consolidation**

The Bank may, at any time and without notice or demand and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any then existing accounts including accounts in the name of the Bank (whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and in whatever currency denominated) of the Chargor alone or jointly with others wherever situate and set off or transfer any sum standing to the credit of any one or more of such accounts in or towards satisfaction of any obligations or liabilities to the Bank of the Chargor whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint.

29. **Currency Conversion**

29.1 All money received or held by the Bank or by any receiver under this Charge may from time to time after demand has been made by the Bank be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Chargor in that other currency at the then

prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing that other currency with the existing currency. If and to the extent that the Chargor fails to pay the amount due on demand, the Bank may in its absolute discretion without notice to the Chargor purchase at any time thereafter so much of any currency as the Bank considers necessary or desirable to cover the obligations and liabilities of the Chargor in such currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing such currency and the Chargor agrees to indemnify the Bank against the full cost incurred by the Bank for such purchase. Neither the Bank nor any receiver shall be liable to the Chargor for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

29.2 No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability, actual or contingent, expressed in that currency the Bank shall have a further separate cause of action against the Chargor and shall be entitled to enforce this Charge to recover the amount of the shortfall.

29.3 The Bank shall in its sole and absolute discretion be entitled upon giving prior written notice to the Chargor at any time to convert any facility made available in a currency other than Kenya Shillings (the "Other Currency") into a Kenya Shilling facility. If the Bank shall exercise the aforesaid right to convert the facility the Other Currency shall be converted into Kenya Shillings at a rate of exchange determined by the Bank in accordance with the usual practice adopted by the Bank in converting the Other Currency into Kenya Shillings as at the date of conversion. Upon the conversion the provisions of Clause 2 (interest) shall apply *mutatis mutandis* in relation to the charging and payment of interest by the Chargor in respect of the Kenya Shillings outstanding from time to time and the Chargor shall be charged and shall pay interest accordingly.

29.4 Neither the Bank nor any receiver shall be liable to the Chargor for any loss resulting from any fluctuation in exchange rates before or after the exercise of any or all of the foregoing powers.

30. **Further Assurance**

The Chargor shall execute and do all such assurances, acts and things as the Bank may require for facilitating the realisation of this Charge and for exercising all the powers, authorities and discretions conferred on the Bank or any receiver and, for the purposes of this clause, a certificate signed by the Bank or any officer of the Bank to the effect that any particular assurance, act or thing is required by the Bank shall be conclusive evidence of the fact.

31. **Power of Attorney**

The Chargor irrevocably and by way of security appoints the Bank and separately any receiver appointed by the Bank under this Charge severally to be the attorney of the Chargor and in the name and on behalf of the Chargor to demand, sue for and receive any money payable under any policies of insurance effected by the Chargor and to settle or compromise any claims in relation to those policies and, as the Chargor's act and deed or otherwise, to sign, seal and

deliver all deeds, assurances, agreements and documents and to do any other acts and things which may be required for the full exercise of any of the powers conferred or implied by this Charge.

32. **Notice of any Subsequent Encumbrance**

If the Bank receives notice of any subsequent mortgage, charge, assignment or other disposition affecting any part of the Premises, the Bank may open new accounts for the Chargor but, if it does not do so, the Bank shall nevertheless be treated as if it had done so at the time when it received the notice and, as from that time, all payments made by or on behalf of the Chargor to the Bank shall be credited or be treated as having been credited to the new accounts and shall not operate to reduce the amount due from the Chargor to the Bank at the time when it received the notice.

33. **Security Not to be Affected by Change in Constitution of the Bank**

This Charge shall continue to bind the Chargor notwithstanding any amalgamation or merger that may be effected by the Bank with any other company and notwithstanding any reconstruction by the Bank involving the formation of and transfer of the whole or any part of the undertaking and assets of the Bank to a new company and notwithstanding the sale or transfer of the whole or any part of the undertaking and assets of the Bank to another company, whether the company with which the Bank amalgamates or merges or the company to which the Bank transfers the whole or any part of its undertaking and assets shall or shall not differ in its name, objects, character or constitution, it being the intent that this Charge shall remain valid and effectual in all respects and for all purposes in favour of the Bank and that the benefit of this Charge and all rights conferred upon the Bank by this Charge may be assigned to and enforced by, any such company and proceeded on in the same manner to all intents and purposes as if such company had been named in this Charge instead of and/or in addition to the Bank. The Bank shall be entitled to share any information concerning the Chargor to any such proposed assignee or other successor.

34. **Invalidity**

Each of the provisions of this Charge is severable and distinct from the others and, if at any time one or more of those 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.

35. **Consent of the Bank**

Where the consent of the Bank is required under any of the provisions of this Charge, the Bank may grant such consent upon and subject to such terms and conditions as the Bank shall think fit.

36. **Certificate by Officer of the Bank Conclusive**

Any notice or demand or certificate as to the amount secured by this Charge, signed by an officer or manager of the Bank, shall be conclusive and binding on the Chargor and, where applicable, shall be conclusive evidence of the rights of the Bank to exercise the powers conferred or implied by this Charge.

37. **Joint and Several Liability**

Where the Chargor comprises two or more persons, the obligations of all such persons under this Charge are joint and several and any service of written demand or notice on one Chargor shall be deemed to be service to all Chargors.

38. **Notices**

Any notice or demand for payment by the Bank shall be deemed to have been properly served on the Chargor if delivered by hand or sent by registered post, telex, electronic mail or fax to the Chargor at the registered office, postal and electronic email address set out in this Charge or notified to the Bank or at any of the principal places of business in Kenya or the last known place of abode of the Chargor. In the absence of evidence of earlier receipt, any notice or demand shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, Seven (7) days after posting (notwithstanding that it be undelivered or returned undelivered) or, if sent by telex, electronic mail or fax, on the completion of transmission. Where a notice or demand is sent by registered post, it shall be sufficient to prove that the notice or demand was properly addressed and posted. Where a notice or demand is sent by electronic mail, it shall be sufficient to prove that the notice or demand was sent to the Chargor's electronic email address.

39. **Discharge**

Upon the final balance of the money hereby secured having been paid off and satisfied together with all interest due thereon and upon payment of all costs, charges and expenses incurred by the Bank in relation to the Premises, the Bank shall, at the request and cost of the Chargor, discharge this Charge.

40. **Amendments**

No alteration, amendment, variation or addition to this Charge shall be effective unless made in writing and executed by the Bank.

41. **Advances to a Third Party**

In cases where the Bank has at the request of the Chargor advanced monies to a third party (in this clause called the "**Borrower**") this Charge shall where necessary be construed *mutatis mutandis* but no such variations shall prejudice the rights and privileges of the Bank in so far as its remedies against the Chargor are concerned and as a separate and independent stipulation the Chargor hereby agrees that any monies which may not be recoverable herein by reason of any legal limitation or disability or incapacity of the Borrower shall nevertheless be recoverable herein and against the Premises as though such monies had been advanced to the Chargor as the sole and principal debtor.

42. **Changes in Law**

If any change in the applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof or if any official requirement or request (not having the force of law) shall:

42.1 subject the Bank to any tax with respect to the facilities made available by the Bank to the Chargor (other than a tax on the overall net income of the Bank);

42.2 change the basis of taxation to the Bank of any payment of principal, interest or other amount in respect of the facilities made available by the Bank to the Chargor;

42.3 impose, modify or deem applicable any reserve or deposit requirements against any assets of or deposits with or for the account of or loans by the Bank; or

42.4 impose on the Bank any other condition with respect to the facilities made available by the Bank to the Chargor

and the result of any of the foregoing is to increase the cost to the Bank of making or maintaining the facilities made available by the Bank to the Chargor or to reduce the amount of any payment receivable by the Bank in either case by an amount which the Bank deems material then and in any such case upon notification from the Bank the Chargor shall pay to the Bank on demand such amount as will compensate the Bank from such increased cost or such reduced receipts calculated from the date of notification by the Bank.

43. **Matters to be Noted in the Register**

The Bank's rights of tacking and consolidation under sections 82 and 83 of the Land Act, 2012 and the restrictions under section 87 of the Land Act and Section 59 of the Land Registration Act shall be noted against the above-mentioned title.

44. **No Representations**

The Chargor acknowledges that no representations or promises contrary to the provisions of this Charge have been made by the Bank or its agents to the Chargor or are outstanding at the date of execution of this Charge.

45. **Governing Law**

This Charge shall be governed by and interpreted in accordance with Kenyan law. The Chargor hereby irrevocably submits to the non exclusive jurisdiction of the High Court of Kenya but this Charge may be enforced in any court of competent jurisdiction.

46. **Definitions and Interpretation**

In this Charge, any reference to:

(a) the "**Bank**" includes a reference to the successors and assigns of the Bank;

(b) the "**Chargor**" includes a reference to personal representatives and/or the successors in title of the Chargor;

(c) the "**Premises**" means the cottage described in the schedule and includes the fixtures, fittings, additions and improvements from time to time forming part of the cottage;

(d) the headings to clauses and sub-clauses are for convenience only and shall not affect its construction or interpretation;

(e) the expression "person" includes a natural person, body corporate, unincorporated body, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm;

(f) the singular includes the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice verse;

(g) references to writing shall include any mode of reproducing words in a legible and non-transitory form;

(h) references to indemnifying any person against any circumstances include indemnifying and keeping that person harmless from all actions, claims and/or proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;

(i) references to any Statute or statutory provision shall include any Statute or statutory provision that amends or replaces or has amended or replaced it and shall include any subordinate legislation made under the relevant Statute;

(j) references to and the definition of any document (including this Charge) shall be deemed to be a reference to such document as it may from time to time be amended modified or replaced (in whole or in part) but disregarding any amendment variation modification or replacement taking place in breach of such document;

(k) references to sections, clauses, sub-clauses and schedules, unless otherwise provided, are to be construed as references to the sections, clauses and sub-clauses of and the schedules of this Charge;

(l) references to costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof; and

(m) references in this Charge to "consent" or "notice" by either party to the other or any other similar expression shall mean consent or notice (as the case may be) in writing.

IN WITNESS this Charge has been duly executed on the day and year first above written.

THE SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT Cottage Number [redacted] erected on Property Land Reference Number [redacted] (Original Number [redacted] which said Cottage is more particularly delineated and described on the Plan registered in the Registry of Documents in Nairobi in **Volume** **Folio** **File** , being the premises comprised in a Lease registered at the Land Titles Registry at Nairobi aforesaid as Number I.R _____/1 (hereinafter called the "**Lease**") AND held by the Chargor as lessee for the residue now unexpired of the term of ninety nine (99) years from 1st April 2012 less the last seven (7) days thereof subject to the payment of the annual revisable rent of a peppercorn if demanded on the First Day of January each year and the performance and observance of the covenants and conditions contained in the Lease TOGETHER WITH the rights and benefits to the Chargor as contained in the Lease and to the Acts, Special Conditions, Encumbrances and other matters specified in the Memorandum hereunder written.

MEMORANDUM

1. The Government Lands Act (Chapter 280 Laws of Kenya) (Now Repealed).
2. The Registration of Titles Act (Chapter 281 Laws of Kenya) (Now Repealed).
3. The Land Act, No. 6 of 2012.
4. The Land Registration Act, No. 3 of 2012.
5. The provisions of the Lease registered as Number I.R. _____/1.
6. The Special Conditions contained in a Grant registered as Number I.R. 141682/1.

Signed by

in the presence of

.....

Advocate's signature

I .....an Advocate of the High Court of Kenya who witnessed the execution of this Charge **CERTIFY** that the above-named Chargors appeared before me on the ..... day of ..... 20... and being known to me being identified to me by .....) acknowledged the above signatures or mark to be theirs and that they had freely and voluntarily executed this instrument and understood its contents.

.....

Advocate's signature

We, the above-named Chargors acknowledge that we understand the effect of Section 90 of the Land Act (the "**Act**") and the Bank's remedies under this Charge and we hereby agree that the Bank's rights under Sections 82 and 83 of the Act and the restrictions under Section 87 of the Act and Section 59 of the Land Registration Act be noted against the above title.

[redacted]

SIGNED by .....

the duly constituted Attorney of the Bank under and by virtue of a Power of Attorney registered at the Land Titles Registry at Nairobi as number ..... and at the Registry of Documents at Nairobi as Number .....

in the presence of:-

.....

Advocate

I CERTIFY that the above-named duly constituted Attorney of the Bank appeared before me on the ..... day of ..... 20.... and being known to me /being identified by .....) acknowledged the above signature or mark to be his/hers/ theirs and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....

Advocate

IN THE MATTER OF THE LAND ACT, No. 6 of 2012

IN THE MATTER OF THE LAND REGISTRATION ACT, No. 3 of 2012

IN THE MATTER OF OATHS AND STATUTORY DECLARATION ACT
(Chapter 15, Laws of Kenya)

AFFIDAVIT OF CONSENT OF SPOUSE

I [redacted] of P.O. Box [redacted] Nairobi DO HEREBY make oath and state as follows:-

1. THAT I am a Kenyan female of sound mind and the holder of a National Identity Card Number [redacted]
2. THAT I am the only spouse of [redacted], one of the Chargor's herein.
3. THAT neither the Chargor nor the Bank have used any compulsion or threat or exercised undue influence on me to induce me to execute this affidavit of consent.
4. THAT I acknowledge that I have been advised to take and have taken independent legal advice regarding the nature, remedies and effect of this Charge.
5. THAT I understand the nature and effect of this Charge, the effect of Section 90 of the Land Act and the Bank's remedies under the Charge.
6. THAT I hereby agree that the Bank's rights under Sections 82 and 83 of the Act and the restrictions under Section 87 of the Act and Section 59 of the Land Registration Act should be noted against the title to the Premises.
7. THAT I hereby give my full consent to the creation of the within written Charge.
8. THAT I make this Affidavit pursuant to the provisions of the Land Act, 2012 and the Land Registration Act, 2012.
9. THAT the facts deponed to herein are all true

Declared at ..... this ..... day of .....20.....

By the said: [redacted])
)
)
Before Me LUCY WAMBUI KYAMA)
ADVOCATE & Commissioner For Oaths)
P. O. Box 573-00506,)
NAIROBI.)
)
Commissioner for Oaths)

[redacted]
Deponent

I ....., a duly appointed Commissioner For Oaths **CERTIFY** that the above-named deponent appeared before me on the ..... day of ..... 20 ..... and (being known to me/being identified by .....) acknowledged the above signature or mark to be hers and that she had freely and voluntarily executed this instrument and understood its contents.

LUCY WAMBUI KYAMA
..... Commissioner For Oaths .....
P. O. Box 573-00506.
NAIROBI.
Commissioner for Oaths