

ALWIYA M. [REDACTED]

- And-

MOHAMMAD HOSSEIN [REDACTED] AND AMIR HOSSEIN NAJAFABADI JAFARI

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding (MOU)

This Memorandum of Understanding (MOU) is made on the th 10 day of February, 2016 by and between:-

1. **ALWIYA M. [REDACTED]** of [REDACTED] - Mombasa, Kenya (hereinafter referred to as "**AMA**" which expression shall where the context so admits be deemed to include her successors and assigns) on the first part,

And

2. **MOHAMMAD HOSSEIN [REDACTED] AND AMIR HOSSEIN JAFARI NAJAFABADI** of [REDACTED] - Iran (hereinafter collectively referred to as the "**HOSSEINS**" which expression shall where the context so admits be deemed to include its successors and assigns) on the other part.

WHEREAS,

- a) AMA is interested in entering into a business venture on the importation and trading in construction materials such as tiles, ceramics, decorative stones, sanitary wares in Mombasa Kenya.
- b) HOSSEINS trade in tiles, ceramics, decorative stones, sanitary wares and is pursuing entry into the Kenyan market through Mombasa for the trading in tiles and ceramics.
- c) To facilitate discussions and procuring of a joint venture, AMA and HOSSEINS wish to record certain understandings of principle by means of this Memorandum of Understanding ("MOU"); and

NOW, THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. Definitions and Interpretation

In this Agreement including the recitals, the following words and expressions shall (unless the context otherwise provides) have the following meanings.

- 1.1.1 "Confidential Information" shall mean all information in whatever form including, without limitation, any information relating to suppliers, operations, plans, intentions market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine- readable medium.
- 1.1.2 "Parties" means AMA and HOSSEINS and "Party" shall refer to either of them as the context may require.

- 1.2 Unless the context or express provisions otherwise require references to clauses are references to clauses hereof.
- 1.3 Other than clauses relating to confidentiality which shall be legally binding on the parties, the matters specified in this Agreement are broad statements of principle only and are subject to further business planning, further negotiations and final agreement.

2. General Intent and Structure

- 2.1 The Parties has entered into this MOU for the purpose of jointly evaluating the feasibility of forming a joint venture to pursue the intended business interest. For this purpose, it is the intention of the Parties to exchange all relevant information that each of them has prepared in relation such actions as are reasonably necessary to accomplish the purpose of this MOU.
- 2.2 Upon the execution of this MOU, the Parties agree to meet at their earliest convenience to establish a work group with representatives from each Party with the objective of accomplishing this MOU. The team shall function under a steering committee comprising of no more than two (2) representatives from each Party. The project team is to be maintained until a joint venture agreement is signed by the Parties or it is jointly decided not to pursue this MOU further.
- 2.3 The work group constituted under clause 2.2 shall have the mandate to formulate and draft a joint venture agreement reflect the following:-
 - 2.3.1 The business shall be importation and trade in tiles, ceramics, decorative stones, sanitary wares in Kenya
 - 2.3.2 Shareholding percentage as follows:
 - a) AMA – Sixty Percent (60%)
 - b) HOSSEINS - Forty Percent (40%)
 - 2.3.3 Investment Capital shall be as shared out as follows:
 - a) AMA – Sixty Percent (60%)
 - b) HOSSEINS - Forty Percent (40%)
 - 2.3.4 Responsibility and obligations to be split as follows:
 - a) AMA the the coordination of HOSSEINS shall handle setting up business operations in Kenya, business development and marketing.

- b) HOSSEINS shall handle importation and sourcing of products from Iran.

- 2.4 This MOU is not intended to be legally binding except as specifically set out in Clause 1.9 below, which are intended to be legally binding and shall survive the termination of this MOU for any reason.
- 2.5 Notwithstanding anything to the contrary in this MOU the Parties agree that each Party may withdraw from further participation upon giving prior written notice thereof to the other Party whereupon this MOU shall terminate in accordance with Clause 2.8 unless and until a Party has given such written notice, such Party is obliged faithfully to fulfill its obligations pursuant to this MOU.
- 2.6 In the event that a Party withdraws from this MOU the withdrawing Party shall have no liability for any damages, losses or financial compensation towards the other Party.
- 2.7 Any and all matters, terms and conditions related to but not specifically stipulated in this MOU shall be discussed by the Parties and settled in good faith by mutual agreement of the Parties.
- 2.8 This MOU shall take effect upon signing by the Parties and continue in force until the earlier occurrence of the following events whereupon this MOU shall automatically terminate:
 - (i) A joint venture between the Parties is incorporated and a joint venture agreement is executed and becomes effective; or
 - (ii) the withdrawal of any Party from this MOU in accordance with Clause 2.5; or
 - (iii) the unanimous agreement of the Parties to terminate this MOU; or
- 2.9 No party shall be liable for any indirect, special or consequential loss of damage or any loss or damage due to loss of goodwill or loss of revenue or profit arising from this MOU.
- 2.10 The rights and obligations of any Party under this MOU shall not be assigned, transferred or novated without the prior written approval of the other Party which approval shall not be unreasonably withheld.

3. Confidentiality

- 3.1 No party shall make any announcement or disclosure concerning the existence of this MOU or any of the actions contemplated thereby without the other Party's prior written consent. Each Party undertakes at all times to keep

confidential and not to disclose to any third party without the other Party's prior written consent any Confidential Information relating to the other Party, its Group or customers. Each Party accepts that such information is valuable, proprietary and secret, and that unauthorized disclosure of such information that may cause the other Party to suffer loss and damage.

- 3.2 This obligation of confidentiality shall survive the termination of this Agreement for whatever reason and shall not be affected or in any way diminished by the entry into or the failure to enter into the joint venture agreement.

4. Exclusivity and fidelity

- 4.1 Each Party represents and warrants to the other that is currently not engaged in any discussions, negotiations or Agreement with any other Parties regarding the matters contemplated in this Agreement and that until this Agreement has been terminated in accordance with clause 9 below and for a period of three (3) months thereafter, neither Party shall either directly or indirectly enter into negotiations, discussions or dealings with any other person, firm or company concerning the matters contemplated herein.

5. Good faith

- 5.1 Each Party undertakes to the other that it shall exercise good faith in finalizing, implementing and carrying out all actions and other activities as may be necessary to conclude this MOU and that reasonable assistance and co-operation will be provided by each Party to other at all times.
- 5.2 Each Party acknowledges that the other is contributing financial and human resources towards the success of the arrangements envisaged under this MOU and that for this reason, they shall use reasonable endeavors to facilitate the success thereof.

6. Severability

If any term, clause or provision contained in this MOU is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

7. Law, Jurisdiction and Arbitration

- 7.1 This MOU will be governed by and construed in accordance with the laws of Kenya. The parties further agree that the future joint venture agreement shall be governed by the laws of Kenya.
- 7.2 All disputes arising out of or in connection with this MOU, including any question regarding its existence, validity or termination, shall first be resolved amicably, but where such attempts prove futile, then the disputes shall be

referred to and be finally resolved by arbitration. The Arbitration will be held under the provisions of the Arbitration Act of Kenya, which rules are deemed to be incorporated into this clause.

7.3 The number of arbitrators may be one or three as agreed upon by the Parties to the dispute. The number of arbitrators shall depend on the contents, significance and complexity of the dispute.

7.4 The seat or legal place shall be at Mombasa, Kenya.

7.5 The language to be used in the arbitral proceedings shall be English.

8. Notice

The below contact details shall be used for any notice, demand, consent or other communication between the parties:

To: -

AMA

Mombasa, Kenya

To:-

HOSSEINS

- Iran.

Attention: Alwiya

@gmail

Attention: Amir Jafari

@gmail.com

9. Effective date

This MOU is effective upon the date that all Parties have signed.

9. Amendments

This Agreement shall not be changed or supplemented in any way except by properly executed documents signed by a representative or officer duly authorized in writing by each of the Parties hereto.

10. Counterparts

This MOU is executed in two counterparts, each of which shall be deemed an original.

IN WITNESS HEREOF the Parties have executed this MOU the day and year first written above.

Signed by

of the **ALWIYA M.**

In the presence of:

Name:

Position

Signature:

J. SINDANNI
ADVOCATE
COMMISSIONER FOR
MOMBASA

Signed by **MOHAMMAD HOSSEIN**

AND AMIR HOSSEIN NAJAFABADI JAFARI

In the presence of:

Name:

Position

Signature:

J. SINDANNI
ADVOCATE
COMMISSIONER FOR
MOMBASA

[Handwritten signature]

[Handwritten signature]
20/02/16

JAFARI NAJAFABADI

10/02/2016