

AGREEMENT FOR SALE OF A RIGHT OF OCCUPANCY

MADE BETWEEN

NKWABI FIKIRINI

**(As administrator and legal personal representative of the
late HAMISI FIKIRINI NKWABI)**

AND

U-FRESH FOOD LIMITED

**FOR THE LAND SITUATED ON FARM NO.1130, MIEMBESABA
KONGOWE AREA, KIBAHA DISTRICT - PWANI WITH C.T
NO.42522**

**DRAWN BY:
AYMAK ATTORNEYS,
PLOT NO. 1359,
HOUSE NO.6, MZINGA WAY ROAD,
P.O.BOX 79575,
DAR ES SALAAM**

This agreement is made on the 11th day of October, 2020

BETWEEN

NKWABI FIKIRINI (as administrator and legal personal representative of the late HAMISI FIKIRINI NKWABI), an adult natural person of P. O. Box 2306, Dar es Salaam, Tanzania (hereinafter called the "**Vendor**" which expression and when the context so admits shall include his legal representatives, agents, assigns and successors in title) of one part;

AND

U-FRESH FOOD LIMITED, a limited liability company incorporated under the laws of the Republic of Tanzania, whose address for the purpose of this Agreement is of Post Office BoX 14004, Dar es Salaam. (Hereinafter called the "**PURCHASER**" which expression shall where the context so admits include and extend to persons deriving title under the **PURCHASER**, its successors and assigns) of the other party;

WHEREAS

The Vendor is the registered owner of the Right of Occupancy over all the land known as **FOR THE LAND SITUATED ON FARM NO.1130, MIEMBESABA KONGOWE AREA, KIBAHA DISTRICT – PWANI REGION WITH C.T NO.42522**, further particulars of which are as per the Certificate of Title annexed to this Agreement, herein after referred to as "**the Property**";

AND WHEREAS:

The Vendor is desirous of selling the said property and the Purchaser is desirous and able to purchase the said property from the Vendor at a consideration of **Tanzania Shillings Five Hundred Million Only (TZS 500,000,000)** (Hereinafter referred to as the "**Purchase Price**").

NOW THIS AGREEMENT WITNESSETH as follows:

1.0 The Sale:

That the Vendor hereby sells to the Purchaser and the Purchaser hereby buys from the Vendor the said Property subject to the covenants herein contained and subject to the terms and conditions under which the said Property was held by the Vendor prior to this Agreement.

2.0 The Consideration:

2.1 That in consideration of the Purchase Price of **Tanzania Shillings Five Hundred Million Only (TZS 500,000,000)** the Vendor is hereby selling the Property to the Purchaser and the Purchaser is hereby purchasing the Property from the Vendor subject to the covenants herein contained.

2.2 That the Purchase Price stipulated herein, shall be paid by the Purchaser to the Vendor in accordance with the provisions of clause 3 herein.

3.0 Mode of Payment of Purchase Price:

That Purchase Price stipulated herein shall be paid as under by the Purchaser to the Vendor as described herein below:

3.1 That the payment shall be in two installments, that the first installment shall be 90% of the sales price and the second installment shall be 10% of the sales price.

3.2 That the First Installment of the Purchase Price amounting to **Tanzania Shillings Four Hundred fifty Million (TZS 450,000,000)** shall be paid by the Purchaser to the Vendor within **Seven (7) working Days** after the signing of this agreement.

3.3 That the Second Installment of the Purchase Price amounting to **Tanzania Shillings Fifty Million (TZS 50,000,000)** shall be paid by the Purchaser to the Vendor upon the registration of the Certificate of Title for the property into the names of the purchaser or within the period of **Six (6) months** from the date of signing the sale agreement whichever come earlier.

3.4 The purchase price as indicated in clause 3.2 and 3.3 above shall be paid to the below designated account:

A/C Name: SWEDY KHAMIS MKWABI

A/C Number:0501719001

Bank Name: DIAMOND TRUST BANK

4.0 TERMS OF PURCHASE

4.1 The **Vendor** shall transfer by way of outright sale, and the **Purchaser** shall acquire and accept the transfer by way of outright purchase of the Property.

4.2 The Property is sold and agreed to be transferred subject to the terms and conditions contained in the Certificate of Title.

POSSESSION OF THE PROPERTY AND DOCUMENTS OF TITLE PENDING

COMPLETION

- 4.3 Upon the payment of the first installment of the purchase price, as hereinabove stipulated, the **Vendor** undertakes to co-operate in the process of the transfer of the Property in the name of the **Purchaser** including the signing and execution of the Transfer Deed and any other documents required to be signed and executed by the parties in accordance with the Land Act and the Land Registration Act of the laws of Tanzania.
- 4.4 The Vendor shall immediately upon signing this agreement as well as the receipt of the first installment of the purchase price as per clause 3.2, hand over the Original Certificate of Title for the Property as well as all related transfer documents to the purchaser.
- 4.5 The Vendor warrants that the Property is free from any form of mortgage, bank loan, property rights, disputes or encumbrance, which can affect the transfer of the Property to the Purchaser.
- 4.6 It is further agreed by both parties that immediately after the payment of the first installment of the purchase price, the Vendor herein undertakes to hand over the property to the Purchaser provided that the purchaser shall not commence any form of construction until the full purchase price is duly paid.

APPROVAL OF THE COMMISSIONER FOR LANDS

- 4.7 The transfer of the Right of Occupancy envisaged under this Agreement and any other terms and conditions contained under this Agreement are subject to and conditional upon the grant of the Commissioner's approval for the disposition of land and consent being obtained.
- 4.8 The Vendor shall execute land forms 29, 30 and 35 seeking the Commissioner's approval, and that the purchaser shall process and use all reasonable endeavours to obtain the said approval.
- 4.9 The Purchaser shall give notice to the **Vendor** when it has obtained the Commissioner's approval as soon as practicable after obtaining it.

5.0 FAILURE TO OBTAIN THE COMMISSIONER'S CONSENT

- 5.1 If the Commissioner's approval and/or consent for the transfer of the land is not granted, either party may then terminate this Agreement effectively after the refusal has been communicated to the parties.

- 5.2 In case of termination of this Agreement under the terms of this Clause neither the **Vendor** nor the **Purchaser** is to be treated as in breach of contract.
- 5.3 As a consequence of the Commissioner's refusal to give consent, the **Vendor** shall, within ONE month after such a refusal has been realised, return all the payments paid as Purchase Price by the **Purchaser** in accordance with the provisions of this Agreement. All other payments made by each of the parties in respect of fees, duties and incidental costs will be at each parties' own costs. It is further agreed by both parties that upon the purchaser receiving the payments paid as purchase price, the Purchaser shall within seven (7) days provide vacant possession for the property to the Vendor.

6.0 IMPLIED COVENANTS RELATING TO THE VENDORS' RIGHTS UNDER THE CERTIFICATE OF OCCUPANCY

The covenants implied by reason of the **Vendor** selling with full title guarantee are to include any to the effect that the covenants and conditions contained in the Certificate of Occupancy relating to the development, state and condition of the Property have been duly observed and performed.

PARTIES' COVENANTS

7.0 GENERAL COVENANTS

- 7.1 This Agreement constitutes a legal, valid and binding obligation of the parties and is enforceable against each party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium and other similar laws affecting creditors' rights or remedies generally.
- 7.2 Nothing in this Agreement shall make the Purchaser liable in respect of anything done or omitted to be done in relation to the Property by the Vendor prior to the due transfer of the Property to the Purchaser and the Vendor shall indemnify the Purchaser in respect of any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, damages, legal and other professional fees and expenses on a party and party basis) which it may incur as a result of anything so done or omitted to be done.
- 7.3 The vendor covenants that it shall be responsible to clear any and all outstanding debts, land rent, outgoing, claims and or any amounts owed in reference to the property immediately after the signing of this agreement.

- 7.4 The Purchaser shall be responsible for all outgoings and liabilities of the Property from the date of registration of the Certificate of Title for the property to the Purchaser.

8.0 COVENANTS BY THE VENDOR

The **Vendor** hereby covenants with the **Purchaser** that:

- 8.1 It has the power to enter into and perform the obligations under this Agreement;
- 8.2 It has full authority to sell, transfer and dispose of the Property and that it has a good and subsisting right, title and interest, and has full powers to sell, grant, convey, assign or otherwise dispose the Property in the manner herein provided;
- 8.3 It is not entitled to receive any consent from any person, the Commissioner of Lands excepted, and if any such consent will be required, the Vendor shall use all its reasonable endeavors to seek and obtain the same and all other consents legally required to be obtained in respect of the disposition of the Property,
- 8.4 The entry into and performance of this Agreement and the transactions contemplated hereby, do not conflict with any law or regulation or any official or judicial order to which the **Vendor** is subject;
- 8.5 The entry into and performance of this Agreement does not constitute a breach of any material contractual obligation of the **Vendor**, or require any consent under any agreement or other instrument to which the **Vendor** is a party or by which it is bound or any judgment, decree or order of any statute, rule or regulation applicable to the **Vendor**. The transactions provided for in any other material contracts to which the **Vendor** is a party do not constitute a breach of any of the contractual obligations or provisions of this Agreement;
- 8.6 No litigation, arbitration or administrative proceeding or claim which may by itself or together with any other such proceeding or claim either have a material adverse effect on or materially adversely affect their ability to observe or perform their material obligations under this Agreement and the transactions contemplated thereby, is presently in progress or, to the best of their knowledge and belief after making reasonable enquiries, is pending or threatened against him or the Property as described in clause 10.0 above;
- 8.7 The **Purchaser** has purchased the Property subject to all terms of use applicable, and as stipulated in the Certificate of Right of Occupancy but free from any encumbrances;

- 8.8 All information that has been made available to the **Purchaser** or their representatives by the **Vendor** or any of their representatives in connection with the transaction contemplated herein is complete and correct in all material respects, is not misleading, and does not omit any material fact.
- 8.9 Each representation and warranty herein stipulated shall be a separate representation and warranty and shall be deemed to be material and to have induced the **Purchaser** to enter into this Agreement. The **Vendor** acknowledges that the **Purchaser** has entered into this Agreement relying on these representations and warranties.
- 8.10 The Vendor hereby unconditionally and irrevocably confirms and warrants that as at the date of this Agreement all the terms and conditions affecting the Property have been complied with and that neither the Vendor nor any other person has breached any of the said terms and conditions affecting the Property and the Vendors hereby further irrevocably and unconditionally warrant and confirm that and that no person other than the Vendor has any right or title to the Property and the Property has not been and will not be allocated to any other person.

9.0 INDEMNITY

The Vendor hereby irrevocably undertake to indemnify and keep indemnified the Purchaser against all actions, claims, proceedings, costs and damages and legal costs and other expenses arising out of any breach of the warranties given by the Vendor above or out of any claim by a third party based on any facts which if sustained would constitute a breach **PROVIDED** that the compensation that shall be paid to the purchaser shall not exceed the purchase price.

10.0 SET OF DOCUMENTS

The Vendor shall deliver to the Purchaser the following documents in respect of the Property (the "Completion Documents") upon signing of this agreement. The said documents shall including but not limited to:

- (a) Original Certificate of Title
- (b) Land rent receipts for the year 2020/2021.
- (c) Instruments of Transfer executed by the Vendor (in triplicate);
- (d) Forms 29,30 and 35 executed by the Vendor (in triplicate);
- (e) Certified copies of the passports for the Vendor or any other form of National Identification;
- (f) Three passport size photos for the Vendor;

- (g) Receipts for payment of the utility bills in respect of the Property (if any) for the past six months.

11.0 COVENANTS BY THE PURCHASER

The **Purchaser** hereby covenants with the **Vendor** that:

- 11.1 It has the power to enter into and perform its obligations under this Agreement.
- 11.2 This Agreement constitutes a legal, valid and binding obligation of the parties and is enforceable against each party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, moratorium and other similar laws affecting creditors' rights or remedies generally.
- 11.3 The entry into and performance of this Agreement and the transactions contemplated hereby, do not conflict with any law or regulation or any official or judicial order to which the **Purchaser** is subject.
- 11.4 The entry into and performance of this Agreement does not constitute a breach of any material contractual obligation of the **Purchaser**, or require any consent under any agreement or other instrument to which the **Purchaser** is a party or by which it is bound or any judgement, decree or order of any statute, rule or regulation applicable to the **Purchaser**. The transactions provided for in any other material contracts to which the **Purchaser** is a party do not constitute a breach of any of the contractual obligations or provisions of this Agreement.
- 11.5 No litigation, arbitration or administrative proceeding or claim which may by itself or together with any other such proceeding or claim either have a material adverse effect on or materially adversely affect its ability to observe or perform his material obligations under this Agreement and the transactions contemplated thereby, is presently in progress or, to the best of its knowledge and belief after making reasonable enquiries, is pending or threatened against it.
- 11.6 The **Purchaser** has purchased the Property subject to all terms of use applicable, and as stipulated in the Certificate of Right of Occupancy but free from any encumbrances.
- 11.7 All information that has been made available to the **Vendor** or his representatives by the **Purchaser** or any of its representatives in connection with the transaction contemplated herein is complete and correct in all material respects, is not misleading, and does not omit any material fact.
- 11.8 Each representation and warranty above shall be a separate representation and warranty and shall be deemed to be material and to have induced the **Vendor** to

enter into this Agreement. The **Purchaser** acknowledges that the **Vendor** has entered into this Agreement relying on these representations and warranties.

12.0 NON ASSIGNMENT OF THIS AGREEMENT

This Agreement is exclusive to the parties and the parties are not obliged to assign, convey or transfer the whole or any part of the Agreement to anyone other than the Parties hereto, without the prior written consent of all the parties hereto.

13.0 MISREPRESENTATIONS

Save for the representations and warranties stipulated above, and what is expressly agreed under this Agreement, the parties acknowledge that no statement or representation, whether oral or written, which may previously have been made to them or any person concerned on their behalf have induced the parties to enter into this Agreement.

14.0 COSTS

14.1 General costs:

Each party shall be responsible for their respective legal costs incurred with respect to the preparation and implementation of this Agreement.

14.2 The Stamp Duty and Registration Fees:

That all Stamp duty payable on the transfer of the demised Property to the Purchaser and the Registration Fees payable in connection with the transfer of the demised Property shall be for the account of and payable by the Purchaser.

14.3 The Capital Gains Tax and Other Costs:

The Capital Gains Tax, Approval and Notification Fees as well Valuation Approval fees shall be borne by the purchaser.

15.0 BOUNDARIES AND PLOT SIZE

15.1 The Vendor warrants that to the best of its knowledge all the beacons relating to the plot are in place and unaltered and that the boundaries of the property are all intact.

15.2 The Vendor warrants that to the best of its knowledge there are no past or existing disputes in reference with the boundaries of the subject plot with any of the neighbours thereon.

16.0 DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

16.1 The validity, construction and performance of this Agreement shall be governed by the Laws of the United Republic of Tanzania.

16.2 All disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to a court of competent jurisdiction in Tanzania.

17.0 FORCE MAJEURE

17.1 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by him of his duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, terrorists activity preventing any of the parties from or hindering any of the parties' ability to fulfil the obligations hereunder undertaken to be provided.

17.2 If either party is unable to perform his duties and obligations under this Agreement as a direct result of the effect of one of the reasons explained under clause 19.1 above, that party shall give written notice to the other of the inability, which sets out full details of the reason in question. The operation of this Agreement shall be suspended during the period (and only during the period) in which the reason continues. Forthwith upon the reason ceasing to exist, the party relying upon it shall give written advice to the other of this fact. If the reason continues for a period of more than ninety days and substantially affects the commercial intention of this Agreement, the party unable to perform the agreement has the right to rescind the agreement as long as such party gives a written notice to the other party of the rescission, and the provision for failure to obtain the commissioner's approval shall apply mutatis mutandis.

18.0 ILLEGALITY

If any provision or term of this Agreement or any part thereof shall become or be declared illegal, inoperative, invalid or unenforceable for any reason whatsoever including but without limitation by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of the Commissioner or any Court or other body or authority having jurisdiction over the parties or this Agreement, such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement in the jurisdiction in question provided always that, if any such deletion substantially affects or alters this Agreement, the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

19.0 AMENDMENT AND WAIVER

19.1 This Agreement shall not be amended, modified, varied or supplemented except in writing and signed by the parties.

19.2 No indulgence, extension of time, relaxation, latitude, failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

20.0 NOTICES

Any notice or notification required to be given under this Agreement must be in writing. All notices to be sent by any party to the other shall be sent by post, , e-mail or delivered by hand to the other party. Any notice given by post shall be deemed to have been served seven (7) days after posting. Any notice given by e-mail shall be deemed to have been served on the same day of dispatch. In proving such services it shall be sufficient to prove that the letter or email (as the case may be) containing the notice was properly addressed and posted or (as the case may be) transmitted.

21.0 CONFIDENTIALITY

21.1 Both parties to this Agreement hereby undertake to keep all information (whether written, oral, and/or electronic, and/or otherwise) arising from or in connection with this Agreement strictly confidential and to treat such information with the highest standard of care.

21.2 Neither party may disclose information arising from or in connection with this Agreement save where required by law to any third party without the prior written consent of the other party.

21.3 Notwithstanding the above, either party and any person controlled by it may disclose information which would otherwise be confidential if and to the extent:

21.3.1 Required by law;

21.3.2 Disclosed to professional advisers, auditors and bankers of each party;

21.4 Neither party is under a duty to treat any information as confidential which:

21.4.1 Is generally known or easily ascertainable by third parties of ordinary skill in the business of either party;

- 21.4.2 Is independently known to a party without any reliance on confidential information disclosed by the other party; or
- 21.4.3 Is or later becomes part of the public domain or may be lawfully obtained from either party from a non-party to this Agreement.
- 21.5 Any party that breaches this confidentiality clause shall indemnify the aggrieved party for any losses and/or damages incurred as a result.

22.0 TERMINATION

- 22.1 This agreement shall be terminated upon the breach of any fundamental covenant or obligation as stated herein and such instances shall include but are not limited to:-
- 22.2 Failure to acquire the Certificate of Approval for the transfer of the land from the Vendor to the Purchaser from the Commissioner for lands as stipulated in clause 7.0 herein.
- 22.3 Failure to make full and prompt payment of the purchase price by the purchaser to the vendor as stipulated in clause 3.0 herein.
- 22.4 Upon the occurrence of instances of Force Majeure as stipulated in clause 17.0 herein.
- 22.5 Upon execution of all obligations as stipulated in this agreement.
- 22.6 Failure to have the land use for the property changed to light industry from the current land use.
- 22.7 **PROVIDED THAT** upon the termination of this agreement as a result of the provisions of clause 7.0, 22.2 as well as 22.6 of this agreement, both parties mutually agree to indemnify each other within a period of not more than one month to restore themselves to the original position prior to the signing of this agreement save for the professional and incidental costs incurred by each party in furtherance of this agreement.

IN WITNESS WHEREOF, the Undersigned have executed this Agreement as of the day and year first written above.

- 21.4.2 Is independently known to a party without any reliance on confidential information disclosed by the other party; or
- 21.4.3 Is or later becomes part of the public domain or may be lawfully obtained from either party from a non-party to this Agreement.
- 21.5 Any party that breaches this confidentiality clause shall indemnify the aggrieved party for any losses and/or damages incurred as a result.

22.0 TERMINATION

- 22.1 This agreement shall be terminated upon the breach of any fundamental covenant or obligation as stated herein and such instances shall include but are not limited to:-
- 22.2 Failure to acquire the Certificate of Approval for the transfer of the land from the Vendor to the Purchaser from the Commissioner for lands as stipulated in clause 7.0 herein.
- 22.3 Failure to make full and prompt payment of the purchase price by the purchaser to the vendor as stipulated in clause 3.0 herein.
- 22.4 Upon the occurrence of instances of Force Majeure as stipulated in clause 17.0 herein.
- 22.5 Upon execution of all obligations as stipulated in this agreement.
- 22.6 Failure to have the land use for the property changed to light industry from the current land use.
- 22.7 **PROVIDED THAT** upon the termination of this agreement as a result of the provisions of clause 7.0, 22.2 as well as 22.6 of this agreement, both parties mutually agree to indemnify each other within a period of not more than one month to restore themselves to the original position prior to the signing of this agreement save for the professional and incidental costs incurred by each party in furtherance of this agreement. That in the event the agreement is terminated for failure by the purchaser to timely complete payment of the purchase price, then the Vendor shall deduct an amount equivalent to 50% of the already paid purchase price and the balance refunded to the purchaser after the successful sale of the plot to another buyer.

IN WITNESS WHEREOF, the Undersigned have executed this Agreement as of the day and year first written above.

SIGNED and DELIVERED by

The said **NKWABI FIKIRINI** (as administrator and **Legal personal representative of The late HAMISI FIKIRINI NKWABI**)

Who is known to me personally/identified

To me by _____

The latter known to me personally in my Presence this 11th day of October 2020.



VENDOR



BEFORE ME:

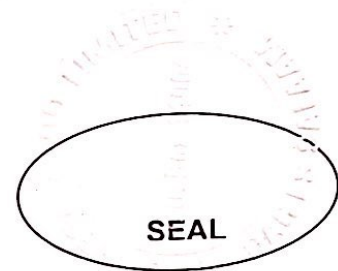
Name: Junu Mbarak Alaudin

Signature: 

Designation: **ADVOCATE**



SEALED with the COMMON SEAL of the said **U-FRESH FOOD LIMITED** and **DELIVERED at DAR ES SALAAM** in the presence of us this 11th day of October 2020.



SEAL

PURCHASER

Name: TIANYING CHEN

Signature: 

Postal Address: P.O. Box 14000 DSM

Designation: _____

Name: _____

Signature: _____

Postal Address: _____

Designation: _____