

DATED THIS 30<sup>TH</sup> DAY OF DECEMBER 2008

PRE-SALE AGREEMENT

BETWEEN

ARM PROPERTIES PLC

AND

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Prepared By:

*Aluko &  
Oycbode*

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THIS PRESALE AGREEMENT is made this 30<sup>th</sup> day of December, 2008

**BETWEEN**

**ARM Properties Plc**, a company incorporated under the relevant laws of the Federal Republic of Nigeria and having its principal place of business at 1, Mekunwen Road, Off Oyinkan Abayomi Drive, Ikoyi, Lagos, [hereinafter referred to as "the Vendor", which expression shall where the context so admits include its successors-in-title and assigns] of the one part;

**AND**

a company incorporated under the relevant laws of the Federal Republic of Nigeria and having its principal place of business at 77, Ihama Road, GRA, Benin City, Edo State [hereinafter referred to as "the Purchaser", which expression shall where the context so admits include its successors-in-title and assigns] of the other part.

**WHEREAS:-**

1. By a Certificate of Occupancy dated 27<sup>th</sup> October 2003 and registered as No.17 at Page 17 in Volume 2003T at the Lagos State Lands Registry Office Alausa, Ikeja, Toll Systems Development Company Limited ("Toll Systems") of 9 Bayo Kuku Road Off Kingsway Road Ikoyi, Lagos, became seised of all that parcel of land situate at Lakowe, Ibeju Lekki Local Government Area of Lagos State of Nigeria measuring approximately 1561.30 Hectares and more particularly delineated and shown verged RED on Survey Plan No. LS/D/LKJ/1396 drawn by A.A. Fetuga dated 9<sup>th</sup> October 2003 for a term of 99 years commencing from 27<sup>th</sup> October 2003.
2. By a Deed of Assignment dated 29<sup>th</sup> September 2008 and registered as No. 44 at Page 44 in Volume 2225 at the Lagos State Lands Registry, Alausa, Ikeja, between Toll Systems and ARM Real Estate Investment Plc, (now ARM Properties Plc) of No 1. Mekunwen Road, Ikoyi, Lagos, Toll Systems, assigned all its entire rights and interests in part of the aforementioned property measuring approximately 100 Hectares and more particularly delineated and verged RED on the Survey Plan No. LS/D/LA 1967 drawn by O.S Jimoh dated 16<sup>th</sup> October 2007, which is more fully described in item A of Schedule 1 hereto to the Vendor to hold the same for the residue of the Term of years granted to Toll Systems in the Certificate of Occupancy dated 27<sup>th</sup> of October, 2003 and registered as No.17 at Page 17 in Volume 2003T at the Lagos State Lands Registry Office Alausa, Ikeja.

3. The Vendor as beneficial owner and upon completion of the payment of the full purchase price contained in this Agreement and subject to the execution of a contract of sale by both parties, hereby agrees with the Purchaser to sell, assign and transfer its entire rights and interests over 2 serviced plots lying and situate in the Adiva Plainfield's estate and more particularly described in item B of Schedule 1 (hereinafter referred to as the "**Property**"), being a part/portion of all that property comprised in the Deed of Assignment between Tolls Systems and the Vendor registered as No. 44 at Page 44 in Volume 2225 at the Lagos State Lands Registry, Alausa, Ikeja, Lagos together with all the appurtenances, and such rights that may now or in the future accrue as a result of its beneficial interest over the said property **TO HOLD UNTO** the Purchaser subject to the consent of the Governor of Lagos State in consideration of the terms, conditions and covenants herein contained.

**NOW THIS DEED WITNESSETH** as follows:-

**1 AGREEMENT TO SELL**

- 1.1 In pursuance of this Agreement and subject to the execution of a contract of sale by the parties and the consent of the Governor of Lagos State being sought and obtained to the Deed of Assignment which shall be executed by the Vendor in favour of the Purchaser in respect of the Property and upon full payment of the consideration for the purchase of the Property, the Vendor hereby agrees to sell and the Purchaser hereby agrees to buy (upon completion of the payment of the full purchase price reserved herein) 2 serviced plots lying and situate in the Adiva Plainfield's estate each measuring approximately 450 square meters.
- 1.2 The Vendor shall develop the Property in accordance with the illustrative design, which is more particularly described in item A of Schedule 2 to this Agreement (the "**Design**"). The Design is only an illustrative description of the Property and there may be slight variations between the Design attached hereto and the completed Property.

**2. PURCHASE PRICE**

The consideration for the said purchase shall be the sum of                      (The "**Purchase Price**") which shall be paid to the Vendor in the manner hereinafter appearing.

### 3. PAYMENT TERMS

- 3.1. The Purchaser shall pay [Two Thousand Five Hundred and No/100 (N2,500.00)] which is equal to ten percent (10%) of the Purchase Price (the "First Installment"), to the Vendor as an initial installment prior to or simultaneously with the execution of this Agreement, whichever comes first.
- 3.2 The remainder of the Purchase Price shall be paid in [3 (three)] installments as follows:
- (a) The sum of [Two Thousand Five Hundred and No/100 (N2,500.00)] representing (20%) of the Purchase Price (the "Second Installment") shall be payable to the Vendor by the Purchaser within 6 (six) months of the First Installment;
  - (b) The sum of [Six Thousand and No/00 (N6,000.00)] representing (30%) of the Purchase Price (the "Third Installment") shall be payable to the Vendor by the Purchaser within 6 (six) months of the Second Installment; and
  - (c) The final payment in the sum of [Five Thousand and Six Hundred and No/00 (N5,600.00)] representing (40%) of the Purchase Price shall be payable to the Vendor by the Purchaser upon written notification of completion of the Property in accordance with Clause 4.2.
- 3.3 Details of each Installmental Payment of the Purchase Price and its payment schedule shall be the same as described in Item B of Schedule 2 attached hereto. Any payment due and payable by the Purchaser pursuant to this Clause 3 shall be made in cleared funds.
- 3.4 Upon the completion of payment, the Purchaser shall be required to enter into a contract of sale with the Vendor in respect of the Property ("Contract of Sale") and shall execute a Home Owners' Agreement substantially in the form set out in the schedule to the Contract of Sale as well as comply with the terms and conditions of the Adiva Plainfields building guide as set out in the schedule to the Contract of Sale.
- ### 4. TIME OF COMPLETION
- 4.1 The Vendor shall commence construction of the Property in accordance with the Design as soon as possible after the date hereof and shall have substantially completed the Property within [18months] from the date the

First Installment is received in cleared funds by the Vendor("Completion Date")

- 4.2 Upon completion of the Property, the Vendor shall notify the Purchaser in writing that the Property has been duly completed and is available for delivery and shall state the date when the Final Installment of the purchase price as provided in Clause 3.2(c) above shall be payable by the Purchaser.
- 4.3 In the event that the Vendor is unable to deliver the Property to the Purchaser within 3 months from the expected Completion Date (Grace Period), the Vendor shall pay to the Purchaser a monthly interest rate of 0.75% of the amount paid by the Purchaser towards the purchase of the Property. The payment of such interest shall be calculated from the last date of the Grace Period up and until the Property is delivered to the Purchaser.

## 5 EVENTS OF DEFAULT

The following shall constitute events of default in this Agreement:

- a) Failure of the Purchaser to make an Installment Payment as and when due and in accordance with the terms of this Agreement;
- b) Selling, leasing or providing the Property as collateral to a third party without the prior written approval of the Vendor and/or for any purpose other than as contemplated by this Agreement;
- c) Breach of any term or condition contained in this Agreement;
- d) Any distress, execution, sequestration or other legal process is levied or enforced upon any of the property, undertakings or assets of the Purchaser;
- e) If the Purchaser or any guarantor of the Purchaser's obligations takes any steps or has steps taken against it for the winding up or dissolution (otherwise than for the purpose of amalgamation or reconstruction while solvent and on terms previously approved by the Vendor in writing) or on the making of an administrative order against it;
- f) Appointment of a receiver, manager, administrative receiver, administrator or similar officer over the whole or any part of the property, undertaking or assets of the Purchaser or any guarantor of the Purchaser's obligation; or

- g) Inability of the Purchaser or any guarantor of the Purchaser's obligation to pay its debts as they fall due.

## 6. REMEDIES FOLLOWING DEFAULT

- 6.1 Upon a default by the Purchaser to make the necessary Installment Payment as stipulated in Clause 3 above, the Vendor may in its absolute discretion grant the Purchaser an extension of time within which to make such payment as may be indicated by the Vendor in writing. Provided that if the Vendor grants the Purchaser an extension of time in respect of any Installment payment, and the Purchaser fails, neglects or refuses to make the required installment payment within the extended period, the Purchaser shall be required to pay interest on such unpaid installment at the prevailing rate of interest of Guaranty Trust Bank Plc.
- 6.2 The Purchaser acknowledges and agrees that the Vendor reserves the right to review the Purchase Price of the Property upwards in the event that the Purchaser fails or neglects to remedy a default to the satisfaction of the Vendor within the time extended for so doing by the Vendor pursuant to the provisions of clause 6.1 above.
- 6.3 The Purchaser acknowledges and agrees that upon the occurrence of any Event of Default referred to in Clause 5 above and while the same is continuing, the Vendor shall be entitled to give notice to the Purchaser of its intention to terminate this Agreement and be discharged of any obligation on the part of the Vendor to convey the Property to the Purchaser provided that in the case of events of default specified in Clause 5(a), 5(b) and 5(c), the Purchaser has not been granted an extension of time within which to make an Installment payment or remedy a breach of any of the terms and conditions of this Agreement. Provided however that if within 15 days of the expiration of the extended period granted to the Purchaser under Clause 6.1 above, the Purchaser fails to make an instalment payment or remedy a breach of any of the terms and conditions of this Agreement, the Vendor shall be entitled to terminate this Agreement in accordance with this Clause 6.3.
- 6.4 If this Agreement is terminated, pursuant to Clause 6.3 above the Vendor shall refund any installment paid by the Purchaser and as compensation for any loss suffered or costs incurred by the Vendor, the Vendor shall be entitled to deduct a sum equal to 10% of the total instalment paid by the Purchaser. Provided that any refund under this Clause 6.4 shall only be payable to the Purchaser upon the successful sale of the Property by the Vendor to a third party purchaser.

## **7 TITLE**

It is hereby agreed that title to the Property shall not pass to the Purchaser until the full Purchase Price and any agreed interest or other charges have been fully paid and a Contract of Sale has been executed by the Purchaser and the Vendor.

## **8. MORTGAGE FACILITIES**

The Vendor hereby undertakes that where the Purchaser has obtained a mortgage facility from any institution to finance the purchase of the Property, it shall assist the Purchaser in providing such assurances, undertakings and documents (which are within its powers to so provide) that may be required by the mortgage provider in connection with taking security over the Property for purposes of the mortgage facility.

## **9. FORCE MAJEURE**

- 9.1 The Vendor shall not be responsible for any suspension of completion of the Property if such suspension is caused by a shortage of raw materials, fire, flood, epidemics, strikes, lockouts or other labor disputes, severe weather, riots, terrorism, acts of war, acts of God or compliance with applicable laws, rules or regulations of any governmental authority or by compliance with any order or decisions of any court, board or other governmental authority or by any cause beyond the reasonable control of the Vendor, whose effects are not capable of being overcome without commercially unreasonable expense to the Vendor ("Force Majeure").
- 9.2 If due to the occurrence of a Force Majeure, completion of the Property is delayed, the Vendor shall:
- (a) inform the Purchaser of such delay; and
  - (b) extend the Completion Date to such further date as may be reasonably agreed with the Purchaser.
- 9.3 If the Vendor is prevented from achieving completion of the Property due to a Force Majeure event occurring and continuing for a consecutive period of 6 (six) months, either party shall have the right to terminate this Agreement by giving written notice to the other party.

## **10. GENERAL PROVISIONS**

- 10.1 Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including

express or courier service), by electronic communication, whether by telex, telegram or telecopy (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested) addressed to the respective addresses above.

- 10.2 The Purchaser may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of the Vendor. It is hereby agreed that the Vendor may assign and transfer this Agreement to its subsidiary, affiliate or other successor in title.
- 10.3 Any disagreement, dispute or difference howsoever arising, from this Agreement, including its interpretation and validity or as to the rights, duties and liabilities of the parties hereto or as to any other matter in any way connected with or arising out of or in relation to the subject matter of this Agreement, which cannot be amicably resolved by the parties within thirty (30) days shall be referred to arbitration pursuant to the provisions of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004 before a Sole Arbitrator who shall be appointed by the parties and failing an agreement by the parties, by the Chairperson of the Chartered Institute of Arbitrators (UK) Nigerian Branch. The decision of the Arbitrator so appointed shall be final.

#### 11. SEVERABILITY

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

## SCHEDULE 1

### Item A

#### DESCRIPTION OF PROPERTY SUBJECT TO DEED OF ASSIGNMENT BETWEEN TOLL SYSTEMS AND THE VENDOR

All that piece of land measuring approximately 100 Hectares the boundaries of which are delineated and verged "RED" on survey plan No. LS/D/LA 1967 prepared by O.S. Jimoh and dated 16<sup>th</sup> October 2007 together with all the appurtenances thereon situate at Lakowe, Ibeju Lekki Local Government Area of Lagos State, Nigeria registered as No. 44 at Page 44 in Volume 2225 at the Lagos State Lands Registry, Alausa, Ikeja.

### Item B

#### DESCRIPTION OF PROPERTY SUBJECT TO PRE-SALE AGREEMENT

2 serviced plots lying and situate in the Adiva Plainfields Estate, each measuring approximately 450 square meters.

SCHEDULE 2

ILLUSTRATIVE DESIGN IN RESPECT OF PROPERTY

Item B

DETAILS OF INSTALLMENTAL PAYMENT OF THE PURCHASE PRICE AND  
PAYMENT SCHEDULE

	Installment	Percentage of Purchase Price	Amount Due and Payable	Due Date
1	First Installment	10%		30 <sup>th</sup> December, 2008
2	Second Installment	20%		30 <sup>th</sup> June, 2009
3	Third Installment	30%		30 <sup>th</sup> December, 2009
4	Fourth Installment	40%		Upon written notification of completion

**IN WITNESS WHEREOF** the parties have affixed their signature and Common Seal respectively the day and year first above written.

The Common Seal of the within-named "Vendor"  
**ARM PROPERTIES PLC** was hereunto affixed in the presence of:

\_\_\_\_\_  
**DIRECTOR**

\_\_\_\_\_  
**SECRETARY**

The Common Seal of the within-named "Purchaser"  
**ARM PROPERTIES LIMITED**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
**DIRECTOR**

\_\_\_\_\_  
**SECRETARY**