



AGREEMENT TO LEASE

- of -

**THREE (3) HECTARES BEING PART OF
LAND REFERENCE No >><<**

DATED THE _____ DAY OF _____ 200 _____

>><< LIMITED

- to -

>><< AFRICA LIMITED

**>><<
ADVOCATES
P O BOX >><<
KENYA**



THIS AGREEMENT FOR LEASE is made the ____ day of _____ Two Thousand and Five

BETWEEN:

>><< LIMITED a limited liability company incorporated in the Republic of Kenya whose postal address is >><< in the said Republic (the "**Landlord**" which expression shall where the context so admits include its successors and assigns) of the one part; and

>><< AFRICA LIMITED a limited liability company incorporated in the said Republic whose postal address is care of Post Office Box Number >>< Nairobi 00200 Kenya aforesaid (the "**Tenant**" which expression shall where the context so admits include its successors and assigns) of the other part.

WHEREAS:

The Landlord is registered as the proprietor as owner of **ALL THAT** piece of land situate adjoining >><< Township in the >><< District of the Republic of Kenya containing by measurement >><< acres or thereabouts that is to say Land Reference Number >>< being premises comprised in a Grant registered in the Land Titles Registry at Nairobi as Number I.R. >><< which said piece of land with the dimensions abuttals and boundaries thereof is delineated on a Plan annexed to the Grant and more particularly on Land Survey Plan Number >><< annexed to the Grant and deposited in the Survey Records Office at Nairobi.

The Landlord wishes to grant and the Tenant is desirous of being granted a lease of part of the land being the premises described in the First Schedule hereto (the "**Demised Premises**") for the term of Twenty (20) years from the ____ day of _____ (the "**Term**") at the monthly rent provided in the Second Schedule hereto payable quarterly in advance on the First days of January, April, July and October in each and every year of the Term (the "**Rent**").

The parties acknowledge and agree that the Land is agricultural and hence the consent of the Land Control Board for the area in which the Land is situate is required prior to the



grant of and registration of the said lease.

The said Land Control Board is presently not operational hence the grant and the finalization of the lease cannot proceed.

The parties have agreed to enter into this Agreement to record their agreement and intention to enter into a legally binding lease (the "**Lease**") for the Demised Premises for the Term at the Rent as soon as the said Land Control Board is reconstituted and its consent obtained by the parties.

The parties further agree that the Lease shall be in the form in the Third Schedule hereto and shall contain like terms covenants and conditions as those therein contained.

NOW IT IS HEREBY AGREED as follows:-

The Landlord shall grant and the Tenant shall accept the Lease of the Demised Premises for the Term and at the Rent and subject to the Landlord obtaining the said Land Control Board's consent to the same together with such other consent and approvals as may be by law required (if any).

The Tenant shall use the Demised Premises for the purposes of carrying and operating a rose farm and such other incidental activities and for no other purpose whatsoever without the Landlord's prior written approval being first had and obtained.

Subject to such amendments and additions as may be necessitated by the form of the documents of title held by the Landlord at the date of the execution hereof and to such modifications thereto as may at that time be mutually agreed between the parties hereto the Term and the Rent and the covenants agreements conditions stipulations and restrictions to be contained in the Lease shall be as are set out in the form of the lease set out in the Third Schedule hereto.

All the Landlord costs of and incidental to the preparation and finalizing this Agreement for Lease and the Lease including all legal charges stamp duties consent and other related costs thereof shall be borne and paid by the Tenant.



This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supercedes all previous agreements and understandings between the parties with respect thereto and may not be modified except by an instrument in writing signed by the duly authorised representative of the parties.

This Agreement shall not capable of transfer or assignment by the Tenant.

FIRST SCHEDULE

The Demised Premises

ALL THAT portion comprising of >><< hectares or thereabouts being part of Land Reference Number >><<, >><<, as the same is shown on the plan annexed hereto and hatched red, the said plan being registered in the Registry of Documents at Nairobi in Volume _____ Folio _____ File _____.

SECOND SCHEDULE

The Rent



THIRD SCHEDULE

The Lease

REPUBLIC OF KENYA
REGISTRATION OF TITLES ACT
(Chapter 281)

GRANT NUMBER I.R. >>><

LEASE

THIS LEASE (“this Lease”) is made on the ____ day of _____ Two
Thousand and _____ **BETWEEN:**

>>>< **LIMITED** a limited liability company incorporated in the Republic of Kenya whose postal address is >>>< in the said Republic (the “**Landlord**” which expression shall where the context so admits include its successors and assigns) of the one part; and

>>>< **AFRICA LIMITED** a limited liability company incorporated in the said Republic whose postal address is care of Post Office Box Number >>>< Nairobi >>>< Kenya aforesaid (the “**Tenant**” which expression shall where the context so admits include its successors and assigns) of the other part.

WHEREAS:

The Landlord is registered as the proprietor of **ALL THAT** piece of land situate adjoining >>>< Township in the >>>< of the Republic of Kenya known as **Land Reference Number >>><** which said piece of land with the dimensions abutments and boundaries thereof is delineated and described on the plan annexed to the Grant registered as Number I.R. >>>< and more particularly on Land Survey Plan Number >>>< annexed to the said Grant and deposited in the Survey Records Office at Nairobi and thereon bordered red (the “**Land**”).



The Landlord wishes to grant to the Tenant a lease (being this Lease) in respect of a portion of the Land comprising by measurement >><< hectares or thereabouts more particularly in the Schedule annexed to this Agreement (the “**Demised Premises**”) for the Term at the Rent and subject to the covenants agreements conditions restrictions stipulations and provisions hereinafter contained.

NOW THIS LEASE WITNESSETH:

DEFINITIONS AND INTERPRETATION

In this Lease:

“**Commencement Date**” means the ____ day of _____ .

“**Movables and Improvements**” shall have the meaning specified in Clause 4.4.5 hereof.

“**Permitted Users**” means use of the Demised Premises for the purposes of carrying on and operating a horticultural or floricultural business of whatever kind and other incidental activities.

“**Pipes**” means all pipes and sewers drains mains ducts conduits gutters watercourses wires cables channels and other conducting media and includes any fixings louvers cowls and any other ancillary apparatus.

“**Rent**” means the Rent payable in accordance with Clause 3 of this Lease.

“**Term**” means Twenty (20) years from and including the Commencement Date and subject to Clause 6.12 hereof.

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

Unless expressly stated to the contrary, any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute



and any regulations or orders made under it and any general reference to statute includes any regulations or orders made to that statute.

The clause paragraph and schedule headings do not form part of this Lease and shall not be taken into account in its construction or interpretation.

The schedules to this Lease and any covenants and obligations contained therein shall form part of the Lease and shall be construed accordingly.

DEMISE PREMISES AND TERM

Demise

The Landlord **HEREBY LEASES** to the Tenant the Demised Premises for the Term in consideration of the Rent.

Rights

The Landlord grants to the Tenant (in common with the Landlord and all others entitled and only in so far as the Landlord is entitled to grant):

the right of the Tenant and all other persons expressly or by implication authorised by it to pass and repass to and from the Demised Premises at all times with or without vehicles of any description for all purposes connected with the use and enjoyment of the Demised Premises (but not otherwise) over and along the roads driveways and pathways within the Land;

the right to free passage and running water sewerage electricity telephone and other services or supplies to and from the Demised Premises in and through the Pipes that will now be or may previously have been laid in on over or under the other parts of the Land to serve the Demised Premises.

Exceptions and Reservations

There are excepted and reserved from the demise, in favour of the Landlord and all others now entitled or who may become entitled:

the free and uninterrupted passage and running water sewage electricity telephone



and other services supplies from and to other parts of the Land in and through the Pipes which now are or may after the date of this Lease during the Term be in under or over the Demised Premises;

the rights of air light support shelter protection and all other easements and rights now or after the date of this Lease belonging to or enjoyed by other parts of the Land and any adjoining property owned by or in possession of the Landlord.

RENT

The rents reserved by this Lease are a stand premium of _____ and thereafter the following annual rent:

TENANT'S COVENANTS

The Tenant **HEREBY COVENANTS** with the Landlord as follows:

Rent

To pay the Rent hereby reserved without deductions whatsoever annually in advance by bankers draft to the Landlord on the days and in the manner specified in this Lease.

Outgoings

Throughout the Term to bear and pay a fair proportion of the rates land rent taxes and other charges of every nature and kind which now or may hereafter be assessed or imposed on the Land by the Government or by any local authority or any other authority (the "**Outgoings**") **AND IT IS HEREBY AGREED AND DECLARED** that for the purpose of this Clause the fair proportionate part of the Outgoings shall be determined by the proportion which the Demised Premises bears to the total area of the Land **AND IT IS HEREBY AGREED AND DECLARED** that the amount so ascertained and payable by the Tenant shall be paid by the Tenant on the date fixed for payment of Rent next after demand for payment shall have been made on the Tenant and shall be recoverable from the Tenant as Rent and in case of any dispute arising from this Clause the same shall



be referred to an Arbitrator in accordance with the Arbitration Act or any other law in that behalf for the time being in force.

Electricity and other services consumed

To pay the suppliers of, and to indemnify the Landlord against, all charges for electricity water and telephone usage at or in relation to the Demised Premises.

Construct and maintain

The Tenant shall be entitled to construct on the Demised Premises permanent or semi-permanent structures for the cultivation, propagation and harvesting of horticultural or floricultural produce of whatever kind and thereafter farm and cultivate the Demised Premises in accordance with the rules of good husbandry and so as not to injure or deteriorate the same;

All Movable and Improvements (hereinafter defined) shall be the property of the Tenant and unless otherwise agreed between the parties hereto on the termination of this Lease or the determination of the Term for any reason whatsoever the Tenant shall be entitled to remove or uproot them as the case may be from the Demised Premises causing as little damage as possible;

At the expiry of the Term or on earlier determination of such Term the Tenant shall remove from the Demised Premises all the Movable and tear down all Improvements prior to the expiration or termination of this Lease leaving the Demised Premises in a good and tidy condition having regard to the state and condition of the Demised Premises as at the Commencement Date (fair wear and tear excepted) and shall make good any damage caused thereby to the Landlord's reasonable satisfaction and failing such removal the Landlord shall have the right to dispose of any of the Tenant's property remaining on the Premises and the Land after the expiry Six (6) months from the expiration or termination of this Lease without any liability to or claim by the Tenant;

Notwithstanding the provision of Clause 4.4.3 above, the Landlord may at its sole option and by giving to the Tenant Fourteen (14) days' notice in writing of



its intention to purchase the Movables and Improvements from the Tenant at a price to be agreed between the parties;

For the purposes of this Lease, the expression “Movables” shall include without limitation all assets capable of being moved and shall include all pumps diesel or electric motor engines cooling and refrigeration equipment greenhouses movable irrigation pumps prefabricated staff houses field lighting and electrical equipment as well as crops rose bushes and any improvements of a movable nature made or constructed by the Tenant on the Demised Premises; and the expression “Improvements” shall mean any improvements made by the Tenant during the currency of this Lease which do not fall within the definition of Movables set out in this Clause.

Repairs

The Tenant shall be entitled to keep the Demised Premises in good order and condition and in particular (but without prejudice to the generality of the foregoing) to keep all the roads pathways and drains serving adjoining or running through the Demised Premises in reasonable and substantial repair and condition, provide that the Tenant shall not be liable for repair rendered necessary by reason of damage by irresistible forces.

Right of Inspection

To permit the Landlord and its servants or agents at all reasonable times upon prior notice to the Tenant to view the Demised Premises with others for the purpose of ascertaining that the covenants and conditions of this Lease have been observed and to enter into and examine the state of repair and condition of the Demised Premises.

Right of Entry

To permit the Landlord and its servants or agents at all reasonable times upon prior notice (other than in a case of an emergency) to the Tenant to enter the Demised Premises with others and to enter into and execute any repairs for which the Tenant may not be liable under the covenants under this Lease or any maintenance repairs cleaning examination testing alteration addition improvement or renewal of or to the Demised Premises or any adjoining premises or land or for



the purposes of maintaining the Land or any pipes cables or conduits serving the same provided always the Landlord will make good any damage caused in such work.

Restrictions affecting use of Demised Premises

Not to use the Demised Premises or any part for any purpose other than for the Permitted Uses without the prior written consent of the Landlord such consent not to be unreasonably withheld;

Not to do or allow to remain or to permit or suffer or allow servants, employees or invitees of the Tenant to do in or upon the Demised Premises anything which in the reasonable opinion of the Landlord may be or has become a nuisance or annoyance to the Landlord or other tenants of the Land or may cause damage to the owners or occupiers of adjoining or neighbouring properties;

Not to do or permit or suffer any act which shall amount to a breach or non-observance of any negative or restrictive covenant or special condition contained in any lease Grant or other instrument under which the Lease or Land is held by the Landlord to which they are otherwise subject or which they may become subject.

Alienation

Not to transfer assign sublet charge or in any way part with possession of the Demised Premises or any part thereof without the prior written notification to the Landlord and any chargee (if required) and any new third party shall execute and agree to be bound by the terms and conditions of this Lease.

Indemnities

To indemnify the Landlord against all damage loss or injury occasioned to the Demised Premises or any adjoining or neighbouring premises or to any person or persons caused by any act default negligence or omission of the Tenant or its servants agents employees licensees or invitees;

To indemnify the Landlord against any actions claims or demands arising out of



leakage or overflow of water or any other effluent from the Demised premises.

Outside authorities

At all times during the Term to comply with all laws acts regulations or bye-laws now or hereinafter made or issued by the Government of Kenya or any Municipal Township local or other authority in relation to occupation conduct or use of the Demised Premises;

Within Twenty One (21) days of receipt of any notice from any such authority upon the Tenant to provide to the Landlord full particulars of the same.

Yielding at end of Term

To yield up the Demised Premises at the end or sooner determination of the Term in a similar condition to which it was originally leased, excepting fair wear and tear and damage caused by irresistible forces.

Costs

To pay all the costs in connection with the preparation and completion of this Lease and counter parts together with all taxes duties and registration fees consents and disbursements payable thereon prior to the execution of the same.

Interest

To pay interest on all sums due under this Lease which are more than thirty (30) days in arrears at the rate of five per cent (5%) above the base lending rate of the Central Bank of Kenya as prescribed from time to time from the date when such sums become due and payable until payment thereof in full.

Regulations

To comply with and ensure that all persons under the Tenant's control comply with the current rules and regulations reasonably promulgated by the Landlord or as agreed between the tenants in respect of the Land, its use, security and access.

LANDLORD'S COVENANTS



The Landlord **HEREBY COVENANTS** with the Tenant as follows:

For quiet enjoyment

That the Tenant paying the Rent hereby reserved and performing and observing the Tenant's covenants hereinbefore contained shall lawfully and peaceably enjoy the Demised Premises throughout the Term without any lawful suit eviction or interruption by the Landlord or by any person lawfully claiming through under or in trust for the Landlord.

Access

The Tenant shall throughout the Term hereby granted enjoy:

The right for the Tenant its servants employees licensees and invitees during reasonable business hours to use on foot or by vehicles the roads or pathways now or hereafter to be constructed on the Land for the purpose of seeking access to or from the Demised Premises;

The right to enter adjoining property forming part of the Land with or without workmen or agents upon giving not less than fourteen (14) days notice or without notice in the case of an emergency to the respective occupier to execute repairs alterations painting redecoration or any other work whatsoever to or for the benefit of the Demised Premises making good any damage thereby occasioned to such property.

Passage of water etc.

The right to free and uninterrupted passage and running of water soil effluent and electricity through all conduits serving the Demised Premises save that the Landlord shall not be held responsible if there are circumstances beyond the Landlord's control which affects the supply of the same.

Borehole and reservoir

To construct and maintain a borehole and a reservoir on the Land and throughout the Term to permit the Tenant to draw water therefrom sufficient for the purposes of the Tenant's business (and to grant or procure the grant of such easements as may be necessary for that purpose).



PROVISOS

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:

Proviso for re-entry

If and whenever during the Term

the Rent or any other moneys hereby reserved or any part thereof shall at any time be unpaid for Fourteen (14) days after becoming payable (whether lawfully demanded or not); or

if any of the other covenants on the part of the Tenant herein contained shall not be performed and observed

then and in any of the said cases the Landlord shall serve the Tenant with Thirty (30) days' notice demanding payment or that the covenant be complied with and in the event of the expiry of the said notice the Tenant shall have failed to commence rectification of the relevant breach and shall still be in breach, it shall be lawful for the Landlord to re-enter upon the Demised Premises or any part thereof in the name of the whole and thereupon this Lease shall determine absolutely but without prejudice to the right of action of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained.

Section 108 of the ITPA

If at any time the Land or any part thereof or the means of access thereto shall be damaged or destroyed by fire floods volcanic eruption or other force majeure so as to render the Demised Premises unfit for occupation and use by the Tenant the Landlord shall until such time as the same shall again be rendered fit for occupation and use allow to the Tenant a total or proportionate abatement of the rents as the case may be, provided that the Tenant shall in no circumstances be liable for any damage or loss suffered by reason of such loss of occupation and use of the Demised Premises;



Where in accordance with sub-clause 6.2.1 hereof a question as to the amount of abatement to be made in the said rent the same shall be determined by surveyors appointed by the Landlord and approved by the Tenant for such purpose and in determining the amount the said surveyors shall be instructed to have regard to the extent of the damage and the extent to which the Demised Premises are unfit for use.

Landlord's liability

The Landlord shall not be liable for any loss damage or injury to the Tenant or its servants employees licensees or invitees and the Tenant shall indemnify the Landlord against all claims actions and proceedings by the servants licensees or invitees of the Tenant in respect of such loss damage or injury caused by:

Any lack or shortage of electricity water or drainage;

The overflow of water to the Demised Premises from other parts of the Land as a consequence of an act of God;

Any burglary or theft;

Any fire howsoever occurring;

Any act or default of any other tenant of the Land or any portion thereof or of their servants licensees or invitees.

Force Majeure

No liability shall attach in respect of any breach of any positive covenant or agreement (other than covenants and agreements for payment of money) on the part of the Landlord or Tenant herein contained or implied so long as they shall be prevented from performing the same by statutory restriction non-availability of labour or materials or matters beyond their control except that if such breach shall occur as aforesaid the Landlord or Tenant as the case may be shall remedy such breach immediately conditions permitting and in the event of any such breach of a covenant or agreement on the part of the Tenant not having been remedied before the expiration or sooner determination pay to the Landlord such an amount as shall



be necessary to remedy such breach as aforesaid.

Repayment of the Landlord

If the Tenant shall default in the performance or observance of payment of Rent, outgoings or costs (as provided herein) and if the Landlord shall make any expenditure or incur any obligation for payment of money in connection therewith including but not limited to advocates' fees in instituting prosecuting or defending any action or proceeding such sums paid or obligations incurred with interest and costs and shall be deemed to be additional Rent hereunder and shall be paid to the Landlord by the Tenant within Fourteen (14) days of the furnishing or rendering to the Tenant of any bill or statement

Landlord's future works

No allowance shall be made to the Tenant for a diminution of rental value and no liability shall fall on the Landlord by reason of any inconvenience annoyance or injury to business arising from the Landlord or others making any repairs alterations additions or improvements in or to any portion of the Land or in or to any fixtures appurtenances or equipment thereof nor shall any liability fall on the Landlord for failure by it or by others to make any repairs alterations additions or improvements in or to any portion of the Land or in or to the fixtures appurtenances or equipment thereof;

Landlord's representations

The Landlord and its agents have made no representations or promises with respect to the Land or the Demised Premises except as herein expressly set forth and the taking of the Demised Premises by the Tenant shall be conclusive evidence as against the Tenant that the Tenant accepts the same as they are and the Demised Premises and the Land were in good and satisfactory condition at the time such possession was so taken;

Landlord's power of waiver

The failure of the Landlord to seek redress for violation of or to insist upon the strict performance of any covenant agreement condition restriction stipulation or provision of this Lease or of any the rules and regulations from time to time promulgated by the Landlord or its agents shall not prevent any subsequent act



which would have originally constituted a violation from having all the force and effect of an original violation and receipt by the Landlord of any Rent with knowledge of the breach of any covenant agreement condition restriction stipulation or provision of this Lease shall not be deemed to be a waiver of such breach nor shall the failure of the Landlord to enforce any such rule or regulation as aforesaid against the Tenant and/or any other tenant in the Land be deemed to be a waiver of any such rules or regulations. No provision of this Lease shall be deemed to have been waived by the Landlord unless such waiver be expressly made by the Landlord in writing nor shall any payment by the Tenant or any receipt by the Landlord of a lesser amount than the Rent hereby reserved be deemed to be other than on account of the earliest stipulation Rent nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rent be deemed to be an accord and satisfaction and the Landlord may accept any such cheque or payment without prejudice to its rights to recover the balance of such rent or pursue any other remedy in this Lease provided.

Entire Agreement

This Lease contains the entire agreement between the parties and no changes or modifications shall be made unless in writing and signed by both parties. Save as set out in Clause 6.2, the provisions of section 108 of the Indian Transfer of Property Act shall not apply to this Lease.

Notices

Any notice or other communication bill or statement provided for by this Lease shall be in writing and any notice communication bill or statement to the Tenant shall be sufficiently served if addressed to the Tenant and delivered to the Demised Premises or sent by registered post to the Tenant's last known address in the said Republic and any notice or communication to the Landlord shall be sufficiently served if delivered by registered post to its aforesaid postal address. Any notice communication bill or statement served by registered post shall be deemed to have been served within Four (4) days following the day on which it was posted.

Arbitration

This Agreement shall be governed and construed in all respects in accordance with the laws of Kenya;



Save as may be hereinbefore otherwise specifically provided any dispute whatsoever and howsoever arising out of or in connection with this Agreement shall be referred for final determination to a single arbitrator to be appointed by agreement between the parties hereto or, in default of such agreement within Fourteen (14) business days of the notification of any dispute by either party to the other then, upon application by either party, the Chairman for the time being of the Kenya branch of the Chartered Institute of Arbitration of the United Kingdom. Such arbitration will take place in Nairobi and will be conducted in accordance with the Arbitration Act, No. 4 of Kenya and the rules for the time being of the said branch;

To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the parties.

Termination

If the Tenant wishes to determine the Term at any time after the expiry of the first Six (6) years after the Commencement Date of the Lease and gives the Landlord Six (6) months notice in writing of its intention to do so then on the expiration of the notice the said Term shall cease and determine but without prejudice to the rights and remedies of either party against the other in respect of any antecedent breach of covenant. In the event of the exercise by the Tenant of its right to determine the Lease under this Clause the provisions of Clause 4.4 shall apply.

SUBDIVISION OF LAND / SALE OF THE DEMISED PREMISES

In the event that the Landlord elects to sub-divide the Land or is otherwise required to surrender its title to the Land, the Landlord will:

procure that the rights of the Tenant over and in relation to the Demised Premises as set out in this Lease are properly and duly recorded and reflected in any new or replacement instrument of the title issued in respect of the Demised Premises (or in respect of any land of which the Demised Premises form a part of); and



procure that any sub-division will include the excision of and transfer to the Tenant of the Demised Premises, such excision and transfer to be at no cost to the Tenant.

GOVERNMENT RATES

The Landlord shall pay and discharge all rates land rent taxes and other charges of every nature and kind which now or may hereafter be assessed or imposed on the Land by the Government or by any local authority and thereafter recover the relevant portion of the same from the Tenant as provided herein.

THE SCHEDULE HEREINABOVE REFERRED TO The Demised Premises

ALL THAT portion comprising of Three (3) hectares or thereabouts being part of Land Reference Number 11517, Naivasha, as the same is shown on the plan annexed hereto and hatched red, the said plan being registered in the Registry of Documents at Nairobi in Volume _____ Folio _____ File _____.



IN WITNESS WHEREOF this Agreement for Lease has been duly executed the day and year first hereinbefore written:

SEALED with the Common Seal of)
>><< **LIMITED** in the)
presence of:-)
)
)
Director)
)
)
Director/ Secretary)

SEALED with the Common Seal of)
>><< **LIMITED** in the)
presence of:-)
)
)
Director)
)
)
Director/ Secretary)

Drawn By:

>><<
Advocates
P O Box >><<
Nairobi