

DATED DAY OF , 20____

TENANT PURCHASE FINANCING AGREEMENT

BETWEEN

(*****)
(as the TPS Financier)

(*****)
(as the Vendor)

- a n d -

(*****)
(as the Tenant Purchaser)

UNIT NUMBER (****) IN (**** APARTMENTS) ERECTED ON THE PARCEL OF LAND KNOWN AS
TITLE NUMBER (*****), ***** COUNTY

Drawn By: -



— LAW LLP —

Advocates & Notaries Public
5th Floor, The Pavilion,
Westlands, Lower Kabete Road
P.O. Box 27547-00100
NAIROBI
File Ref:

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THIS TENANT PURCHASE AGREEMENT is made the day of, 20.....

BETWEEN:

1. **(*****)** of P.O. Box Number **(*****)**, Nairobi in the Republic of Kenya (hereinafter called the **TPS Financier**), which expression shall where the context so admits include its nominees, successors in title and assigns, of the one part;
2. **(*****)** a limited liability company incorporated in the Republic of Kenya as registration number PVT-DLULE7GQ of P.O. Box Number **(*****)** Nairobi in the Republic of Kenya (hereinafter called the **Vendor**), which expression shall where the context so admits include its nominees, successors in title and assigns, of the second part;

AND

3. **(*****)** of Post Office Box Number P. O. Box -....., in the Republic of (hereinafter called the **Tenant Purchaser**), which expression shall where the context so admits include their respective personal representatives and assigns, of the third part.

WHEREAS: -

- A. The Vendor is developing a residential development to be known as **(*****)** for the purposes of sale to interested buyers.
- B. The TPS Financier has entered into an end user financing agreement with the Vendor pursuant to which the TPS Financier will provide financing to homebuyers by way of a tenant purchase scheme.
- C. The Tenant Purchaser is desirous of purchasing a Unit (as hereinafter defined) by way of a tenant purchase scheme.
- D. The Tenant Purchaser and the TPS Financier are entering into this Agreement to set out the terms governing their relationship as Tenant Purchaser and TPS Financier. The Vendor joins this Agreement to give the representations and warranties set forth in the Third Schedule and perform the various actions required of the Vendor to facilitate the tenant purchase agreement contemplated in this Agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

1. Definitions and Interpretation

In this Agreement except where the context otherwise requires the following words and expressions shall have the following meanings: -

- 1.1 **“Agreement”** means this tenant purchase agreement, including its recitals, schedules, and annexures, addendums and variations and any other documents that may be expressly incorporated by reference;
- 1.2 **“Business Day”** means any day (other than Saturday, Sunday or gazetted public holiday in Kenya) on which banking institutions in Kenya are generally open for the conduct of banking business;
- 1.3 **“Certificate of Occupation”** means a certificate issued by the County Government of Nairobi confirming the Unit or the Development is ready for occupation;
- 1.4 **“Certificate of Practical Completion”** means a certificate issued by the Vendor’s architect confirming partial or sectoral practical completion of the Unit and so much of the

Development as gives in the architect's opinion sufficient access to the Unit for the purposes of the Tenant Purchaser being able to occupy the Unit;

- 1.5 **“Corporation”** means the body corporate established under the SPA to control, manage, and administer the common areas and do all things reasonably necessary for the enforcement of the by-laws;
- 1.6 **“Development”** means the building block, consisting of a total of (*****) studio apartment units and (*****) one (1) bedroom apartment units, together with car parking spaces, a gym, laundry/drying area, rooftop lounge area and other related amenities, conveniences and fixtures erected on the Land;
- 1.7 **“EMCA”** means the Environmental Management and Coordination Act, 1999;
- 1.8 **“Default Damages Rate”** means the per annum rate which is 2% above the Central Bank of Kenya (CBK) rate on any such sums from the due date until payment in full;
- 1.9 **“Outgoings”** means land rates and land rent payable in respect of the Unit (if any);
- 1.10 **“Land”** means ALL THAT parcel of land situate in the City of Nairobi at Ngara – Mushembi Road containing by measurement XXX of an hectare or thereabouts and being Land Reference XXX being the premises comprised in a Grant registered as Number I.R. XXX and more particularly delineated on Land Survey Plan Number XXX for the term of fifty (XX) years from the XX day of XXX SUBJECT TO the payment in advance on the first day of January in each year of the annual rent of Kenya Shillings XXX (Kshs.XXX) (revisable) and the Acts Special Conditions Encumbrances and other matters as are notified by the Memorandum endorsed on the Certificate of Title together with the developments and improvements erected and being on the said piece of land, if any;
- 1.11 **“Reserve Fund”** means the fund maintained by the TPS Financier to cover any costs and losses incurred and attributable to a defaulting tenant purchaser;
- 1.12 **“SPA”** means the Sectional Properties Act 2020;
- 1.13 **“TPS Commencement Date”** means the date the Tenant Purchaser shall be entitled to receive possession of the Unit as outlined in Clause 6.1 of this Agreement;
- 1.14 **“Tenant Purchase Period”** means the period commencing the TPS Commencement Date and ending the date the Tenant Purchase Instalments are paid in full;
- 1.15 **“Tenant Purchase Instalments”** means the monthly instalments as set out in in First Schedule of this Agreement payable by the Tenant Purchaser to the TPS Financier for the purposes of acquiring title to the Unit by way of the tenant purchase scheme;
- 1.16 **“Transfer Date”** means the date falling ten (10) working days from the date the Tenant Purchaser pays the final Tenant Purchase Price Instalment;
- 1.17 **“Transferee”** means the legal owner of the Unit on the Transfer Date with capacity to pass good title to the Tenant Purchaser at the date of this Agreement being a special purpose vehicle jointly owned by the Vendor and the TPS Financier or its nominee pending full payment of the Tenant Purchase Instalments;
- 1.18 **“Unit”** means ALL THAT apartment unit erected on the Land, known as Apartment Number and measuring [.....] situate in that development known as (*****) Apartments;

- 1.19 All references in this Agreement to a statutory provision shall be constructed as including references to: -
- 1.19.1 All statutory instruments or orders made pursuant to a statutory provision and to any statutory instrument, order or regulation made thereunder or under any such re-enactment; and
- 1.19.2 Any statutory provisions of which a statutory provision is a consolidation, re-enactment or modification.
- 1.20 Clause headings in this Agreement are for ease of reference only and do not affect the construction of any provision herein.
- 1.21 In this Agreement any reference to any document (including this Agreement) means that document as is supplemented, amended or varied from time to time in accordance with the terms of that document and, if applicable, hereof.
- 1.22 If the "Tenant Purchaser" shall consist of two or more persons such expression throughout means and includes such two or more persons and each of them and shall, so far as the context requires, be construed as well in the plural as in the singular and all covenants, agreements and undertakings herein expressed or implied shall be on the Tenant Purchaser joint and several.
- 1.23 For the purposes of this Agreement, if a definition imposes substantive rights on a party to this Agreement such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.
- 1.24 For the purpose of this Agreement, any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof;
- 1.25 the word "Tax" shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including, without limitation, value added tax, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and taxation shall be construed accordingly and the expression competent taxing authority means, in respect of any state or administrative division thereof, any governmental authority, monetary agency or central bank having power to collect or levy taxes;
- 1.26 In this Agreement (including the recitals and the schedules hereto), unless the context otherwise requires, reference to: -
- 1.26.1 words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;
- 1.26.2 sub-clauses, clauses, and the Schedules shall be construed as references to sub-clauses, clauses and the schedules to this Agreement;
- 1.26.3 indemnifying any person against any circumstance includes indemnifying and keeping them harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made

or incurred by that person as a consequence of or which could not have arisen but for that circumstance;

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

1.26.5 a “party” or to “parties” shall mean a party or the parties to this Agreement.

2. The Tenant Purchase Arrangement

2.1 In consideration of the Tenant Purchaser’s covenant to pay the Tenant Purchase Instalments as and when due and the covenants and agreements by the Tenant Purchaser contained in this Agreement, the TPS Financier shall issue an undertaking to the Vendor to pay the balance of the purchase price in respect of the Unit within ninety (90) days from the date of transfer of the title to Unit to the Transferee.

2.2 The Tenant Purchaser acknowledges that to facilitate the tenant purchase arrangement, as contemplated in this Agreement, the TPS Financier and the Vendor shall enter into arrangements with regard to the holding of the title to the Unit by the Transferee.

2.3 The Tenant Purchaser accepts that during the Tenant Purchase Period, the Tenant Purchaser shall have no legal, beneficial, equitable or any other interest in the Unit except as tenant.

3. Paying the Tenant Purchase Amount

3.1 Each Tenant Purchase Instalment shall be paid without setoff or deduction, commencing the TPS Commencement Date.

3.2 Each Tenant Purchase Instalment shall be payable on or before the 5th day of every calendar month to the TPS Financier using either of the payment channels below or as may be prescribed by the TPS Financier from time to time:

Bank Transfers

Account Name:

Account Number:

Bank:

Branch:

Branch Code:

SWIFT CODE:

Mobile Money

Paybill No.:

Account:

3.3 The Tenant Purchaser shall, upon request from the TPS Financier provide proof of payment within two Business Days of receiving a written request from the TPS Financier.

4. Exiting the Tenant Purchase Arrangement Early

4.1 The Tenant Purchaser shall after the expiry of five (5) years from the TPS Commencement Date have the option to exit the tenant purchase arrangement. The option to exercise the right to an early exit from the tenant purchase arrangement shall be subject to there being no outstanding payments including on account of default damages payable by the Tenant Purchaser.

- 4.2 The option shall be exercised subject to the issue by the Tenant Purchaser of a minimum three-month notice period ending on the 30th of November of the relevant calendar year (the “**TPS Exit Notice**”).
- 4.3 Upon receipt of the TPS Exit Notice, the TPS Financier shall determine the amounts payable by the Tenant Purchaser on the basis of the TPS Financier’s Rent to Own Calculator (the “**RtO Calculator**”). The amounts shall be final.
- 4.4 The amounts payable in respect of an early exit will be due on or before the 5th of December of the relevant calendar year (the “due date”). If the TPS Financier does not receive the full Tenant Purchase Price by the due date thereof the Tenant Purchaser’s right to prepayment in that year shall be deemed cancelled.

5. Disclaimer

- 5.1 The Tenant Purchaser agrees and confirms that:
- 5.1.1 the Tenant Purchaser enters into this Agreement having carried out legal due diligence on the Land and as a result of its own survey and inspection of the building and development plans and on the basis of the terms of this Agreement and not in reliance upon any representation either written or oral or implied or made by or on behalf of the TPS Financier or the Vendor; and
- 5.1.2 having reviewed the building plan, purchases the Unit cognizant of the restrictions and obligations contained thereunder and recognizing the benefits inherent in the undertaking of organized development activity in accordance with the said documents.
- 5.2 Without prejudice to the generality of the foregoing the TPS Financier shall not be liable for any special, collateral, exemplary, punitive, indirect, incidental or consequential losses or damages (including any costs or expenses in respect thereof) of any kind whatsoever, howsoever and by whomsoever caused.

6. Grant of Possession

- 6.1 The TPS Financier shall notify the Tenant Purchaser in writing of the TPS Commencement Date, which shall be a date, not more than twenty-one (21) Business Days from the date of issuance of the Certificate of Occupation and upon which the first Tenant Purchase Instalment shall be due. The notice shall be accompanied by certified copies of the:
- 6.1.1 Certificate of Practical Completion;
- 6.1.2 Certificate of Occupation; and
- 6.1.3 the Development approval issued by the National Environmental Management Authority (NEMA);
- 6.2 On the TPS Commencement Date and subject to the Tenant Purchaser having paid the sums outlined in the Second Schedule, the Tenant Purchaser shall receive possession of the Unit and a copy of the By-Laws regulating the relationship among the occupiers of **(*****)** Apartments. The By-Laws shall be binding on the Tenant Purchaser as an occupier of **(*****)** Apartments and the Tenant Purchaser shall ensure adherence to the By-Laws at all times.
- 6.3 For the avoidance of doubt, the grant of possession shall not confer any beneficial or legal ownership of the Unit to the Purchaser and the TPS Financier hereby reserves the right to terminate this Agreement as provided herein.

7. Defects liability

- 7.1 The Tenant Purchaser shall be required to notify the Vendor under copy to the TPS Financier of any alleged faulty defective or incomplete work, within six (6) months of the TPS Commencement Date. All decisions of the Vendor's architect as to the construction modifications and workmanship with regard to the construction of the Unit and Development shall be final.
- 7.2 Upon the expiry of six (6) calendar months from the TPS Commencement Date, the Tenant Purchaser shall have no claims for any alleged faulty defective or incomplete work against the Vendor.

8. Representations and Warranties of the Tenant Purchaser

- 8.1 The Tenant Purchaser represents and warrants to the TPS Financier as follows:
- 8.1.1 it has the full power and authority to enter into this Agreement on the terms and conditions set out herein and in any other agreement, document or letter exchanged with the TPS Financier and to perform and observe its obligations under this Agreement;
 - 8.1.2 there is no law decree or similar enactment binding on it so far as it is aware and no provision in its Memorandum and Articles of Association, corporate document, charge, indenture, trust deed, contract or agreement binding on it or its directors or affecting its assets which would conflict with or prevent it or its directors from entering into or performing and observing the terms of this Agreement;
 - 8.1.3 this Agreement constitutes valid and legally binding obligations of the Tenant Purchaser enforceable in accordance with its terms;
 - 8.1.4 the Tenant Purchaser is not engaged in nor to the best of the Tenant Purchaser knowledge threatened by any litigation, arbitration or administrative proceedings the outcome of which might materially affect the Tenant Purchaser's financial condition or make it improbable that the Tenant Purchaser will be able to observe or perform its obligations under this Agreement;
 - 8.1.5 the Tenant Purchaser is not in violation of any statute or regulation of any competent authority in Kenya and no judgement or order has been issued which has or is likely to have any material adverse effect on the Tenant Purchaser's financial condition or make it improbable that the Tenant Purchaser will be able to observe or perform its obligations under this Agreement;
- 8.2 The Tenant Purchaser represents and warrants that each of the Warranties set out herein is true and accurate and not misleading at the date of this Agreement.
- 8.3 Each of the warranties are separate and independent and unless otherwise expressly provided shall not be limited by reference to any other warranty or anything in this Agreement.
- 8.4 The Tenant Purchaser hereby undertakes at all times and from time to time to keep the TPS Financier indemnified (on full and unqualified basis) from and against all actions, losses, liabilities, claims and demands whatsoever which may be incurred or suffered by the TPS Financier pursuant to breach of non-performance by the Tenant Purchaser of any provisions or warranty contained in this Agreement.

9. Covenants of the Tenant Purchaser and TPS Financier

9.1 Tenant Purchaser covenants during the Tenancy Period:

- 9.1.1 To pay the monthly Tenant Purchase Instalments and service charge as and when they are due;
- 9.1.2 To use and occupy the Unit as a private residence for one family only;
- 9.1.3 To pay all electricity conservancy, internet, telephone and water charges raised in respect of the Unit during the Tenant Purchase Period;
- 9.1.4 To keep the Unit and fixtures therein clean and in good condition and if this Agreement is terminated pursuant to Clause 14 hand over the Unit in the same condition and repair as on entry fair wear and tear excepted;
- 9.1.5 To be responsible for all normal running repairs and maintenance in connection with internal plumbing furniture fixtures fittings immersion heaters windows locks handles and fasteners;
- 9.1.6 To permit the TPS Financier or its agent/s upon written notice except in the event of an emergency at all reasonable times with or without workmen and others to enter into and upon the Unit to inspect it and in case of any defect or want of reparation which the Tenant Purchaser is liable for in terms of this Agreement, the TPS Financier may serve notice in writing thereof upon the Tenant Purchaser or leave such notice upon the Unit requiring the Tenant Purchaser to make good such defects or want of reparation in a proper manner to the satisfaction of the TPS Financier within one (1) month of the date of such notice or such other period as shall be agreed upon by the Tenant Purchaser and the TPS Financier in writing AND should the Tenant Purchaser fail to make good the said defects or want of reparation specified in the said notice then the TPS Financier shall be entitled to enter upon the Unit with its servants or agents and effect the said repairs and the cost thereof shall be a debt due to the TPS Financier by the Tenant Purchaser and shall be forthwith recoverable by action or by agreement;
- 9.1.7 NOT to make any alterations or additions to the Unit without the consent in writing of the TPS Financier or its authorized agents;
- 9.1.8 NOT to alienate, charge, sub-let, assign or howsoever part with possession of the Unit during the Tenant Purchase Period without the consent in writing of the TPS Financier or its authorized agents;
- 9.1.9 NOT to do or permit or suffer to be done anything whereby any insurance of the Unit against loss or damage by fire may become void or voidable or the rate of premium for any such insurance may be increased and to repay to the TPS Financier all sums paid by way of increased premium and all expenses incurred in or about the renewal of any such policy rendered necessary by a breach of this covenant and all such payments shall be added to the Tenant Purchase Instalments and recoverable as such;
- 9.1.10 In the event of the premises or any part thereof being damaged or destroyed by fire at any time during the Tenant Purchase Period and the insurance money under any insurance policy against fire effected thereon by the TPS Financier being wholly or partly irrecoverable by reason **solely or in part of any act or default of the Tenant Purchaser** then and in every such case the Tenant Purchaser will forthwith (in addition to the Tenant Purchase Instalments) pay to the TPS Financier the whole or (as the case may require) a fair proportion of the cost of completely rebuilding and reinstating the Unit. Any dispute as to the proportion to be so contributed by the Tenant Purchaser

or otherwise in respect of or arising out of this provision shall be resolved pursuant to Clause 16 (the Dispute Resolution Clause);

- 9.1.11 NOT to do or permit or suffer to be done anything in or upon the Unit or any part thereof which may at any time be or become a nuisance or annoyance to the neighbours or injurious or detrimental to the reputation of the Unit;
- 9.1.12 To remove at their own expense any nest of bees that may infest the Unit during the Tenancy Period and to take every reasonable precaution to ensure that white ants or other destructive insects do not gain access to the said premises and to notify the Landlord forthwith in the event of any infestations appearing;
- 9.1.13 Comply with all provisions of the law binding on the Tenant Purchaser and in particular without limiting the generality of the foregoing, the Tenant Purchaser shall on receipt of any notice, order or other similar demand affecting or likely to affect the Unit or any part thereof or any interest therein immediately notify the TPS Financier in writing of such;
- 9.1.14 Comply with and not commit any offences under the provisions of EMCA and the Tenant Purchaser shall procure that all occupiers and owners (as defined in the EMCA) of the Unit shall comply with and shall not commit any offence under the provisions of the EMCA;
- 9.1.15 To be responsible for and to keep the TPS Financier fully indemnified against all damage damages losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the TPS Financier arising directly or indirectly out of:
 - 9.1.15.1 any act omission or negligence or any alleged breach thereof of the Tenant Purchaser or any persons at the Unit expressly or impliedly with the Tenant Purchaser's authority or under the Tenant Purchaser's control; or
 - 9.1.15.2 any breach or non-observance by the tenant Purchaser of the covenants conditions or other provisions of this Agreement.

The TPS Financier's Covenants

- 9.2 The TPS Financier hereby covenants with the Tenant Purchaser as follows:
 - 9.2.1 To keep the Unit adequately insured against fire and for the purposes hereof it is understood that the insurance maintained by the TPS Financier shall only be for the purposes of insuring the external and main walls of the demised premises. The Tenant Purchaser may at its discretion take out any further insurance policies with regard to the furniture and fittings within the Unit as may be installed therein by the Tenant Purchaser which obligation remains the Tenant Purchaser's obligation during the Tenant Purchase Period;
 - 9.2.2 To pay all Outgoings in respect of the Unit including all rents and rates payable to the county and national government, respectively;
 - 9.2.3 To pay the Service Charge to the Corporation or the Vendor, as the case may be;
 - 9.2.4 To liaise with the Vendor or the Corporation as the case may be, to ensure the exterior the Unit and the common areas are in a good state of repair.

10. Destruction of the Unit

- 10.1 If and whenever during the Tenant Purchase Period, the Unit or any part thereof is damaged or destroyed by fire so as to render the Unit or any part thereof unfit for or incapable for occupation and use and provided that the insurances effected by the TPS Financier shall not have been vitiated or payment of the insurance money refused in whole or in part by reason of any act neglect or default on the part of the Tenant Purchaser or his or her servants agents tenants or invitees then (subject to the following provisions of this Clause):
- 10.1.1 all money received under any policy of insurance effected shall subsequently be released to the TPS Financier in instalments against the architect's certificates (or other evidence acceptable to the parties) of expenditure actually incurred by the TPS Financier or Corporation in rebuilding and reinstating the Unit or the affected part of the development;
 - 10.1.2 the TPS Financier shall take such steps as may be requisite and proper to obtain the required governmental consents and approvals and as soon as these have been obtained, shall rebuild and reinstate the Unit or the affected part of the development; and
 - 10.1.3 the Tenant Purchase Instalments, service charge or a proportionate part thereof according to the nature and extent of the damage sustained shall cease to be payable by the Tenant Purchaser until the Unit is again fit for or capable of occupation.
 - 10.1.4 If the Unit continues to be unfit for or incapable for occupation and use for more than six (6) months, then the Tenant Purchaser may terminate this Agreement by issuing to the TPS Financier a twenty-One (21) day termination notice.

11. Transfer

- 11.1 On the Transfer Date, the TPS Financier shall procure registration of the title over the Unit in favour of the Purchaser. Upon registration, the TPS Financier's Advocates shall release to the Tenant Purchaser the following documents:
- 11.1.1 The Original Certificate Lease in respect of the Unit registered in favour of the Tenant Purchaser;
 - 11.1.2 Certified copy of the Vendor's Certificate of Incorporation;
 - 11.1.3 Certified copy of the Transferor's iTax Kenya Revenue Authority PIN Certificate;
 - 11.1.4 Certified copy of the Rates Clearance Certificate in respect of the Unit for the year of the transfer;
 - 11.1.5 Certified copy of the Land Rent Clearance Certificate in respect of the Unit for the year of the transfer;
 - 11.1.6 Certified copy of the duly approved and registered Sectional Plan;
 - 11.1.7 The Corporation's Registration Certificate;
 - 11.1.8 The management agreement or proposed management agreement, if any; and
 - 11.1.9 The recreational agreement or proposed recreational agreement, if any.

12. Application of the SPA

- 12.1 The transfer of the Unit shall be in accordance with the SPA and in consideration of the

payment of the Tenant Purchase Amount in full as provided in this Agreement

- 12.2 It is hereby agreed that the tenant purchase terms herein are provisional only and shall terminate immediately upon transfer of the Unit to the Purchaser.

13. Changes in the Law

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

13.1.1 subject the TPS Financier to any tax with respect to Tenant Purchase Instalments or any other amounts under the tenant purchase scheme made available by the TPS Financier to the Tenant Purchaser (other than a tax on the overall net income of the TPS Financier);

13.1.2 change the basis of taxation to the TPS Financier of any payment of principal, interest, damages or other amount in respect of the Tenant Purchase Instalments or any other amounts under the tenant purchase scheme made available by the TPS Financier to the Tenant Purchaser;

13.1.3 impose on the TPS Financier any other condition with respect to the tenant purchase scheme made available by the TPS Financier to the Tenant Purchaser

and the result of any of the foregoing is to increase the cost to the TPS Financier of operating the tenant purchase scheme made available by the TPS Financier to the Tenant Purchaser or to reduce the amount of any payment receivable by the TPS Financier in either case by an amount which the TPS Financier deems material then and in any such case upon notification from the TPS Financier the Tenant Purchaser shall pay to the TPS Financier on demand such amount as will compensate the TPS Financier from such increased cost or such reduced receipts calculated from the date of notification by the TPS Financier.

14. Default

- 14.1 If the Tenant Purchaser:

14.1.1 fails to pay any part of the Tenant Purchase Amount on its due date or any amount in accordance with this Agreement, or

14.1.2 commits any breach of this Agreement and fails to remedy such breach within ninety (90) days of the date of delivery of a written notice calling on the Purchaser to remedy such breach, then the TPS Financier shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof and at the election of the TPS Financier:

Right to extend timelines

14.1.2.1 extend the time for the Tenant Purchaser to remedy the breach and in the event the TPS Financier shall extend the time for payment, the Purchaser shall pay the TPS Financier damages on any moneys due under this Agreement remaining unpaid at the Default Damages Rate computed from the date such payment is due until the date of payment in full both days inclusive. All amounts paid by the Tenant Purchaser shall in this case be kept in the Reserve Fund to be applied towards investing in

improvements and repairs on the common areas.

Right to rescind this Agreement

14.1.2.2 exercise its right to rescind this Agreement by:

- a) regaining possession of the Unit peaceably; or
- b) re-entering the Unit upon obtaining an order of a competent Court in the Republic of Kenya.

If upon entry by the TPS Financier into possession of the Unit or any part thereof the Unit shall contain any movable property of the Tenant Purchaser which the Tenant Purchaser shall refuse or fail to remove within twenty-eight (28) days of written notice by the TPS Financier to do so then and in any and every such case the TPS Financier shall thereupon be deemed appointed as the agent of the Tenant Purchaser (without assuming any of the duties or obligations of an agent as provided by law) with full authority at the Tenant Purchaser's expense to remove store preserve sell and dispose of such movable properties in such manner in all respects as the TPS Financier shall think fit and to apply the proceeds of any sale or disposal towards the satisfaction of the outstanding amount on the Tenant Purchase Amount or any other amount required under this Agreement.

14.1.2.3 Following rescission of this Agreement all the amounts paid towards the Tenant Purchase Instalments to the TPS Financier shall be forfeited to and retained by the TPS Financier. The forfeited amounts shall be deemed applied towards rent on account of the Tenant Purchaser's occupation of the Unit and compensation for the damages suffered by the TPS Financier because of the Tenant Purchaser's breach of this Agreement. Upon successful rescission of this Agreement, the TPS Financier shall have the right:

14.1.2.3.1 to negotiate with any other person and to require such other person to purchase the Unit on such terms and conditions as may be agreed between the TPS Financier and such new purchaser. The Tenant Purchaser shall where a successful outright resale of the Unit, by way of cash, is achieved be entitled to the gains from the sale of unit, if any, **PROVIDED THAT** the resale of the Unit is completed within one hundred and eighty days of the date of the rescission. The gains shall be calculated after deduction of the amounts paid by the TPS Financier to the Vendor towards the purchase price, any default damages and any costs and charges incurred by the Tenant Purchaser in respect of the Unit including costs in reselling the Unit. A certificate by the TPS Financier's Accountant's certifying the amount payable to the Tenant Purchaser in this regard shall be final and conclusive;

14.1.2.3.2 the TPS Financier shall be entitled to recover by action any amounts found to be due to the TPS Financier in the event of there being any deficiency. The Tenant Purchaser

Financier shall only be entitled to the benefit of this sub-clause 14.1.2.3.2 where the Unit was sold at not less than 75% of its fair market value as at the date of sale as determined by a registered valuer and subject to any default damages charged not exceeding the monthly instalments that remain outstanding.

Lease to a third party

- a) where the Tenant Purchaser has paid at least seventy-five percent (75%) of the Tenant Purchase Amount or such other amount as may be determined by the TPS Financier, the TPS Financier may resume possession of the Unit, peaceably, for the purposes of leasing the Unit on a short term lease to a third party. The short term lease shall not be for a period of more than two (2) years. The rent payments by the third party lessee shall be payable to the TPS Financier in the manner set out in this Agreement and shall be applied for the benefit of the Tenant Purchaser;
- b) The TPS Financier shall serve the Tenant Purchaser with at least a one (1) month notice of withdrawal from possession, following the rectification of the non-payment;
- c) The Tenant Purchaser shall endeavour to ensure that the rent payments paid by the short term lessee are equivalent to the Tenant Purchase Instalments provided that where similar rents in the area are below the Tenant Purchase Instalments, the Tenant Purchaser shall be required to top-up any deficits on the due date of the relevant Tenant Purchase Instalment failure to which damages on the deficit amount shall accrue at the Default Damages Rate.

14.2 If the TPS Financier fails to comply with its obligations under this Agreement, the Tenant Purchaser shall give the TPS Financier a ninety (90) days' written notice to comply with its obligations and such notice shall specify the default and require the TPS Financier to make it good within the ninety (90) days' notice and if the TPS Financier fails to comply with the said notice, the Tenant Purchaser shall be entitled to (without prejudice to any other rights which it may have at law): -

14.2.1 extend the time for the TPS Financier to remedy the breach;

14.2.2 sue for specific performance; or

14.2.3 rescind this Agreement and following such rescission shall have no obligations to the TPS Financier under this Agreement. All the amounts paid towards the Tenant Purchase Instalments shall be refunded within ninety (90) days. The Tenant Purchaser shall not be entitled to interest on the amounts.

14.3 If the Tenant Purchase Commencement Date is not achieved twenty-four (24) months from the date construction commences or within fifteen (15) days of the date of issue of the Certificate of Completion or the Certificate of Occupation whichever date shall be the later, due to no fault of the Tenant Purchaser; the Tenant Purchaser shall subject to a twenty one (21) day notice

to the Vendor be entitled to a refund by the Vendor of all monies paid by the Tenant Purchaser to the Vendor except the booking fees, without interest, within one hundred and eighty (180) days of the lapse of the twenty one (21) day notice. The TPS Financier's obligations under this Agreement shall automatically lapse upon expiry of the twenty-one (21) day notice and the undertaking issued to the Vendor under Clause 2.2 of this Agreement shall stand automatically discharged.

15. Protection of the new purchaser

No purchaser or other person dealing with the TPS Financier or its nominee appointed hereunder shall be bound to see or inquire whether the right of the TPS Financier or such nominee to exercise any of its or his powers has arisen or has become exercisable or be concerned with any notice to the contrary or be concerned to see whether any such delegation by the TPS Financier shall have lapsed for any reason or been revoked, or concerned with any propriety or regularity of any dealing by or with the TPS Financier or such nominee or concerned as to the application of any money or other asset paid at transferred to or at the direction of the TPS Financier or such nominee.

16. Assignment

The TPS Financier shall have a full and unfettered right to assign the whole or any part of the benefit of this Agreement and the assignees and other successors whether immediate or derivative of the Agreement who shall be entitled to enforce and proceed upon this Agreement in the same manner as if named herein.

17. Governing Law and Dispute Resolution

17.1 Each of the parties hereby agrees and confirms for the purpose of the Law of Contract Act (Chapter 23, laws of Kenya) that it has executed this Agreement with the intention to bind itself or to the contents hereof.

17.2 The validity construction and performance of this Agreement shall be governed by Kenyan law.

17.3 Should any dispute arise between the parties with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the parties shall in the first instance attempt to resolve such dispute by amicable negotiation.

17.4 Should such negotiations fail to achieve a resolution within fifteen (15) days, either Party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to mediation by **(*****)** at no cost to the parties.

17.5 Should such negotiations fail to achieve a resolution within fifteen (15) days, either Party may refer the dispute to Kenyan Courts and parties submit to the exclusive jurisdiction of the Courts of the Republic of Kenya.

18. Notice

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

18.1.1 **in the case of a notice to the TPS Financier, to:**

[INSERT]

or such other address or e-mail address as the TPS Financier shall have specified by giving ten (10) Business Days prior written notice to the Tenant Purchaser;

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

[INSERT]

18.1.3 **in the case of a notice to the Tenant Purchaser, to:**

[INSERT]

18.2 Save as otherwise expressly provided herein, any notice, demand or document to be given or made by one party to this Agreement to the other shall be deemed effective:

18.2.1 if made by e-mail when the e-mail is received by the party during normal business hours on a Business Day) **PROVIDED THAT** the appropriate acknowledgement of proper transmission is obtained by the sender; or

18.2.2 when left during normal working hours on a Business Day at the principal office of each party; or

18.2.3 seven (7) Business Days after posting by registered post **PROVIDED THAT** proof is given that the notice, demand or document was properly addressed adequately stamped and put into the post by registered post.

19. **Costs, Duties and Fees**

19.1 The Tenant Purchaser shall bear and pay all fees costs and charges detailed in the Second Schedule.

19.2 The Tenant Purchaser shall also bear the cost of stamp duty and any registration fees payable on transfer of title to the Unit to the Tenant Purchaser.

19.3 All payments to be made by the Tenant Purchaser hereunder shall be made without and free from any set-off, counter-claim or deduction whatsoever and free of bank charges.

19.4 If any tax (including value added tax or sales tax) shall be chargeable in respect of any moneys payable under this Agreement, the Purchaser shall pay in addition to the amounts otherwise payable the amounts otherwise payable the amount of the tax chargeable.

20. **Further Assurance**

The Tenant Purchaser shall cooperate with the TPS Financier at any time if and when required to do such things or execute such further documents as required from time to time relating to and to give effect to the terms of this Agreement.

21. **Power of Attorney**

The Tenant Purchaser hereby irrevocably appoints the TPS Financier to be his attorney and on his behalf and as the act and deed of the Tenant Purchaser to execute, seal and deliver any documents which the TPS Financier may require to give effect to the terms of this Agreement and where applicable, for vesting the Unit in the TPS Financier or its nominees and otherwise generally to sign, seal, deliver any such legal document referred to in this Agreement and to do all such deeds,

documents, acts and things as may be required for the full exercise of the powers hereby conferred. The Tenant Purchaser irrevocably acknowledges and agrees that the said power of attorney is (inter alia) given to the TPS Financier to secure the performance of those obligations owed to the TPS Financier.

22. Invalidity

22.1 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

22.2 Notwithstanding the foregoing, the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

23. Entire Agreement

23.1 This Agreement embodies the entire understanding of the parties and supersedes all previous agreements (if any) whether written or oral between the parties in respect of such matters.

23.2 No amendments or modification of this Agreement shall be valid or binding on any party unless the same:

23.2.1 is made in writing;

23.2.2 refers expressly to this Agreement; and

23.2.3 is signed by the party concerned or its or his/her duly authorized representative.

FIRST SCHEDULE

[Schedule of Tenant Purchase Instalments (Annual & Monthly)]

SECOND SCHEDULE

Part B

	Amount (KES)
Arrangement Fees	1.2% of tenant purchase amount
Legal Fees (1% of Tenant Purchase Amount)	
Stamp Duty on Tenant Purchase Agreement	140/=
Disbursements	
VAT on Arrangement fees and disbursements	
TOTAL	

Part C

The associated costs payable by the Purchaser shall be as follows:

	Amount (KES)
Initial Provisional Service Charge (for 1 year)	18,000/=

THIRD SCHEDULE

Vendor's Warranties

The Vendor warrants to the Tenant Purchaser that to the best of its knowledge: -

1. The Vendor has diligently carried out and completed construction of the Unit in compliance with approved documents and building plans and the exercise of the degree of skill, care, diligence, prudence and foresight that would be expected to be observed by a skilled and experienced developer of the Vendor's experience and reputation in developing and/or constructing the Unit and the development to the standard communicated and advertised by the Vendor.
2. It is the legal and beneficial owner of the Land and possesses good title.
3. There is no Encumbrance or equity on over or affecting the whole or any part of the Unit and there is no agreement or commitment to give or create any and no claim has been made by any person to be entitled to any.
4. The Land is not on a buffer zone, road reserve or public property and its ownership thereof is not subject to any challenge whatsoever from the government of Kenya, any local authority or any third party whatsoever.
5. There is no law or decree or similar enactment binding on them so far as they are aware and no provision and indenture, trust deed, contract or agreement binding the Vendor from affecting the Vendor's assets which would conflict with or prevent the Vendor from entering into or performing and observing the terms of this Agreement.
6. It is not engaged in nor threatened by any litigation, arbitration or administrative proceedings relating to the Unit;
7. The execution and delivery of this Agreement, and the performance by the Vendor of the obligations under this Agreement, will not:
 - a. result in a breach of, or constitute a default under, any agreement or instrument to which the Vendor is a party or by which the Vendor is bound; or
 - b. result in a breach of any order, judgment or decree of any court or Government agency to which the Vendor is a party or by which the Vendor is bound.
8. All obligations in respect of the Land whether imposed by statute order or regulation common law deed or contract affecting the Unit have been observed to date and all requirements or recommendations of any Competent Authority have been complied with.
9. There are no charges, cautions, inhibitions or notices registered against the Land and there is nothing of a similar nature which is capable of registration against them.
10. The actual use of the Land is the permitted use for the purposes of the purchase.
11. The Vendor has complied and is complying with all planning permissions and statutory orders and regulations with respect to the Land.
12. There is no adverse claim on the Land, dispute regarding ownership, boundary, easement, rights or way or any other such matters.
13. It has disclosed to the Purchaser all material information relating to the Land.
14. There are no circumstances which (with or without the taking of other action) would entitle any third party to exercise a right or power of entry or to take possession or which

would in any other way affect or restrict the continued possession enjoyment or use of the Property.

15. Except for any easements registered against the Land as at the date hereof the Vendor has not given any rights of way, easement or any over-riding interest as defined in Section 28 of the Land Registration Act (No. 3 of 2012)) or to any informal charge (as defined in Section 79 of the Land Act (No. 6 of 2012) to any third party and has no intention of so doing.
16. It has not received any notice from government or municipal authority or from owners of adjoining properties which remain to be complied with and has disclosed all such notices received to the Purchaser.
17. It will immediately disclose in writing to the Purchaser any event or circumstance which may arise or become known to the Vendor within twenty (20) months from the date of this agreement which is inconsistent with any of the warranties or which had it occurred on or before the date of this agreement would have constituted a breach of the warranties or which is material to be known by a purchaser for value of the Unit.
18. It shall fully indemnify and keep indemnified the Purchaser against any claims whether direct, indirect or consequential that may arise and/ or any damage that the Purchaser may suffer as a result of any breach to these warranties.
19. These warranties shall subsist and remain enforceable for a period of twenty months from the date of this Agreement.

IN WITNESS WHEREOF the TPS Financier, Vendor and the Tenant Purchaser hereto have executed this Agreement the day and year first hereinbefore written.

EXECUTED by (*****) DIRECTOR
	Signed in the presence of: ADVOCATE

DRAFT

EXECUTED by the **VENDOR**

(***)**

.....
DIRECTOR

Signed in the presence of:

.....
ADVOCATE

DRAFT

SIGNED by the **TENANT PURCHASER**: -

In the Presence of

ADVOCATE

)
)
) Name:
)
) ID No:
)
) KRA Pin No:
)
)
)
) Signature:

CERTIFICATE OF ATTESTATION

I certify that I was present and saw the Tenant Purchaser duly sign this Agreement on the date aforementioned and acknowledged the above signature or mark to be his and that he freely and voluntarily executed this Agreement and understood its contents.

.....
Advocate

