

## REPUBLIC OF KENYA

## THE LAND REGISTRATION ACT

## THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

Date Received

Presentation Book

Official Fees Paid

...../...../.....

No.....

Kshs. ....

## CHARGE

TITLE NUMBER .....

Date of Issue:	
The Chargor:	
Address:	
The Chargee:	<b>Uni-County Sacco Ltd</b>
Address:	<b>10132 – 20100, Nakuru</b>
Principal Amount:	

**THIS CHARGE** witnesses as follows:

1. The Chargor as legal and or beneficial owner HEREBY CHARGES to the Chargee the interest of the Chargor in the above Title as [a continuing security/term loan security] for the payment and discharge in full of all monies, obligations and liabilities covenanted to be paid or discharged or otherwise secured by this Charge.
2. The Chargor hereby authorises the Bank and its agents to register the security created by this Charge in accordance with the provisions of the Land Act, 2012 and the Land Registration Act, 2012 to the satisfaction of the Chargee.

**WHEREAS:**

- (A) The Chargor is registered as proprietor of the land comprised in the above mentioned title and the buildings, fixtures, fittings, additions and improvements from time to time erected or maintained thereon and forming part of the land (hereinafter called “the **Property**”).
- (B) The Chargee has at the request of the Chargor made or agreed to make or continue to make from time to time advances to the Chargor by way of Loan or to grant to the Chargor any financial facilities or other accommodation or to grant time for so long as it may think fit or to forbear to sue or demand immediate payment from the Chargor or any other person whose liabilities and obligations have been guaranteed by the Chargor.
- (C) The Chargor in consideration of the matters referred to in Recital (B) above has agreed to create a legal charge (being this charge) over the premises to secure the principal Amount on the terms and conditions contained herein.
- (D) The Chargee has in particular agreed at the request of the Chargor to make Loan or accommodation or advances available to the Chargor to overdraw the Chargor account (s) with the Chargee or by granting to the Chargor a Loan or further and other financial accommodation from time to time to an aggregate amount not exceeding **Kenya Shillings**

..... (Kes.  
.....) only or the equivalent in whatever currency denominated  
(hereinafter called "**the Principal Amount**") or such lower limit as may for the time being  
or from time to time be fixed by the Chargee upon having the same secured in the manner  
and upon the terms and conditions hereinafter appearing.

**THIS CHARGE** witnesses as follows:-

1. **Covenant to pay**

The Chargor hereby covenant and agree with the Chargee as follows:-

**1.1. To Pay on the Legal Date of Redemption**

The Chargor covenant with the Chargee to pay to the Chargee on the thirtieth day after the date of this charge (**hereinafter called the Legal Date of Redemption**) the principal money and interest thereon as secured by this charge and thereafter to pay to the Chargee on demand all monies and discharge all obligations and liabilities, whether actual or contingent, now or hereafter due, owing or incurred to the Chargee by the Chargor in whatever currency denominated whether on any current or other account or otherwise in any manner whatsoever (whether alone or jointly and in whatever style, name or form and whether as principal or surety) including all liabilities in connection with foreign exchange transactions, swap arrangements, issuing, confirming, accepting, endorsing or discounting any notes or bills or under bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Chargee for or at the request of the Chargor together with interest upto the date of actual payment at rates stated herein and upon such terms as may from time to time be agreed and all commissions, fees and charges and other costs, on a full indemnity basis, all legal and other costs and expenses which the Chargee may incur in relation to this security.

**1.1. To Pay In Installments**

If the Chargor shall pay to the Chargee the Principal Amount and other moneys secured by this Charge with interest thereon calculated in the manner and at the rate hereinafter mentioned by monthly installments (excluding insurance premium, valuation fees and other charges and expenses) (or by such increased or reduced monthly installments as the Chargee may notify the Chargor in writing from time to time) until the whole of the Loan together with interest thereon shall be fully repaid over a period of ..... (**.....**) **monthson** the agreed dates and if the Chargor shall perform and observe all the covenants conditions and stipulations herein contained or implied and on the part of the Chargor to be performed and observed other than the payment of the Loan and interest then the Chargee shall accept the payment of the amount secured by this Charge with interest thereon by the installments at the times and in the manner aforesaid and shall not save as provided in Clause 6.1 hereof enforce the security hereby constituted **PROVIDED THAT** notwithstanding that any installments may have been paid pursuant to this Clause the remainder of the amount secured by this Charge shall continue to be due for all the purposes of the exercise of the statutory and other powers of the Chargee on and after the Legal Date of Redemption.

### **1.2. Treatment of Payment**

No payment by the Chargor to the Chargee shall be treated as being a payment on account of principal unless all interest due or deemed to be due or accrued has been paid.

### **1.3. No Set Off**

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

## **2. Interest**

The Chargor hereby covenant and agree with the Chargee as follows:-

### **2.1.To Pay Interest**

- 2.1.1. The Chargor shall pay interest on the Term Loan facility (as well after as before any demand, judgment, death, incapacity or bankruptcy of the Chargor) at the agreed rate or at such other rate or rates (not exceeding any maximum prescribed by law) as the Chargee may in its sole discretion from time to time decide.
- 2.1.2. The Chargee shall in its sole discretion determine the rate or rates and methods of calculating the interest applicable from time to time with full power and authority to the Chargee to charge different rates for different accounts and/or transactions.
- 2.1.3. The Chargee shall issue the Chargor or such principal debtor a notice of not less than Thirty (30) days prior to any change in the rate or rates of interest so payable, such notice to state the new rate of interest payable in respect of this charge.
- 2.1.4. In the case of any monies being also secured to the Chargee under an agreement or instrument reserving a higher rate of interest than is herein provided nothing herein contained shall affect the right of the Chargee to recover such higher rate of interest or (as the case may be) the difference between such higher rate and the rate payable herein.

### **2.2. To Pay Default Interest**

Save as may otherwise be provided herein, if the Chargor does not pay any sum payable hereunder on its due date for payment, the Chargor shall (without prejudice to the exercise by the Chargee of any other right or remedy in favour of the Chargee) pay to the Chargee (as well after as before any demand, judgment, death, incapacity or bankruptcy of the Chargor) interest at a rate of Five per cent (5 %) above the agreed rate under clause 2.1.1 or at such other rate or rates as may be determined by the Chargee from time to time in its sole discretion (hereinafter referred to as the “**Default**

**Rate**") on all monies due from the Chargor with effect from the date of the same becoming due until actual repayment of such monies in full (together with all accrued interest) and the Chargor hereby acknowledges and agrees that the Default Rate represents a reasonable pre-estimate of the loss to be suffered by the Chargee in funding the default of the Chargor.

### **2.3. Extension of Provisions**

The provisions of sub-clauses 2.1.2 to 2.1.4 (both inclusive) shall (where appropriate) also apply to the interest charged pursuant to clause 2.2 above and all the covenants and provisions contained in this Charge relating to interest shall be construed and have effect as referring to such varied interest applicable from time to time.

### **2.4. Statement of the Chargee Conclusive**

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

## **3. Secured Obligations**

The total monies for which these presents constitute security shall be the aggregate of the principal amount with interest as aforesaid and such other costs, liabilities, taxes, expenses and charges and other amounts payable by the Chargor pursuant to the provisions of this Charge (hereinafter together referred to as the "**Secured Obligations**").

## **4. Charging Clause**

- 4.1.** The Chargor as beneficial owner **HEREBY CHARGES** the Charged Property to the Chargee as a continuing security for the payment and discharge unconditionally and in full of the Secured Obligations.
- 4.2.** The Chargor hereby applies to the Land Registrar and or authorizes the Chargee and its agents to register the security created by this Charge in accordance with the provisions of the Land Act and The Land Registration Act to the satisfaction of the Chargee.

## **5. Covenants by the Chargor.**

### **5.1. Outgoings**

During the subsistence of this security, the Chargor will punctually pay in full and indemnify the Chargee and any receiver appointed by the Chargee against all existing and future rents, municipal or local rates, taxes, duties, charges, assessments, impositions and other outgoings whatsoever (whether imposed by agreement, statute or otherwise and whether in the nature of capital or revenue and even if wholly novel) now or at any time during the continuance of this security payable in respect of the Charged Property or any part thereof or by the owner or occupier thereof.

### **5.2. Buildings**

The Chargor will during the subsistence of this security, keep all buildings and structures and all roads, passageways, pipes, wires, cables, drains and sanitary and water apparatus and all fixtures and fittings and every part thereof in or upon the Charged Property in good and substantial repair and in good working order and condition and except in the ordinary course of use, repair, maintenance or improvement the Chargor shall not make any structural or other material alteration thereto or pull down, remove, sell or otherwise dispose of any of the same without the prior consent in writing of the Chargee.

### **5.3. Right of Inspection**

During the subsistence of this security:

- 5.3.1. the Chargee is authorised (should the Chargee so require) at any time and from time to time during the continuance of this security to instruct a surveyor or valuer to inspect and report on the Charged Property (at the expense of the Chargor) and all monies paid by the Chargee for that purpose shall be deemed to be expenses properly incurred by the Chargee in relation to the security hereby created repayable in full by the Chargor on demand with interest as aforesaid; and
- 5.3.2. the Chargor will permit the Chargee, its employees or agents during working hours or at any time in the event of an emergency (as determined by the Chargee in its sole discretion) to enter the Charged Property to enable the Chargee, its employees or agents (as the case may be) to examine the state and condition thereof.

### **5.4. Title Matters**

During the subsistence of this security:

- 5.4.1. the Chargor will forthwith deposit with the Chargee and permit the Chargee during the continuance of this security to hold and retain all deeds and documents of title and insurance policies relating to the Charged Property and such other documents relating to the Charged Property as the Chargee may from time to time require;
- 5.4.2. the Chargor shall comply with and observe all the terms and conditions (if any) endorsed on or referred to in the document of title in respect of the Charged Property; and
- 5.4.3. the Chargor will observe and perform all covenants and stipulations from time to time affecting the Charged Property or the mode or user of enjoyment of the same and will not without the prior consent in writing of the Chargee enter into any onerous or restrictive obligations affecting any part of the Charged Property or undertake any developments on the Charged Property including, without limitation, developments which would require the Chargor to obtain a change of user in respect of the Physical Planning Act, 1996 and if consent is granted by the Chargee, the Chargor will comply with the provisions of the Physical Planning Act, 1996.

### **5.5. Insurance**

During the subsistence of this security:

- 5.5.1. the Chargee may in its own name or other agency and at the expense of the Chargor insure and keep insured for such amounts in such names and with such insurers as the Chargee may from time to time select any buildings or any effects or property of an insurable nature (whether affixed to the freehold or leasehold or not) being or forming part of the Charged Property;
  - a) against loss or damage by fire; and
  - b) against such other risks as the Chargee may from time to time think expedient;
- 5.5.2. the Chargor will repay every such sum from time to time paid by the Chargee for effecting or keeping on foot any such insurance within fourteen

(14) days after the date on which the same was paid by the Chargee and that every such sum until it is repaid shall bear interest at the rate for the time being payable hereunder and with the interest thereon shall constitute a first charge over the Charged Property;

- 5.5.3. the Chargor shall not except at the request or with the consent of the Chargee effect or keep on foot any insurance against any risk in respect of the Charged Property whereof the Chargee has effected or shall keep on foot such an insurance;
- 5.5.4. the Chargor will permit all insurance policies and the receipts or other evidence of payment of any premium paid by the Chargee to remain in the custody of the Chargee and will when required deliver to the Chargee any policies of insurance effected by the Chargor and the receipt or other evidence of payment of the current premium in respect thereof;
- 5.5.5. the Chargee may (at its option) require any money received on any insurance if the said buildings effects or property whether effected by the Chargee or by the Chargor to be applied in or towards making good the loss or damage in respect of which the money is received or in or towards the discharge of any principal money or interest secured hereby and the Chargor shall hold any money received on such insurance in trust for the Chargee;
- 5.5.6. the Chargee shall be entitled to retain for its own use and benefit any commission paid or allowed to it as agents for any insurers;
- 5.5.7. the Chargor shall take and keep in force (and pay all the premiums including increased premiums on the due date) a mortgage protection policy with an insurance company approved by the Chargee in writing insuring the overdraft facility or any part thereof at any time outstanding and state in such policy that the Chargee is the beneficiary thereof; and
- 5.5.8. the Chargor shall repay by equal monthly installments every premium paid by the Chargee for effecting or keeping in force an assurance on the life of the Chargor for a sum assured equal to the amount of the overdraft facility from time to time outstanding. In the event of a claim arising, the proceeds of the assurance shall be used by the Chargee to reduce the amount owed to it by the Chargor. The Chargor agrees that the repayment of premium shall not create a lien upon the assurance, such assurance being the property of the Chargee absolutely.
- 5.5.9. deposit with the Chargee its policies of insurance and duly pay all premiums and other money necessary for effecting and keeping up its insurances and deliver to the Chargee at least seven days before the expiry of any policy the receipt for the payment of the premium to renew that policy it being agreed that all money payable under any policy of insurance effected by the Chargor shall be paid by the insurers directly to the Chargee or, if not so paid, shall be held in trust for the Chargee to be applied, at its option, in replacing, restoring or reinstating the property or assets destroyed, damaged or lost or in reduction of the money, obligations and liabilities secured by this Charge and, if default shall be made by the Chargor at any time in effecting or keeping up any insurance, in depositing the policies or delivering the receipt for any premium, the Chargee shall be entitled, but not bound, to take out or renew that insurance in any sum which it may

consider expedient. Upon expiry of any insurance cover, the Chargor shall within seven (7) days of such expiry deliver to the Chargee the relevant renewal advise failing which the Chargee shall be at liberty to effect such insurance cover at the Chargor's cost without further reference to the Chargor and debit the Chargor's account with any amount paid by the Chargee and an administration fee of 10% of the value of the premium arising thereunder;

- 5.5.10. insure and keep insured, with insurers approved by the Chargee and in the joint names of the Chargor and the Chargee or, at the option of the Chargee with a charge clause endorsed or the interest of the Chargee noted on the policy, the buildings forming part of the premises and all fixtures fittings, additions and improvements against loss or damage by fire, lightening, earthquake, storm, flood, explosion, riot and civil commotion, aircraft and such other risks as the Chargee may from time to time specify to their full insurable value to the satisfaction of the Chargee.

**5.6. No Further Encumbrance**

Save for this Charge, the Chargor will not during the subsistence of this security, without the prior consent in writing of the Chargee create or attempt to create or permit to subsist any mortgage or charge upon or permit any lien or other Encumbrance to arise on or affect any part of the Charged Property.

**5.7. Not Affect the Value of the Charged Property**

During the subsistence of this security, the Chargor will not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Chargee of the security hereby created nor permit any person (other than the Chargee) to become entitled to any proprietary right or interest which might affect the value of the Charged Property or any part thereof.

**5.8. Not to Sell or Transfer**

During the subsistence of this security, the Chargor will not, without the prior consent in writing of the Chargee, which consent will not be unreasonably withheld, part with the possession of, transfer, sell, assign, lease or give a licence to utilise or otherwise dispose of any interest in the Charged Property or any part thereof or attempt or agree so to do. However, the Chargee may consider to execute partial discharges upon request by the Chargor.

**5.9. No Overriding Interest**

No person (other than the Chargor) shall during the subsistence of this security and without the prior consent in writing of the Chargee be registered as the proprietor of the Charged Property or any part thereof or of any interest therein nor, without such consent first having been obtained, shall the Chargor create or permit to arise or subsist any overriding interest in relation to the Charged Property.

**5.10. Not to Apply for Loans**

The Chargor will not during the subsistence of this security apply for nor incur any indebtedness for borrowed money the security for which under or by virtue of any law for the time being in force in Kenya or otherwise howsoever would or might rank in priority to or *paripassu* with the security created under this Charge.

#### **5.11. Agricultural Property**

If the Charged Property is classified as agricultural land, the Chargor will during the subsistence of this security observe the rules (if any) made pursuant to the Agriculture and Food Authority Act in so far as they affect or are binding upon the Charged Property. The Chargor will farm the Charged Property in a good and husband like manner and in particular (but without prejudice to the generality of the foregoing) will keep in a good state of cultivation and condition and clean and free from weeds all portions thereof which are now or may hereafter be put under cultivation and all crops from time to time thereon and will permit the Chargee or the agent of the Chargee at all reasonable times to enter upon the Charged Property and examine the state of cultivation and condition thereof and if any land which is now or shall at any time during this security have been under cultivation or the said crops or any part thereof shall not be found in a proper state of cultivation and condition and notice in writing of any such defects or matters shall be given to the Chargor, the Chargor will if and so far as the case will admit make good the same in a proper manner and to the satisfaction of the Chargee within the space of Three (3) calendar months next after every such notice shall have been so given. Further the Chargor will not permit any person (other than the Chargor spouse and children) to occupy or reside on the Charged Property without obtaining the prior written consent of the Chargee.

#### **5.12. Leasehold Property**

During the subsistence of this security:

- 5.12.1. (if the Charged Property consists of a leasehold interest) the Chargor will not (without the prior consent in writing of the Chargee) vary, surrender, cancel, assign, charge or otherwise dispose of or permit to be forfeited any lease of the Charged Property or any part thereof or agree to do so whether such lease be the lease under which the Chargor holds the Charged Property or superior thereto or derived out of the Chargor's interest therein;
- 5.12.2. without prejudice to the generality of sub-clause 5.1 (if the Charged Property consists of a leasehold interest) the Chargor will pay the rents reserved by and generally perform and observe all the covenants stipulations conditions and restrictions imposed on the Chargor under the lease under which the Chargor holds the Charged Property and use her best endeavours to procure the observance and performance by the landlord under the said lease of the terms, covenants, stipulations and conditions on the part of the landlord and provide to the Chargee such evidence as the Chargee may reasonably require to prove the compliance by the Chargor with this covenant; and
- 5.12.3. if the term granted to the Chargor is for any reason extended the Chargor shall forthwith at the request of the Chargee and cost of the Chargor deliver to the Chargee a replacement charge over the new or extended leasehold term and on such terms as the Chargee may require.

#### **5.13. Comply with Notices**

During the subsistence of this security, the Chargor shall comply with all provisions of the law binding on the Chargor and in particular without limiting the generality of the foregoing, the Chargor shall on receipt of any notice, order or other similar demand affecting or likely to affect the Charged Property or any part thereof or any interest therein immediately notify the Chargee in writing of such receipt and send the same or a copy thereof to the Chargee and shall on demand by the Chargee supply to the Chargee (at the cost of the Chargor) all information relating to the matters mentioned



in such notice, order or other similar demand and shall take (at the expense of the Chargor such action in respect thereof as the Chargee shall or may require.

**5.14. Illegal or Immoral Activities**

During the subsistence of this security the Chargor shall procure that all occupiers and managers of the Charged Property shall not carry on any illegal or immoral activities on the Charged Property and, without prejudice to the generality of the foregoing, shall not commit any offence thereon under the provisions of the **Narcotic Drugs and Psychotropic Substances (Control) Act, 1994**.

**5.15. Environmental Matters**

The Chargor shall during the subsistence of this security comply with and shall not commit any offences under the provisions of the **Environmental Management and Coordination Act, 1999 ("EMCA")** and the Chargor shall procure that all occupiers and owners (as defined in the EMCA) of the Charged Property shall comply with and shall not commit any offence under the provisions of the EMCA.

**5.16. Road Making and Paving**

The Chargor shall during the subsistence of this security punctually pay in full all charges in connection with road making and paving which may become chargeable on the Charged Property during the continuance of this security.

**5.17. Comply with Terms of Facility Letter, letter of commitment or letter of offer etc.**

During the subsistence of this security the Chargor shall in addition to the terms and conditions contained herein and on the part of the Chargor to be performed and strictly perform observe and comply with the terms and conditions contained in the Chargee's letter of offer or in any letter of commitment, facility letter or other agreement on the basis of which the SACCO has afforded any facility hereby secured **PROVIDED THAT** in the event that there is any conflict between the covenants agreement conditions restrictions stipulations and provisions in this charge contained and those contained in the letter of offer or in such other document or letter, the covenants agreements conditions restrictions stipulations and provisions contained herein shall prevail.

**5.18. Pay all Charges and Expenses**

The Chargor will during the subsistence of this security pay (on a full and unqualified indemnity basis) to the Chargee on demand any and all costs, charges, taxes, liabilities, damages and expenses incurred or suffered by the Chargee in relation or incidental to the negotiation, preparation, completion, protection, preservation, realisation and enforcement of this security together with interest thereon at the rate aforesaid with effect from (and including) the date incurred or suffered to the date of payment in full. All such costs, charges, taxes, liabilities, damages, expenses and interest shall be deemed for all purposes hereof to form part of the Secured Obligations and shall include all costs, charges, claims, damages and other monies paid suffered or incurred by the Chargee:

5.18.1. in any action, proceeding or claim brought by or against the Chargee for the enforcement, protection, preservation or improvement of the security hereby created; or

5.18.2. in any action proceeding claim or demand against or for the recovery of the Charged Property or any part thereof or any compromise, purchase or getting-in

thereof (which the Chargee shall have full power to effect without the concurrence of the Chargor); or

- 5.18.3. in connection with the negotiation and completion of any further charge, deed of variation or other instrument or document supplemental to or collateral with this Charge or otherwise relating to the Charged Property (whether or not completed) and any correspondence and attendances relating thereto; or
- 5.18.4. in connection with any proposed lease, surrender, assurance or other transaction concerning the Charged Property for which the Chargor may need the consent of the Chargee (whether such consent be given or withheld) including legal costs incurred in perusing and (if necessary) copying any document (whether engrossed or in draft form) required for carrying out any such proposed transaction and any correspondence and attendances relating thereto; or
- 5.18.5. in effecting any registration which the Chargee may deem necessary or expedient for the proper protection of its security; or
- 5.18.6. in paying the advocates, architects, surveyors, auctioneers, valuers or other professional or technical advisers of the Chargee in respect of their costs, fees and disbursements for attendances made, advice given, correspondence written or other work done by such persons or any of them in connection with any of the matters referred to in the preceding paragraphs of this sub-clause 5.18 or the happening of any one or more of the events specified in clause 6.1 below and that the legal costs and disbursements paid or incurred by the Chargee under this Charge shall as against the be deemed to include every sum which would be allowed to the advocates of the Chargee in a taxation as between advocate and own client to the extent that the Chargor shall afford to the Chargee a complete entitlement and unqualified indemnity in respect thereof; or
- 5.18.7. in paying the premia for the insurance policies referred to in 5.5 above.

## **6. Events of Default**

- 6.1. The Chargor hereby agrees that the Loan and interest or other moneys secured by this Charge shall at the sole discretion of the Chargee immediately become due and payable and the statutory powers of the Chargee to appoint a receiver or to sell the Charged Property shall forthwith become exercisable without delay for one month or any lesser period and without service of any notice on the Chargor other than notice of the immediate exercise of such powers if:-
  - 6.1.1. the Chargor fail to pay on the due date any money or to discharge any obligation or liability payable by the Chargor and to the Chargee or fails to comply with any term, condition, covenant or provision of this Charge or to perform any obligation or liability of the Chargor to the Chargee under this Charge or if any representation, warranty or undertaking from time to time made to the Chargee by the Chargor is or becomes incorrect or misleading; or
  - 6.1.2. the Chargor defaults under any loan agreement, facility letter or other agreement or obligation relating to any borrowing arrangement with the Chargee or if any borrowing becomes or is capable of being declared payable prior to its stated maturity or is not paid when due or if any mortgage, charge or other security now existing or hereafter created by the Chargor becomes enforceable; or

- 6.1.3. a petition is presented or an order is made or analogous proceedings are taken for making the Chargor bankrupt or if the Chargor dies or becomes of unsound mind; or
- 6.1.4. an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver is appointed of the whole or any part of the property assets or revenues of the Chargor; or
- 6.1.5. any judgement or order made against the Chargor is not complied with within seven (7) days or if any execution, distress, sequestration or other process is levied or enforced upon or against any part of the property assets or revenue of the Chargor; or
- 6.1.6. the Chargor stops payment or commits an act of bankruptcy or is unable to pay her debts as and when they fall due or if a notice is issued convening a meeting of the creditors of the Chargor or if the Chargor proposes or enters into any composition or arrangement with her creditors generally or any class of her creditors; or
- 6.1.7. the Chargor, without the prior consent in writing of the Chargee, ceases or threatens to cease to carry on the business carried on by the Chargor and or the changes in the nature or mode of conduct of her trading in any material respect; or
- 6.1.8. any material part of the property, assets or revenues of the Chargor is sold or disposed of (otherwise than in the normal course of trading) or threatened to be sold or disposed of whether in a single transaction or a number of transactions or is nationalised compulsorily acquired seized or appropriated; or
- 6.1.9. any licence, authorization, consent or registration at any time necessary or desirable to enable the Chargor to comply with her obligations to the Chargee hereunder or to carry on her business in the normal course shall be revoked, withheld or materially modified or shall fail to be granted or perfected or shall cease to remain in full force and effect; or
- 6.1.10. any breach occurs of the terms and conditions (if any) endorsed on or referred to in the document of title in respect of the Charged Property; or
- 6.1.11. where the Charged Property is agricultural property if a Management Order is made in respect of the Charged Property under the relevant Law; or
- 6.1.12. any of the foregoing events occur without the prior consent in writing of the Chargee in relation to any third party who now or hereafter has guaranteed or provided security for or given an indemnity in respect of the Secured Obligations (or any part thereof); or
- 6.1.13. there is an attempt by the Government, the head Lessor or any other competent person to terminate, impair, suspend or forfeit the Chargor' title and or interest is for any reason terminated, impaired, suspended or forfeited; or
- 6.1.14. the SACCO receives notice of intention by the Government, the head lessor or any other competent person to terminate or impair or suspend or forfeit the chargor's title and or interest to the charged property; or
- 6.1.15. if it becomes lawful or impossible for the Chargee to meet or maintain or fund the secured obligations or any part thereof; or
- 6.1.16. any other event occurs which in the opinion of the Chargee (as determined by it in its absolute discretion) materially adversely affects the ability of the Chargor to fully

discharge its obligations to the Chargee in accordance with the Chargee's express requirements from time to time.

6.1.17. If the Chargor without the prior written consent of the Sacco, creates, attempts to create or permits to arise any charge, mortgage, lien or other encumbrance over any part of the Premises;

- (a) If an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver or receiver and manager is appointed over any of the property or assets of the Chargor;
- (b) If any final judgement or order is made against the Chargor and is not complied with within seven (7) days or if any decree, order, warrant or process is issued or other action is taken whereby a distress, attachment or execution is or may be levied or enforced upon or against any of the property or assets of the Chargor;
- (c) If the Chargor commits any act of bankruptcy, dies or becomes of unsound mind;
- (d) If the Chargor without the prior consent in writing of the Sacco, ceases or threatens to cease to carry on the business carried on by the Chargor on the date hereof;

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

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

6.1.19. If the Chargor is participating or is deemed to be participating in illegal activities or corrupt activities or is charged or convicted of such activities by any Court of competent jurisdiction;

6.1.20. If any cheques or other negotiable instruments of the Chargor is dishonoured by the Sacco or other institution for lack of funds whether the Chargor is charged in a Court of law or not;

6.1.21. If any of the above events occurs in relation to any person who guarantees or gives an indemnity or provides security in respect of any of the monies, obligations or liabilities secured by this Charge or of any such person gives notice terminating his liability under the relevant guarantee, indemnity or security;

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

6.2 At any time after the occurrence of any of the events specified in clause 6.1, the Sacco may serve notice on the Chargor in accordance with Section 90 of the Land Act demanding payment of the monies secured by this Charge and if the Chargor does not comply with the notice served under Section 90 of the Land Act the Sacco may:-

6.2.1 sue the Chargor for any monies due and owing under this Charge;

6.2.2 appoint a receiver of the income of the Premises;

- 6.2.3 lease or sub-lease the Premises;
- 6.2.4 enter into possession of the Premises; or
- 6.2.5 sell the Premises;

All such remedies to be exercised in accordance with the Land Act.

- 6.3 Before exercising the power to sell the Premises, the Sacco shall serve a notice on the Chargor to sell (with copy to such persons as are prescribed by Section 96 (3) of the Land Act) and shall not proceed to complete any contract for the sale of the Premises until at least Forty (40) days have elapsed from the date of the service of such notice.

#### **6.4. Statutory power of Sale.**

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

- 6.4.1 the Sacco and/or the receiver shall appoint a valuer to carry out a forced sale valuation of the Premises;

- 6.4.2 the sale by the Sacco and/or the receiver of the Premises may be:

- (i) of the whole or part of the Premises;
- (ii) subject to or free of any charge or other encumbrance having priority to this Charge;
- (iii) by way of subdivision or otherwise;
- (iv) by private contract at market value;
- (v) by public auction with a reserve price;
- (vi) for a purchase price payable in one sum or by installments; or
- (vii) subject to any other conditions that the Sacco shall think fit having due regard to the duty imposed on the SACCO by Section 97 (1) of the Land Act;

- 6.4.3 The purchase money shall be applied in accordance with the order of priority set out in Section 101 of the Land Act, namely;

- (i) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the Premises;
- (ii) second, in discharge of any prior charge or other encumbrance subject to which the sale was made;
- (iii) third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
- (iv) fourth, in discharge of the Principal Amount, interest and other charges, including any money advanced to a receiver in respect of the Premises;
- (v) fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the Charge; and

- 6.4.4 the sale shall be carried out in accordance with the provisions of the Land Act and the Land Registration Act.

- 6.4.5. at any time before the Sacco exercises its power of sale:-

- (a) the Chargor or any other person entitled to discharge the charge may discharge the charge by paying to the Chargee the amount secured by this charge at the time of payment; and
  - (b) the Chargor may apply for relief in accordance with Section 103 of the Land Act.
- 6.4.6. the parties hereby agree that the commission to which a receiver is entitled by virtue of section 92 (7) of the Land Act shall be (unless otherwise provided by law) at the rate not exceeding ten (10%) percent of the gross amount of all monies received.

## 7. **Date Specified For Repayment**

The Chargor and the Chargee hereby agree that at any time after the occurrence of any of the events specified in Clause 6.1, the Chargee may serve notice on the Chargor and or the this Charge and it is acknowledged and agreed by the Chargor that the date of service of such a notice shall be deemed to be **“the date specified for repayment”** within and for all purposes of this Charge.

## 8. **Enforcement**

- 8.1. At any time after the Chargee shall have demanded payment of the Secured Obligations as provided hereunder the Chargee may without the giving of any notice or concurrence on the part of the Chargor:
- 8.1.1. enter into and upon the Charged Property and execute or cause to be executed any repairs, alterations and additions or other works thereto or thereon and for the purposes aforesaid the Chargee shall be at liberty to employ contractors, workmen, builders and others and purchase all necessary material as the Chargee may in its absolute discretion deem fit but so that the Chargee in acting under the powers given by this sub-clause 8.1.1. shall not be deemed to be a mortgagee in possession or become liable as such;
  - 8.2. The statutory power to appoint a receiver may be exercised by the Chargee at any time after payment of the Secured Obligations has been demanded and the Chargor is in default in paying the same and the Chargee may appoint in writing any person (or persons) (whether an officer of the Chargee or not) to be a receiver or receivers of all or any part of the Charged Property and upon such appointment:
    - 8.2.1. the Chargee may remove the receiver and appoint another in his place;
    - 8.2.2. the receiver shall (so far as the law permits) be the agent of the Chargor (who shall alone be liable for the receiver's acts defaults omissions and remuneration) and the receiver shall be entitled to exercise all applicable statutory powers; and
    - 8.2.3. any receiver appointed by the Chargee shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver and for his remuneration a commission at the rate of ten per cent (10%) of the gross amount of all moneys received by him provided that the Chargee shall have power upon or at any time after the appointment of any such receiver to reduce the rate of commission payable to him to such lesser rate than that hereinbefore specified as the Chargee shall in its sole discretion think fit.
  - 8.3.
    - 8.3.1. At the time of entry into possession or receipt of the rents and profits of the Charged Property by the Chargee or by any receiver appointed by the Chargee

the Charged Property or any part thereof shall be let furnished under a tenancy which is or becomes binding on the Chargee then and in any and every such case the Chargee or such receiver shall be entitled to receive and apply the whole of the rent reserved by such tenancy as if it were rent of the Charged Property and neither the Chargee nor any such receiver shall be required or bound to make any apportionment of such rent in respect of any furniture or chattels of the Chargor provided under the terms of such tenancy and maintained at the Charged Property; and

- 8.3.2. upon entry by the Chargee into possession of the Charged Property or any part thereof, the Charged Property shall contain any furniture or chattels of the Chargor which the Chargor shall refuse or fail to remove within twenty-eight (28) days of the Chargor being required in writing by the Chargee so to do then and in any and every such case the Chargee shall thereupon be deemed appointed as the agent of the Chargor (without assuming any of the duties or obligations of an agent as provided by law) with full authority at the Chargor's expense to remove, store, preserve, sell and otherwise dispose of such furniture and chattels in such manner in all respects as the Chargee shall think fit and to apply the proceeds of any sale or disposal in or towards the satisfaction and discharge of the Secured Obligations provided that the Chargee shall not sell such furniture or chattels pursuant to the powers conferred on the Chargee hereunder until after the expiration of the twenty-eight (28) days period referred to above.
- 8.4. The provisions of clause 8.3 shall not operate to confer on the Chargee any right in equity to any of the furniture or chattels of the Chargor and shall accordingly not be construed to create any charge or other security interest thereon or otherwise so as to constitute this Charge an instrument under the Chattels Transfer Act (Cap. 28 of the laws of Kenya).
- 8.5. The Chargee in exercising its statutory power of sale may sell or concur with any person in selling the Charged Property or any part thereof either subject to any prior Encumbrance or not and either together or in lots by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the Chargee thinks fit with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby.
- 8.6. Without prejudice to the foregoing if the Chargor is in possession of the Charged Property the Chargee shall be entitled to recover possession of the Charged Property upon a bid being accepted at any auction sale whether or not the bid so accepted is made by the Chargee or upon the execution and completion of any private contract to sell the Charged Property.
- 8.7 The Chargee may from time to time make such payments as it may consider expedient to any person whether a receiver or a subsequent chargee or any person acting on the instructions of the Chargee in connection with the maintenance, repair, alteration or improvement of the Charged Property or for outgoings in relation thereto or for any costs or expenses incurred by the Chargee in connection with the enforcement, protection or improvement of the security hereby created or intended to be created and all monies so paid shall be deemed to be and form part of the Secured Obligations and shall carry interest at the Default Rate from the date of the same being paid by the Chargee and shall be repayable together with such interest by the Chargor on demand.

- 8.8 The Chargee may at any time after entering into possession of all or part of the Charged Property under the powers herein contained relinquish such possession on giving notice to the Chargor.
- 8.9. The Chargor irrevocably covenants and agrees that upon first written demand made by the Chargee on the Chargor at any time after the security herein created has become enforceable the Chargor all other occupiers of the Charged Property shall forthwith quit and vacate the Charged Property.
- 8.10. Every receipt of the Chargee of any rent or purchase money or insurance or other monies shall effectively discharge the tenant, purchaser or any other person paying the same (as the case may be) from the obligation to pay the same and such person shall not be concerned to see to the application thereof.

## **9. Extension and Variation.**

- 9.1. The Chargor shall not sell, transfer, lease, agree to lease, accept surrenders of leases, charge or part with the possession of any part of the Charged Property or any estate or interest thereof without the prior written consent of the Chargee which consent shall not be unreasonably withheld and the provisions of section 88 (f) and section 88 (g) of The Land Act shall not apply to this Charge.
- 9.2 The powers to grant leases and accept surrenders of leases conferred on the Chargee by Section 93 of the Land Act shall apply to this Charge but without the restrictions contained in that section.
- 9.3. Section 83 of the Land Act, 2012 (restricting the right of consolidation) shall not apply to this Charge and, without prejudice to any equitable right of consolidation, it is agreed that no property of the Chargor which is subject to a mortgage or charge in favour of or vested in the Sacco shall be redeemed except on payment not only of all money secured by that mortgage or charge but also of all money secured by this Charge.

## **10. Continuing Security and Consolidation**

- 10.1. This security shall be a continuing security for the payment of the Secured Obligations or so much thereof as may from time to time be outstanding notwithstanding the death, bankruptcy or incapacity of the Chargor or any settlement of account or other matter whatsoever and is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or guarantee, lien, pledge, bill, note mortgage or other security (whether created by the deposit of documents or otherwise) now or hereafter held by or available to the Chargee and shall not in any way be prejudiced or affected thereby or by the invalidity thereof or by the Chargee now or hereafter dealing with exchanging releasing varying or abstaining from perfecting or enforcing any of the same or any rights which the Chargee may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.
- 10.2. It is hereby acknowledged and agreed by the Chargor that there shall be no restriction on the right of the Chargee of consolidating mortgage or charge securities and the Chargee hereby reserves the right to consolidate all mortgages and charges which the Chargee may from time to time hold from the Chargor on any account whatsoever and it is hereby declared that neither the Charged Property nor any other property of the Chargor which at any time during the



continuance of this security is subject to a mortgage or a charge in favour of or vested in the Chargee shall be redeemed except on payment not only of the monies hereby or thereby secured but also of all monies secured by every such mortgage or charge (including this Charge).

10.3. The Chargee shall be at liberty without thereby affecting its rights hereunder at any time:-

10.3.1. to combine, consolidate, split, determine or vary any credit to or accounts of the Chargor and the mode of repayment thereof;

10.3.2. to vary exchange or release any other securities held by the Chargee for or on account of the Secured Obligations hereby secured or any part thereof;

10.3.3. to compound with, give time for payment, accept compositions from and make any other arrangements with the Chargor or any person or persons liable on other securities held by the Chargee for or on behalf of the Chargor ;and

10.3.4. at any time and without notice to the Chargor combine or consolidate all or any of the Chargor accounts with the Chargee and set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the Chargor liabilities to the Chargee on any other account or in any other respect whether such liabilities be present, future, actual or contingent, primary, collateral, joint or several and whether such accounts and liabilities be current deposit, loan or of any other nature whatsoever whether subject to notice or not, whether in Kenya Shillings or in any other currency or in one or more branches of the Chargee in Kenya.

10.4. The Chargee is hereby irrevocably authorised by the Chargor in the Chargor name and at the Chargor's expense to perform such acts and sign such documents as may be required to give effect to any consolidation, set-off or transfer pursuant to the foregoing sub-clauses of this Clause

## **11. Effect of Dealing Between the Chargor and the Chargee**

11.1. No dealing between the Chargor and the Chargee shall in any way:-

11.1.1. prejudice or affect the covenants liabilities and obligations of the Chargor or the rights and remedies of the Chargee; or

11.1.2. release or discharge any mortgage or charge given by the Chargor.

### **11.2. As respects the Chargee:-**

11.2.1. the Chargor shall be liable on the covenants on the part of the Chargor herein contained as principal; and

11.2.2. every charge created by this security shall be a principal and primary security for the monies hereby secured.

### **11.3. For the purposes of this Clause a dealing shall include:-**

11.3.1. the giving of time or indulgence by the Chargee;

11.3.2. the neglect or forbearance of the Chargee in requiring or enforcing payment of any monies hereby secured;

- 11.3.3. the release of any property subject to this Charge or of any property mortgaged or charged to secure the Secured Obligations or of any covenant liability or obligation hereunder or the release of any guarantor who has guaranteed payment of the Secured Obligations;
- 11.3.4. any variation of any of the provisions of this Charge;
- 11.3.5. any arrangement or compromise between any one or more of the Chargor and the Chargee; and
- 11.3.6. any act, omission, matter or thing whatsoever whereby the Chargor would or might have been released from any covenant, liability or obligation hereunder or any mortgage or charge given by the Chargor.

## **12. Currency Conversion**

It is hereby agreed by the Chargor that:

- 12.1. all amounts due and owing by the Chargor to the Chargee and secured by this security shall be paid to the Chargee in the currency in which the principal amounts are outstanding and interest on such amounts shall also be paid in the currency in which the principal amounts are outstanding in freely transferable and convertible funds;
- 12.2. all monies received or held by the Chargee or by a receiver under this Charge may from time to time after demand has been made by the Chargee be converted into such other currency as the Chargee considers necessary or desirable to cover the Secured Obligations in that other currency;
- 12.3. no payment to the Chargee (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Chargee shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that if the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Chargee shall have a further separate cause of action against the Chargor and shall be entitled to enforce this Charge to recover the amount of the shortfall;
- 12.4. The Chargee shall in its sole and absolute discretion be entitled upon giving prior written notice to the Chargor at any time to  
 convert any facility made available in a currency other than Kenya Shillings (the "Other Currency") into a Kenya Shillings facility. If the Chargee shall exercise the aforesaid right to convert the facility the Other Currency shall be converted into Kenya Shillings at a rate of exchange determined by the Chargee in accordance with the usual practice adopted by the Chargee in converting the Other Currency into Kenya Shillings as at the date of conversion. Upon the conversion the provisions shall apply mutatis mutandis in relating to charging and payment of interest by the Chargor in respect of Kenya Shillings outstanding from time to time and the Chargor shall be charged and shall pay interest accordingly; and
- 12.5. neither the Chargee nor any receiver shall be liable to the Chargor for any loss resulting from any fluctuation in exchange rates before or after the exercise of any or all of the foregoing powers.

### **13. Changes in the Law**

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

- 13.1. subject the Chargee to any tax with respect to the Loan made available by the Chargee to the Chargor (other than a tax on the overall net income of the Chargee);
- 13.2. change the basis of taxation to the Chargee of any payment of principal, interest or other amount in respect of the Loan made available by the Chargee to the Chargor;
- 13.3. impose, modify or deem applicable any reserve or deposit requirements against any assets of or deposits with or for the account of or loans by the Chargee; or
- 13.4. impose on the Chargee any other condition with respect to the Loan made available by the Chargee to the Chargor.

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

### **14. Representations and Warranties**

14.1. The Chargor represents and warrants to the Chargee that:

- 14.1.1. It has the power to grant the security set out herein and in any other agreement, document or letter exchanged with the Chargee and to perform and observe her obligations under this Charge and under any other securities created in favour of the Chargee;
- 14.1.2. It has the power to own the Charged Property and all his other property and assets and to carry on her business
- 14.1.3. there is no law decree or similar enactment binding on her so far as she is aware and no provision in any mortgage, indenture, trust deed, contract or agreement binding on his or affecting his assets which would conflict with or prevent it from entering into or performing and observing the terms of any of the facilities made available to him by the Chargee under this Charge;
- 14.1.4. this Charge constitutes valid and legally binding obligations of the Chargor enforceable in accordance with its terms;
- 14.1.5. neither the making of this Charge nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default or require any consent under any indenture, mortgage, charge, agreement or other instrument or arrangement to which the Chargor is a party or by which the Chargor is bound or violate any of the terms or provisions of any judgement, decree or order or any statute, rule or regulation applicable to the Chargor or the businesses undertaken by the Chargor;
- 14.1.6. the Chargor is duly and properly registered as the proprietor of the Charged Property;

- 14.1.7. there is no outstanding Encumbrance on the Charged Property (or any part thereof) and (save in the case of this Charge) no contracts or arrangements conditional or unconditional exist for the creation by the Chargor of any Encumbrance on or over the Charged Property (or any part thereof);
- 14.1.8. the Chargor and is not engaged in nor to the best of the Chargor's and or the, arbitration or administrative proceedings the outcome of which might materially affect the Chargor's business prospects or financial condition or make it improbable that the Chargor and or the Chargor's obligations under this Charge;
- 14.1.9. the Chargor is not in violation of any statute or regulation of any competent authority in Kenya and no judgment or order has been issued which has or is likely to have any material adverse effect on the Chargor's business prospects or financial condition or make it improbable that the Chargor will be able to observe or perform the Chargor's obligations under this Charge; and
- 14.1.10 no event or circumstance which constitutes or which with the giving of notice lapse of time or the making of a determination would constitute an event of default as set out in clause 6.1 has occurred and is continuing.
- 14.2. The representations and warranties in clause 14.1 shall be deemed repeated by the Chargor on and as of each day the Secured Obligations remain outstanding to the Chargee.

## **15. Indemnity**

The Chargor agrees to indemnify and keep indemnified, on demand, the Chargee and every receiver, attorney, agent or other person appointed by the Chargee hereunder in respect of all liabilities and expenses incurred directly or indirectly by any of them in execution or purported execution of any of the powers, authorities or discretions vested in any of them hereunder and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Charged Property or powers conferred by this Charge or occasioned by any breach of the Chargor of their obligations to the Chargee and the Chargee, such receiver, attorney, agent or other person may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Charge.

## **16. Further Assurance**

The Chargor shall at any time if and when required by the Chargee execute such further legal or other charges, mortgages or assignments in favour of the Chargee as the Chargee shall from time to time require over the Charged Property and all rights and remedies relating thereto both present and future (including any vendor's lien) to secure the Secured Obligations or to facilitate the realization of the Charged Property or other assets of the Chargor or the exercise of the powers conferred on the Chargee or a receiver appointed by the Chargee such further charges, mortgages or assignments to be prepared by or on behalf of the Chargee at the cost of the Chargor and to contain such clauses for the benefit of the Chargee as the Chargee may reasonably require.

## **17. Power of Attorney**

The Chargor hereby irrevocably appoints the Chargee (and the persons deriving title under it) and severally and separately any receiver appointed hereunder to be her attorney and in her name and on her behalf and as the act and deed of the Chargor or otherwise to execute, seal and deliver any documents which the Chargee may require for perfecting the

Chargee's title to or for vesting the Charged Property in the Chargee or the Chargee's nominees or in any purchaser and otherwise generally to sign, seal, deliver and otherwise perfect any such legal or other mortgage charge, assignment, or other document referred to in this Charge and to do all such deeds, documents, acts and things as may be required for the full exercise of the powers hereby conferred including any sale, lease or disposition or realisation or getting in of the Charged Property. The hereby covenants with the Chargee and separately with any such receiver to ratify and confirm any deed, document, act and thing and all transactions which any such attorney may lawfully execute or do and the Chargor irrevocably acknowledges and agrees that the said power of attorney is (*inter alia*) given to the Chargee and/or receiver to secure the performance of those obligations owed to the Chargee or any receiver by the Chargor

**18. Effect of Release or Discharge**

Any settlement, release or discharge of this Charge between the Chargor and the Chargee shall to the extent permitted by law be conditional upon no security or payment to the Chargee by the Chargor being avoided or reduced whether by virtue of any provisions or enactments relating to bankruptcy for the time being in force or otherwise and the Chargee shall be entitled to recover the value or amount of such security or payment from the Chargor as if such settlement, release or discharge had not occurred.

**19. Security Not to be Affected by Change in Constitution of the Chargee**

This Charge shall remain in effect and be binding on the Chargor notwithstanding any change in the constitution of the Chargee or any amalgamation or merger that may be effected by the Chargee with any other person and notwithstanding the sale or transfer of all or any part of the Chargee's undertaking and assets to another person whether the person with which the Chargee amalgamates or merges or the person to which the Chargee transfers all or any part of its undertaking and assets either on a reconstruction or sale or transfer as aforesaid shall or shall not differ from the Chargee in its objects character or constitution it being the intent of the Chargor that the security herein created and the provisions herein contained shall remain valid and effectual in all respects in favour of the Chargee and that the benefit thereof and all rights conferred upon the Chargee thereby may be assigned to and enforced by any such person and proceeded on in the same manner to all intents and purposes as if such person had been named herein instead of or in addition to the Chargee. The Chargee shall be entitled to impart any information concerning the Chargor to any such proposed assignee or other successor.

**20. Notice of any Subsequent Encumbrance**

If the Chargee shall at any time receive notice of any subsequent Encumbrance or other like interest, matter, event or transaction affecting the Charged Property, the Chargee may open a new account or accounts for the Chargor in its books. If the Chargee does not in fact open any such new account then unless the Chargee gives express written notice to the Chargor to the contrary the Chargee shall be treated as if it had in fact opened such account or accounts at the time when it received such notice. As from that time and unless such express written notice shall be given to the Chargor all payments by or on behalf of the Chargor to the Chargee shall (in the absence of any express contrary appropriation by the Chargor) be credited or treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time when the Chargee received such notice. All monies received, recovered or released by the Chargee may in its discretion be credited to any suspense

account and held in such account for so long as the Chargee may think it fit pending application in or towards satisfaction of the Secured Obligations.

**21. Lien by the Chargee**

Until all the Secured Obligations shall have been paid or satisfied in full the Chargee shall have a lien on all property and assets of the Chargor from time to time in the Chargee's possession and a charge over all the Chargor's stocks, shares and marketable and other securities from time to time registered in the name of the Chargee or its nominees whether the same be held for safe custody or otherwise.

**22. Rights of Disclosure**

Without prejudice to any other right or remedy of the Chargee, the Chargee shall have a full and unfettered right to disclose information about the Chargor to any credit reference agency if the Chargor does not make full repayment of the Secured Obligations within twenty eight (28) days of the Chargee making demand under this Charge.

**23. Consent of the Chargee**

Where the consent of the Chargee is required under any of the provisions of this Charge, the Chargee shall be entitled to withhold its consent in relation to any such matters without assigning any or any sufficient reason therefore and the Chargee may give such consent upon and subject to such terms and conditions as the Chargee in its sole discretion shall think fit.

**24. Advances to a Third Party**

In cases where the Chargee has at the request of the this Charge shall where necessary be construed *mutatimutandis* but no such variations shall prejudice the rights and privileges of the Chargee in so far as its remedies against the Chargor are concerned and as a separate and independent stipulation the Chargor hereby agrees that any monies which may not be recoverable herein by reason of any legal limitation or disability shall nevertheless be recoverable herein and against the Charged Property as though such monies had been advanced to the Chargor as the sole and principal debtor.

**25. Rights to Debit Chargor's Accounts**

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

**26. No Right to Further Advances**

Upon demand being made by the Chargee for payment of the Secured Obligations or upon the Secured Obligations for any other reason becoming immediately payable, the Chargee shall be under no obligation to make any further advances or grant any further facility to the Chargor.

**27. Other Security**

The security hereby given to the Chargee shall be without prejudice and in addition to any other security whether by way of pledge, legal or equitable mortgage or charge or otherwise howsoever which the Chargee may now or at any time hereafter hold on the

property and assets of the Chargor or any part thereof for or in respect of all or any part of the indebtedness of the Chargor to the Chargee howsoever arising or any interest thereon.

## **28. Application of Monies Received**

Any money received by the Chargee or any receiver in the exercise of any powers conferred or implied by this Charge shall be applied in or towards the satisfaction of the money, obligations and liabilities secured in such order as the Chargee, in its absolute discretion, may determine and the Chargee shall be entitled to credit any money so received to a suspense account for so long and in such manner as the Chargee may determine from time to time.

## **29. Protection of Third Parties**

No purchaser or other person dealing with the Chargee or its delegate or any receiver appointed hereunder shall be bound to see or inquire whether the right of the Chargee or such receiver to exercise any of its or her 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 Chargee shall have lapsed for any reason or been revoked, or be concerned with any propriety or regularity of any dealing by or with the Chargee or such receiver or be concerned as to the application of any money paid or other assets transferred to or at the direction of the Chargee or such receiver.

## **30. General**

### **30.1. Exercise of Rights**

The Chargee may choose when, where and how often to exercise each of its rights, powers and remedies as provided by this Charge or by law and the Chargor expressly agrees and covenants with the Chargee that it shall not plead limitation under the **Limitation of Actions Act (Cap 22 of the Laws of Kenya)** or any other similar enactment. No failure or delay by the Chargee in exercising any such right or remedy shall impair the same or operate or be construed as a waiver of the same nor shall any single, partial or defective exercise of any such right, power or remedy preclude its further or future or other exercise or the exercise of any other such right, power or remedy.

### **30.2. Invalidity**

Each of the provisions of this Charge is severable and distinct from the others and if at any time one or more of such provisions is or become invalid, illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and the Chargor shall cooperate with the Chargee in substitution of new provisions in compliance with the intention contained in this Charge.

### **30.3. Notices**

Any notice required or authorised by law or by this Charge shall be deemed to have been properly served by the Chargee on the Chargor if left at the Charged Property or at the principal place of business of the Chargor or sent by registered post to her last known postal address or sent by telex or facsimile to the Chargor's last known relevant address. Any notice hand-delivered as aforesaid shall be deemed to have been given upon delivery at the relevant address and any notice sent by registered post shall be deemed to have been served on the addressee at 10.00 a.m. on the seventh succeeding business day following the day of posting notwithstanding that it

be undelivered or returned undelivered and, in proving service, it shall be sufficient to prove that the notice or demand was properly addressed and posted. Any notice or demand sent by telex or facsimile shall be deemed to have been served at the time of transmission.

#### **30.4. Rights Cumulative**

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

#### **30.5. Certificate by Officer of the Chargee Conclusive**

Any notice or demand or certificate signed by an officer of the Chargee as to the amount of the Secured Obligations for the time being shall, save in the case of manifest error, be binding and conclusive upon the Chargor and, where applicable, shall be conclusive evidence of the rights of the Chargee to exercise the powers conferred or implied by this Charge.

#### **30.6. Assignment**

The Chargee shall have a full and unfettered right to assign the whole or any part of the benefit of this Charge free from any equities and the assignees and other successors whether immediate or derivative of the Chargee shall be entitled to enforce and proceed upon this Charge in the same manner as if named herein. The Chargor shall not be entitled to assign or transfer any of her rights and obligations under this Charge.

#### **30.7. Application of Law of Contract Act**

Each of the parties hereto hereby agree and confirm that it/she has executed this Charge with the intention to bind itself/herself to the contents hereof generally and also for all the purposes of **the Law of Contract Act (Chapter 23 of the laws of Kenya)**.

#### **30.8 Amendments**

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

### **31. Discharge**

Upon the payment and satisfaction in full of the Secured Obligations the Chargee will (subject to clause 10.2) release and discharge to the Chargor or as the Chargor may direct (but always at the cost of the Chargor) the Charged Property or any part of it as has not been applied in or towards the payment and discharge of the Secured Obligations.

### **32. Early Redemption**

The chargor may exercise the right to discharge the charge at any time before the expiry of the term of the charge by giving one month's notice to the Chargee of his intention to discharge or shall pay not more than one month's interest at the rate at which interest is payable on the principle sum secured by the charge or at any lesser rate which may be agreed, as well as paying all other money secured by the charge.

### **33. Governing Law**

This Charge shall be governed by and construed in accordance with the laws of the Republic of Kenya.



**34. No representations**

The Chargor acknowledges that no representations or promises contrary to its terms have been made to the Chargor or are outstanding at the date of execution of the Charge.

**35. In this Charge, any reference to:**

- a)** the **"Chargee"** includes a reference to the successors and assigns of the Sacco;
- b)** the **"Chargor"** includes a reference to the successors in title to the Chargor;
- c)** The **"Property"** means the land described herein and includes the buildings, fixtures, fittings, additions and improvements from time to time forming part of the land;
- d)** references to writing shall include any mode of reproducing words in a legible and transitory form;
- e)** references to indemnifying any person against any circumstances include indemnifying and keeping her harmless from all actions, claims or proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- f)** references to any statute or statutory provision shall be construed as references to such statute or provision as respectively amended or re-enacted or as their operation is modified by any other statute or statutory provision (whether before or after the date of this Charge) and shall include any provisions of which they are re-enactments (whether with or without modification) and shall include subordinate legislation made under the relevant statute;
- g)** references to and the definition of any document (including this Charge) shall be deemed to be a reference to such document as it may from time to time be amended modified or replaced ( in whole or in part) but disregarding any amendment variation modification or replacement taking place in breach of such document;
- h)** reference to person shall include any firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing and any other legal entity;
- i)** expressions in the singular shall include the plural and words importing a gender shall include every gender;
- j)** 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 or any penalty or interest payable in connection to any failure to pay or any delay in paying 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 SACCO having power to collect or levy tax;
- k)** the expression **"month"** means a calendar month;
- l)** the expression **"Encumbrance"** includes any mortgage or charge (whether legal or equitable) lien, option, security, interest, restrictive covenant, pledge, hypothecation, assignment, title retention, leasing, sale-and-purchase, sale-and-leaseback arrangement,

preferential right, trust arrangement or other restriction of any kind or other right securing or any right conferring a priority of payment in respect of any obligation of any person;

m) **“the Land Act”** means The Land Act No. 6 of 2012;

n) **“the Land Registration Act”** means The Land Registration Act No. 3 of 2012;

o) the expression **“covenant”** means and includes **“agree”** and **“agreement”** and vice versa;

36. I, the above the Chargor hereby acknowledge that I understand the effect of sections 82, 83, 85, 87, 89, 90, 92, 93, 94, 96, 98, 100 (1), 101, 102 (2) and 103(1) of The Land Act 2012 and section 59 of The Land Registration Act 2012. We further hereby agree that the Chargee’s rights under Section 82, 83, 90 and 96 of The Land Act and the restrictions under Section 87 of The Land Act and Section 59 of The Land Registration Act be noted against the above mentioned title.

**Acknowledgement of Effect of Section 90 of the Land Act, 2012**

Pursuant to the provisions of section 56 of the Land Registration Act, 2012, we, the Chargor hereby acknowledge that we understand the effect of Section 90 of the Land Act, 2012 and the chargee’s remedies under this Charge. This acknowledgement is signed on behalf of the Chargor by the persons witnessing the affixing of the Common Seal of the Chargor to this Charge.

.....

Director

.....

Director/Secretary

.....

Attorneys’ signatures

**IN WITNESS WHEREOF** this Charge has been duly executed.

**Execution**

All parties including the Borrower(s) must execute. Sealed with the Common Seal of the Chargor in the presence of: ..... Director ..... Director/Secretary ..... Advocate	Common Seal
Verification of execution pursuant to Section 45 of the Land Registration Act	
I CERTIFY that ..... and ..... being the persons witnessing the affixing of the Common Seal of the Chargor appeared before me on ..... and being known to me/being identified by ..... of ..... freely and voluntarily executed this instrument.  ..... Name and signature of person certifying	
Signed by the duly authorized attorneys of the Chargee under and by virtue of Powers of Attorney registered at the District Lands registry as number ..... and ..... and at the registry of Documents at Nairobi as Number ..... and ..... respectively in the presence of ..... Signature of Sacco official as witness	
Verification of execution pursuant to Section 45 of the Land Registration Act	
I CERTIFY that ..... and ..... being the duly constituted attorney(s) of the Sacco appeared before me on ..... and being known to me/being identified by..... of..... acknowledged the above signature or mark to be his/hers/theirs and that he/she/they had freely and voluntarily executed this instrument and understood its contents.  ..... Name and signature of person certifying	

REGISTERED this ..... day of ..... 20.....

ENTRY in Encumbrances Section Number:..... Seal.....

LAND REGISTRAR

Name:..... Registrar's Stamp / No.....

Signature: .....

DRAWN BY:

**DRAWN BY:**

**NANCY NJORGE, KAIRU & CO. ADVOCATES,**

**VICMARK PLAZA, 3<sup>RD</sup> FLOOR, P.O BOX 3653-20100, NAKURU**

**Notes:**

**ATTACHMENTS**

- \* Coloured passport size photograph,
- \* Copy of National ID
- \* Tax PIN Number.
- \* Attach a survey plan.