

Dated as of the 14th day of July, 2015

THE REGISTERED TRUSTEES OF THE MWALIMU NYERERE FOUNDATION

(as "Owner")

and

CRJE ESTATE LIMITED

(as "Developer")

AGREEMENT

Relating to building, operating and transferring
a Project at Plot No. 2217/1/168, Block A,
Sokoine Drive/Morogoro Road/Mansfield/Zanaki Streets,
CBD Ilala District, Dar Es Salaam, Tanzania

ATZ LAW CHAMBERS ALN



ATZ Law Chambers
1st Floor
Opal Place
77 Haile Selassie Road
Masaki P.O. Box 79651
Dar Es Salaam
Tanzania

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Kati Kumbi

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Kali Kumbhe LB
SPEAKER

This Agreement is mutually agreed and entered into on this _____ day of _____, 2015

BETWEEN

1. **The Registered Trustees of the Mwalimu Nyerere Foundation**, a body incorporated under the provisions of the Trustees' Incorporation Ordinance (CAP 375, Laws of Tanzania), for the purposes hereof of Post Office Box Number 71000, Dar-Es-Salaam, Tanzania (hereinafter referred to as "MNF," which expression shall, where the context so requires, include MNF's successors in title and permitted assigns); and
2. **CRJE Estate Limited** (Company Number 56386), a limited liability company duly incorporated under the laws of the United Republic of Tanzania for the purposes hereof of Post Office Box Number 77198, Dar-Es-Salaam, Tanzania (hereinafter referred to as "CEL", which expression shall, where the context so requires, include CEL's successors in title and permitted assigns).

WHEREAS:

- (A) MNF previously owned the Sokoine Property (as hereinafter defined) and had agreed with CEL to develop a commercial project on the Sokoine Property. Although CEL began working on the project, the project did not proceed as expected and was terminated in its early stages.
- (B) Consequently, MNF proposed that CEL develop a commercial complex on MNF's newly acquired Project Site (as hereinafter defined).
- (C) Pursuant to a Memorandum of Understanding dated 26th October, 2012, MNF has agreed to appoint CEL to design, finance and construct the Commercial Complex (as hereinafter defined) on the Project Site and subsequently manage the Commercial Complex for a period of forty (40) years.
- (D) The Parties have agreed to enter into this Agreement to establish the conditions for the implementation of the Project (as hereinafter defined) and to record their respective rights and obligations relating to the Project.
- (E) CEL has agreed to finance, construct, develop and manage the Commercial Complex under a build, operate and transfer scheme.

NOW IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION


1.1 In this Agreement (including the Recitals and Schedules to this Agreement), save where the context otherwise requires, capitalized terms shall have the following meanings:

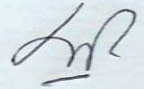
1.1.1 "Agreement" means this agreement, and includes any amendments hereto made in accordance with _____ the _____ provisions _____ hereof;

Kalis Kambe


[Signature]


- 1.1.2 **"Building Contractor"** means the main building contractor appointed to carry out the Construction Works, being CRJE (East Africa) Limited of Post Office Box Number 77198, Dar-Es-Salaam, Tanzania, or any other reputable contractor as may be appointed by CEL;
- 1.1.3 **"Building Permit"** means the permit issued by the Ilala Municipal Council on 5th June, 2014 approving Plan No. ILA/63/2014 and TP No. 59452 for the construction of the Commercial Complex;
- 1.1.4 **"Business Day"** means a day (other than a Saturday, Sunday or a gazetted public holiday) on which banking institutions are generally open for the conduct of banking business in the United Republic of Tanzania;
- 1.1.5 **"Certificate of Occupation"** means the certificate issued by the relevant municipal authority authorizing occupation of the Commercial Complex;
- 1.1.6 **"Certificate of Practical Completion"** means the architect's certificate or written statement issued in accordance with the Construction Contract certifying that the Commercial Complex is practically complete according to the terms of the Construction Contract;
- 1.1.7 **"Commercial Complex"** has the meaning ascribed to it under clause 4.1.2;
- 1.1.8 **"Commercial Space"** means all of the lettable space on the Project Site, including all the space in the Commercial Complex, with the exception of the MNF Space;
- 1.1.9 **"Concept Design"** means the Commercial Complex drawings annexed to this Agreement as Schedule 2;
- 1.1.10 **"Construction Contract"** means the turnkey construction contract for the carrying out of the Construction Works on the Project Site to be entered into by CEL and the Building Contractor;
- 1.1.11 **"Construction Period"** means the estimated thirty-eight (38) month period for construction, which commences on the Lease Commencement Date and ends on the Project Completion Date, plus any extensions granted during that period;
- 1.1.12 **"Construction Works"** means the civil and related construction works of and in connection with the building of the Commercial Complex on the Project Site;
- 1.1.13 **"Encumbrances"** means any charge (whether formal or informal), lien, option, security interest, restrictive covenant, pledge, hypothecation, assignment, title retention, trust arrangement or other restriction of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person;
- 1.1.14 **"Financing"** means the capital necessary to implement the Project, which is expected to be provided in part by IFC pursuant to the Financing Agreement and in part by CEL;


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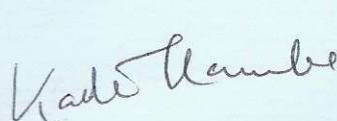

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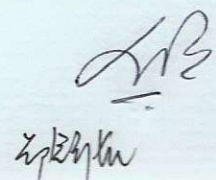
- 1.1.15 **"Financing Agreement"** means the amended and restated loan agreement between CEL and IFC dated 2nd October, 2013, pursuant to which CEL has been offered a loan facility to enable it to finance the Project, and includes all security and other documents ancillary thereto;
- 1.1.16 **"Fit Out"** means, with respect to the MNF Office Space, the fitting out of the MNF Office Space in accordance with the specifications mutually agreed by the Parties;
- 1.1.17 **"Force Majeure Event"** means war (declared or undeclared), mobilisation, blockage, embargo, coup d'état, insurrection, civil disturbance, riots, strike and other labour conflicts, epidemic, storm, flood, drought, or other adverse weather conditions, explosions, act of God, or action by the government or any authority of the government that will affect the completion of the Construction Works, which is of such nature as to delay, curtail or prevent timely action by the Party affected;
- 1.1.18 **"IFC"** means the International Finance Corporation;
- 1.1.19 **"Lease"** means the lease to be entered into between the Parties, pursuant to which MNF will lease the Project Site and all buildings to be erected thereon to CEL for a period of forty-three (43) years. As part of the same Lease, CEL will surrender the MNF Space back to MNF on the Project Completion Date;
- 1.1.20 **"Lease Commencement Date"** means 28th September, 2014 being the date when the Project Site was handed over to CEL for the purposes of the Project in contemplation of this Agreement;
- 1.1.21 **"Lease Period"** means the forty-three (43) year period beginning on the Lease Commencement Date, plus any extensions granted during the Construction Period pursuant to the terms of this Agreement;
- 1.1.22 **"Material Adverse Effect"** means a material adverse effect on (i) the ability of CEL to exercise any of its rights to perform or discharge any of its duties or obligations under and in accordance with the provisions of this Agreement, or (ii) the legality, validity, binding nature or enforceability of this Agreement;
- 1.1.23 **"Material Breach"** means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.24 **"MNF Clerk of Works"** means the qualified person appointed by MNF to safeguard its interests during the Construction Period;
- 1.1.25 **"MNF Office Space"** means the approximately one thousand nine hundred and ninety one and fifty two square meters (1,991.52m²) of office space on Podium 6 of the Commercial Complex, exclusively for use by MNF;
- 1.1.26 **"MNF Office Occupation Date"** has the meaning ascribed to it under clause 5.3;
- 1.1.27 **"MNF Rental Space"** means the approximately three thousand and six hundred square meters (3,600m²) of space to be allocated to MNF on floors 1 and 2 and part of floor 3 of the Commercial Complex;


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- 1.1.28 **"MNF Rental Space Occupation Date"** has the meaning ascribed to it under clause 5.3;
- 1.1.29 **"MNF Space"** means the MNF Office Space plus the MNF Rental Space (totaling approximately five thousand six hundred square meters (5,600m²)), which is the total space in the Commercial Complex to be surrendered back to MNF by CEL on the Project Completion Date, pursuant to the terms and conditions of the Lease;
- 1.1.30 **"Non-terminating Party"** means the Party that is not the Terminating Party;
- 1.1.31 **"Parties"** means MNF and CEL, and **"Party"** means any one of them;
- 1.1.32 **"Plans"** means the drawings, specifications, engineering calculations, and other data relating to the Construction Works annexed to the Building Permit, including any variations from, alterations and additions to, and revisions thereto as approved from time to time by the relevant governmental authorities;
- 1.1.33 **"Previous Project Costs"** means the approximately United States Dollars one million two hundred thousand (USD 1,200,000) spent by CRJE Co (T) Ltd during the development phase of MNF's previous project on the Sokoine Property;
- 1.1.34 **"Professional Team"** means the architect, structural engineers, design consultants, project managers, sub-contractors or other professional advisers, including their respective employees or agents, whose services are from time to time engaged by CEL in connection with carrying out the Project under the provisions of this Agreement;
- 1.1.35 **"Project"** means the entire development of the Project Site known by the Project Name, including securing the Financing for undertaking the Construction Works, constructing, completing and managing the Commercial Complex until the expiration of the Lease, transferring the Project Site and the Commercial Complex to MNF at the expiration of the Lease, and all activities incidental thereto, and a reference to the Project is to the whole or any part of it as the circumstances may require;
- 1.1.36 **"Project Completion Date"** means the date on which the Certificate of Practical Completion is issued by the architect;
- 1.1.37 **"Project Cost"** means all the costs incurred in connection with completing the Project in accordance with this Agreement including without limitation, the items set out under Schedule 1 annexed to this Agreement;
- 1.1.38 **"Project Name"** means The Mwalimu Nyerere Foundation Square, abbreviated as MNF Square;
- 1.1.39 **"Project Site"** means ALL THAT piece of land situate in the City of Dar-Es-Salaam and containing by measurement six thousand five hundred and fifty-nine square meters (6,559m²) or thereabouts that is to say Plot No. 2217/1/168, Block A, lying between Sokoine Drive/Morogoro Road/Mansfield/Zanaki Streets, in the CBD Ilala District, Dar-Es-Salaam, which said piece of land is delineated on the plan annexed to the Certificate of Occupancy registered at the Land Registry





under Title Deed No. 118096 and held by MNF as a lessee from the Government of Tanzania for a period of ninety-nine (99) years from the 5th day of January, 2011;

1.1.40 **"Requisite Consents"** means all those permissions, consents, approvals, licences, certificates and permits in the legally required format as may be required by CEL to commence, carry out, maintain and complete the Construction Works and to use and enjoy the Commercial Complex as intended by CEL including (but without limitation):

- (a) planning permission and environmental approvals and assessments, of which the Parties acknowledge that the Building Permit and plans annexed thereto have already been approved by the relevant authorities and received by the Parties;
- (b) building regulations, consents and by law approvals;
- (c) the consents and authorizations required under the Financing Agreement;
- (d) the consents (if any) of all competent authorities regulating the Project or the use of the Project Site; and
- (e) without prejudice to MNF's obligation to hand over the Project Site to CEL free and clear of any Encumbrances, the consents (if any) of any person having an interest or right in or over the Project Site who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out or progress of the Project or its use and enjoyment;

1.1.41 **"Sokoine Property"** means plot numbers 60 & 61 situated along Sokoine Drive/Shaabab Robert Street, Dar-Es-Salaam;

1.1.42 **"Tax Ruling Request"** means the letter dated 3rd June, 2014, a copy of which is annexed to this Agreement as Schedule 3, pursuant to which Pricewaterhouse Coopers, acting on behalf of the Parties, requested an official ruling from the Commissioner General of the TRA in respect of the tax treatment at various stages of the Project. The TRA response to Pricewaterhouse Coopers requested is contained in the letter dated 13th April, 2015 from Commissioner for Large Tax payers, TRA which is annexed to this Agreement as Schedule 3;

1.1.43 **"Title Deed"** means the Certificate of Occupancy No. 118096 for the Project Site;

1.1.44 **"Terminating Party"** has the meaning ascribed to it in clause 9.3;

1.1.45 **"Termination Event"** has the meaning ascribed to it in clause 8;

1.1.46 **"TRA"** means the Tanzania Revenue Authority; and

1.1.47 **"USD"** means United States dollars.

1.2 Unless the context otherwise requires, in this Agreement (including the Recitals and Schedules to this Agreement):

1.2.1 words denoting the singular number shall include the plural and vice versa and reference to the masculine includes a reference to the feminine gender and neuter and vice versa;

1.2.2 references to sections, clauses and sub-clauses, unless otherwise provided, are to be construed as references to the sections, clauses and sub-clauses of this Agreement;



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- 1.2.4 the word "tax" shall be construed so as to include any tax including, without limitation, withholding tax and value added tax, and other charges of a similar nature including, without limitation, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any such taxes; and
- 1.2.5 statutory provisions shall, save as otherwise expressed in this Agreement, be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and any subordinate legislation made from time to time under statute concerned provided that any such enactment, consolidation, extension or re-enactment does not have a retrospective effect.
- 1.3 Section headings are for convenience only and shall not affect the construction of this Agreement.
- 1.4 Any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within the Party's power or control.
- 1.5 In this Agreement any reference to any document (including this Agreement) means that document as is supplemented, amended or varied from time to time between the Parties thereto in accordance with the terms (if applicable) hereof and thereof.
- 1.6 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.

2. AGREEMENT TO BUILD, OPERATE AND TRANSFER THE COMMERCIAL COMPLEX

- 2.1 Subject to the terms and conditions of this Agreement, in consideration of MNF agreeing to grant the Lease to CEL, CEL has agreed to undertake the Project and provide to MNF the following:
- 2.1.1 A payment of United States Dollars one hundred thousand (USD 100,000) per annum inclusive of taxes for the period beginning on the Lease Commencement Date and ending on the MNF Office Occupation Date, which amount is payable semi-annually and on a *pro rata* basis for part of a year; and
- 2.1.2 Surrendering the MNF Space back to MNF on the Project Completion Date, pursuant to the terms and conditions of the Lease. MNF and CEL will thereupon enter into an agreement whereby MNF shall be obliged to pay to CEL (or the manager for the time being of the Commercial Complex) service charges and other expenses in respect of the MNF Space in like manner as all other tenants of the Commercial Complex (other than rent).
- 2.2 In further consideration of CEL managing the entire Project, MNF has agreed to grant CEL the sole right to receive income and profits derived from sub-leasing or granting licences with respect to the Commercial Space from the Project Completion Date until the expiration of the Lease.



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- 2.3 For the avoidance of doubt, the amount referred to in the preceding sub-clause 2.1.1 shall be inclusive of all taxes legally collectable, including but not limited to value added tax and withholding tax, payable by CEL on account of the rental payments due to MNF.
- 2.4 At least three (3) months prior to the expiry of the Lease, CEL shall submit to MNF a management report regarding the status of the Commercial Complex, including the tenancies and condition of the Commercial Complex and such other information as MNF may reasonably require.
- 2.5 Upon expiry of the Lease, CEL's interest in the Project, including its right to receive income and profits from the Commercial Space, shall revert to MNF pursuant to the terms and conditions of the Lease; provided that in the event that the economic value of the Project to CEL is adversely affected due to any unforeseeable reason whatsoever, including but not limited to an obligation to pay any unanticipated taxes, levies, duties, charges or impositions in connection with the reversion of the Project Site and the Commercial Complex to MNF, the Parties hereby agree to ensure that CEL is fully and fairly compensated for any such adverse effects.

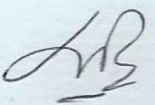
3. LEASE COMMENCEMENT DATE AND LEASE REGISTRATION

- 3.1 On the Lease Commencement Date, MNF shall handover to CEL vacant and physical possession of the Project Site free from Encumbrances, for the purpose of implementing the Project. Notwithstanding the aforesaid, MNF hereby grants CEL full and unrestricted access to the Project Site to enable CEL to obtain the Requisite Consents and carry out such other activities as are required to enable CEL and any members of the Professional Team to carry out preliminary activities in respect of the Project and secure the Financing.
- 3.2 With respect to registration of the Lease and possession of the Title Deed, the Parties hereby agree as follows:
- 3.2.1 CEL shall be entitled to hold the original Title Deed until the Lease is registered with the Ministry of Lands;
- 3.2.2 CEL and MNF shall cooperate to ensure that the Lease is promptly registered with the Ministry of Lands following the date of this Agreement; and
- 3.2.3 Upon completing registration of the Lease, CEL shall return the Title Deed to MNF.

4. DESIGN SPECIFICATION AND CONSTRUCTION PERIOD

- 4.1 It is hereby agreed by the Parties that:
- 4.1.1 The Concept Design is acceptable to both Parties and that no material amendments to the design shall be permitted without the prior written consent of both Parties;
- 4.1.2 The Concept Design consists primarily of a twenty-nine (29) storey commercial complex, which comprises of: one (1) basement floor, one (1) ground floor, one (1) mezzanine floor, six (6) podium floors, one (1) swimming pool floor and twenty (20) tower floors, making up a total built-up area of approximately fifty-six thousand seven hundred seventy-four square meters (56,774m²) (the "Commercial Complex");

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- 4.1.3 CEL will undertake the Construction Works in accordance with the provisions of the Construction Contract, which shall be a turnkey construction contract entered into with the Building Contractor;
- 4.1.4 Unless otherwise agreed by the Parties, carrying out of the Construction Works shall commence within two (2) months of the Lease Commencement Date and CEL will use commercially reasonable efforts to complete the Construction Works within the Construction Period;
- 4.1.5 In the event that CEL requires more time to complete the Construction Works, extension of time shall be granted by MNF upon request in writing on the occurrence of any of the following events, and such extension shall not be unreasonably withheld:
- (a) Material changes to the Concept Design;
 - (b) A material increase in the project magnitude; or
 - (c) Any other reason not attributable to CEL's negligence in performance of its obligations under this Agreement.
- 4.1.6 Notwithstanding the preceding sub-clause 4.1.5, any delays caused by a Force Majeure Event or other events outside of CEL's control shall be notified to MNF and automatically warrant an extension of the Construction Period.

5. PROJECT COMPLETION

- 5.1 Upon completion of the Construction Works, the Building Contractor shall request a Certificate of Practical Completion from the architect overseeing the Construction Works.
- 5.2 Upon the issuance of a Certificate of Practical Completion, CEL shall apply for a Certificate of Occupation in relation to the Construction Works.
- 5.3 Following the issuance of a Certificate of Occupation, CEL shall (i) issue a notice to MNF specifying the date on which MNF will have full access to the MNF Rental Space (the "**MNF Rental Space Occupation Date**"), and (ii) complete the Fit Out and issue a notice to MNF specifying the date on which MNF will be authorized to occupy the MNF Office Space (the "**MNF Office Occupation Date**").
- 5.4 From the Project Completion Date until the expiration of the Lease, CEL shall manage and operate the Project Site, including the Commercial Complex, pursuant to the terms of the Lease.

6. CEL'S RIGHTS AND OBLIGATIONS

- 6.1 The specific rights and obligations of CEL include, but are not limited to:
- 6.1.1 The right to appoint at its sole discretion the Building Contractor;
 - 6.1.2 The right to substitute materials or items that are of the same or better quality, appearance and suitability in lieu of those contained or referred to in the Concept Design or Plans if such substitution is deemed expedient by the relevant members of the Professional Team to ensure that completion of the Construction Works is not unduly delayed or where the materials or items are not readily available or cannot be obtained without an extra burden



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