

# LEASES

Definitions and distinctions  
Essentials of a lease  
Implied conditions and express covenants  
Assignment and determination  
The regime of rent Acts  
Duties of the Conveyancer

## LEASE DEFINITION AND CHARACTERISTICS

A lease is a document creating an interest in land for a fixed period or determinate period usually in consideration of the payment of rent. An owner of a property who does not wish to stay or occupy the land himself may grant another person the right to occupy and use the property for a certain period in return for an agreed sum of money. A lease is therefore an executor contract where rights and obligations remain outstanding in the duration of the lease.

*In Prudential Assurance Co. Ltd V London Residuary Body (1992)AC 286* Lord Templeman explained that a Lease is "**a contract for the exclusive possession and profit of land for some determinate time**"

S2 LA defines a lease as

The grant, with or without consideration by the proprietor of land of the **right to exclusive possession** of his or her land, and includes the right so granted and the instrument granting it and also includes a sublease but does not include an agreement to lease.

A grantor of a lease is known as the lessor while the grantee is known as the lessee.

The words 'lease' and 'tenancy' denote the grant and are sometimes used interchangeably. However the word tenancy has come to be used in reference to short term leases.

Under the *Lessor and Lessee (shops, Hotels and Catering Establishments) Act Cap 301* a tenancy is described as a tenancy created by a lease or underlease, by an agreement for a lease or underlease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;

## ESSENTIALS OF A LEASE

The Requirements of a valid lease are:

### i) Exclusive possession

The lessee must have an interest that entitles him to exclude all other persons including the lessor from the premises. **Exclusive possession** is a central and indispensable feature of a lease. The lessee must acquire a right of possession of the property to the exclusion of the lessor. If the lessor visits the property without lawful authority he can be sued for trespass. The Lessor has to notify the Lessee if he wants to visit the leased premises. A Lessee must acquire the right of possession to the exclusion of the Lessor and all persons claiming through the Lessor.

The leading case is *Street Vs. Mountford* (1985) AC 809. Whereas exclusive possession is crucial in determining the existence of a lease the court must ascertain the nature and quality of the occupancy. Lord Templeman in this case sought to offer guidance as to how exclusive possession differs from the right to occupy enjoyed by a licensee by stating on page 816 that

'The Lessee possessing exclusive possession is able to exercise the rights of an owner of land, which is in the real sense his land albeit temporarily and subject to certain restrictions. A Lessee armed with exclusive possession can keep out strangers and keep out the Lessor unless the Lessor is exercising limited rights reserved to him by the tenancy agreement to enter and view and repair.'

In other words the Lessee steps into the shoes of the Lessor as he has the control rights associated with ownership particularly the right to exclude others including the Lessor.

If, however, the Lessor's has unrestricted access to the leased premises then there is no exclusive possession and the agreement is a contractual licence (*Westminster City Council v Clarke* [1992] 2 A.C. 288). The result is that the licensee (a lodger perhaps), 'is entitled to live in the premises but cannot call the place his own.' (*Street v Mountford* [1985] A.C. 809 818).

Possession alone does not result in a lease. If it is not exclusive then a license is created. The exclusiveness of possession depends on the degree of control.

*Desai V Cooper*(1950)214 KLR 32- the defendants did not have keys to the front door of a shop and could only access it from the back. They could not enter the front when they pleased but had to go to their portion through the plaintiff's portion. The plaintiff sought to recover the portion occupied by the defendants. The Court held that even though the defendants had exclusive use of a portion of the premises, they did not have exclusive possession and were licensees not Lessees.

*Hecht V Morgan*(19957) EA 741- 'paying guest' . The respondent lodged a complaint under the Central Rent Tribunal Board against his Lessor. The tribunal had to decide whether it had a jurisdiction(only if it was a lease). The respondent proved that he had exclusive possession and the court of appeal held in his favour. The court held that there must be a **clear intention** to create a lease.

*London Northwestern Railway Co. Buckmaster*(1874) 10 LR –exclusive possession precludes interference from the Lessor

Please note that exclusive possession does not necessarily imply that where one is let into exclusive possession he becomes a Lessee. It is quite possible that one may be in exclusive possession yet failing to be deemed a Lessee. Refer to- *Runda Coffee Estate V Ugaga Singh(1962) EA 564*

ii) *The Parties must be clearly identified*

iii) *The property must be clearly defined*

The land or part thereof must be defined. **S56 LA** gives power to lease whole or part of the land. **S 56 LA** the owner of land may lease the land or part of it to any person for a definite term or for the life of the lessor or the lessee or for a period which though indefinite may be determined by the lessor or lessee.

If part of land is being leased it shall be accompanied by a plan or other description which the registrar deems adequate to identify the property.

**Ratwani V Deganela(1956)17 EACA 37-** for a lease to exist the land must be defined. In this case the lessee was to share a shop and his portion was not defined.

iv. *Determinate Term*

The period of a lease must be defined or capable of being defined, that is, the term must have a beginning and a certain ending. Commencement date must be fixed or capable of ascertainment. The term granted must be ascertainable. Term of years must be definite it must be for a specific period or for a period capable of being ascertained.

If the lessee has a fixed term, he can underlet or sublet the whole or a portion of his leased term. Avoid creating leases that have clauses for perpetual renewal. Leases can either be in possession or commence at a future date.

A term made to come into effect at a passed date is called a lease in possession.

Consider the following statements and decide whether the duration is capable of being ascertained?  
Eg A grants to B a lease for 7 years commencing when E vacates the premises. Is this ascertainable?  
A grant to determine on the death of lessor or expiry of 20 years whichever is longer?

DIFFERENCES BETWEEN A LEASE AND A LICENCE

- i) The Nature of a Lease and a Licence –  
Lord Templeman in *Street V Mountford(1985)AC 809* said “whenever exclusive possession of premises is granted for a term of a rent, then prima facie a lease will be created.

A license is a relationship whereby the licensee is granted a right to enter into or use the premises without

becoming entitled to exclusive possession. A licensee has no interest in the premises but he can exclude the whole world from the premises except the licensor. Under a licence the Licensee has mere permission to use the premises.

S2 LA defines a license as permission given by the commission(for public land) and proprietor(for private land) allowing the licensee to do some act in relation to the land which would otherwise be a trespass but does not include an easement or profit.

Halsbury's Laws of England Volume XX page 9(2 ed.)

...a grant under which the grantee takes only the right to use the premises without exclusive possession operates as a license, regard must be had to the substance of the agreement. If the effect of the instrument is to give the holder, the exclusive right of occupation of land though subject to certain reservations and a restriction of the purposes for which it may be used, it is a lease. If the contract is merely for the use of the property in a certain way and on certain terms while it remains in the possession and control of the owner, it is a licence. To give exclusive possession there need not be express words to that effect, it is sufficient if the nature of acts to be done by the grantee require that he should have exclusive possession....

ii) A lease can be assigned / transferred whereas a licence cannot.

iii) A lease confers more rights than a licence for example quiet possession, non derogation from grant, repairs, fit for habitation etc. The rights conferred under a licence are limited.

iv. A lease is not easily revoked whereas a licence can be revoked with reasonable notice.

v. A leasee is granted statutory protection eg under cap 301 and cap 296 whilst a Licensee is not.

### **A LEASE AND AN ASSIGNMENT**

In a lease only a term of years is granted to the lessee and the lessor has a right of reversion after the expiration of the term granted.

An assignment takes place where a third party takes the identical term which the lessor or the lessee had. The lessor or the lessee may be the assignor. The whole interest must be transferred and the assignor has no right of reversion. The assignor can only assign the unexpired residue of his term.

### **A LEASE, SUB-LEASE AND UNDERLEASE**

A lease is a direct relationship between the lessor and the lessee.

A sub-lease is created when a Lessee leases out a portion of his premises.

An under-lease is created when a Lessee leases out part of his term of years or part of the remainder of his term. An underlease anticipates the existence of a headlessor. The underlessor is a Lessee of the headlessor.

In practice the terms sub-lease and underlease are used interchangeably and have no legal consequences.

## TYPES OF LEASES

### a) Periodic leases- Under S. 57 LA

If in any lease the

- i) Term not specified and no provision is made for giving notice to terminate the tenancy it is deemed to be a periodic lease. Point of reflection- What does this mean since one of the essentials of a lease is a determinate term?
- ii) The term may be from week to week, month to month, year to year or any other periodic basis for rent payment. In relation to agricultural land the periodic lease shall be for 6 months

iii) Lessee remains in possession with the consent of lessor after expiry of the term of the lease unless there is an express or implied term agreed. The conditions and term of the expired lease apply. No agreement in writing but there is occupation and payment of rent.

May be terminated by giving notice whose length is not less than its period and shall expire on the day when rent is payable. S 57(4)

Does the above provision conflict with S 4 of cap 301

28(f) LRA periodic tenancies are overriding interest.

### b) Short term leases- Under S. 58 of LA

A short term lease is a lease

- i) for a term of 2 years or less without an option for renewal
- ii) That is a periodic lease; and
- iii) To which section 57 (2) applies.

A short term lease may be made orally or in writing.

A short term lease is not a registrable interest in land

### c) Future Leases- Under S. 61 of LA

A lease can be made to commence at a future date not being later than 21 years after the date it is executed. A lease made to commence after 21 years from the date of its execution is void.

If the term of a future lease is for more than 5 years it must be registered. A lease to commence at some future date is called a reversionary lease.

## **REGISTRATION OF LEASES**

S58 of the LA provides that leases of more than 2 years should be registered

S 54 LRA- after registration of lease with a requirement for consent of lessor no dealing will be registered until consent of lessor.

S30 LRA no certificate of lease shall be issued unless the lease is for a certain period exceeding **25 years**. S32 the registrar shall note the disposition on the original and duplicate lease or charge.

S7 LA title to land may be acquired through a long term lease exceeding **21 years**.

### ***What is the effect of non-registration of a lease?***

S43(2) LRA- No instrument affecting any disposition of private land under this Act shall operate to sell or assign land, create, transfer or otherwise affect land, lease or charge until it has been registered in accordance with the laws relating to registration of instruments unless the disposition is exempt from registration.

S36(2) LRA- unregistered instruments shall be construed as contracts.

S 4 of the Registration of Documents Act requires registration of leases and licenses of over 1 year.

## **CASE LAW**

### **James Michiki Mwangi & Ano. V Esther Wanjiru Kabuku & Ano (2006) eKLR**

Lease for 5 years 1 month not registered. *Walsh V Londsdale (1882)21 Ch.D* quoted (where a Lessee holds under an agreement for a lease equity regards him as holding a lease). The Lessee continued in occupation after expiry of term and Lessor accepted rent. S 52 RLA provided that acceptance of rent was evidence of consent to continue in occupation

### **Bachelor's Bakery Ltd V Westlands Securities Ltd Civ Appeal No.2 of 1978.**

Lease of shop was for 6 years and was unregistered. Upon its expiry the Lessor sought possession. It was held that it was not a protected tenancy as there an unexecuted lease for more than 5 years which created a tenancy and did not require to be registered under ITPA S107

## **PARTIES COVENANTS IN A LEASE**

Application of Part VI LA

S55 LA provides that unless otherwise provided in a lease instrument the provisions of part VI of the Act shall apply to all leases, other than leases governed by legislation relating to community land. The provision enables parties to a lease to contract out of the provisions of the said part VI. It is an acknowledgement that a lease agreement is based on freedom of contract.

### **Implied covenants-lessor S 65 LA**

A lease will normally contain certain agreements regarding payment of rent, insurance, repairs, assignments, subleases etc. The agreement will also refer to the remedies of the parties for breaches.

These are freely contracted and fixed. The agreement may however be silent on some matters or there may be no agreement at all.

The law implies certain covenants into the agreement because they are essential.

#### **A. LESSORS COVENANTS UNDER S. 65 OF THE LAND ACT**

##### ***i. Quiet enjoyment***

So long as lessee pays rent and observes and performs the obligations contained or implied in the lease the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any interruption from the lessor or a person rightfully claiming through him. It does not mean absence of noise. Interference eg removal of windows and doors.

##### ***ii. Non-derogation from grant***

Not to use or permit any adjoining or neighbouring land that the lessor owns or leases that would in any way render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they may be used. It goes hand in hand with quiet enjoyment.

##### ***iii. Duty to repair***

If part of the building is leased, keep the roof, all external and main walls and drains and common parts, installations and facilities, including passages and walkways in a proper state of repair  
Lessor's covenants contd'

##### ***iv. Fitness for habitation***

If flat, house or room that it is fit for human habitation at the commencement and throughout the lease period

##### ***v. Suspension of rent***

If premises are destroyed by fire, flood or explosion or other accident(not caused by lessee's negligence), civil commotion, lightning, storm, earthquake, volcanic activity or other natural disaster, rent shall be suspended until premises are made fit for habitation within 6 months and lessee shall have the option to terminate.

##### ***vi. Fitness for purpose***

If the land or premises can only be used for one purpose, the lessee can terminate by one month notice if the property can no longer be used for that purpose.

##### ***vii. Pay all rates, taxes dues and outgoings***

#### **LESSOR'S RIGHTS- S. 65 (2)**

i. **Right of Entry-** Either personally or by agents enter leased land or buildings at a reasonable time

to inspect the condition of premises and repair.

ii. **Right to Terminate lease-** by serving a notice of intention to terminate  
If any rent is unpaid for one month after due date whether or not it has been demanded in writing  
There is breach of lessees covenants by lessee for one month

iii. **Right to Grant Consent S 67 LA**

A covenant by lessee not to do anything without the consent of the lessor shall be construed to mean that the lessor shall not unreasonably withhold the consent if the lessor applies for the consent

The lessor is supposed to either give or refuse to give consent within a reasonable time

If lessor refuses to grant consent unless the lessee pays additional rent or premium or a fine or any other consideration or imposes an unreasonable condition or objects to a transfer or sublease on grounds of gender or nationality of the transferee or sublessee it will be concluded that it has unreasonably withheld consent

Unreasonable withholding entitles one to seek damages and recover money lost

**Chantly V Ward (1913) 29 TLQ** the court held that the Lessor must show a solid and substantial cause for withholding the consent.

### LESSEES COVENANTS UNDER S. 66

- i) **Payment of Rent-** The lessee ought to pay rent at times and in the manner specified
- ii) **Sustainable Use of the land-** The lessee ought to use the land in a sustainable manner and in accordance with the conditions in the lease including not to cut down any tree unless this is necessary to enable use of the land
- iii) **Yield up the land** and buildings in the same condition as they were when the term of the lease began except for deterioration caused by:
  - a) Reasonable wear and tear
  - b) Fire, flood or explosion not attributable to the negligence of the lessee or the lessees invitees or employees
  - c) civil commotion,
  - d) Natural calamities such as lightning, storm, earthquake, volcanic activity or other natural disasters
- iv) **Keep all boundary marks in repair**
- v) Keep all buildings comprised in the lease in a reasonable state of repair

### REMEDIES AND RELIEFS FOR BREACHES OF COVENANTS



A lease is a contract so the usual remedies under contract eg specific performance, injunctions, sue for damages etc are available. However since a lease is a special estate contract it imports some special remedies:

**A. Distress for rent**

The Lessor is allowed to seize and sell the movables in the leased premises for payment of rent arrears due. The right to distress for rent is contained in the Distress for Rent Act(cap 293). Refer to section 3 (1) of the Act. The lessor carrying out the distress is also known as the distrainor. The remedy for distress for rent permits the distrainor to levy distress without the necessity for court proceedings. This is the Kenyan position which mirrors the position under common law in England. It is important to note that the distrainor must be entitled to reversion at the time the rent is due.

**Gusii Mwalimu Investment Co. Limited & others V Mwalimu Hotel Ltd Civil Appeal no. 160 of 1995** –detrained goods must remain in situ for at least 10 days.

Distress must be carried out within 6 months after expiry of lease

To avoid abuse of the remedy for distress of rent by the distrainor or the Lessee the statute has strict provisions preventing interference with levy of distress and against wrongful distraint. Refer to the distress for Rent Act (cap 293) on goods exempted from distress, goods absolutely privileged and goods conditionally privileged.

**B. Court Action**

The Lessor may opt to institute court proceedings for recovery of his rent. The distress for rent and court proceedings to recover rent are mutually exclusive and both cannot be pursued for rent at the same time. The Lessor may sue for the balance of arrears of rent if the purchase money from the distrained goods is insufficient. However, the Lessor cannot turn to levy distress if he had first sued for

the rent and the judgement remains unsatisfied. •The recovery proceedings must be initiated subject to the limitation period of 6 years under the Limitation of Actions Act(cap 22).

C. **Action For Damages**- to put the Lessor in the position he would have been had the breach not occurred

D. **Re-Entry & Forfeiture** (sections 73 - 76 of the Land Act)

S. 73 LA provides that the Lessor is entitled to forfeit the Lease if the Lessee:

- i) Commits any breach or omits to perform any agreement or condition expressed or implied in the lease
- ii) Is adjudicated bankrupt; or
- iii) Being a company goes into liquidation

It is exercised in two ways

- i) If lessee is not in occupation by entering and remaining in possession of the land
- ii) Enforced by court action

The effect of forfeiture of a lease according to the provisions of S. 74 LA is to determine every sublease and other interest appearing on the register relating to the lease. However if the court sets aside the forfeiture on grounds that it was procured by fraud or grants relief against the forfeiture ( S 76 LA) every such sub-lease and interest shall be deemed not to have been determined.

Where the Lessor intends to exercise its right to forfeit a lease he has a mandatory obligation to issue a written notice of not less than thirty days to the Lessee. (Refer to S. 75 LA) The written notice must

- i. Specifying the breach
- ii. If breach is capable of remedy require the lessee to remedy within a reasonable period specified in the notice
- iii. In any case other than default in rent payment require monetary compensation for breach

Relief against forfeiture s 76 application by lessee(court may grant or refuse to grant relief) or by sublessee or chargee(court may vest the property on the sublessee or chargee so long as they are not involved in breach. This section applies whether lease is registered or not. It is important to note that a lessee unlawfully evicted shall be relieved from paying rent.( S. 77 of the LA).

Under the previous legal regime forfeiture and the lessees reliefs against it was contained in RLA sections 56-59, 64 (1) (C); under the ITPA sections 111g, 112, 114 and 114a; GLA Sections 77-80. Please note that the circumstances under which the Lessor forfeits the lease and the rights of the Lessee may differ under the different regimes.

Refer to the sections of those repealed laws and consider the requirements that a Lessor had to meet under the respective regimes in order to obtain the relief of forfeiture.

**E. Injunction to restrain the committing of a breach**

- F. The Lessee may institute proceedings for injunction or damages- This is self explanatory.
- G. Repudiate the agreement all together

**DETERMINATION OF LEASES**

A lease may come to an end by:

**i.Forfeiture:** S73 of LA forfeiture available where the lessee commits a breach of covenants, is adjudged bankrupt or goes into liquidation.

ii. **Surrender:** the lessee voluntarily yields up the premises to the lessor. It can be express or implied. Under S 64 LA surrender of a lease for renewal shall not affect a sublease if the latter will expire on or before the new head lease expires or if the sublease is periodic which means notice can be given for its termination

iv. **Expiry:** the lease lapses because of effluxion of time. Periodic tenancies and tenancies at will are an exception since they do not have an agreed term.

v. **Merger:** occurs where there is a vesting of the reversion and the leasehold interest in the same person at the same time eg the lessee acquires the reversion. In other words it may occur when the reversion is transferred to the Lessee during the term of the lease. Unlike a surrender where the lessor takes the lease in a surrender the lessee takes the reversion.

vi. **Disclaimer:** The Trustee in Bankruptcy under S. 58 of the Bankruptcy Act by disclaimer disclaim leases with burdensome covenants.

vii. **Notice & Frustration-**It is required for fixed term leases if the lease agreement provides as such. Under periodic tenancies s 57(4) LA requires notice equivalent to the period of tenancy

**Frustration-** S65(e) LA destruction of property through fire, earthquakes, civil commotion etc entitles a lessee to terminate the tenancy if after 6 months it has not been repaired by giving 1 month notice

### THE RENT ACTS

#### A. The Land Lord and Lessee( Shops, Hotels and Catering Establishment) Act Chapter 301

Applies to

**"catering establishment"** means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises.

**"hotel"** -any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable consideration

**"shop"** -premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money's worth

What is a controlled tenancy?

S 2(1) "controlled tenancy" means a tenancy of a shop, hotel or catering establishment—

(a) which has not been reduced into writing; or

(b) which has been reduced into writing and which—

(i) is for a period not exceeding five years; or

(ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or

(iii) relates to premises of specified by the Minister as controlled tenancies

Provided that no tenancy to which the **Government, the Community or a local authority is a party,**

whether as Lessor or as Lessee, shall be a controlled tenancy

Tenancy agreement may be in prescribed form. Terms and conditions to be implied in every tenancy not reduced in writing or not in controlled form.

- (i) That the premises are fit for habitation and comply with the laws relating to health in all respects.
  - (ii) That where the premises are destroyed by fire, civil commotion, or accident, through no negligence on the part of the lessee, any liability to pay rent shall be suspended until the premises are again made fit and habitable.
  - (iii) The lessee shall have quiet enjoyment of premises provided that he complies with express or implied covenants.
  - (iv) The lessor shall not use adjoining land or premises in a way which would render leased premises unfit for the purpose for which they were let.
  - (v) The lessor shall be responsible for all repairs to roofs, main walls, main drains, main electric wiring and structures, and shall be responsible for all necessary renewals to the premises.
  - (vi) The lessee shall be responsible for all internal repairs and decorations, fair wear and tear excepted.
  - (vii) The lessor shall be responsible for the repair, maintenance, cleaning and lighting of common parts where part of a building is let.
  - (viii) The lessee shall pay rent for the premises in advance.
  - (ix) The lessor shall pay all rates, taxes and similar outgoings, unless the lessee is responsible therefor under any written agreement.
  - (x) The lessee shall keep the fixtures and fittings in good and Lesseeable repair.
  - (xi) The lessee shall permit the lessor or his agent and his workmen to enter the premises and to examine or repair the same at all reasonable times after giving reasonable notice thereof.
  - (xii) The lessee shall not transfer, part with possession, or sublet the premises or any part thereof without the consent of the lessor, which consent shall not be unreasonably withheld.
- S4 (cap 301) Termination or alteration of terms of a controlled tenancy to take effect 2 months after service of tenancy notice

Point of reflection-Does this conflict with s 57(4) on termination of periodic tenancies?

#### **B. RENT RESTRICTION ACT (CAP 296)**

The purpose of the Act is to restrict the increase of rent, right to possession and creation of premiums and for fixing of standard rents in relation to dwelling houses.

The Act applies to dwelling houses which have rent of Kshs. 2,500/= and below

Increase in rent shall only be after a rent assessment. The Act controls the management of tenancies for the houses within its ambit.

#### ***Express covenants***

These are the covenant expressed in the lease document and usually include implied covenants.

They may differ depending on the usage of the leased property.

Purpose- implied covenants may not cover everything

Express covenants -examples

- a) Users covenant
- b) Insurance covenant
- c) Covenant to repair
- d) Covenant against assignment, transfer or otherwise parting with possession
- e) Covenant for renewal
- f) Covenant against alteration
- g) Covenant to deliver possession at the end of the term
- h) Option to purchase the reversion
- i) Option to renew Clause
- j) One of express covenants that at the end of term, the Lessor is willing to extend the lease for another period as may be agreed by the parties

#### Contents

Time within which the Lessee must indicate his desire to renew the lease eg 3 months to expiry

Manner in which it will be exercised- eg in writing

Conditions to be fulfilled eg repairs, compliance with covenants of present lease

Terms on which new lease will be granted

Insurance

Inserted to protect against loss of rent or property

Who should insure?

Both Lessor and Lessee have insurable interests

Either or both can insure looking at the nature of the premises, existing obligations, payment of service charges, risk in the use of the property

## OBLIGATIONS OF THE PARTIES ADVOCATES

### A. LESSOR'S ADVOCATES

- i. Obtain precise instructions from your client on the following *inter-alia*:
- ii. Description of the property (obtain copy of title)
- iii. Portion to be leased (if not whole)
- iv. Rent to be paid
- v. Proposed use of the property by lessee
- vi. Covenants
- vii. Draw the lease to reflect the wishes of your client ensure all the essentials of a lease are included and the covenants protect your client's interests
- viii. Obtain all requisite consents eg consent to lease
  
- ix. Ensure that the Lease is properly executed and attested by all the parties
- x. Obtain stamp duty from the lessee
- xi. Register the lease

### B. LESSEE'S ADVOCATES

- i. Investigate Lessor's title
- ii. Approve draft lease
- iii. Advise your client on the contents of the draft

See *Sykes V Midland Bank & trustee Ltd* (1970) All ER 471 there was a prohibition on any other use of the premises unless permission is granted by lessor and headlessor. The former gave consent while the latter did not. Held the solicitor ought to have explained the consequence of this clause  
Collect disbursements from your client eg stamp duty, registration fees etc.

AVOID CONFLICT OF INTEREST- See *Francis Mugo & 22 others V James Muthee & 3 others (2005) e KLR*- application for Andrew Musangi to cease acting for plaintiff because he drew and witnessed a lease between the defendant and other parties relevant to the suit and would be a witness in the suit. Rule 9 of the Advocates Practice Rules was quoted.- No Advocate may appear in any matter in which he may be called as a witness to give evidence  
The Advocate was ordered to disqualify himself.

### ASSIGNMENT AND TRANSFER

What is the difference?

Transfer- passing of lease from one party to another

Assignment- transfer of rights and obligations to the leased property. The assignee acquires the same rights as the assignor.

Effect of the two is more or less the same.

The subject of transfer or assignment is the interest held in the lease and the reversion.

S69 LA transfer or assignment of reversion or part of it by lessor imposes the covenants and rights to benefits on the assignee against the lessee. Lessee must be notified of transfer or assignment, registration alone does not satisfy the required notice(s70LA)

S71 LA transfer or assignment of lease or part of it by lessee relinquishes the transferor or assignor from the common law rule that they remained liable for the breaches of the assignee or transferee.

The assignor/transferor is discharged from the rights and obligations of the lease from date of transfer/assignment unless he remains in possession. S71 LA

If lessee vacates the land before the termination of lease he shall remain liable to perform all obligations including payment of rent for the next 1year unless the lease provides for a shorter period unless the lessor leases the property to another person before the end of the year.

Under common law the lessee would be liable for breaches committed after assignment or transfer but the LA liability only falls on lessee before assignment or transfer.

# LEASE

[ ]  
(as the Lessor)

to

[ ]  
(as the Lessee)

-of -

[ ]

Drawn by:-

**Wakili Advocates  
P.O. Box  
Wakili Towers, 5<sup>th</sup> Floor  
KSL Grounds  
NAIROBI**

**REPUBLIC OF KENYA**  
**IN THE MATTER OF THE LAND ACT NUMBER 6 OF 2012**  
**IN THE MATTER OF THE LAND REGISTRATION ACT NUMBER 3 OF 2012**  
**IN THE MATTER OF THE REGISTRATION OF TITLES ACT (CHAPTER 281) (REPEALED)**  
**LEASE NUMBER I. R. [-----]**  
**SUBLEASE**

THIS LEASE is made the \_\_\_\_\_ day of \_\_\_\_\_ 2014

**BETWEEN:**

1. **KUJENGA PROPERTIES LIMITED** a limited liability company incorporated in the Republic of Kenya and of Post Office Box Number XXXX-00100, Nairobi in the said Republic (hereinafter referred to as the "**Lessor**" which expression shall where the context so admits include its successors in title and assigns) of the first part; and
2. \_\_\_\_\_ of P.O. Box \_\_\_\_\_, Nairobi in the aforesaid Republic (hereinafter referred to as the "**Lessee**" which expression shall where the context so admits include its successors in title and assigns) of the other part.

In this Lease, the Lessor and Lessee are also referred to as "Parties" and "Party" refers to either of them as the context may require.

**WHEREAS:-**

- A. The Lessor is the beneficial owner and proprietor of ALL THAT piece of land more particularly described in the Schedule hereto, together with all buildings, fixtures, developments and improvements from time to time erected and being thereon are hereinafter called the "**Property**".
- B. The parties have agreed that the Lessor will construct a School on the Property (hereinafter called the "**Premises**") and that the Lessee will accept a Lease of the Premises on the following terms and conditions.

**NOW THIS LEASE WITNESSES AS FOLLOWS:-**

1. **PARTICULARS DEFINITIONS AND INTERPRETATION**

In this Lease:



- 1.1 "Common Parts" include without limitation the areas and amenities made available from time to time by the Lessor for use in common by the Lessees of the Estate and all persons expressly or by implication authorized by them including the pedestrian ways forecourts service roads landscaped areas entrance halls staircases passages and areas designated for the keeping and collecting of refuse swimming pool, garden, if any.
- 1.2 "the Deposit" means the sum equivalent to Three (3) Month's Rent payable at the commencement of the Term
- 1.3 "the Estate" means buildings comprising of residential bungalows maisonettes apartments villas shops and other ancillary facilities together with the usual conveniences therewith erected on Land Reference Number ..... and more particularly known as ..... Estate.
- 1.4 "Insured Risks" means the risks of loss or damage by fire storm tempest earthquake lightning explosion riot civil commotion malicious damage terrorism impact by vehicles and by aircraft and articles dropped from aircraft flood damage and bursting and overflowing of water pipes and tanks and such other risks whether or not in the nature of the foregoing as the Lessor acting reasonably from time to time decides to insure against and "Insured Risk" shall be interpreted accordingly
- 1.5 "Interest" means interest during the period from the date on which any payment is due to the date of payment both before and after any demand or judgment at the Interest Rate then prevailing
- 1.6 "Interest Rate" means 1% per month.
- 1.7 "Permitted User" means the use of the Premises as a School and change of user shall not be permitted during the period of the lease.
- 1.8 "Pipes" means all pipes and sewers drains mains ducts conduits gutters watercourses wires cables channels flues and all other conducting media and includes any fixings louvers cowls and any other ancillary apparatus
- 1.9 the "Premises" means all that School erected on the Property comprising of [ ] square feet or thereabouts
- 1.10 the "Property" means all that piece of land described in the Recital
- 1.11 "Rent" means the rent set out in the Third Schedule hereto payable in accordance with Clause 3 of this Lease and does not include the Service Charge but the term "rents" includes Rent and the Service Charge
- 1.12 "Rent Commencement Date" means the 1<sup>st</sup> December, 2014.
- 1.13 "Retained Parts" means the Property (other than the Premises) which are not let out including (but without prejudice to the generality of the foregoing)

**Comment [j1]:** To comply with the term of 5 years three months hence avoid creating a controlled tenancy.

- (i) the Common Parts
- (ii) all roads driveways and loading areas within the Property
- (iii) office or other accommodation for the Lessor or any property manager appointed to manage the Property and any of their ancillary staff
- (iv) all Pipes on or serving the Property
- (v) the boundary walls and fences of the Property
- (vi) the common lavatories
- (vii) Gardens grassed areas and flower beds

1.14 "Service Charge" shall have the same meaning as defined in Part A of the First Schedule

1.15 the "Office Covenants" means the covenants contained in the Second Schedule to this Lease

1.16 the "Opening Hours" means 6.00 a.m. to 9 p.m. on Mondays to Sundays other than Christmas Day Good Friday and any other statutory or public holiday

1.17 the "Term" means the period specified in the Third Schedule hereto

1.18 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

1.19 Where any party to this Lease for the time being comprises two or more persons obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

1.20 Unless expressly stated to the contrary any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under it and any general reference to statute includes any regulations or orders made under that statute

1.21 The clause paragraph and schedule headings do not form part of this Lease and shall not be taken into account in its construction or interpretation

1.22 The Schedules to this Lease and any covenants and obligations contained therein shall form part of this Lease and shall be construed accordingly

**2. DEMISE PREMISES AND TERM**

**2.1 Demise**

The Lessor HEREBY LEASES to the Lessee the Premises ..... for a term of **Five (5) years and one (1) month** from the **1<sup>st</sup> Day of December, Two Thousand and Fourteen** (hereinafter called the "Term").

**Comment [j2]:** If the term of the lease is less than 5 years the lease becomes a controlled tenancy whose terms are not favourable to a Lessor.

**2.2 Rights**

The Lessor grants to the Lessee (in common with the Lessor and all others entitled and only in so far as the Lessor is entitled to grant):

- 2.2.1 the right for the Lessee and all other persons expressly or by implication authorized by it to pass and regress to and from the Premises at all times for all purposes connected with the use and enjoyment of the Premises (but not otherwise) over and along the roads driveways and pathways within the Property
- 2.2.2 the right for the Lessee and all persons expressly or by implication authorized by it to use the Common Parts for all proper purposes in connection with the use and enjoyment of the Premises
- 2.2.3 the right to the free passage and running (subject to temporary interruption for repair alteration or replacement and to the provisions of this Lease) of water sewerage electricity telephone and other services or supplies to and from the Premises in and through the Pipes that now serve the Premises presently laid in on over or under other parts of the Property

## 2.3

### Exceptions and Reservations

There are excepted and reserved from the demise in favour of the Lessor and all others now entitled or who may become entitled:

- 2.3.1 the free and uninterrupted passage and running of water sewerage electricity telephone and other services or supplies from and to other parts of the Property in and through the Pipes which now are or may after the date of this Lease during the Term be in under or over the Premises
- 2.3.2 the right to construct and to maintain in on under or over the Premises at any time during the Term any Pipes for the benefit of any part of the Property and the Building
- 2.3.3 the right at any time during the Term and upon reasonable notice except in cases of emergency to enter the Premises
  - 2.3.3.1 to inspect the condition and state of repair of the Premises
  - 2.3.3.2 to inspect cleanse connect or to repair remove replace with others alter or execute any works whatever to or in connection with the Pipes easements or services referred to in sub-clauses 2.3.1 and 2.3.2
  - 2.3.3.3 to view the state and condition of and repair and maintain the Premises and any other buildings erected on the Property after the date of this Lease
  - 2.3.3.4 to carry out work or do anything whatsoever comprised within the Lessor's obligations within this Lease
  - 2.3.3.5 to take schedules or inventories of fixtures fittings and other items to be yielded up on the expiry of the Term
  - 2.3.3.6 to exercise any of the rights granted to the Lessor by this Lease
- 2.3.4 the right to erect scaffolding for the purpose of inspecting repairing or cleaning the Premises and any other buildings erected on the Property after the date of this Lease notwithstanding that such scaffolding may temporarily restrict the access to or use and enjoyment of the Premises provided that the Lessor shall give sufficient notice to the Lessee.

- 2.3.5 the rights of light air support shelter protection and all other easements and rights now or after the date of this Lease belonging to or enjoyed by other parts of the Property and any adjoining property owned by or in the possession of the Lessor
- 2.3.6 full right and liberty at any time after the date of this Lease:
- 2.3.6.1 to alter raise the height of or rebuild the other parts of the Premises or any buildings erected on the Property after the date of this Lease or on any adjoining property owned by or in the possession of the Lessor
- 2.3.6.2 to erect any new buildings of any height on the Property or any adjoining property in such manner as it shall think fit notwithstanding the fact that the same may obstruct or interfere with the amenity of the Premises or the passage of light and air to the Premises
- 2.3.7 the right to reasonable access to the Premises for the purpose of cleaning and maintaining in good repair and condition the lifts that open into the Premises( Are there lifts on the premises?)

### 3. RENT

#### 3.1 Reserved Rents

The rents reserved by this Lease are:

- 3.1.1 The monthly rent reserved by this Lease is **Kenya Shillings Three Hundred Thousand (Kshs. 300,000/=)** payable **quarterly in advance** on the first days of, January, April, July, October into the following account:-

**Bank:** Pesa Pap Ltd  
**Account Name:** Lessors Account  
**Branch:** Upper Hill  
**Branch code:** xxxx  
**Account No:** yyyyyy  
**Bank code:** zzz  
**Swift code:** KSLKENA

- 3.1.2 In the event that the monthly rent is not paid by the fifth day of every month, the Lessor shall reserve a right to charge interest on the outstanding rent at one per centum (1%) per annum above the Barclays Bank of Kenya Limited base lending rate from the date when rent is due until the rent is paid in full and cleared funds, both dates inclusive.
- 3.13 by way of additional rent the Service Charge payable in accordance with the First Schedule hereto.

#### 4. THE LESSEE'S COVENANTS

The Lessee covenants with the Lessor:

##### 4.1 Rent

- 4.1.1 to pay the rents on the days and in the manner set out in Clause 3 of this Lease and the Third Schedule to this Lease and not to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off
- 4.1.2 if so required in writing by the Lessor to make such payments by banker's order or credit transfer to any bank and account that the Lessor may from time to time nominate provided that the Lessor shall each time payment instructions are varied give the Lessee a prior Thirty (30) days' notice in writing of such change
- 4.1.3 if and whenever during the Term any payment of rents is made by the Lessee by way of cheque which is dishonored on presentation by the Lessor the Lessee shall immediately pay to the Lessor the rents in cash together with the bank penalty for the dishonoured cheque.

##### 4.2 Deposit

- 4.2.1 To pay a deposit equivalent to three (3) month's rent (the "**Deposit**") as security for the performance by the Lessee of the Lessee's obligations under this Lease. The Deposit will be retained by the Lessor until the termination of this Lease where upon the Deposit or any balance remaining after any deductions effected pursuant to any provisions of this Lease and upon the delivery up by the Lessee to the Lessor of possession of the Premises in accordance with the Lessee's covenants in this Lease shall be forthwith refunded to the Lessee without interest. The Lessor will be entitled at any time to apply the whole or any part of the Deposit in payment to the Lessor of any amount not exceeding any sum then due to the Lessor arising out of the default of the Lessee.
- 4.2.2 Not to assign or encumber or attempt to assign or encumber the Deposit and the Lessor shall not in any way be bound by any such assignment encumbrance or attempted assignment or encumbrance
- 4.2.3 To pay the utility bills which inter alia include water bills, electricity bills and telephone bills, amounting to Kshs 100,000/=plus all legal costs and service charges.

##### 4.3 Outgoings and taxes

To pay and indemnify the Lessor against:

- 4.3.1 all rates taxes assessments duties charges impositions and outgoings which are now or during or in respect of any time falling within the Term charged or assessed or imposed upon the Premises or upon their owner or occupier excluding any payable by the Lessor occasioned by receipt of the rents or by any disposition or dealing with ownership of any interest reversionary to the interest created in this Lease
- 4.3.2 any VAT or similar charge imposed on the Lessor on the receipt of the rents during the Term

#### 4.4 Electricity and other services consumed

- 4.4.1 To pay to the suppliers of and to indemnify the Lessor against all charges for electricity telephone and conservancy consumed at or in relation to the Premises and to pay for the cost of installing and maintaining a meter for measuring electricity consumed at or in relation to the Premises
- 4.4.2 To indemnify the Lessor against all actions proceedings claims and demands arising from any leakage or overflow of water from the Premises or any Pipes supplying the Premises attributable to the negligence on the part of the Lessee or the occupiers of the Premises during the Term.
- 4.4.3 Not to do or carry on any business or install any equipment in the Premises which may abnormally increase the consumption of water consumed in the Premises without the prior written consent of the Lessor who shall be entitled as a condition of giving such consent to require the Lessee to pay such additional charges for the increase in consumption of water as the Lessor or the Lessor's agent shall determine

#### 4.5 Repair Cleaning Decoration and Redecoration

- 4.5.1 To repair the Premises for such damage arising during the Term, excepting such fair wear and tear of the Premises.
- 4.5.2 To clean the Premises and keep them in a clean condition and without prejudice to the generality of the above to clean and keep clean both sides of the windows in the Premises
- 4.5.3 Not to bring keep store stack or lay out on or in any part of the Property any materials equipment plant bins crates cartons boxes or any receptacle or waste or any other item
- 4.5.4 Not to deposit or permit to be deposited any waste rubbish or refuse on or in any part of the Property other than in the refuse chute or receptacles designated for that purpose
- 4.5.5 As often as may in the opinion of the Lessor be necessary in order to maintain a high standard of decorative finish and attractiveness and to preserve the Premises and at the end of the Term to paint the Premises in a good and workmanlike manner and with the appropriate materials of good quality to the reasonable satisfaction of the Lessor to reinstate them in the condition they were in prior to the lease agreement.

#### 4.6 Waste and alterations

Neither to commit any waste nor to make any addition or alteration whatsoever to the Premises except as permitted by the provisions of this Clause.

- 4.6.1 Pre-conditions for alterations
  - The Lessee must not make any alterations (including the installation of any internal partitions) to the Premises unless it first: —
  - 4.6.1.1 obtains and complies with the necessary consents of the competent authorities and pays their charges for them
  - 4.6.1.2 makes an application to the Lessor for consent supported by drawings and where appropriate a specification in duplicate

- 4.6.1.3 prepared by an architect or a member of some other appropriate profession who must supervise the work throughout to completion pays the reasonable to scale fees of the Lessor any head Lessor any mortgagee and their respective professional advisers 4.6.1.4 enters into any covenants the Lessor requires as to the execution and reinstatement of the alterations and
- 4.6.1.5 obtains the written consent of the Lessor whose consent may not be unreasonably withheld or delayed.

4.6.2 Removal of alterations

At the end of the Term if so requested by the Lessor the Lessee must remove any additions alterations or improvements made to the Premises so as to return the Premises to the original condition in which they were at the commencement of the Term (fair wear and tear excepted) and must make good any part of the Premises damaged by their removal.

**4.7 Aerials Signs and Advertisements**

- 4.7.1 Not without the prior written consent of the Lessor erect any pole mast or wire (whether in connection with telegraphic telephonic radio or television communication or otherwise) upon the Premises or the Property
- 4.7.2 Not to affix or exhibit upon the Premises or the Property nor display anywhere on the Premises or the Property any placard sign notice fascia board or advertisement except with the written consent of the Lessor who must approve any such placard sign notice fascia board or advertisement
- 4.7.3 If so required by the Lessor to pay for a suitable sign showing the Lessee's trading name and business of a size and kind first which conforms with the design and layout selected by the Lessor at a point to be specified in writing by the Lessor

**4.8 Statutory Obligations**

- 4.8.1 At the Lessee's own expense to execute all works and provide and maintain all arrangements upon or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute (already or in the future to be passed) or any government department local authority other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the Lessor the Lessee or the occupier
- 4.8.2 Without prejudice to the generality of the above not to do or omit or suffer to be done or omitted any matter in contravention of the statutes statutory instruments rules orders and regulations for the time being in force relating to the planning control development or any order directions or notices made or given thereunder and in particular to comply with the conditions attached to any permission for development given or to be given in relation to the Premises and the Property and at all times (without prejudice to any statutory indemnity in that behalf) to indemnify and keep indemnified the Lessor against all action proceedings costs expenses claims objections representations or appeals in respect thereof as the Lessor may reasonably require

#### 4.9

##### Access of the Lessor and notice to repair

- 4.9.1 To permit the Lessor and its servants or agents upon receipt of at least seven (7) days' notice to the Lessee
- 4.9.1.1 to enter upon the Premises for the purpose of ascertaining that the covenants and conditions of this Lease have been observed and performed
- 4.9.1.2 to view (and to open up floors and other parts of the Premises where so required in order to view) the state of repair and condition of the Premises
- 4.9.1.3 to give to the Lessee (or leave upon the Premises) a notice specifying any repairs cleaning maintenance or painting that the Lessee has failed to execute in breach of the terms of this Lease and to request the Lessee immediately to execute the same including the making good of such opening up (if any)
- PROVIDED THAT any such opening up shall be made good by and at the cost of the Lessor where such opening up reveals no breaches of the terms of this Lease
- 4.9.2 Immediately to repair cleanse maintain and paint the Premises as required by such notice
- 4.9.3 If within One (1) month of the service of such notice and without reasonable explanation to the Lessor the Lessee shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice or shall fail to complete the work within a reasonable period of time or if in the Lessor's reasonable opinion the Lessee is unlikely to have completed the work within such period to permit the Lessor its servants and agents to enter the Premises to execute such work as may be necessary to comply with the notice and to pay the Lessor the reasonable cost of so doing and reasonable expenses incurred by the Lessor (including legal costs and surveyor's fees) within Fourteen (14) days of demand such expenses to be recoverable as additional rent in the event of non-payment

#### 4.10

##### Alienation

- 4.10.1 Not to hold the Premises on trust for another and not to assign sub-let charge or part with the possession of the Premises or any part thereof without the written consent of the Lessor, had and obtained, which consent shall not be unreasonably delayed or withheld AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED THAT upon any breach by the Lessee of this covenant it shall be lawful for the Lessor to re-enter upon the Premises upon issuance of a thirty days' notice and thereupon the Term shall determine absolutely
- 4.10.2 For the purposes of this sub-clause if the Lessee transfers the beneficial interest in more than 50% of its holding or issued share capital, such transfer shall be deemed to be an assignment and shall require the consent of the Lessor which consent shall not be unreasonably delayed or withheld
- 4.10.3 Any consent by the Lessor to any assignment or parting with the possession of or charging of the Premises shall not in anyway be construed as relieving the Lessee



- from the Lessee's obligation to obtain the express consent in writing of the Lessor to any further assignment parting with the possession of or charging of the Premises
- 4.10.4 Prior to any permitted assignment the Lessee must procure that the assignee enters into direct covenants with the Lessor to perform and observe all the Lessee's covenants and all other provisions during the residue of the Term
- 4.10.5 The Lessor may impose all or any of the following conditions on giving any consent for any assignment by the Lessee and any such consent is to be treated as being subject to each of the following:-
- 4.10.5.1 that if reasonably so required by the Lessor on an assignment to a limited liability company the assignee must ensure that at least Two (2) directors of the company with the Assignee are substituted for the Lessee.
- 4.10.5.2 within Twenty-eight (28) days of any assignment or any transmission or other devolution relating to the Premises the Lessee must produce a certified copy of any relevant document relating thereto for registration (if such registration is required) with the Lessor's Advocates and procure payment to the Lessor's Advocate's the reasonable charges for registration of any such document

#### 4.11 **User Nuisance and Residential Restrictions**

- 4.11.1 Not to use the Premises for any purpose other than the Permitted User
- 4.11.2 Not to do or allow to remain upon the Premises anything which may be or become or cause a nuisance annoyance or disturbance inconvenience injury or damage to the Lessor or its Lessees or the owners or occupiers of other parts of the Property, the Estate or any adjacent or neighbouring premises
- 4.11.3 Not to use the Premises for a sale by auction or for any dangerous noxious noisy or offensive trade business manufacture or occupation nor for any illegal or immoral act or purpose
- 4.11.4 Not to use the Premises as sleeping accommodation or for residential purposes nor keep any animal fish reptile or bird anywhere on the Premises
- 4.11.5 Not to cease carrying on business in the Premises or leave the Premises continuously unoccupied for more than Fourteen (14) days without notifying the Lessor and without providing such caretaking or security arrangements as the Lessor shall reasonably require and any insurers of the Premises shall require in order to protect the Premises from vandalism theft damage or unlawful possession
- 4.11.6 To remove at the Lessee's own expense any vermin that may infest the Premises during the Term and to take every reasonable precaution to ensure that white ants bees or other destructive insects do not gain access to the Premises and to notify the Lessor forthwith in the event of any infestations appearing and the presence of any dry or wet rot

#### 4.12 **Lessor's Costs**

To pay the Lessor on an indemnity basis such reasonable to scale costs fees charges disbursements and expenses charged (including without prejudice to the generality of the above all legal fees and surveyor's fees) properly incurred by the Lessor in relation to or incidental to:

- 4.12.1 every application made by the Lessor in relation to the Premises and/or for purposes of the Lessee's operations for a consent or licence required by the provisions of this Lease or by any statute enactment or condition on which the Property is held whether such consent is granted or refused or proffered subject to any qualification or condition or whether the application is withdrawn
- 4.12.2 the preparation and service of any notice or demand under this Lease
- 4.12.3 the recovery or attempted recovery of arrears of Rent or other sums due from the Lessee
- 4.12.4 any costs arising from the inspection of the Premises upon the expiry or determination of the Term leading to the preparation and service of a schedule of dilapidations during or after the expiration of the Term
- 4.12.5 the negotiation preparation execution and grant of this Lease as well as stamp duty payable hereon and any counterpart of this Lease

**4.13 Plans Documents and Information**

If called upon to do so to produce to the Lessor all plans documents and other evidence as the Lessor may reasonably require in order to satisfy itself that the provisions of this Lease have been complied with

**4.14 Indemnities**

To be responsible for and to keep the Lessor fully indemnified against all damage damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Lessor arising directly or indirectly out of:

- 4.14.1 any act omission or negligence or any breach thereof of or by the Lessee or any persons at the Premises expressly or impliedly with the Lessee's authority or under the Lessee's control or
- 4.14.2 any breach or non-observance by the Lessee of the covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject

**4.15 Encroachments**

- 4.15.1 Not to stop up or darken or obstruct any windows or light belonging to the Premises
- 4.15.2 To take all reasonable steps to prevent any new window light opening doorway path passage pipe or other encroachment or easement being made or acquired in against out of or upon the Premises and to notify the Lessor immediately if any such encroachment or easement shall be made or acquired (or attempted to be made or acquired) and at the request of the Lessor to adopt such means as shall reasonably be required to prevent such encroachment or the acquisition of any such easement

**4.16 Yield Up**

At the expiration of the Term:

- 4.16.1 to yield up the Premises in good and satisfactory repair and in accordance with the terms of this Lease, fair wear and tear excepted

- 4.16.2 to give up all keys of the Premises to the Lessor
- 4.16.3 to remove all signs erected by the Lessee in upon or near the Premises and immediately to make good any damage caused by such removal and
- 4.16.4 to permit the Lessor or the Lessor's agents during the (three) months preceding the termination of the Term and at any time thereafter and whenever the rents or any part of them shall be in arrears and unpaid for longer than Fourteen (14) days to fix and retain without interruption on any suitable part of the Premises a notice or board for selling or re-letting the same and during such period to permit persons by order in writing of the Lessor or the Lessor's agents to view the Premises during normal business hours without interruption provided the Lessor shall have given the Lessee an advance notice in writing of not less than five (5) days before such viewing

**4.17 Interest on Arrears**

- 4.17.1 Without prejudice to any right of re-entry or distress conferred by law or by this Lease if the Lessee shall fail to pay the rents or any other sum due under this Lease within Seven (7) days of the date due whether formally demanded or not the Lessee shall pay to the Lessor Interest on the rents or other such sum at the Interest Rate from the date when they were due to the date on which they are paid and such Interest will be recoverable by the Lessor as additional rent
- 4.17.2 Nothing in the preceding Clause shall entitle the Lessee to withhold or deny any payment of the rents or other sum due under this Lease after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Lessor in relation to such non-payment (but without prejudice to the generality of the above) under the proviso for re-entry contained in this Lease

**4.18 User Covenants**

To perform and observe the User Covenants described in the Second Schedule

**4.19 Unloading and Parking**

Not to unload any goods or materials from vehicles and convey them into the Premises except through the approved entrances provided for the purpose and not to cause congestion to adjoining parking areas or inconvenience to any other user of them

**4.20 The selling in and access to Common Parts:**

- 4.20.1 Not to place in the Common Parts or expose on the same for sale any goods or things whatsoever
- 4.20.2 Not to do or permit or suffer to be done anything which may affect or obstruct the free and easy access exit and passage for the Lessor and anyone deriving title from it to and from the fire escape and staircase in the Common Parts and in the case of emergency to and from the lifts

**4.21 Use of electrical installation and Pipes**

Not to overload electrical installations or any Pipes in the Premises or in the Property

4.22 **Regulations**

To comply with any regulations made by from time to time for the management of the Property and the Premises

4.23 **Statutory Notices**

To give full particulars to the Lessor of any notice direction order or proposal for the Premises made given or issued to the Lessee by any local or public authority forthwith upon receipt or as soon as practically possible and if so required by the Lessor to produce it to the Lessor and without delay to take all the necessary steps to comply with the notice direction or order and at the request of the Lessor but at the cost of the Lessee to make or join with the Lessor in making such objection or representation against or in respect of any notice direction order or proposal as the Lessor shall deem expedient

4.24 **Keyholders**

To furnish to the Lessor upon request a written notice of the name home address and home telephone number of at least Two (2) keyholders of the Premises

4.25 **Viewing on sale of reversion**

On reasonable notice at any time during the Term to permit prospective purchasers of the Lessor's reversion or any other interest superior to the Term or agents instructed in connection with the sale of the reversion or such an interest to view the Premises without interruption provided they have the prior written authority of the Lessor or its agents

4.26 **Defective Premises**

To give notice to the Lessor of any defect in the Premises which might give rise to any obligation on the Lessor to do or refrain from doing any act or thing in order to comply with the provisions of this Lease or any duty of care imposed on the Lessor by statute or otherwise and at all times to display and maintain all notices which the Lessor may from time to time reasonably require to be displayed at the Premises

4.27 **Lessor's Rights**

To permit the Lessor at all times during the Term to exercise without interruption or interference any of the rights granted to it by virtue of the provisions of this Lease

5. **THE LESSOR'S COVENANTS**

The Lessee paying the said rents and performing and observing all and every one of the covenants clauses conditions and agreements hereinbefore respectively reserved and contained and on the part of the Lessee to be performed and observed and unless prevented by any cause beyond the control of the Lessor the Lessor HEREBY COVENANTS with the Lessee as follows:

5.1 **Payment of Rents, rates and outgoings**

Subject to Clause 4 hereof to pay all rates taxes charges head rents and outgoings whatsoever which now are or hereafter may become payable in respect of the Premises or any part thereof

**5.2 To keep in good and Lesseeable repair and condition**

- 5.2.1 To keep in good and Lesseeable repair and condition the main structure of the Premises including the roof timbers foundations external and load-bearing internal walls (but not the exterior walls of the Premises)
- 5.2.2 All drains gutters drainpipes waterpipes sanitary apparatus wires and cables which serve the Premises
- 5.2.3 Any Common Parts of Estate enjoyed or used by the Lessee in common with others

**5.3 Structural Repairs**

To carry out any repairs to the interior of the Premises or to the Lessor's fixtures fittings and fastenings therein which may become necessary at any time during the Term by reason of structural repairs to or defects in the Premises or by reason of any breach or non-performance of the obligations of the Lessor under this Clause but so that the liability of the Lessor hereunder shall only extend to repairs which may become necessary other than by reason of damage caused by the Lessee or the servants licensees or invitees of the Lessee PROVIDED THAT the Lessor shall not be liable for damage caused by or resulting from or arising out of default of any Lessees or occupiers of the Premises, the Estate and the Property their servants licensees or invitees with reference to the maintenance or user of any pipes or sanitary water or electrical apparatus therein or caused by any such persons permitting the maximum floor stress of any part of the Premises or the Property to be exceeded

**5.4 To provide the Services**

Unless prevented by any cause beyond the control of the Lessor and subject to payment of the Service Charge to provide the Services specified in Part C of the First Schedule to this Lease either by itself or through a managing agent.

**5.5 Deposit**

- 5.5.1 Within Fourteen (14) days of the expiry or determination of the Term and after delivery up of the Premises in proper condition and in accordance with the Lessee's covenants herein the Lessor shall refund to the Lessee the Deposit free of any interest
- 5.5.2 The Lessor shall upon prior written notice to the Lessee be entitled to apply the whole or any part of the Deposit towards the Lessee's obligations and the Lessee shall forthwith pay to the Lessor an amount equal to the sum so applied to restore the Deposit in full
- 5.5.3 In the event of any sale of the Property the Lessor shall notify the Lessee in writing and thereafter transfer the Deposit to the Purchaser or the lessee thereof and shall procure a written confirmation from the new Lessor to the Lessee undertaking the Lessor's obligations under this Lease and upon receipt of such confirmation, the Lessor shall thereupon be deemed to have been released by the Lessee from all liability for the return of the Deposit and the Lessee shall henceforth look solely to the

new Lessor for the return of the Deposit, provided that should a third party offer to buy the Premises, the Lessor will have first right of refusal at the same price.

5.6 **Quiet Enjoyment**

The Lessee paying the rents hereby reserved and observing and performing the several covenants and stipulations on the part of the Lessee herein contained or implied shall peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming under or in trust of the Lessor .

6. **INSURANCE**

6.1 **Lessor to insure**

Subject to the provisions of this Lease the Lessor covenants with the Lessee to insure and keep insured the Premises against the Insured Risks to the full insurable value thereof (including loss of rental income) and to pay all premiums necessary for that purpose AND to rebuild or reinstate the Premises including the means of access thereto so far as the same may be damaged or destroyed AND to apply all moneys received by virtue of such insurance in making good the loss or damage in respect of which the same shall have been received but without prejudice to the liability of the Lessee to pay or contribute towards the cost of such making good in the event of the insurance money being wholly or partially irrecoverable by reason of any proven act or default of the Lessee or the servants licensees or invitees of the Lessee

6.2 **Lessee's insurance covenants**

The Lessee covenants with the Lessor:

- 6.2.1 to insure the plate glass
- 6.2.2 to comply with all the requirements and recommendations of the Lessor's insurers
- 6.2.3 not to do or omit to do anything that could cause any policy of insurance on or in relation to the Premises or any part of the Property to become void or voidable wholly or in part nor (unless the Lessee shall have previously notified the Lessor and have agreed to pay the increased premium) anything by which additional premiums may become payable
- 6.2.4 not to store or bring into the Property or the Premises any articles substance or liquid of a specially combustible inflammable or explosive nature and to comply with the requirements and recommendations of the fire authority and the requirements of the Lessor as to fire precautions relating to the Premises
- 6.2.5 not to obstruct the access to any fire equipment or the means of escape from the Property and not to lock any fire door while the Premises or any part of the Property is occupied
- 6.2.6 to give notice to the Lessor immediately upon the happening of any event which might affect any insurance policy on or relating to the Premises or the Property or

- upon the happening of any event against which the Lessor may have insured under this Lease
- 6.2.7 immediately to inform the Lessor in writing of any conviction judgment or finding of any court or tribunal in Kenya relating to the Lessee (or any director other officer or major shareholder of the Lessee) of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue such insurance
- 6.2.8 if at any time the Lessee shall be entitled to the benefit of any insurance on the Premises (which is not effected or maintained in pursuance of any obligation contained in this Lease) to apply all money received by virtue of such insurance in making good all the loss or damage in respect of which such money shall have been received
- 6.2.9 if and whenever during the Term the Premises or any part of it is damaged or destroyed by an Insured Risk and the insurance money payable under the policy of insurance effected by the Lessor pursuant to its obligations contained in this Lease is by reason of any proven act or default of the Lessee or anyone at the Premises expressly or by implication with the Lessee's control wholly or partially irrecoverable immediately in every such case (at the option of the Lessor) either:
- 6.2.9.1 to rebuild and reinstate at its own expense that part of the Premises destroyed or damaged to the reasonable satisfaction and under the supervision of the Lessor the Lessee being allowed towards the expenses of so doing upon such rebuilding and reinstatement being completed after six (6) months from the date of damage or destruction the amount (if any) actually received in respect of such destruction or damage under any such insurance policy or
- 6.2.9.2 to pay to the Lessor on demand with Interest the amount of such insurance money so irrecoverable

## 7. PROVISOS

### 7.1 Re-entry

If and whenever during the Term:

- 7.1.1. the rents (or any of them or any part of them) under this Lease are outstanding for Fourteen (14) days after becoming due whether formally demanded or not or
- 7.1.2 there is a breach by the Lessee of any covenant or other term of this Lease or any document supplemental to this Lease or
- 7.1.3 a company Lessee:
- 7.1.3.1 enters into liquidation whether compulsory or voluntary (but not if the liquidation is for amalgamation or reconstruction of a solvent company) or
- 7.1.3.2 has a receiver appointed or
- 7.1.4 the Lessee enters into an arrangement for the benefit of its creditors
- the Lessor may re-enter the Premises (or any part of them in the name of the whole) at any time (and even if any previous right of re-entry has been waived) and then the Term will absolutely cease but

without prejudice to any rights or remedies which may have accrued to the Lessor against the Lessee in respect of any breach of covenant or other term of this Lease (including the breach in respect of which the re-entry is made) PROVIDED ALWAYS THAT in the event of any breach of any of the covenants or other terms of this Lease or occurrence of any of the other events stipulated in sub-clause 7.1 above the Lessor shall not be entitled to exercise the said right of re-entry unless the Lessor shall first give the Lessee Thirty (30) days notice of the breach complained of and the Lessee shall fail to remedy such breach on the expiration of such notice

**7.2 Section 65 of the Land Act, Act Number 6 of 2012**

7.2.1 If at any time the Premises or any part thereof or the means of access thereto or the Lessor's fixtures and fastenings therein shall be damaged or destroyed by fire or other risks against which the Lessor shall have insured so as to render them unfit for occupation or use the Lessor shall (unless the insurance moneys shall be wholly or partially irrecoverable by reason solely or in part of any act default or omission of the Lessee) until such time as the same shall again be rendered fit for occupation and use allow to the Lessee a total or proportionate abatement of the rents as the case may be PROVIDED THAT the Lessor shall in no circumstances be liable for any damage or loss suffered by the Lessee by reason of such loss of occupation and use of the Premises and PROVIDED ALSO THAT the Lessee may have such right of determination of Term as is contemplated by Section 65 (e) of the Land Act, Act Number 6 of 2012

7.2.2 Where in accordance with sub-clause 7.2.1 hereof a question arises as to the amount of abatement to be made in the said rents the same shall be determined by surveyors appointed by the Lessor for such purpose and in determining the amount the said surveyors shall be instructed to have regard to the extent of the damage and the extent to which the Premises are unfit for use

7.2.3 Except as provided for by section 7.2.1, the provisions of Section 65 of the Land Act, Act Number 6 of 2012 shall not apply to this Lease

**7.3 Exclusion of Liability**

7.3.1 The Lessor shall not be liable for any loss damage or injury to the Lessee or the servants licensees or invitees of the Lessee caused by:-

7.3.1.1 Any lack or shortage of electricity water or drainage

7.3.1.2 Any burglary or theft occurring or arising without any fault or neglect on the part of the Lessor of its obligations under this Lease

7.3.1.3 Any fire howsoever occurring or arising without any fault or neglect on the part of the Lessor of its obligations under this Lease

7.3.1.4 Any act or default of the Lessee or any portion thereof or of their servants licensees or invitees with reference to the maintenance or use of any pipes or sanitary water or electrical apparatus therein or the overloading of any floor of any part of the Premises

AND the Lessee shall indemnify the Lessor against all claims actions and proceedings by the servants licensees or invitees of the Lessee in respect of such loss damage or injury



7.3.2 No liability shall attach in respect of any breach of any positive covenant or agreement (other than covenants and agreements for the payment of money) on the part of the Lessor or the Lessee herein contained or implied so long as they shall be prevented from performing the same by statutory restrictions non-availability of labour or materials or matters beyond their control except that if such breach shall occur as aforesaid the Lessor or the Lessee as the case may be shall remedy such breach immediately the conditions permit and in the event of any such breach of a covenant or agreement on the part of the Lessor or the Lessee not having been remedied before the expiration or sooner determination of the said term the Lessor or the Lessee as the case may be shall forthwith upon such expiration or sooner determination pay to the Lessor or the Lessee as the case may be such an amount as shall be necessary to remedy such breach as aforesaid

**7.4 Repairs effected by Lessor**

No allowance shall be made to the Lessee for a diminution of rental value and no liability shall fall on the Lessor by reason of any inconvenience annoyance or injury to business arising from the Lessor or the Lessee or others making any repairs alterations additions or improvements in or to any portion of the Premises or in or to any fixtures appurtenances or equipment thereof

**7.5 Entire understanding**

The Lessor and its agents having made no representations or promises with respect to the Premises except as herein expressly set forth the taking possession of the Premises by the Lessee shall be conclusive evidence as against the Lessee that the Lessee accepts the same as they are and that the Premises and the Property were in a good and satisfactory condition at the time such possession was so taken

**7.6 Waiver**

7.6.1 The failure of the Lessor or the Lessee to seek redress for violation of or to insist upon the strict performance or any covenant agreement condition restriction stipulation or provision of this Lease or of any of the rules and regulations from time to time promulgated by the Lessor shall not prevent any subsequent act which would have originally constituted a violation from having all the force and effect of an original violation

7.6.2 The receipt by the Lessor of any rents with knowledge of the breach of any covenant agreement condition restriction stipulation or provision of this Lease shall not be deemed to be a waiver of such breach nor shall the failure of the Lessor to enforce any such rule or regulation as aforesaid against the Lessee be deemed to be a waiver of any such rules and regulations

7.6.3 No provision of this Lease shall be deemed to have been waived by the Lessor or the Lessee unless such waiver be expressly made by the Lessor or the Lessee in writing

7.6.4 No payment by the Lessee or any receipt by the Lessor of a lesser amount than the rents hereby reserved shall be deemed to be other than on account of the earliest

stipulated rents nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rents be deemed to be an accord and satisfaction and the Lessor may accept any such cheque or payment without prejudice to its rights to recover the balance of such rents or pursue any other remedy in this Lease provided

7.7

**Notices**

Any notice or other communication bill or statement provided for by this Lease shall be in writing and any notice communication bill or statement to the Lessee shall be sufficiently served if addressed to the Lessee and delivered to the Premises or sent by registered post to the Lessee's last known address in the Republic of Kenya or if sent by facsimile to the facsimile number in the said Republic as the Lessee may hereafter notify the Lessor in writing and any notice or communication to the Lessor shall be sufficiently served if sent by registered post to its aforesaid postal address or if sent by facsimile to the facsimile number in the said Republic as the Lessor may hereafter notify the Lessee in writing. Any notice communication bill or statement served by registered post shall be deemed to have been served within Seven (7) days following the day on which it is posted and if served by hand or facsimile transmission shall be deemed to have been served at the time of actual delivery or transmission (We should provide for service of notice vide electronic mail since the same is now acceptable under the Evidence Act.)

7.8

**Additional Building**

The Lessor shall have the right at any time as it may think fit during the Term to rebuild or to execute any other works alterations additions or improvements and to erect scaffolding and boarding in connection herewith in or to any portion of the Premises or in or to any fixtures appurtenances or equipment thereof notwithstanding any interference with the access to light and air to the Premises or to the timbers walls floors ceilings doors windows fixtures or fittings thereof provided that prior to erecting such scaffolding and boarding the Lessor shall notify the Lessee and provided further that such activities undertaken by the Lessor or its agents and other occupiers of the Estate shall not interfere with the Lessee's peaceable and quiet enjoyment of the Premises and the Lessee's right of access to the Premises and other rights contained and implied in this Lease.

7.9

**Exclusion of use warranty**

Nothing in this Lease or in any consent granted by the Lessor under this Lease shall imply or warrant that the Premises may lawfully be used under any enactment or statute other than for the purpose authorized in this Lease (or any purpose subsequently authorized)

7.10

**Licences etc under hand**

Whilst the Lessor and the Lessee are limited liability companies or other corporations all licences consents approvals and notices (as the case may be) required to be given by the Lessor or the Lessee shall be sufficiently given under the hand of a director the secretary or other duly authorized officer of the Lessor or the Lessee as the case may be

7.11

**Change of arrangements etc.**

The Lessor shall have the right at any time without the same constituting an actual or constructive eviction and without incurring any liability to the Lessee therefor to change the arrangement and/or location of the Retained Parts and to change the name and designation by which the Property is commonly known

**7.12 Amendments**

No provision of this Lease shall be waived or varied by either party hereto except by the agreement of both parties in writing which agreement shall if the case so requires be duly registered in the Land Titles Registry at Nairobi at the sole cost and expense of the party requiring the waiver or variation

**7.13 Inability to perform**

This Lease and the obligation of the Lessee to pay the rents hereunder and to perform all the other covenants hereunder on the part of the Lessee to be performed and observed shall not in any manner be excused because the Lessor is unable to fulfill any of its obligations under this Lease or to supply or is delayed in supplying any of the Service expressly or implied to be supplied by a cause proven to be beyond its control provided that the Lessor shall at all times take all due and reasonable measures to fulfill its obligations under this Lease

**7.14 Lessee's property**

If after the Lessee has vacated the Premises on the expiry of the Term any property of the Lessee remains in or on the Premises and the Lessee fails to remove it within Seven (7) days after being requested in writing by the Lessor to do so or if after using its best endeavours the Lessor is unable to make such a request to the Lessee within Fourteen (14) days from the first attempt so made by the Lessor:

- 7.14.1 the Lessor may as the agent of the Lessee sell such property and the Lessee will indemnify the Lessor against any liability incurred by it to any third party whose property shall have been sold by the Lessor in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Lessee
- 7.14.2 if the Lessor having made reasonable efforts is unable to locate the Lessee the Lessor shall be entitled to retain such proceeds of sale absolutely unless the Lessee shall claim them within Six (6) months of the date upon which the Lessee vacated the Premises and
- 7.14.3 the Lessee shall indemnify the Lessor against any damage occasioned to the Premises and any actions claims proceedings costs expenses and demands made against the Lessor caused by or related to the presence of the property in or on the Premises

AND the Lessee hereby accepts this Lease subject to the covenants conditions provisions stipulations and agreements contained herein.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO

PART A

Service Charge

1. "Periodical Expenditure" means:
  - 1.1 all costs expenses and outgoings whatsoever incurred by the Lessor during a Financial Period in or incidentally to providing all or any of the Services and any taxes payable
  - 1.2 all sums incurred by the Lessor during a Financial Period in relation to the matters specified in Part D of this Schedule ("the Additional Items") and any taxes payable excluding any expenditure in respect of any part of the Property for which the Lessee or any other Lessee shall be wholly responsible and excluding any expenditure that the Lessor shall recover or which shall be met under any policy of insurance maintained by the Lessor pursuant to its obligations in this Lease and including (when any expenditure is incurred in relation to the Property and other premises) the proportion of such expenditure that is reasonably attributable to the Lessee to be determined from time to time by the Lessor.
2. "Computing Date" means the 31<sup>st</sup> December, 2013 of every year of the term or such other date as the Lessor may from time to time nominate and "Computing Dates" shall be construed accordingly.
3. "Financial Period" means the period:
  - 3.1 from the Rent Commencement Date to and including the first Computing Date and subsequently
  - 3.2 between Two (2) consecutive Computing Dates (excluding the first Computing Date from but including the second Computing Date in the period).
4. "Initial Provisional Service Charge" means the sum of **Kenya Shillings One Hundred Thousand (K.shs.100,000/=)** per quarter excluding Value Added Tax.
5. "the Services" mean the services facilities and amenities specified in Part C of this Schedule.
6. "Service Charge" means the Periodical Expenditure.
7. "the Additional Items" means the Additional Items specified in Part D of this Schedule.

## **PART B**

### **Performance of the Services and payment of the Service Charge**

#### **1.0 Performance of the Services**

Subject to the Lessee paying to the Lessor the Service Charge and complying with the covenants and other terms of this Lease the Lessor shall render the Services throughout the Term provided that the Lessor shall not be liable to the Lessee in respect of any failure or interruption in any of the Services by reason of any cause beyond the Lessor's control provided and to the extent that:

- 1.1 any such failure or interruption could not have been prevented or shortened by the exercise of proper care attention diligence and skill by the Lessor or those undertaking the Services on behalf of the Lessor and
- 1.2 the Lessor uses and continues to use its best endeavours to restore the Services in question

#### **2.0 Payment of the Service Charge**

- 2.1 The Lessor shall as soon as convenient after each Computing Date prepare and furnish to the Lessee upon a written request to do so an account showing the Periodical Expenditure for the Financial Period ending on that Computing Date and containing a detailed summary of the expenditure referred to in it
- 2.2 The Lessee shall pay for the period from the commencement of the Term to the Computing Date next following the date of this Lease the Initial Provisional Service Charge
- 2.3 The Lessee shall pay for the next and each subsequent Financial Period a provisional sum calculated upon a reasonable and proper estimate by the Lessor of what the Periodical Expenditure is likely to be for that Financial Period by such installments as the Lessor shall require provided always that the minimum amount payable in respect of such Financial Period shall not be less than the Initial Provisional Service Charge
- 2.4 If the Service Charge for any Financial Period shall exceed the provisional sum for that Financial Period the deficit shall be paid to the Lessor within thirty (30) days upon receipt of the accounts referred to in 2.1 above and if the Service Charge for that Financial Period is less than the provisional sum paid, the surplus paid shall be carried forward to the next Financial Period.
- 2.5 The Initial Provisional Service Charge and the provisional sum payable for each Financial Period shall be payable quarterly in advance together with the installments of Rent

#### **3.0 Variations**

The Lessor may withhold add to extend vary or make any alteration in the rendering of the Services or any of them from time to time provided that the same complies with the principles of good estate management and is reasonable in all the circumstances

**Part C**  
**The Services**

1. **Maintaining etc Retained Parts**  
Maintaining repairing and where appropriate treating washing down painting and decorating to such standard as the Lessor may from time to time consider adequate the Retained Parts including the entirety of all walls floors and ceilings surrounding and all doors and windows and door and window frames in the Retained Parts (but excluding any such items or parts of them the maintenance of which is the exclusive responsibility of the Lessee)
2. **Maintaining etc Pipes**  
Maintaining repairing cleansing emptying draining amending and renewing all Pipes in or under or over Premises (but excluding any Pipes or parts of them whose maintenance is the exclusive responsibility of any other Lessee or Lessee in the Building)
3. **Water and supplies**  
Supplying water to all parts of the Premises and Retained Parts
4. **Maintaining etc Fire Alarms etc**  
Maintaining and renewing any fire alarms fire prevention and firefighting equipment and ancillary apparatus in the Retained Parts.
5. **Cleaning etc the Retained Parts**  
Cleaning treating polishing and lighting the Retained Parts to such standard as the Lessor may from time to time consider adequate.
6. **Fixtures fittings etc**  
Supplying providing purchasing hiring maintaining renewing replacing repairing servicing overhauling and keeping in good and serviceable order and condition all fixtures and fittings bins receptacles tools appliances materials equipment and other things which the Lessor may deem desirable or necessary for the maintenance appearance upkeep or cleanliness of the Premises , the Property or any part of it.
7. **Refuse**  
Collecting and disposing of refuse from the Property and the provision repair maintenance and renewal of plant and equipment for the collection treatment packaging or disposal of the same.
8. **Insurance**  
Insuring the Premises in respect of:-  
24.1                    the Insured Risks

- 24.2 without prejudice to the foregoing for insuring in such amount and on such terms as the Lessor shall determine against liability of the Lessor to third parties under the Occupiers Liability Act (Chapter 34 of the Laws of Kenya) or under the general law arising out of or in relation to the Premises the Property or any part thereof
- 24.3 workmen's compensation
9. Any other services relating to the Premises or any part of it provided by the Lessor from time to time during the Term and not expressly mentioned.

**Part D**  
**The Additional Items**

- 1.0 **Fees**
- 1.1 The proper fees and disbursements (and any taxes payable on them) of:
- 1.1.1 the managing agents (whether or not the Lessor) for or in connection with:
- 1.1.1.1 the management of the Premises
- 1.1.1.2 the collection of the charges and all other sums due to the Lessor from the Lessee
- 1.1.1.3 the performance of the Services and any other duties with respect to the Premises and the Common Parts or any part of it relating to (without prejudice to the generality of the above) the general management administration security maintenance protection and cleanliness
- 1.1.2 any individual firm or company valuing the Premises for the purposes of assessing the full cost of rebuilding and reinstatement
- 1.1.3 any individual firm or company providing caretaking or security arrangements and services to the Premises
- 1.1.4 any other individual firm or company employed or retained by the Lessor to perform (or in connection with) any of the services or any of the functions or duties referred to in this Paragraph.
- 1.2 The reasonable fees of the Lessor for any of the Services or other functions and duties shall be undertaken by the Lessor and not by a third party
- 1.3 The reasonable fees of the Lessor for any function or duty not referred to in this Paragraph but in respect of any operating expense of the Property whatsoever.
- 2.0 **Staff etc**  
The cost of employing (whether by the Lessor the managing agents or any other individual firm or company) such staff as the Lessor may in its absolute discretion deem necessary for the performance of the Services and the other functions and duties with respect to the Premises
- 3.0 **Contracts for Services**

The cost of entering into any contracts for the carrying out of all or any of the Services and other functions and duties that the Lessor may in its absolute discretion deem desirable or necessary.

**4.0 Outgoings**

The amount which the Lessor shall be called upon to pay as a contribution towards rates head rents taxes assessments duties charges impositions and outgoings which are now or during the Term shall be charged assessed or imposed on:

29.1 the whole of the Property;

29.2 the whole of the Retained Parts or any part of them including (but without prejudice to the generality of the above) residential accommodation for caretakers engineers and other staff employed in connection with the Property and the Building.

**5.0 Electricity, gas etc**

The cost of supply of water electricity gas oil or other fuel for the provision of the Services and for all purposes in connection with the Premises.

**6.0 Roads etc charges**

The amount which the Lessor shall be called upon to pay as a contribution towards the expense of making repairing maintaining rebuilding and cleansing any ways roads pavements or structures pipes or anything which may belong to or be used for the Property or any part of it exclusively or in connection with other neighbouring or adjoining premises.

**7.0 Parkings**

The cost of maintaining car parkings and delivery areas.

**8.0 Regulations**

The costs charges and expenses of preparing and supplying to the Lessees copies of any regulations made by the Lessor relating to the Property or the use of it.

**9.0 Statutory requirements etc.**

The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence of the provisions of any statute byelaw or notice concerning town planning public health highways streets drainage or other matters relating to or alleged to relate to the Property or any part of it for which any Lessee is not directly and exclusively liable.

**10. Nuisance**

The cost to the Lessor of abating a nuisance in respect of the Premises or any part of it in so far as the same is not the liability of any individual Lessee.

**11. Anticipated expenditure**

Such provision (if any) for anticipated expenditure in respect of any of the Services or the Additional Items as the Lessor shall in its absolute discretion consider appropriate.



**THE SECOND SCHEDULE HEREINBEFORE REFERRED TO**

**The Office Covenants**

**1 Use**

**1.1 Use as a School**

The Lessee must not use the Premises for any purpose other than as School House.

**1.2 External Displays**

The Lessee must not display or deposit anything outside the Premises for sale or for any other purpose and must not cause any obstruction of the Common Parts.

**1.3 Noxious discharges**

The Lessee must not discharge into any of the Pipes any oil grease or other deleterious matter or any substance that might be or become a source of danger or injury to the drainage system or emit or cause to be emitted any deleterious matter from the Premises.

**1.4 Window cleaning**

The Lessee must clean all windows and window frames in the Premises at least once every month.

**1.5 Noisy machinery**

The Lessee must not install or use in or on the Premises any machinery or apparatus causing noise or vibrations that can be heard or felt outside the Premises or that may cause damage.

**1.6 Sound audible outside**

The Lessee must not play or use in the Premises any musical instrument, audio or other equipment or apparatus that produces sound that may be heard outside the Premises if the Lessor in its absolute discretion reasonably considers such sounds to be undesirable and gives notice to the Lessee to that effect. (This is a school. They will be teaching music. We suggest that you amend this notice to provide that they can play provided the sound is not heard outside the school premises. Is the structure of the building sound proofed. ?)

**1.7 Flashing lights**

The Lessee must not display any flashing lights in the Premises that can be seen from outside the Premises or display any other lighting arrangement that can be seen from outside the Premises if the Lessor in its absolute discretion considers the lighting to be undesirable and gives notice to the Lessee to that effect.

**1.8 Exterior lights and awnings**

The Lessee must not install or erect any exterior lighting shade or awning at the Premises.

**2 Hours of Operations**

**2.1 Operating during the Opening Hours**

During the Opening Hours the Lessee must keep the Premises open for business and properly cared for and must trade throughout substantially the whole of the Premises except:-

2.1.1 in so far as it is prevented from doing so by destruction or damage to the Premises caused by one or more of the Insured Risks.

2.1.2 when non-trading is necessary to allow any major repairs alterations or additions to the Premises to be carried out with all reasonable speed.

2.1.3 when non-trading is necessary to allow a permitted assignment or subletting of this Lease to be completed or

2.1.4 in so far as to do so would be in breach of any other provision of this Lease.

## 2.2 **Operating outside the Opening Hours**

The Lessee must not open the Premises for business outside the Opening Hours without the consent of the Lessor which consent shall not be unreasonably withheld. (Why does the Lessee need to ask for consent to open the premises outside the Opening Hours? This is oppressive to the Lessee and should be deleted. The Lessee has a right to enjoy the premises once it meets its own obligations.)

## 3 **Ceiling and floor loading**

### 3.1 **Heavy items**

The Lessee must not bring onto or permit to remain on the Premises any safes machinery goods or other articles that will or may strain or damage the Premises or any part of them.

### 3.2 **Protection of ceilings**

The Lessee must not without the consent of the Lessor suspend anything from any ceiling on the Premises.

### 3.3 **Expert advice**

If the Lessee applies for the Lessor's consent under Paragraph 3.2 the Lessor may consult any engineer or other person in relation to the ceiling loading proposed by the Lessee and the Lessee must repay the fees of the engineer or other person to the Lessor on demand.

## 4 **Common Parts**

### 4.1 **Care of the Common Parts**

The Lessee must not cause the Common Parts or any other land roads or pavements adjoining the Premises to become untidy or dirty.

### 4.2 **Display of goods outside**

The Lessee must not display or deposit anything whatsoever within or without the Property for display or sale or for any other purpose or cause any obstruction of the Common Parts.

## 5 **Machinery**

### 5.1 **Noisy machinery**

The Lessee must not install or use in or on the Premises any machinery or apparatus other than usual school equipment, that will cause noise or vibration that can be heard or felt in nearby premises or outside the Premises or that may cause structural damage.

## 5.2 Operation of Equipment

The Lessee must ensure that any equipment on the Premises forming part of the Lessor's fixtures is properly used and operated in accordance with any guidelines or instructions given by the Lessor or its agents.

## 6 Security and fire alarms

### 6.1 Entry for servicing and maintenance

The Lessee must permit persons authorized by the Lessor to enter the Premises upon reasonable notice during the Opening Hours accompanied by an employee of the Lessee to service and maintain any security and fire alarm system in the Premises and the Property.

### 6.2 Access on security alarm call

The Lessee must permit persons authorized by the Lessor to have such access to the Premises and the Property as may be required in the event of any security alarm call.

### 6.3 Repair of alarms

The Lessee must maintain repair and when necessary renew any security fire alarm and ancillary equipment installed in the Premises.

### 6.4 Incompatible apparatus

6.4.1 The Lessee must install in the Premises at its own expense such additional fire fighting equipment and apparatus as shall be required and approved by the Lessor or the Lessor's agents if the trade business or occupation of the Lessee is such as to necessitate such additional equipment and apparatus over and above that and those supplied by the Lessor

6.4.2 The Lessee must not install or maintain in the Premises any equipment or apparatus that may adversely affect the performance of any security fire alarm or sprinkler systems in the Building.

### 7.5 Unauthorized connections

The Lessee must not make any connections to any security fire alarm or sprinkler systems without the consent of the Lessor.

## 8 Telephones

The Lessee must install and maintain a telephone system in the Premises and pay all costs and charges in connection with the installation and maintenance of that telephone system.

## 9 Cooling and ventilation

The Lessee must not do anything that interferes with the cooling ventilation or air conditioning of the Common Parts or that imposes an additional load on any cooling ventilation or air conditioning plant and equipment and any other plant and equipment serving the Building.

10 **Water damage precautions**

The Lessee must take all necessary care and precautions to avoid water damage to any part of the Premises by reason of the bursting or overflowing of any pipe or water apparatus in the Premises.

11 **Regulations**

The Lessee must comply with all regulations made from time to time for the management of the Premises and the Property provided that nothing in the regulations may purport to amend the terms of this Lease and in the event of any inconsistency between the terms of this Lease and the regulations the terms of this Lease are to prevail.

**THE THIRD SCHEDULE HEREINBEFORE REFERRED TO**

1. **The Property**

**ALL THAT ALL THAT**[piece of land] known as Plot Number [ ] which said Plot is more particularly delineated and marked as Plot Number [ ] on the Building Plan registered at the Registry of Documents at Nairobi in **Volume ZI Folio XXX/YYYYY File MMVII** and being one of the plots bungalows maisonettes apartments villas and shops erected on a piece of land situate in Nairobi Municipality in Nairobi District containing by measurement Six One Decimal Eight Four (61.84) hectares or thereabouts known as Land Reference Number 55555 which said Premises are comprised in the Grant registered in the Land Titles Registry at Nairobi as Number I.R. 444444/7 and more particularly on Deed Plan Number 66667770 annexed to the said Grant and deposited at the Survey Records Office at Nairobi. The Property is comprised in the Lease registered in the Registry of Titles at Nairobi as Number I.R. ....../1 and is held by the Lessor for the unexpired residue of a term of 99 years from 1<sup>st</sup> January , 2013 (less the last Seven (7) days thereof) subject to (a) the Acts, special conditions and other matters referred to in the Grant and (b) such charges and encumbrances (if any) as are notified by the Memorandum endorsed hereon.

2. **The Premises**

: **ALL THAT** area of space measuring .....shown for the purpose of identification only shown for the purpose of identification

only on the Plan annexed to this Lease and thereon bordered in red and includes:-

- (i) the floor and ceiling finishes but not any other part of the floor slabs and ceiling slabs that bound the Premises;
- (ii) the inner half severed medially of the internal non-load bearing walls that divide the Premises from any other premises;
- (iii) the interior plaster and decorative finishes of all walls bounding the Premises;
- (iv) the doors and windows (including external and internal plate glass windows and shop front windows) and door and window frames and shutters at the Premises;
- (v) all additions and improvements to the Premises;
- (vi) all the Lessor's fixtures and fittings and fixtures of every kind that are from time to time in or on the Premises whether originally fixed or fastened to or on the Premises or otherwise except any fixtures installed by the Lessee that can be removed from the Premises without defacing them;
- (vii) the Conduits exclusively serving the Premises;  
but excludes the use of roof and the roof space the foundations and all external structural on load bearing walls columns beams and supports

3. **The Term** : means Five (5) years and One (1) Month from and including the Rent Commencement Date.

4. **Monthly Rent** : (i) Kenya Shillings **One Hundred Thousand (Kshs. 100,000/=)**  
(ii) The Monthly Rent shall be revised after every two years by an upward revision rate agreed upon by the parties provided that should the parties fail to agree on the rate the Monthly Rent shall be revised upwards by an increase of [ ]%.

**The Monthly Rent payable in 4 above is exclusive of Service Charge and inclusive of VAT.**

#### **MEMORANDUM**

1. The Land Act, Number 6 of 2012.
2. The Land Registration Act, Number 3 of 2012.
3. The Registration of Titles Act (Chapter 281, Laws of Kenya) (repealed)
4. The Government Lands Act (Chapter 280, Laws of Kenya) (repealed)
5. The Special Conditions contained in a Grant registered as Number I. R. 103926/1
6. The Special Conditions contained in a Lease registered as Number I. R. ....../1



