**LETTER OF DEPOSIT FOR A SINGLE BORROWER AND A**

**THIRD-PARTY GUARANTOR**

**DATED 20[\*]**

**-BETWEEN-**

**[\*]**

**(“THE “CHARGOR”)**

**- AND -**

**[\*]**

**(THE “LENDER”)**

**-IN RESPECT OF -**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**[\*]**

**(THE “PROPERTY”)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NOTES:**

This is a letter of deposit also Known as an Informal Charge executed between the Borrower of a loan, the Chargor who is the third-party guarantor and the Lender. It is done in favour of the Lender and acts as security for a sum/credit/loan advanced to the Borrower. It defines the terms under which such loan has been granted and provides mechanisms of debt collection and or remedies to the Lender upon default of the Borrower.

A letter of deposit being an informal charge is only noted in the registry. It is noted as encumbrance only when a search is done over the Property. As an informal charge, a caution should also be prepared and registered. Other accompanying documents such as the original title, copies of IDs and PINs of the borrower should also be surrendered to the Lender.

Further, and on top of this, the Lender should ask the borrower to execute an undated transfer at the point of executing this letter of deposit. This is also beneficial to the Lender in that, if the borrower defaults, the Lender may proceed to transfer the secured property to themselves.

**LETTER OF DEPOSIT FOR A SINGLE BORROWER AND A THIRD-PARTY GUARANTOR**

 **Date: [\*]**

**[\*][[1]](#footnote-1)**

**P.O. BOX Number [\*],[[2]](#footnote-2) NAIROBI**

**The Directors**

**[\*]**

P.O. Box **[\*]**

**Nairobi.[[3]](#footnote-3)**

**Attention: [\*][[4]](#footnote-4)**

Dear Sirs

**Re: LETTER OF DEPOSIT**

**THIS LETTER OF DEPOSIT** is made on this **[\*]** day of **[\*]**, 20**[\*]** by **[\*][[5]](#footnote-5)** (holder of ID No./Incorporation No. **[\*]**)[[6]](#footnote-6) and whose address is **P.O Box Number [\*]**, Nairobi (hereinafter called the **“Chargor”** which expression shall, where the context so requires, include the Chargor personal representatives and permitted assigns) to secure advances made to the Chargor.)

***in favour of:***

**[\*]**, a limited liability company incorporated in the Republic of Kenya and of P.O. Box Number **[\*]**, Nairobi (the “**Lender**” which expression shall refer to the successors and permitted assigns of the Lender)

And it is intended to secure certain credit facilities advanced to the Chargor and or **[\*]**, a private company limited by shares and incorporated in the Republic of Kenya under Incorporation Number **[\*]** and for purposes hereof of P.O. Box Number **[\*]**, Nairobi (hereinafter called the **“Borrower”** which expression shall refer to the successors in title and permitted assigns of the Borrower).

**WHEREAS:**

1. On or before the date hereof, the Chargor and or the Borrower have requested the Lender to advance the Chargor and or the Borrower certain credit facilities;
2. The Lender has agreed to advance the said credit facilities to the Chargor and or the Borrower in accordance with the terms and conditions of the Facility Letter (Reference Number **[\*]**) dated **[\*]**, 20**[\*]** executed between the parties (as may be amended, supplemented, varied or reviewed from time to time) (hereafter together called the “**Facility Letter Agreement**”); and
3. It is a conditional precedent for the advancement of the said credit facilities that the Chargor shall deposit the title document for the Charged Property (a phrase herein defined) as a security for the repayment of the principal amounts, interest and other amounts expressed or implied in the Facility Letter Agreement and this Letter of Deposit.

**Now, therefore**, in consideration of the mutual promises set forth below, **IT IS HEREBY AGREED** as follows: -

1. **Covenant to pay**
	1. The Chargor and or the Borrower undertake to the Lender to faithfully comply with all the Chargor and or the Borrower payment obligations set out or implied in the Facility Letter Agreement.
	2. It is hereby agreed that the principal amount advanced to the Chargor and or the Borrower under the Facility Letter Agreement is the aggregate sum of **Kenya Shillings** **[\*] (KShs. [\*]/=)** (or its equivalent in whatever currency denominated) (the “**Principal Amount**”).
2. **Interest**
	1. The Chargor and or the Borrower shall pay commission, fees and other usual Lender charges as well as interest up to the date of payment (as well after as before any demand, judgement, insolvency or liquidation of the Chargor and or the Borrower) on all the monies and liabilities from time to time due and payable hereunder such interest to be calculated at the rate or rates set out in the Facility Letter Agreement or at such other rate or rates from time to time agreed with the Lender and in the absence of such agreement at such rate or rates as the Lender may, in its sole and absolute discretion, from time to time determine.
	2. If the Chargor and or the Borrower defaults in making any payments hereunder the Chargor and or the Borrower shall pay interest on that excess sum or any portion remaining unpaid from the due date of such payment until actual payment thereof at such rate or rates over and above the rates specified in Clause 2.1 above as agreed with the Lender in writing or in the absence of such agreement at such rate or rates as the Lender may in its sole and absolute discretion (within the limits permitted by law) from time to time determine.
	3. Interest payable hereunder shall be calculated on daily cleared balances and debited monthly by way of compound interest according to the usual mode of the Lender but without prejudice to the right of the Lender to determine the methods of calculating the applicable interest and to require payment of such interest when due.
	4. The Lender shall not be required to seek the consent of the Chargor and or the Borrower or any principal debtor (as the case may be) prior to any change in the rate and method of calculating the interest so payable and the failure by the Lender to seek such consent from the Chargor and or the Borrower or other principal debtor as aforesaid shall not prejudice in any way howsoever the recovery by the Lender of interest charged subsequent to any such change provided however that the Lender shall give the Chargor and or the Borrower or other such principal debtor at least thirty (30) days’ notice prior to any change in the rate or rates of interest payable.
	5. The statement of the Lender as to the rate, mode or amount of interest payable shall, in the absence of manifest error, be conclusive.
3. **Charged Property**
	1. The land whose Title Document shall be deposited with the Lender as security for the Secured Obligations shall be

Original Certificate of Lease for ALL THAT property comprised in Title Number: **[\*]** situate in the **[\*]** District measuring approximately **[\*]** (**[\*]**) hectares or thereabouts and held absolutely by the Chargor.

* 1. The Title Document for the Charged Property are hereinafter together called the Title Document.
1. **Charging Clause**

The Chargor as the legal and beneficial owner hereby:

* 1. deposits the Title Document with the Lender as a continuing security for the payment and discharge in full of all money, obligations and liabilities covenanted to be paid or discharged or otherwise secured by this Letter of Deposit; and

(b) applies to the Land Registrar and/or authorises the Lender and its agents to register the caution over the Title Document in order to protect its interests in accordance with the provisions of the Land Registration Act and the Land Act to the satisfaction of the Lender.

1. **Secured Obligations**

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

1. **Covenants by the Chargor and or the Borrower: -**

In consideration with the aforesaid credit facility, the Chargor and or the Borrower hereby irrevocably undertakes to the Lender as follows: -

1. That the Chargor shall not create, attempt to create or suffer to exist any Letter of Deposit, lien or any other form of encumbrance or security whatsoever on or over the Charged Property or make an application for the replacement of the Title Document for the Charged Property without the prior written consent of the Lender;
2. That the Chargor shall keep all buildings on the Charged Property, (if any) in good and substantial repair and condition and also to keep the Charged Property insured against fire and such other risks, for the full amount of their insurable value or such value as the Lender may reasonably require with such insurer or insurance company as the Lender shall recommend or approve. The Chargor shall at any time on the Lender’s request deposit the insurance policies and the receipts or other evidence of payment of any premium with the Lender or to the Lender’s order. Any insurance proceeds received and held by the Chargor shall be so received and held in trust for the Lender;
3. That the Charged Property is not a matrimonial property and for that reason the Chargor shall not be required to obtain any spousal consent to create the security comprised in this Letter of Deposit;
4. That should the Chargor and or the Borrower default in complying with the payment obligations under the Facility Letter Agreement, the Lender may exercise its right to sue the Chargor and or the Borrower as provided for under the Land Act and the Chargor and or the Borrower shall indemnify, on demand, the Lender against all losses, actions, claims, expenses, demands and liabilities, whether in contract, tort or otherwise, now or hereafter incurred by the Lender in any such legal proceedings;
5. That the rights, powers and remedies provided in this Letter of Deposit are cumulative and are not nor are they to be construed as exclusive of any rights, powers and remedies provided by law; and
6. That the Chargor and or the Borrower shall execute and do all such assurances, acts and things as the Lender may require for facilitating the realization of this Letter of Deposit and for exercising all the powers, authorities and discretions conferred on the Lender or any receiver and, for the purposes of this clause, a certificate signed by the Lender or any officer of the Lender to the effect that any particular assurance, act or thing is required by the Lender shall be conclusive evidence of the fact.
7. **Power of Attorney**

The Chargor and or the Borrower irrevocably and by way of security appoint the Lender to be the Chargor and or the Borrower attorney and in the name and on the Chargor and or the Borrower behalf to demand, sue for and receive any money payable under any policies of insurance effected by the Chargor and or the Borrower and to settle or compromise any claims in relation to those policies and to sign, seal and deliver all deeds, assurances, agreements and documents and to do any other acts and things which may be required for the full exercise of any of the powers conferred or implied by this Letter of De

1. **Other Security**

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

1. **Joint and Several Liability**

Where the Chargor and or the Borrower comprises of two or more persons, the obligations of all such persons under this Letter of Deposit are joint and several.

1. **Certificate by Officer of the Lender Conclusive**

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

1. **Notices**

Any notice or demand for payment by the Lender shall be deemed to have been properly served on the Chargor and or the Borrower if delivered by hand or sent by registered post or email to the Chargor and or the Borrower at the registered office or at any of the principal places of business in Kenya or the last known place of abode of the Chargor and or the Borrower. In the absence of evidence of earlier receipt, any notice or demand shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, seven (7) days after posting (notwithstanding that it be undelivered or returned undelivered) or, if sent by email, on the completion of transmission. Where a notice or demand is sent by registered post, it shall be sufficient to prove that the notice or demand was properly addressed and posted.

1. **Advances to a Third Party**

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

1. **Changes in Law**
	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:
		1. subject the Lender to any tax with respect to the facilities made available by the Lender to the Chargor and or the Borrower (other than a tax on the overall net income of the Lender);
		2. change the basis of taxation to the Lender of any payment of principal, interest or other amount in respect of the facilities made available by the Lender to the Chargor and or the Borrower;
		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 Lender; or
		4. impose on the Lender any other condition with respect to the facilities made available by the Lender to the Chargor and or the Borrower,

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

1. **No Representations**

The Chargor and or the Borrower acknowledge that no representations or promises contrary to the provisions of this Letter of Deposit have been made by the Lender or its agents to the Chargor and or the Borrower or are outstanding at the date of execution of this Letter of Deposit.

1. **General**
	1. The failure to exercise or delay in exercising a right or remedy provided by this Letter of Deposit or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and the Chargor and or the Borrower expressly agree and covenant with the Lender that the Chargor and or the Borrower shall not plead limitation under the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment. No single or partial exercise of a right or remedy provided by this Letter of Deposit or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy.
	2. Each of the provisions of this Letter of Deposit is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
	3. No amendment or variation to this Letter of Deposit shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
	4. No alteration, amendment, variation or addition to this Letter of Deposit shall be effective unless made in writing and executed by the Lender.
	5. This Letter of Deposit shall be governed by and interpreted in accordance with Kenyan law. The Chargor and or the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the High Court of Kenya but this Letter of Deposit may be enforced in any court of competent jurisdiction.
2. **Discharge**

Upon the final balance of the money hereby secured having been paid off and satisfied together with all interest due thereon and upon payment of all costs, charges and expenses incurred by the Lender in relation to the Charged Property, the Lender shall, at the request and cost of the Chargor and or the Borrower, discharge or cancel this Letter of Deposit.

1. **Definitions and Interpretation**

In this Letter of Deposit, any reference to:

* 1. The “**Borrower**” includes a reference to the successors in title and assigns of the Borrower;
	2. the “**Chargor’**” includes a reference to the respective personal representatives and assigns of the Chargor (as case may be);
	3. the “**Charged Property**” means the land or property described Clause 3.1 and includes the buildings, fixtures, fittings, additions and improvements from time to time forming part of the said land or Property;
	4. the “**Lender**” includes a reference to the successors in title and assigns of the Lender;
	5. the “**Title Document**” mean the document of title described in Clause 3.2;
	6. the headings to clauses and sub-clauses are for convenience only and shall not affect its construction or interpretation;
	7. the expression “person” includes a natural person, body corporate, unincorporated body, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm;
	8. the singular includes the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa;
	9. references to writing shall include any mode of reproducing words in a legible and non-transitory form;
	10. references to indemnifying any person against any circumstances include indemnifying and keeping that person harmless from all actions, claims and/or proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
	11. references to any Statute or statutory provision shall include any Statute or statutory provision that amends or replaces or has amended or replaced it and shall include any subordinate legislation made under the relevant Statute;
	12. references to and the definition of any document (including this Letter of Deposit) 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;
	13. references to sections, clauses, sub-clauses and schedules, unless otherwise provided, are to be construed as references to the sections, clauses and sub-clauses of and the schedules of this Letter of Deposit;
	14. references to costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof; and
	15. references in this Letter of Deposit to “consent” or “notice” by either party to the other or any other similar expression shall mean consent or notice (as the case may be) in writing.

**IN WITNESS WHEREOF** this Letter of Deposit has been duly executed on the day and year first above written.

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**SIGNED,** by the Borrower )

**[\*][[7]](#footnote-7)** )

in the presence of: ) **[\*][[8]](#footnote-8)**

) **[\*]**

) I.D. Card No. **[\*]**

) PIN No. **[\*]**

**Advocate** )

**Certificate of Attestation**

I CERTIFY THAT **[\*]** appeared before me on the **[\*]** day of **[\*]**, 20**[\*]** and being known to me/being identified by **[\*]** of **[\*]** acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this Letter of Deposit and understood its contents.

**…………………………………………………………..**

**Advocate of High Court of Kenya**

**SIGNED** by the Chargor )

**[\*][[9]](#footnote-9)** )

in the presence of: ) **[\*][[10]](#footnote-10)**

) **[\*]**

) I.D. Card No. **[\*]**

) PIN No. **[\*]**

**Advocate** )

**Certificate of Attestation**

I CERTIFY THAT **[\*]** appeared before me on the **[\*]** day of **[\*]**, 20**[\*]**and being known to me/being identified by **[\*]** of **[\*]** acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this Letter of Deposit and understood its contents.

**…………………………………………………………..**

**Advocate of High Court of Kenya**

**SIGNED,** by the Lender )

**[\*][[11]](#footnote-11)** )

in the presence of: ) **[\*][[12]](#footnote-12)**

) **[\*]**

) I.D. Card No. **[\*]**

) PIN No. **[\*]**

**Advocate** )

**Certificate of Attestation**

I CERTIFY THAT **[\*]** appeared before me on the **[\*]** day of **[\*]**, 20**[\*]**and being known to me/being identified by **[\*]** of **[\*]** acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this Letter of Deposit and understood its contents.

**…………………………………………………………..**

**Advocate of High Court of Kenya**

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**-OR-[[13]](#footnote-13)**

Sealed with the Common Seal of the )

Borrower the said, **[\*]** )

**LIMITED** )

in the presence of: -)

 )

**Director** )

Signature: **[\*]** )

 )

**Director/Company Secretary** )

Signature: **[\*]** )

 )

Before me: - ) )

 )

 )

 )

**Advocate** )

**Certificate of Attestation**

I certify that I was present and witnessed **[\*]** a Director and **[\*]** another Director/Company Secretary of the Borrower duly witness the affixation of the Borrower’s common seal on this Letter of Deposit and that they and they had freely and voluntarily witnessed the affixation of the Borrower’s common seal on this Letter of Deposit and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

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Sealed with the Common Seal of the Lender )

**[\*]** )

in the presence of: -)

 )

**Director** )

Signature: **[\*]** )

 )

**Director/Company Secretary** )

Signature: **[\*]** )

 )

Before me: - ) )

 )

**Advocate** )

**Certificate of Attestation**

I certify that I was present and witnessed **[\*]** a Director and **[\*]** another Director/Company Secretary of the Lender duly witness the affixation of the Lender’s Seal on this Letter of Deposit and they had freely and voluntarily witnessed the affixation of the Lender’s common seal on this Letter of Deposit and understood its contents.

…………………………………………..

**Advocate of the High Court of Kenya**

1. Insert name of the Chargor. [↑](#footnote-ref-1)
2. Insert Postal Address of the Chargor. [↑](#footnote-ref-2)
3. Insert the details of the Chargee or Financier. [↑](#footnote-ref-3)
4. The person from the Financier’s/ Chargee’s office the letter is addressed to. [↑](#footnote-ref-4)
5. Insert name of Chargor. [↑](#footnote-ref-5)
6. Either or, depending if the Chargor is a company or a Natural Person. [↑](#footnote-ref-6)
7. Insert name of the Borrower. [↑](#footnote-ref-7)
8. Insert Passport Photo of the Borrower. [↑](#footnote-ref-8)
9. Insert name of the Chargor. [↑](#footnote-ref-9)
10. Insert Passport Photo of the Chargor. [↑](#footnote-ref-10)
11. Insert name of the Lender. [↑](#footnote-ref-11)
12. Insert Passport Photo of the Lender. [↑](#footnote-ref-12)
13. **NB: IF PARTIES OR EITHER PARTY IS A COMPANY OR AN LLP USE THIS FORMAT. IF NOT, KINDLY DELETE THIS PART.** [↑](#footnote-ref-13)