

AGREEMENT

DATED _____

BETWEEN

[THE RESIDENT]

- AND -

RUNDA WATER LIMITED

**AGREEMENT FOR THE SUPPLY OF WATER
AND OTHER SERVICES**

KAPLAN & STRATTON

Advocates

P.O. Box 40111

00200-Nairobi

THIS AGREEMENT is made on between:

(1) (the “**Resident**”) of P.O. Box, Nairobi; and

Email:.....Telephone.....Mobile.....

(2) **RUNDA WATER LIMITED** (the “**Company**”) a company duly registered under the Companies Act Cap 486 and of P.O. Box 505, Village Market, 00621-Nairobi.

WHEREAS IT IS AGREED as follows:

(A) The Resident is the occupier of all that piece or parcel of land more specifically described in the First Schedule (the “**Premises**”).

(B) The Company has agreed to supply water through the Water main for Domestic purposes and provide other services to the Resident on the following terms and conditions:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this agreement and its recitals:

- (a) “**Charges**” means the amounts listed in the Third Schedule;
- (b) “**Commencement Date**” means
- (c) “**Domestic purposes**” means a water supply to the Premises for human consumption, maintenance of the premises and sanitary purposes;
- (d) “**Estate**” means the boundaries covering the estates known as Old Runda Estate and Runda-Mimosa Estate;
- (e) “**Notice**” means notice complying with the terms of clause 15;
- (f) “**Resident**” means those persons residing whether as the registered owner or as a tenant on the Premises in the Estate and are members of Runda Association;
- (g) “**Runda Association**” and “**Association**” means a registered association of the Residents;
- (h) “**Services**” means the services to be provided by the Company as listed in the Second Schedule;
- (i) “**Service pipe**” means so much of a pipe which is, or is to be, connected to a Water main for supplying water from that Water main to any premises;
- (j) “**Shillings**”, “**Kshs.**” and “**Cents**” denote Shillings and Cents, the lawful currency of Kenya;
- (k) “**Term**” means from the Commencement Date until the Resident ceases to reside in the Estate;
- (l) “**Water main**” means any pipe, not being a pipe for the time being vested in a person other than the Company, which is used or to be used by the Company for the purpose of making a supply of water for Domestic purposes available to the Residents or

potential Residents of the Estate, as distinct from the purpose of providing a supply to a particular Resident.

1.2 Interpretation

In this agreement, unless the context otherwise requires, any reference to:

- (a) the singular includes the plural and *vice versa*;
- (b) a person includes reference to a body corporate or other legal entity;
- (c) any written law includes that law as amended or re-enacted from time to time;
- (d) any agreement or other document includes that agreement or other document as varied or replaced from time to time;
- (e) a clause is to the relevant clause of this agreement;
- (f) any party includes that party's successors and assigns.

1.3 Successors

Any reference to any party includes a reference to the successors and permitted assigns of that party.

1.4 Headings

Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

2. CONDITION PRECEDENT

It shall be a condition precedent for the supply of water and Services by the Company that the Resident be a duly registered member of the Runda Association and shall pay all such charges and subscriptions that may be imposed by the Association.

3. MEASURE AND RATE OF FLOW

3.1 All water supplied by the Company shall be metered.

3.2 Subject to the provisions of clause 4.1 below, the amount of water consumed shall be measured by a meter to be supplied and maintained by the Company. The full cost of the installation of the meter including all overhead expenses and any expense incurred by the Company in any investigation and any other ancillary works carried out for the purposes of connection with the provision of a single separate metered service pipe to the Resident shall be borne by the Resident, who shall also pay to the Company in advance the estimated cost of any such installation. The meter shall remain the property of the Company and shall be maintained by it and replaced if necessary.

4. CHARGES

4.1 The Company shall supply water for Domestic purposes and provide Services to the Resident subject to the Resident making the payments stipulated in Schedule 3 hereto but the Company's obligation to furnish such supply shall not be enforceable in the event of the rents or rates reserved by or payable under this agreement being in arrears or of any deficiency in

their resources of supply by reason of unusual drought or of any contingency affecting their works or machinery or of any accidental interruption of their supply.

- 4.2 The Resident shall on a monthly basis pay to the Company all Charges including any local or government taxes, levies or charges of whatever nature which may be levied by the City Council of Nairobi or other competent authority, for all services provided and water consumed or supplied to the Resident from the Water main as recorded by the meters, and at all times in the future shall keep the Company indemnified against such charges.
- 4.3 The Company may, if Residents have not paid the Charges and after one month's written notice, stop the provision of services and disconnect the water supply from the Water main and the Resident will also be charged interest for late payment.
- 4.4 The Resident shall pay to the Company at its offices situated on L.R. 7785/092, Runda Grove, or such other offices as may be specified in respect of such supply the rates mentioned in the Third Schedule and shall observe and perform the conditions specified in this Agreement.
- 4.5 The Resident shall pay promptly all Charges to the Company.
- 4.6 The Company may, if it has reason to doubt a Resident's willingness or ability to pay promptly all Charges due, require the Resident to pay a deposit of the sum set out in Schedule 3 herein or a sum not greater than the estimated cost of one year's supply if called upon to do so by the Company.
- 4.7 Any such deposit shall be refunded to the Resident without interest when the Company is satisfied that future Charges will be paid promptly. This will not prejudice the power to require a further deposit from time to time under this condition.

5. **USE OF SUPPLY**

- 5.1 Water supplied from the Company's mains will be supplied by the Company to the Resident's Premises for Domestic purposes only.
- 5.2 No addition whatsoever shall be made to the water supply system by the Resident without the consent of the Company which will not unreasonably be refused but may be subject to other supplementary agreements.
- 5.3 No Resident is permitted to supply water to any other Resident or person.

6. **TESTING AND READING OF METER**

- 6.1 The Resident may on giving written notice to the Company require that the meter be tested for accuracy. The Company may remove the meter from the Premises where it is necessary for such testing. Unless on such testing the meter is found to register incorrectly the Resident shall pay to the Company on demand the reasonable costs incurred in carrying out the test.
- 6.2 The Company may at its own expense read the meter or test its accuracy at such times as it deems necessary.
- 6.3 The Company shall arrange for the meter to be read from time to time as will be necessary for billing purposes.

- 6.4 No charge will be made for reading a meter including reading a meter at the request of a Resident who is vacating the Premises or where leakage of water is detected by such reading or the meter is found not to be in working order.
- 6.5 For the purpose of enabling a Resident to check his consumption of water the Company shall as soon as practicable after being so requested, permit the Resident to see its records of previous meter readings.
- 6.6 The meter reading shall be prima facie evidence of the amount of water consumed, and in the event of any discrepancy, the meter reading shall prevail. If a meter fails to accurately record the amount of water consumed by a Resident, the Company may estimate the consumption since the penultimate and charge accordingly. The estimate shall be based on average consumption during earlier corresponding periods but if this information is not available, on the most reliable information available.
- 6.7 Charges are payable in respect of all water passing through the meter including water lost by leakage or waste with the exception only of water used for fire fighting purposes subject to any allowance which the Company may make in respect of leakage.

7. ROAD AND STREET MAINTENANCE

- 7.1 The Company shall, in addition to the works carried out by local authorities and/or Ministry of Roads and Public Works, carry out the maintenance and improvement of the roads and streets within the Estate including the street lighting, street signs, cleanliness and maintenance of barriers.
- 7.2 The costs borne by the Company shall be charged to the Residents at a flat rate as set out in the Third Schedule.

8. SECURITY

- 8.1 The Company may operate and maintain a security system in respect of the Estate.
- 8.2 All equipment, instruments and guard dogs used by security officers and personnel of the Company for security services shall be supplied by the Company.
- 8.3 A record of persons entering and leaving the Estate will be kept by the security officer in charge and all irregularities or incidents discovered by him or a Resident will be noted in a record book. Such record book shall be accessible to the Residents for inspection.
- 8.4 The provision of such security services shall not operate to impose any obligation and/or liability on the Company for any loss or damage caused to the Resident.

9. RESIDENTS COVENANTS

9.1 Obstruction of and Discharge into Shared Drains

- 9.1.1 The Resident must not allow any gutters, sewers drains, pipes or cables within or upon the Premises and used jointly with the other Residents to become obstructed, broken, severed or otherwise to fall into a state of disrepair.

9.1.2 The Resident shall not cause, permit or allow soil water, waste water or other noxious effluents as defined in the Public Health Act Cap 242 to be discharged into any storm water drain or other common water drainages.

9.2 Obstruction of Pathways

The Resident must not obstruct the free passage of other Residents or other persons entitled to rights of way over the common driveways and pathways and road reserves within the Estate or permit vehicles to be parked for more than 24 hours on any road, pathway or open area.

9.3 Garbage

The Resident must place any domestic refuse, rubbish, vegetation and other similar waste in the receptacle provided by the Company at such place where the receptacle may be easily collected by the Company.

The Resident shall not burn or incinerate any refuse, rubbish or vegetation within the Premises or any other area in the Estate.

9.4 Noise

The Resident must not permit any singing or playing of any musical instrument or any use of any electrical or mechanical apparatus so as to cause nuisance or annoyance to the occupiers of any adjoining or neighbouring Premises.

9.5 Construction and Development

The Resident shall comply with the building and construction laws and any restrictions imposed by the Nairobi City Council and the Runda Association on use and development of land. The Resident shall permit the Company to make all such inquiries with all relevant government authorities for purposes of ascertaining that the Resident has complied with the building laws and the Company will be entitled to take such steps where necessary to prevent the breach of any of the said building laws.

9.6 Nuisance

The Resident must maintain the Premises in a good condition and must ensure that it does not cause a nuisance to the occupiers of any adjoining or neighbouring Premises by falling into an unkempt and/or dishevelled state.

9.7 Use

In addition to the special conditions of the lease or title of the Premises, no Resident shall without the prior written consent of the Company use the Premises for commercial or industrial purposes including but not limited to converting the Premises or any part thereof to a school or educational institution, motor vehicle garage, sports facility, club, restaurant, mini-kiosks, eateries, shops or similar purposes. Such consent shall be granted on such terms and upon such conditions as the Company shall determine in its absolute discretion.

9.8 Abstraction of Ground Water

The Resident shall not, without the consent of the Company, abstract ground water within his Premises nor connect any pipes from any such abstraction structures to the water mains.

10. **COMPANY'S COVENANTS**

The Company shall maintain and keep clean and tidy all common areas including but not limited to trimming, existing trees, shrubs and hedges planted within the common areas within the estate.

11. **LIABILITY FOR LOSS OR DAMAGE**

The Company will not be liable for any loss or inconvenience caused to the Resident by reason of any delay or failure in any Service or amenity maintained or to be maintained by the Company as a result of its closure for repair, shortages, industrial action or inclement weather or any other cause beyond the reasonable control of the Company.

12. **SUSPENSION AND RESTRICTION OF SUPPLIES**

12.1 The Company may without notice interrupt or suspend the provision of all or any of the Services where its ability to provide the same is affected by unavoidable causes or accidents including:

12.1.1 contingencies affecting its employees, works, pipes, machinery or apparatus;

12.1.2 severe weather conditions including drought;

12.1.3 shortage of water available for supply however caused; or

12.1.4 failure by the Resident to comply with any enactment by-law or regulation relating to the provision of Services or any provision of this agreement.

12.2 Before commencing any tests or works likely to cause a material interruption in the provision of Services or the supply of water the Company shall, except in the case of emergency, give to any Resident known to be likely to be affected such warning as is reasonably practicable.

12.3 In the event of a deficiency or threat of a deficiency of water available for distribution the Company may by notice circulate in the Estate where it has imposed or intends to impose a restriction on the use of hosepipes or similar apparatus for watering the gardens, washing private cars, impose a restriction on the use of the supply of water for watering sports in any Premises.

13. **FAILURE TO COMPLY WITH CONDITIONS**

In the event of a Resident failing to comply with any provisions of this Agreement, the Company may suspend the supply of Services until the matter is rectified to the Company's satisfaction. The Company reserves the right to implement the suspension without notice. If a notice is required, a 14-day notice will be given in the case of breach of clause 9. Where a supply is cut off under this clause the Resident will be liable to pay a re-connection fee as set out in the charges scheme, in the Third Schedule, before the supply will be restored.

14. **RIGHT OF ENTRY**

The Resident shall permit any authorised employee of the Company to enter his Premises during normal working hours for any purpose connected with the provision of any of the Services and to prevent a breach of any of the covenants in this Agreement. Such employee shall, where practicable and always in any case where the need has been agreed between the

Resident and the Company, inform the Resident or a representative of the Resident and shall produce evidence of his authority. This is in addition to the Company's statutory right of entry.

15. **NOTICES**

Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by post or fax to the addresses given above or such other address as the recipient may have notified to the other parties in writing. In the absence of evidence of earlier receipt, any notice or communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, four days after posting or, if sent by fax, on the completion of transmission.

16. **STATUTORY AND OTHER RIGHTS**

The supply of Services is given subject to any enactments, regulations and by-laws relating to such supply or the supply of water in force in the area and subject to any rights conferred by statute or common law.

17. **TERMINATION OF SUPPLY**

17.1 Upon receipt of 14 days' notice from the Resident the Company will terminate the supply of water at its stopcock. The Resident will remain liable for all sums due to the Company until such notice has expired even if he vacates the Premises before that date. Where it is not practicable to turn off the supply at the Company's stopcock the Resident shall be responsible for any works to the service pipe which are needed to isolate the Premises from the Water main supply and the Resident shall be liable for all Charges until these works are completed to the satisfaction of the Company. On termination of the supply of water the Company shall be permitted to remove the meter and any other property of the Company and the Resident shall pay all costs thereon to the Company.

17.2 The Company shall have a right, without giving any reasons, to terminate the supply of water to any Resident upon giving the Resident 30 days' notice.

17.3 On termination of the supply of water, the Company shall repay to the Resident any sum held on deposit under clause 4.6 after deducting any sums due to the Company.

17.4 The termination of the supply of water under this clause shall not affect the other provisions of this Agreement.

18. **WARRANTIES AND INDEMNITIES**

18.1 The Company shall take all such steps within its control to ensure that no damage, contamination, waste or misuse of the water occurs but will not be liable for any damage, loss, injury, illness, disease or any other matter caused to the Resident as a result of any of the Services supplied from the Water main that could not have been foreseen or was beyond its control.

18.2 The Resident shall be entirely responsible for and shall maintain proper piping from the Water main to the Resident's Premises and storage tanks therein. The Resident hereby agrees and undertakes to give free access to the Company's officers, Local Authority and Public Health officers when called upon to do so to enter the Premises for purposes of inspecting the piping

and storage tanks or any other inspections, measurements and tests on the Premises or on water fittings or other articles and to take away samples to ascertain whether there has been a contravention of the provisions of this Agreement and to satisfy themselves as to the cleanliness of the storage tanks and potability of the water supplied from the Water main.

18.3 The Resident shall not interfere with the Water main or other pipe or apparatus that could lead to waste, damage or contamination of the water supplied.

18.4 The Resident shall take all such measures to avoid such contamination taking place within the Premises. The Resident shall notify the Company as soon as practicable of any leakage or other matter that could give rise to the water supplied being contaminated.

18.5 The Resident agrees to indemnify the Company in respect of all costs, expenses, debts and liabilities that the Company may from time to time properly incur during the management of the Estate or the business in accordance with the provisions of this agreement.

19. NO WAIVER OF RIGHTS

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

20. FORCE MAJEURE

The Company shall be relieved of all responsibility for any failure or delay in the carrying out of its obligations under this Agreement due to strikes, combinations or restrictions of work, Act of God, war, failure of the supply of electric energy, breakdown of factory machinery, fire, tempest, unavoidable accident or any other circumstances beyond its control whether or not the same be *ejusdem generis* with those above but only to the extent and for the period during which any such cause shall so operate.

21. VARIATION

No variation of this Agreement shall have any effect unless it is in writing and signed by both parties hereto.

22. ASSIGNMENT OF THIS AGREEMENT

Neither party shall assign its obligation or responsibilities under this Agreement but the Company may delegate the performance of all or any of its duties to any subsidiary or associated company.

23. SEVERABILITY

If any of the provisions of this Agreement is found by an arbitrator, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

24. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties about its subject matter and any previous agreements, undertakings, representations, warranties and negotiations (“prior representations”) on that subject cease to have any effect. Each party confirms that it has not relied upon any prior representations and waives any rights which it may have in respect of such reliance if it in fact occurred.

25. **ARBITRATION**

All claims and disputes whatsoever arising under this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act No. 4 of 1995 (or any statutory enactment in that behalf for the time being in force) by a single arbitrator to be appointed by agreement between the parties or, failing agreement within 14 days of the notification by either party to the other of the existence of a dispute or claim, to be appointed by the Chairman for the time being of The Chartered Institute of Arbitrators, Kenya Branch, Nairobi on the application of any party to the claim or dispute.

26. **COSTS**

Each party shall be responsible for its own legal costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

27. **GOVERNING LAW**

The validity, construction and performance of this Agreement shall be governed by Kenyan law.

IN WITNESS this agreement has been duly executed by the parties.

First Schedule

The Premises

Second Schedule

1. Water Supply
2. Security Services
3. Garbage Collection
4. Road and Street Maintenance
5. Streets lighting

Third Schedule

SERVICE	CHARGE (Kshs.)
<u>Water</u>	
Connection costs	33,000.00
Supply in Block (M ³)	0- 20 75.00 Per M ³
	21- 50 80.00 Per M ³
	51-100 85.00 Per M ³
	Over 100 130.00 per M ³
Meter testing by KEBS	½“ meters only 5,000.00
Meter Rent	200.00
Reconnection Fee	500.00
Security	1,500.00
Garbage Collection	650.00
Street/Road Maintenance	600.00
Road Development Fund	800.00
Refundable Water Deposit	6,000.00
Street Lights Maintenance	400.00

Sealed with the Common Seal of)
RUNDA WATER LIMITED)
in the presence of:)
))
Director)
))
))
Director/Secretary)
))
))
Signed by the said)
in the presence of:)
))
))
))

I certify that I was present and saw duly sign this Agreement.

Signature of witness:

Name:

Address:

Occupation: