

## **CHARGE ANNEXURE**

BETWEEN

**MALAYSIA BUILDING SOCIETY BERHAD  
(COMPANY NO. 197001000172/ 9417-K)**

AND

CHARGOR(S)

SOLICITORS

## **LAMPIRAN**

### **ANNEXURE**

I/We, the person(s) described in Section 1 of the First Schedule hereto (hereinafter called "the Chargor(s)") have this day charged the land described in the Jadual and in Section 2 of the First Schedule hereto (hereinafter called "the said Property") to MALAYSIA BUILDING SOCIETY BERHAD (Company No. 197001000172/ 9417-K) a company incorporated in Malaysia and having its registered office at Level 25, Menara MBSB Bank, PJ Sentral, Lot 12, Persiaran Barat, Seksyen 52, 46200 Petaling Jaya, Selangor (hereinafter called "MBSB") upon the terms and subject to the conditions hereinafter appearing and DO HEREBY AGREE(S), COVENANT(S) AND UNDERTAKE(S) with MBSB as follows:-

#### **1. COVENANT TO PAY**

In consideration of MBSB having agreed at the request of the Chargor(s) to grant to Chargor(s) a loan in the sum stated in Section 3 of the First Schedule hereto (hereinafter called "the Loan" which expression shall include wherever the context so permits any balance of part thereof) or in connection with or arising from the Facilities granted by MBSB at any time and from time to time the Chargor(s) HEREBY AGREE(S) COVENANT(S) AND UNDERTAKE(S):

- (a) to repay MBSB on demand the Loan together with interest thereon calculated at the rate stated in Section 4 of the First Schedule hereto on monthly rests (hereinafter referred to as "the Prescribed Rate" which expression shall include where and when applicable such other rate as may from time to time be substituted therefor in the manner hereinafter provided) or in connection with or arising from the Facilities granted by MBSB at any time and from time to time as well as before Judgement. AND until demand as aforesaid the Chargor(s) shall repay the Loan and interest thereon at the Prescribed Rate by monthly instalments in the sum stated in Section 5 of the First Schedule hereto or such other amount as may be determined by MBSB (hereinafter referred to as the "Instalments") the first of the Instalments commencing from one (1) month after the date on which the full amount of the Loan shall have been advanced or paid to or on behalf or for the benefit of the Chargor(s) (or on such other date as MBSB may stipulate) and the subsequent Instalments to be paid at regular successive intervals of one (1) month until the full amount of the Loan and all interest thereon shall have been fully paid and satisfied before the expiry of the Term stated in Section 7 of the First Schedule hereto.
- (b) until such time as the Chargor(s) shall commence to make payment of the Instalments the Chargor(s) shall pay to MBSB interest at the Prescribed Rate to be calculated on monthly rests on every sum advanced to or otherwise howsoever payable by the Chargor(s) under this Charge (whether the same shall form part of the Loan or otherwise howsoever) from the date on which the sum in question shall first be advanced or paid out by MBSB on the first day of every month commencing in the month following next after the said date on which such sum shall first be advanced or paid out as aforesaid.
- (c) to pay all sums and moneys as are or may become payable by the Chargor(s) under this Charge and in particular (but without limiting the generality of the foregoing) all the costs charges expenses and other sums and moneys provided herein.

AND NOTWITHSTANDING that the payments specified in the preceding clauses may have been made as aforesaid the Loan and any monies payable by the Chargor(s) to MBSB under this Charge and interest thereon as herein provided shall continue to be due for all purposes ON DEMAND.

#### **2. DEMAND**

- (a) If and when the Loan shall be demanded as aforesaid or shall otherwise be required to be settled the monies owing by the Chargor(s) to MBSB shall be ascertained by MBSB and when such

monies shall be ascertained the Chargor(s) agree(s) that the statement of the Manager, Assistant Manager or any other officer of MBSB as to the amount of the monies in respect of the Loan to be paid shall be final and conclusive.

- (b) Any demand for payment of the moneys intended to be hereby secured may be made by a notice in writing requiring payment within seven (7) days from the date thereof or in such form as may be prescribed by or under the National Land Code and/or Sarawak Land Code (CAP 81) and /or Sabah Land Ordinance (CAP 68) (where applicable) and may be signed on behalf of MBSB by the Manager/Assistant Manager or any other Officer of MBSB or by any solicitor or firm of solicitors purporting to act for MBSB and such notice shall be deemed to have been sufficiently served on the Chargor(s) if it is left at the usual or last known place of residence or at the addresses abovestated of the Chargor(s) or at the usual or last known place of business of the Chargor(s) or sent by registered letter to any of such addresses and in the last mentioned case the service shall be deemed to be made at the time when the registered letter would in the ordinary course of post be delivered or if it is served in such manner as may be prescribed by the National Land Code and/or Sarawak Land Code (CAP 81) and /or Sabah Land Ordinance (CAP 68) (where applicable).

### **3. DISBURSEMENT OF LOAN**

- (a) The Loan shall be disbursed upon completion of legal documentation or at any time at MBSB's discretion and in the event that the Loan or part of it shall for whatsoever reason be unutilised after six (6) months from the date of the letter of offer issued by MBSB in which MBSB agrees to grant the Loan (hereinafter called the "Letter of Offer") MBSB shall be at liberty at its discretion to withdraw the Loan or to vary the terms of the Loan.
- (b) MBSB shall be at liberty and is hereby expressly authorised by the Chargor(s) to advance or pay the whole of the Loan or such part or parts thereof to such person or persons as such times in such manner by such amounts and upon such contingencies and conditions as MBSB may in its absolute discretion decide and including to the Vendor/Developer named in the Sale and Purchase Agreement or to existing chargee of the Said Property, if any, in accordance with such undertakings which MBSB may give or require from such parties and/or by progressive releases in accordance with the Schedule of Payment set out in the Sale And Purchase Agreement AND it is hereby declared that such express authorisation as aforesaid shall be irrevocable AND it is hereby expressly acknowledged agreed and confirmed by the Chargor(s) that all advances and payments to such other person or persons as aforesaid shall for all purposes whatsoever be deemed to be and form part of the moneys secured by and owing under this Charge and the acknowledgement on receipt of such person or persons shall be as good and sufficient and effective as if the same had been made or given by the Chargor(s) personally And it is hereby further irrevocably agreed and confirmed by the Chargor(s) that the Chargor(s) shall not be entitled to object to or to restrain such payments by MBSB PROVIDED THAT MBSB shall not be deemed to be the agent of the Chargor(s) in so disbursing the Loan.

And where applicable and without prejudice to MBSB's powers rights herein conferred it is hereby expressly agreed between the parties hereto that in the event of any default on the part of the Vendor/Developer in honouring its obligations to MBSB or any financial institutions or in the opinion of MBSB the Vendor/Developer and/or the Chargor(s) is/are in breach of the Sale And Purchase Agreement, MBSB shall be at liberty to withhold the disbursement of the Loan or any part or such parts thereof.

### **4. CALCULATION OF INTEREST**

- (a) The interest chargeable on any sum advanced or paid to on behalf of or otherwise howsoever payable by the Chargor(s) to MBSB under this Charge (whether the same shall form part of the Loan or otherwise) from the date on which the same shall have been advanced or paid or become payable as aforesaid until the full amount of the Loan shall have been advanced or paid to or on

behalf of or for the Chargor(s) shall be calculated on the amount thereof outstanding at the end of every month and shall be deemed to be due forthwith upon such sum being advanced or paid as aforesaid.

- (b) The interest chargeable from the date on which the full amount of the Loan shall have been advanced or paid as aforesaid up to and including the last day of the month in which the full amount of the Loan shall have been advanced shall be calculated on the full amount of the Loan and all other sums then payable by the Chargor(s) and shall be deemed to be due on the first day of the following month or on such date as MBSB may stipulate.
- (c) In and for each succeeding month thereafter, interest shall be calculated on the total amount of the moneys due to MBSB hereunder (whether for principal or interest) as at the last day of the proceeding month and shall be deemed to be due on the first day of the following month.
- (d) The Chargor(s) hereby agree that the method or manner of calculation of interest payable hereunder shall be final and conclusive and shall not be questioned on any account whatsoever.
- (e) No part of any instalments to be paid by the Chargor(s) as hereinbefore provided or any other payments which the Chargor(s) may make to MBSB shall be deemed to be a repayment of principal until all interest due or deemed to be due to MBSB has been paid.

## **5. VARIATION OF INTEREST**

- (a) (i) Notwithstanding the provisions relating to the rate of interest as herein provided, the Chargor(s) hereby agrees that MBSB is entitled to at any time and from time to time vary at its discretion such rate of interest. Notwithstanding the generality of the foregoing, if the rate of interest is pegged to MBSB's Effective Cost of Funds, the variation may be in respect of MBSB's Effective Cost of Funds, or the spread or quantum of interest that is payable over and above MBSB's Effective Cost of Funds, or a combination of one or more of the methods aforesaid including varying or changing the entire basis upon which the Prescribed Rate is arrived at or calculated.
- (ii) Where variation in the matter aforesaid occurs, the amended or new rate of interest shall be payable from the date such amended or new rate of interest imposed or takes effects ("Effective Date") and interest shall be recomputed, if necessary, with the provisions of this Agreement.
- (iii) MBSB shall give notice of such change of rate of interest to the Chargor(s) but failure by MBSB to give notice shall not prejudice or have the effect of invalidating any such variation.
- (b) If the rate of interest chargeable is varied in the manner herein provided, the interest shall be calculated at the rate before such variation on the full amount of the Loan or all other sums then payable by the Chargor(s) as at the last day of the preceding month and chargeable from such date until the day preceding the Effective Date.
- (c) The new rate of interest shall be calculated on the full amount of the Loan and all other sums then payable by the Chargor(s) and/or the Borrower(s) as at the last day of the preceding month and chargeable from the Effective Date and shall be deemed to be due on the first day of the following month.
- (d) The decision of MBSB as to what at any time is the rate of interest chargeable shall be final and conclusive and shall not be questioned on any account whatsoever.
- (e) If and whenever the rate of interest payable by the Chargor(s) under this Charge shall be varied in the manner herein this Charge appearing, MBSB may, at its absolute discretion, make the necessary adjustment consequent upon such variation by varying the amount of any Instalments, or by varying the number of Installments or both.

- (f) The Chargor(s) hereby acknowledges confirms and agrees that if the rate of interest is pegged to MBSB's Effective Cost of Funds, MBSB shall have the absolute right to determine "MBSB's Effective Cost of Funds" and such determination by MBSB shall be final and conclusive.
- (g) Notwithstanding the provisions herein relating to the rate of interest and without prejudice to MBSB's right to vary the interest at any time as herein provided, in the event that more than three (3) Instalment for the Loan shall be due and in arrears, the Prescribed Rate shall automatically be increased to two point five per centum (2.5%) above MBSB's Effective Cost of Funds or ECOF.

## **6. CAPITALISATION OF INTEREST**

The interest on any principal moneys for the time being hereby secured including capitalised interest shall at the end of each calendar month where interest is calculated with monthly rests be capitalised and added for all purposes to the principal sum then owing and shall thenceforth bear interest at the Prescribed Rate and be secured and payable accordingly and all covenants and conditions contained in or implied by these presents and all powers and remedies conferred by law or these presents and all the rules of law or equity in relation to the said principal sum and interest shall equally apply to such capitalised arrears of interests and to interest on such arrears.

## **7. LATE PAYMENT CHARGE**

In addition and without prejudice to the powers rights and remedies herein conferred upon MBSB if the Chargor(s) shall default in the payment on due date of any one or more of the Instalments or the Loan or interest due under this Charge and other moneys herein covenanted to be paid MBSB shall be entitled to charge and the Chargor(s) shall pay a late payment charge the amount of which shall be at MBSB's discretion for each month or part thereof during which the Instalments or the Loan or interest and other moneys is in arrears and until payment shall form part of the principal sum hereby advanced.

The Chargor(s) hereby further agree(s) that in the event any cheque tendered to MBSB for repayment or payment of the Loan, interest or any other sums or moneys hereby secured is dishonoured by the paying bank for any reason whatsoever, the Chargor(s) shall pay MBSB an administrative/service charge of Ringgit Malaysia Fifty (RM50.00) or such other amount as may be determined by MBSB.

## **8. PREPAYMENT**

Prepayment - "Refer to the Letter of Offer".

## **9. REPRESENTATIONS AND WARRANTIES**

The Chargor(s) hereby represent(s) and warrant(s) to MBSB as follows:-

- (a) that this Charge constitutes the legal valid and binding obligations of the Chargor(s) in accordance with the terms and conditions herein;
- (b) that the execution delivery and performance of this Charge by the Chargor(s) will not violate the provisions of :-
  - (i) any law or regulation or any order or decree of any governmental authority agency or Court to which the Chargor(s) is subject; or
  - (ii) any mortgage contract or other undertaking or instrument to which the Chargor(s) is a party or which is binding upon the Chargor(s); and

- (iii) will not result in the creation or imposition of or any obligation to create or impose any mortgage lien pledge or charge on any of the Chargor's(s') assets or revenues pursuant to provisions of any such mortgaged contract or other undertaking or instrument;
- (c) that all consents approvals authorisation of any relevant authority which are required on the part of the Chargor(s) or which are advisable for or in connection with the execution delivery performance legality and enforceability of this Charge have been obtained and are in full force any conditions contained therein or otherwise applying thereto have been complied with;
- (d) that the Chargor(s) is not in default under any agreement to which the Chargor(s) is a party or by which the Chargor(s) may be bound and no litigation arbitration or administrative proceedings are presently current and pending or threatened which default litigation arbitration or administrative proceedings as the case may be might materially affect the solvency of the Chargor(s) and might impair the Chargor's(s') obligations herein;
- (e) that the Chargor(s) is not in default of any of the terms of the Sale and Purchase Agreement;
- (f) that all information, statements or particulars relating to the financial affairs of the Chargor(s) and furnished to MBSB when the Chargor(s) first applied for the Loan are true and accurate in all respects.

#### **10. TRUTH AND CORRECTNESS OF REPRESENTATIONS AND WARRANTIES**

- (a) The Chargor(s) acknowledge(s) that MBSB has accepted this Charge on the basis of, and in full reliance upon, the aforesaid representations and warranties, which will be correct and complied with in all material respects so long as this Charge shall remain in force and each of the above representations and warranties will be correct and complied with in all material respects so long as the Loan shall remain available.
- (b) The truth and correctness of all the matters stated in the representations and warranties under Clause 9 hereof shall form the basis of MBSB's commitments to make available or continue the Loan to the Chargor(s). If any such representations and/or warranties made shall at any time hereafter be found to have been incorrect in any material respect then and in such event and notwithstanding anything to the contrary hereunder MBSB shall have the right at its absolute discretion to review suspend recall or terminate the Loan or any part thereof.

#### **11. CONDITIONS PRECEDENT**

The obligations of MBSB to make the Loan available for disbursement and/or to permit any utilisation of the Loan by the Chargor(s) is subject to the fulfilment in manner satisfactory to MBSB and its legal advisers, prior to the utilisation of the Loan by the Chargor(s) of the following conditions :-

- (a) The Security Documents referred to herein and/or which are required by MBSB to be executed by the Chargor(s) and the other Security Parties (if any) have been stamped and registered with such registries as MBSB may deem necessary or expedient and copies thereof duly delivered to MBSB;
- (b) A search having been made at the relevant land registry/land office confirming that the said Property is free from all encumbrances and no acquisition notices have been lodged and/or registered or issued against the said Property;
- (c) MBSB is satisfied that the execution delivery and performance of the Security Documents have been duly authorised and approved by all necessary actions and that the sale do not contravene any law rules or regulations or any contractual or other restrictions binding upon the Chargor(s) or the other Security Parties (if any);
- (d) The Chargor(s) shall have delivered to MBSB the current receipts of the Quit Rent, assessments rates dues and other outgoings (if any) thereto as MBSB may require;



- (e) The receipt by MBSB of all relevant undertakings required by MBSB;
- (f) Where the Loan is to be disbursed by Progressive Releases the receipt by MBSB of the relevant architect certificates;
- (g) Where required by MBSB, report from the Office of the Official Assignee confirming that the Chargor(s) or the other security parties if any is not a bankrupt;
- (h) Completion of all legal documentation to the satisfaction of MBSB;
- (i) The Chargor(s) shall have delivered to MBSB a certified copy of the Sale and Purchase Agreement and the Memorandum of Transfer relating to the Said Property duly executed by all parties and stamped;
- (j) MBSB is satisfied that as from the date when the Chargor(s) first applied for the Loan there has been no material adverse changes in the financial affairs of the Chargor(s) which could or might adversely affect the decision of MBSB to proceed with or continue the Loan;
- (k) MBSB shall have received documentary evidence in form and substance satisfactory to it that the difference between the Loan and the purchase price of the Said Property has been paid.

Pending fulfilment in manner satisfactory of any of the conditions hereinbefore stipulated MBSB may at its absolute discretion terminate or suspend the Loan or disbursement of any part thereof.

## **12. PERFORMANCE OF COVENANTS**

The obligation of MBSB to grant the Loan under this Charge or to continue with the Loan shall also be subject to the following conditions:

- (a) MBSB is satisfied that no event has occurred so as to render the loan to become immediately repayable and no event of default under any agreement or arrangement referred to in this Charge and the other Security Documents shall have happened and be continuing;
- (b) there shall not have occurred any default in the performance by any party thereto of any covenant or agreement contained in any of the agreements and arrangements referred to in Clause 11 hereof;
- (c) the matters represented by the Chargor(s) set out in Clause 9 are true and correct in all respects;
- (d) no extraordinary circumstances or change of law or other governmental action shall have occurred which shall make it improbable that the Chargor(s) will be able to observe and perform the covenants and obligations on their part to be observed and performed under the provisions of this Charge;
- (e) no extraordinary circumstances or change of law or circumstances or other governmental action shall have occurred or likely in the opinion of MBSB to render it unlawful to grant the Loan or to grant the Loan on the said Property or shall howsoever affect the value of the Said Property.

## **13. WAIVER OF CONDITIONS PRECEDENT**

It is hereby expressly acknowledged and declared that the terms and conditions contained in Clause 8, Clause 11 and Clause 12 are inserted for the sole benefit of MBSB and may therefore be waived wholly or in part by MBSB at the sole and absolute discretion of MBSB unconditionally or upon terms and conditions specified by MBSB without prejudicing the rights of MBSB herein and such waiver shall not

preclude MBSB from insisting on the Chargor's(s') compliance with such waived terms and conditions at a subsequent time.

#### **14. CONTINUING SECURITY**

The securities created under this Charge and any other documents relating to the security of the Loan are expressly intended to be and shall be a continuing security for the repayment and payment of all principal sums, interest thereon and all other moneys and liabilities whatsoever as may now or at any time and from time to time hereafter be owing or payable by the Chargor(s) in respect of the Loan under the provisions of this Charge or otherwise intended to be secured under the aforesaid instruments notwithstanding that the account or accounts of the Chargor(s) with MBSB shall cease to be current for any reason whatsoever and notwithstanding any settlement of account or accounts or otherwise.

#### **15. COVENANT TO PROVIDE FURTHER SECURITY**

- (a) The Chargor(s) will at any time and when required by MBSB execute in favour of MBSB or as MBSB shall direct such further legal or other mortgages, charges, debentures, assignments, transfer, agreements or other assurances as MBSB shall require of and on all Chargor's (s') rights titles and interest in any property or assets or business now belonging to or which may hereafter be acquired by or belonging to the Chargor's(s') (including any vendor's lien) and the benefit of all licenses held in connection therewith to secure all moneys and liabilities hereby agreed to be paid or intended to be hereby secured such mortgages charges assignments transfers agreements or other assurances to be prepared by or on behalf of MBSB at the cost of the Chargor(s) and to contain all such terms and conditions for the benefit of MBSB as MBSB may require or stipulate.
- (b) The Chargor(s) shall at any time if and when required by MBSB to do so deposit with MBSB the document(s) of title of any or all immovable properties vested in the Chargor(s) for any tenure and all or any debenture shares stocks or other investments or securities registered in the name of the Chargor(s) or otherwise belonging to the Chargor(s). Such deposit may be by way of collateral security for the repayment of money and liabilities hereby secured and may also or otherwise be for the purpose of securing any other money owing to MBSB and not secured hereby.

#### **16. PROCEDURE ON NOTICE OF FURTHER CHARGE**

It is hereby agreed that if the Chargor(s) (or any one or more of them) shall execute or create any further or subsequent charge mortgage or encumbrances over the said Property hereby charged or any part or parts thereof in favour of any other corporation person or persons of which MBSB shall receive notice either actual or constructive MBSB may on receiving such notice forthwith open a new or separate account with the Chargor(s) in its books and if MBSB does not in fact open such new or separate account MBSB shall nevertheless be deemed to have done so at the time when MBSB received or was deemed to have received such notice (hereinafter called the "Time of Notice") and as from and after the Time of Notice all payments in account made by the Chargor(s) (or any one or more of them) to MBSB shall (notwithstanding any legal or equitable rule or presumption to the contrary) be placed or deemed to have been placed to the credit of the new or separate account so opened or deemed to have been opened as aforesaid and shall not go in reduction of the amount due by the Chargor(s) to MBSB at the Time of Notice Provided Always that nothing in this Clause contained shall prejudice the security which MBSB otherwise would have had hereunder for the payment of the moneys costs charges and expenses herein this Charge referred to notwithstanding that same day become due or owing or be incurred after the Time of Notice.

#### **17. DEALINGS WITH SECURITY**

The Chargor(s) will not transfer sell charge or otherwise howsoever deal with the said Property or any part thereof or any interest therein or make the same subject to any burden charge encumbrance liability or lien whatsoever or make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the said Property or for the conversion of the



land into Malay Holding or Malay Reserve or for rescission removal or amendment of any condition or restriction affecting the said Property without the written consent of MBSB first had and obtained.

## **18. INSURANCE**

- (a) At all times during the continuance of this security MBSB may at its absolute discretion and through selected agencies and at the cost and expense of the Chargor(s) keep insured any building or any effect or property of an insurable nature whether affixed to the said Property or not being or forming part of the said Property against loss or damage by fire and against such other specific risks under such insurance policy for such amounts, in such names and with such insurers as MBSB from time to time in its absolute discretion may deem it expedient. Furthermore MBSB may at the request of the Chargor(s) increase the amount insured and MBSB will not be held liable for any negligence whatsoever as a result of any action taken to effect, maintain renew or increase any such insurance or otherwise and MBSB shall retain for its own use and benefit any commission paid or allowed to it as agents of such insurers.
- (b) Whenever required by MBSB, the Chargor(s) shall take up and maintain a life assurance policy or a mortgage decreasing term policy as MBSB may in its absolute discretion decide or any other policy guaranteeing the repayment of the Loan together with the interest thereon and all the monies hereby secured and Chargor(s) shall, if required by MBSB, execute an assignment or other forms of documents in respect of the aforementioned policy in favour of MBSB.
- (c) Any insurance taken out in the name of the Chargor(s) shall be expressly and specifically assigned to and for the benefit of MBSB. Without prejudice to any other assignment of insurance policies which may be effected by the Chargor(s) in favour of MBSB, the Chargor(s) hereby expressly assigns to MBSB all the rights, title and interest of the Chargor(s) in, to and under all insurance policies taken out with respect to the Said Property including all proceeds and benefits thereof and all rights or claims thereunder.
- (d) MBSB is hereby authorised but not required, in its own name or in the name of Chargor(s) to demand, collect, give receipts for and prosecute all necessary actions in the courts to recover any and all insurance moneys that may become due and payable under any insurance policy taken out in respect of the Said Property. If the Chargor(s) at any time fails to pay or cause to be paid when due any insurance premiums, calls or other costs related to obtaining or maintaining the insurance required hereunder or fails to obtain any required insurance or to deliver to MBSB all policies, certificates, contracts of insurance, binders and cover notes and all renewals thereof as required by the provisions of this Charge, MBSB may, but is not required to, procure such insurance or pay unpaid premiums, or both, and other costs in relation thereto.
- (e) All monies so paid or expended by MBSB under this Clause together with interest thereon at the Prescribed Rate from the date of such payment shall be on demand repaid to MBSB by the Chargor(s) and until such repayment shall be deemed to be a sum advanced by MBSB to the Chargor(s) and shall form part of the Loan outstanding and secured hereunder.

## **19. CONFLICTING INSURANCE**

Save and except at the request or with the consent of MBSB the Chargor(s) shall not effect or maintain any insurance against any risk in respect of aforementioned buildings fixtures structures property and effects where MBSB or the Chargor(s) has/have effected or maintained any such insurance as aforesaid.

## **20. APPLICATION OF INSURANCE MONEY**

MBSB may at its discretion require all moneys received on any insurance or the said buildings fixtures structures property or effect whether effected by MBSB or by the Chargor(s) to be applied in or towards making good the loss or damage in respect of which the money is received or at the option of MBSB or towards the discharge or any money secured hereby and the Chargor(s) shall hold moneys so received

on such insurance in trust for MBSB and MBSB may receive and give a good discharge of all such moneys.

## **21. GOVERNMENT ACQUISITION**

In the event that the said Property or any part thereof shall at any time become the subject matter of or be included in any notice notification or declaration concerning or relating to acquisition by government or any government authority or any enquiry or proceedings in respect thereof the Chargor(s) shall forthwith inform MBSB of the same and shall forward to MBSB a copy or copies of any such notice notification or declaration as soon as the same shall be delivered to or served on the Chargor(s). MBSB shall be entitled at the expense of the Chargor(s) to engage such advisers and agents (including solicitors and valuers) as it may think fit for the purposes of appearing or attending at or advising upon enquiry or proceedings affecting concerning or relating to any such acquisition. All moneys received as or by way of compensation for any such acquisition of the said Property or any part thereof shall be applied in or towards the discharge or repayment of any money or liability secured by this Charge and the Chargor(s) shall and hereby declare(s) that he/they will hold all moneys if paid to and so received by him/them in trust for MBSB and the Chargor(s) agree(s) and confirm(s) that MBSB may receive and given a good discharge for all such moneys.

In the event of all such moneys aforesaid being less than the amount due to MBSB hereunder including interest and all moneys and other charges due and payable by the Chargor(s) to MBSB hereunder, the Chargor(s) shall forthwith pay to MBSB the difference between the amount due and the amount so received and until such payment will also pay interest on such difference at the Prescribed Rate calculated in the manner then applicable to the moneys hereby or intended to be hereby secured.

## **22. DEFAULT**

The Loan and any interest thereon and all other sums or moneys (whether principal or interest) for the time being owing under this Charge shall immediately become payable by the Chargor(s) to MBSB and MBSB shall forthwith become entitled to recover the same with interest thereon and to exercise the rights and powers upon default herein this Charge and by law provided without any previous notice to or concurrence on the part of the Chargor(s) upon the happening of any one or more of the following events:

- (a) if the Chargor(s) or any of the Security Parties shall make default in payment on the due dates of any one more of the Instalments or any interest thereon or other sums or money (whether principal or interest) herein agreed or covenanted by the Chargor(s) to be paid; or
- (b) if the Chargor(s) or any of the Security Parties shall fail to make payment of the balance of the moneys owing to MBSB after the expiration of the notice referred to in Clause 2 hereof; or
- (c) if the Chargor(s) or any of the Security Parties shall fail to observe or perform any of the agreements covenants stipulations terms and conditions on the part of the Chargor(s) herein expressed or implied; or
- (d) if the Chargor(s) or any of the Security Parties shall be affected by a material adverse change in his/their financial condition and/or employment and/or nature of business which in the opinion of MBSB is likely to prejudice the ability of the Chargor(s) or the Security Party(ies) to perform his/their obligations under this Charge in accordance with the terms hereof and/or which likely to have possible implications under the Anti-Money Laundering and Anti-Terrorism Financing, Act 2001 (Act 613); or
- (e) if the Chargor(s) shall allow a second charge to be registered against the Said Property without the consent of MBSB; or

- (f) if any representation or warranty made or implied pursuant to Clause 9 herein or any other provisions of this Charge or pursuant to any notice, certificate, letter or other document delivered pursuant to the terms of this Charge is incorrect or misleading in a material particular as of the date at which it was made or deemed to have been made; or
- (g) if a distress or execution or other process of a Court of competent jurisdiction is levied upon or issued against any property of the Chargor(s) or of any Security Parties and such distress execution or other process, as the case may be, is not satisfied by the Chargor(s) or any Security Parties seven (7) days from the date thereof; or
- (h) if any of the parties to the Sale and Purchase Agreement commits or threatens to commit a breach of any term stipulation, covenant or undertaking contained in the Sale and Purchase Agreement entitling the vendor named therein to repudiate the agreement aforesaid; or
- (i) if the Chargor(s) commits a default of any provision of any agreement, or security documents, or both (as the case may be) relating to other accounts or loan facilities by MBSB to the Chargor(s) or other party in which the Chargor(s) is a guarantor, or chargor or assignor; or
- (j) if, before the Said property is fully and completely constructed, a petition is presented for the winding-up of the developer of the Said Property (where applicable); or
- (k) if the Security Documents shall be challenged with regard to its validity by any person or if in the absolute opinion of MBSB this Charge is in jeopardy; or
- (l) if default is made in effecting, maintaining or renewing any insurance required to be effected, maintained or renewed by the Chargor(s) or the Security Parties; or
- (m) if legal proceedings suit or action of any kind whatsoever (whether criminal or civil) be instituted against the Chargor(s) or any Security Parties; or
- (n) if any step or action is taken or a resolution is passed for the winding up, dissolution, liquidation or bankruptcy of the Chargor(s) or any Security Parties or a petition for winding up or bankruptcy, as the case may be is presented against the Chargor(s) or any security party or if such proceeding or action has been taken by the Chargor(s) or where applicable, such Security Parties and such step or petition is not discharged or stayed within 21 days from the date of the taking of such step or petition; or
- (o) if the Chargor(s) or any of the Security Parties being a company, have any Receiver and/or Manager appointed in respect of its undertaking or assets or any part thereof or ceases or threatens to cease to carry on its business; or
- (p) if the Chargor(s) or any Security Parties who is a natural person or individual dies or becomes insane or is adjudged a bankrupt; or
- (q) if any other event or series of events whether related or not has or have occurred which in the opinion of MBSB (which opinion shall be final and binding upon the Chargor(s)) could or might affect or prejudice the ability or willingness of the Chargor(s) or where applicable, of any Security Parties to comply with all or any of its respective obligations hereunder or where applicable, under any of the Security Documents.

## **23. BREACH OF COVENANT**

Upon the happening of an event stipulated in Clause 22 or in the event of any breach by the Chargor(s) of any of the agreements covenants terms stipulations and undertakings herein or in the Loan Agreement (if any) between the Chargor(s) and MBSB provided and on the part of the Chargor(s) to be observed and performed (including the agreement or covenant to pay the sum for the time owing to MBSB on

demand as aforesaid) occurring and continuing for a period of not less than seven (7) days (in substitution for the period of thirty (30) days referred to the relevant sections of the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) it shall be lawful for MBSB forthwith to give notice to the Chargor(s) under National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) requiring the Chargor(s) to remedy the said breach within period of not less than fourteen (14) days (in substitution for the period of thirty (30) days referred to the relevant sections of the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) and service of such notice shall be effected in the same manner as a notice demanding payment of the balance due as hereinbefore provided.

## **24. PROCEEDS OF SALE**

All moneys received by MBSB from any proceeding instituted or step taken under this Charge or any other security documents (if any) shall subject to statutory priorities (if any) be applied by MBSB:

FIRSTLY in payment of all costs charges and expenses incurred and payments made by MBSB under the provisions of this Charge or any other security documents (if any) and any other taxes payable under any written law for the time being in force on the disposal of the Said Property.

SECONDLY in or towards payment to MBSB of all interest then accrued and remaining unpaid in respect of the Loan, or the balance thereof for the time being owing.

THIRDLY in or towards payment to MBSB of the principal sum due and remaining unpaid under the Loan.

FOURTHLY in or towards payment to MBSB of all other moneys due and remaining unpaid under this Charge or any other security documents (if any).

FIFTHLY in and towards the repayment or payment of all amount due and payable under any other loan including renovation loan (if any).

SIXTHLY any surplus shall be paid to such persons entitled thereto.

PROVIDED ALWAYS THAT if MBSB shall be of the opinion that the security may prove deficient payments may be made to MBSB on account of principal before interest but such alteration in the order of payment shall not prejudice the right of MBSB to receive the full amount to which it would have been entitled if the primary order had been observed or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

## **25. PERSONAL LIABILITY OF THE CHARGOR(S)**

If the amount realised by MBSB on a sale of the said Property under the provisions of the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) after deduction and payment from the proceeds of such sale of all fees dues cost rents rates taxes and other outgoings on the said Property is less than the amount due to MBSB and whether at such sale MBSB is the purchaser or otherwise the Chargor(s) shall pay to MBSB the difference between the amount due and the amount so realized.

## **26. MBSB NOT ANSWERABLE FOR LOSS**

MBSB shall not be answerable for any involuntary loss happening in or about the exercise or execution of the powers or trusts which may be vested in MBSB by virtue of this Charge or by law for the time being in force.

## **27. COMPLIANCE WITH LAND TITLE CONDITIONS**

The Chargor(s) shall comply with and observe all the conditions restrictions and category of land use express or implied imposed upon relating to or affecting the said Property or to which the said Property is subject as well as the provisions of any Act of Parliament ordinance or enactment for the time being in force and of any rules or orders made thereunder affecting the same.

## **28. USER OF LAND**

The Chargor(s) shall not use the said Property or any fixture or any building upon the said Property or suffer the same to be used for purposes other than those for which the same has been intended nor to store or bring upon the said Property any articles of a specially combustible inflammable or dangerous nature nor to do or permit or suffer to be done anything by reason whereof any policy or policies of insurance referred to in Clause 18 hereof may be rendered void or voidable. Upon receipt of notice in writing from MBSB that in the opinion of MBSB any user by the Chargor(s) of the said Property or any structure or fixture thereon or any part thereof whether by reason or overcrowding or for any reason whatsoever is calculated to affect adversely the security of MBSB the Chargor(s) shall forthwith discontinue such user.

## **29. PAYMENT OF OUTGOING**

The Chargor(s) will at all times during the continuance of this security pay the quit rent assessments rates taxes and all other outgoings whatsoever payable from time to time in respect of the said Property as and when the same shall become due and payable and will produce to MBSB on demand all receipts for such payments. In default whereof it shall be lawful for but not obligatory upon MBSB to pay the same or any part thereof and such payment is to be for and on the account of the Chargor(s).

## **30. INFORMATION ON MATTERS**

The Chargor(s) shall inform MBSB of any application demand notice order or any other whatsoever notice document or transactions in any way affecting concerning or touching the said Property or any structure or fixture or other erection thereon or any part thereof forthwith upon the issue publication service or occurrence thereof (time being of the essence in respect hereof) and produce the same to MBSB if called upon to do so AND the Chargor(s) shall do all acts and take all steps necessary or expedient to safeguard and preserve the said Property or any building structure or fixture or other erection thereon or any part thereof or the title of ownership thereto AND the Chargor(s) agree(s) that MBSB may if it thinks fit and on behalf or in the name and at the expense of the Chargor(s) do all such acts and employ all such persons as MBSB shall deem fit for the purposes of safeguarding and preserving the said Property or any structure or fixture or erection thereon as aforesaid.

## **31. LEASING AND POSSESSION**

The Purchaser will not let out or lease or grant agree to let out or lease or grant any licence or otherwise howsoever part with the possession or make or accept the surrender of any lease whatsoever of or in respect of the said Property or any fixture or any part thereof to any person firms or companies without the consent in writing of MBSB first had and obtained which consent may be given or refused without assigning any reason therefor either absolutely or on such terms and conditions as MBSB deems fit and the decision of MBSB shall be final and conclusive.

## **32. REPAIRS MAINTENANCE INSPECTION AND VALUATION**

- (a) The Chargor(s) will during the term of this security keep any building structure or fixture now or at any time hereafter erected on or affixed to the said Property in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon MBSB at the cost and expense of the Chargor(s) to carry out such repairs.



- (b) The Chargor(s) will not alter pull down or remove any building structure or fixture now or any time hereafter erected on or affixed to the Said Property or any part thereof without the consent in writing of MBSB first had and obtained and will forthwith replace or make good the same in the event of any such alteration pulling down or removal.
- (c) MBSB and its agents and workmen shall be at liberty at all reasonable times of the day to enter into the Said Property and into any building or structure now or at any time hereafter erected on the Said Property and may have access to any fixture thereon and to view and inspect the condition of repair thereof Provided Always That if MBSB should enter and repair the same it shall not be liable as a chargee in possession.
- (d) The Chargor(s) hereby authorities MBSB to value the Said Property annually or at such interval as MBSB shall in its absolute discretion decide by any valuer or any officer of MBSB or any person of MBSB's choice at cost and expense of the Chargor(s) and in the event such valuation reveals that the forced sale value of the Said Property is lower than that at the date hereof MBSB shall have the absolute discretion to require the Chargor(s) within fourteen (14) days from the date of the notice from MBSB to charge, pledge, mortgage or deposit with MBSB the stocks and shares, assets, movable property and/or the issue document of title, if any, or all immovable properties vested in the Chargor(s) of such value as MBSB may from time to time require or for such tenure as MBSB requires by way of further and additional security for the repayment of the total amount owing for the time being under this Charge.

### **33. ERECTION OF BUILDING AND OR RENOVATION**

Where it is intended that there is to be erected any new building on the land of the Said Property or there is to be renovation of the Said Property or that the Loan is to be utilised for the purpose thereof the Chargor(s) shall complete the erection of such building or the renovation of the Said Property in accordance with the approved plans thereof or such amendments therefor as may have been agreed to in writing by MBSB with all reasonable speed and shall complete the erection or renovation thereof so as to comply with all requirements of any municipal or such other competent authority or authorities necessary for the obtaining of and shall obtain a Certificate of Fitness for Occupation not later than such date as MBSB may stipulate.

### **34. CHANGE IN MBSB**

The securities liabilities and/or obligations created by this Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or otherwise which may be made in the constitution of MBSB.

### **35. CHANGE IN CHARGOR(S)**

The securities liabilities and/or obligations created by this Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding any change whether by reason of amalgamation bankruptcy death insanity incorporation liquidation reconstruction winding up or otherwise in the name style constitution or composition of the Chargor(s) and it is expressly declared that no change of any sort whatever in relation to or affecting the Chargor(s) shall in any way affect the security liabilities and/or obligations created by this Charge in relation to any transaction whatsoever whether past present or future.

### **36. CHANGES IN LAW**

Notwithstanding any provision to the contrary herein, in the event that by reason of the enactment of or the making of any change in any applicable law, regulation or regulatory requirement or in the interpretation or application thereof or the making of any request or application thereof or the making of any request or direction from or requirement of Bank Negara Malaysia or other fiscal or monetary authority (whether or not having the force of law) MBSB shall be of the opinion that it has or will become



unlawful or it is otherwise prohibited or prevented for it to maintain or give effect to all or any of its obligation as contemplated by this Charge then, notwithstanding any other provisions herein, MBSB's obligation to advance the Loan shall forthwith be terminated and/or as the case may be if the Loan has been fully disbursed the Chargor(s) shall on demand forthwith repay the Loan in full together with accrued interest thereon and any other amount payable hereunder to MBSB.

### **37. VARIATION OF TERMS**

The terms of this Charge may be varied and/or amended at MBSB's absolute discretion with additional terms and conditions and it shall be varied and/or amended by written notice. The variation or amendments shall be effective without the necessity of having to enter into any formal instrument or supplement document and the relevant provisions of this Charge shall be deemed to have been amended and/or varied accordingly and shall be read and construed as if such amendments and/or variations had been incorporated in and had formed part of this Charge at time of execution hereof.

### **38. DOCUMENTS**

- (a) MBSB shall have the custody or possession of the issue document(s) of title in respect of the Said Property.
- (b) The parties hereby agreed that the issue document of title will be released where the production of any document is required for purposes of any action or matter initiated or instituted by Government or any government authority department or officer and not where such document is required for any purpose or to effect any transaction conducted or initiated by the Chargor(s).

### **39. CONSOLIDATION**

- (a) In addition to and without prejudice to any other right of consolidation it is hereby declared that the Said Property shall not be redeemed save and except on payment by the Chargor(s) of not only all moneys secured hereby but also moneys by any other charge created by the Chargor(s) or any person through whom he claims which is at the date hereof or at any time hereafter charged to or vested in MBSB over any property other than the Said Property comprised in this Charge.
- (b) Without prejudice to any other remedy which MBSB may have, MBSB may without notice to the Chargor(s) and at any time or from time to time at its sole and absolute discretion combine, consolidate or merge all or any of the Chargor(s)' account or accounts at any branch of MBSB of whatsoever nature with and liabilities of whatsoever nature to MBSB and may set off or transfer any sum standing to the credit of any such accounts in or towards the satisfaction of any of the Chargor(s)' liabilities to MBSB under this Charge or under any other account or accounts of whatever nature and in whatever currency and whatever such account or accounts may be maintained.

### **40. MODIFICATION AND INDULGENCE**

MBSB may at any time and without in any way affecting the security hereby created:

- (a) review the Loan hereby granted and determine vary reduce or increase the amount of the Loan or any credit or other facility granted to the Chargor(s) at such time(s) as MBSB shall in its absolute discretion think fit and the Chargor(s) hereby expressly consent(s) to any such review determination variation reduction and/or increase as may be effected or determined by MBSB pursuant to the provisions of this Clause;
- (b) vary the terms and conditions herein contained in such manner and at such time(s) (as MBSB shall in its absolute discretion think fit) and the Chargor(s) hereby expressly consent(s) to any such variation of the terms and conditions as may be effected or determined by MBSB pursuant to the provisions of this Clause;

- (c) modify or restructure or alter the nature of the Loan herein granted in such manner and at such time(s) as MBSB shall in its absolute discretion think fit and the Chargor(s) hereby expressly consent(s) to any such modification or restructuring or alteration as may be effected or determined by MBSB pursuant to the provisions of this Clause;
- (d) grant to the Chargor(s) or to any other person or guarantor any time or indulgence;
- (e) renew any bills notes or other negotiable securities;
- (f) deal with exchange release or modify or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or at any time hereafter or from time to time have from or against the Chargor(s) or any other person;
- (g) compound or otherwise enter into any scheme of arrangement or composition with the Chargor(s) or any other person or guarantor(s);
- (h) vary from time to time the terms and conditions of the Loan given herein to comply with all relevant rules decisions and rulings of Bank Negara Malaysia whether the same be made before or after the creation of this Charge herein;
- (i) vary the amount of any instalments to be paid by the Chargor(s) to MBSB.

#### **41. WAIVER**

No failure or delay on the part of MBSB in exercising nor any omission to exercise any right, power, privilege or remedy accruing to MBSB under this Charge or any of the other security documents (if any) shall impair any such right, power, privilege, or remedy or be construed as a waiver thereof or an acquiescence in such default; nor shall any action by MBSB in respect of any default or any acquiescence in any such default, affect or impair any right, power, privilege or remedy of MBSB in respect of any other or subsequent default.

#### **42. SUSPENSE ACCOUNT**

Any money received hereunder may be placed and kept to the credit of a suspense account for so long as MBSB thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of any money or liabilities due or incurred by the Chargor(s) to it. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy liquidation composition or arrangement MBSB may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liabilities in the same manner as if this security had not been created and no moneys or dividends so received by MBSB shall be treated as received in respect of this Charge, but the full amount hereby secured shall be payable by the Chargor(s) until MBSB shall have received from all sources one hundred sen in the Ringgit Malaysia on the ultimate balance outstanding against the Chargor(s). After MBSB has received such ultimate balance in full any claim on the part of the Chargor(s) to any excess or any securities remaining with MBSB shall be a matter of adjustment between MBSB and the Chargor(s) or any other person or persons laying claim hereto.

#### **43. NO OBLIGATION TO ADVANCE**

Notwithstanding any other provisions in this Charge to the contrary, it is hereby expressly agreed and declared that the Loan may be reviewed and or the terms and conditions thereof may be amended and or varied from time to time and at any time by MBSB irrespective of whether the Chargor(s) has committed any breach hereunder and nothing in these presents contained shall be deemed to impose on MBSB any obligation either at law or in equity to make or to continue to make available the Loan or to make or to continue to make any advance thereunder.

#### **44. LIENS AND OTHER SECURITIES**

Nothing herein contained shall prejudice or affect any lien to which MBSB is entitled or any other securities which MBSB may at any time or from time to time hold for or on account of the moneys hereby secured nor shall anything herein contained operate so as to merge or otherwise prejudice or affect any bill note guarantee mortgage or other security which MBSB may for the time being have for any money intended to be hereby or otherwise secured or any right or remedy of MBSB thereunder.

#### **45. INTEREST RATE IN OTHER SECURITIES**

When the payment of any moneys hereby secured or intended so to be shall be further secured to MBSB by any bill of exchange promissory note draft receipt or other instrument reserving a higher rate of interest to be paid in respect thereof that hereinbefore covenanted to be paid such higher rate of interest shall be payable in respect of such moneys and nothing contained in or to be implied from these presents shall affect the right of MBSB to enforce and recover payment of such higher rate of interest or as the case may be the difference between such higher rate and the rate payable hereunder.

#### **46. PAYMENT BY MBSB**

All costs charges and expenses incurred hereunder by MBSB including any expenditure incurred in the creation enforcement and/or preparation of this Charge or in the giving of any notice or in the making of any demand under pursuant to or in respect of this Charge or any moneys secured by this Charge and all other moneys whatsoever paid by MBSB in respect of the said costs charges expenses and expenditure or otherwise howsoever and all or any sums of moneys paid or expended by MBSB under or pursuant to the provisions of the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) and this Charge express or implied shall be payable by the Chargor(s) to MBSB on demand and shall bear interest thereon at the Prescribed Rate with monthly rests from the date of the sums having been paid or expended or as the case may be and such sums and interest shall on demand be paid to MBSB by the Chargor(s) and until payment shall be charge on the said Property in addition to the principal sum hereby advanced and shall form part of the first payment due under this Charge.

#### **47. COSTS & PAYMENTS BY CHARGOR**

- (a) The Chargor(s) shall and hereby undertake to pay all fees and expenses in connection with or incidental to this Charge, including MBSB's solicitors' fee (on a solicitor and client basis) in connection with the preparation and execution of this Charge and any documents related thereto. If the moneys hereby secured or any part thereof shall be required to be recovered through any process of law or if the said moneys or any part thereof shall be placed in the hands of solicitors for collection, the Chargor(s) shall pay (in addition to the moneys then due and payable hereunder) MBSB's solicitors' fees (on a solicitor and client basis) and any other fees and expenses incurred in respect of such collection.
- (b) The Chargor(s) shall repay to MBSB on demand together with interest any expenses incurred for repairs effected by MBSB to the Chargor's(s') building or fixtures therein and until such repayment in full such moneys shall be deemed to be a sum advanced by MBSB to the Chargor(s) and shall be debited to the account of Chargor(s) to be secured by this Charge.
- (c) If any sum shall be debited to the account of the Chargor(s) pursuant to Clause 46 of this Clause, the Chargor(s) shall pay the administrative costs incurred by MBSB in effecting such debit. The amount of such administrative costs shall be determined at MBSB's absolute discretion and shall be debited to the account of Chargor(s) and form part of the Loan outstanding under this Charge.

#### **48. CONSENT TO TRANSFER**

The Chargor(s) hereby covenant(s) and agree(s) that MBSB shall be at liberty at any time with or without notice to the Chargor(s) to transfer all its rights interest and benefit and obligations of this Charge to any person or financial institution upon such terms as MBSB shall deem fit and any recital or statement therein of the amount due to MBSB under or by virtue of these presents shall be conclusive and binding for all purposes against the Chargor(s) and shall not be questioned on any account whatsoever.

#### **49. UNDERTAKINGS**

In consideration of:

- (a) MBSB having at the request of the Chargor(s) given its express or implied undertaking or covenant to the Vendor/Developer or its solicitors or firm of solicitors purporting to act for the Vendor/Developer to pay; or
- (b) MBSB having at the request of the Chargor(s) given its express or implied undertaking or covenant to pay MBSB's solicitors to enable MBSB's solicitors to give to the Vendor/Developer or the Vendor's/Developer's solicitors their solicitor's undertaking to pay the balance purchase price payable by the Chargor(s) under the Schedule of Payment set out in the Sale and Purchase Agreement the Chargor(s) agree(s) (in addition to the said Property being charged as provided herein) that the said Property is charged for the benefit of MBSB with the payment of all monies undertaken or guaranteed or covenanted to be paid by MBSB to the Vendor/Developer or the Vendor's/Developer's solicitors or MBSB's solicitors as the case may be and the Chargor(s) will at all times hereafter indemnify and keep MBSB indemnified against all actions proceedings costs expenses claims and demands which may be taken incurred or suffered by MBSB arising from the aforesaid undertaking given by MBSB and/or MBSB's Solicitors to the Vendor/Developer or the Vendor's/Developer's solicitors.

#### **50. LOAN APPLICATION FORM**

The Chargor(s) hereby covenants with MBSB that each and every statement contained in the Loan Application Form and every declaration made therein in accordance with the provisions of the Statutory Declarations Act, 1960 is true and accurate and that if it is hereinafter discovered that any of the statements or declarations contained therein is false or untrue the Chargor(s) shall be deemed to have committed a breach of covenant and in such an event MBSB shall be entitled to have recourse to the remedies provided in Clause 23 hereof for breach of covenant.

#### **51. INFORMATION TO THIRD PARTIES**

The Chargor(s) hereby acknowledge(s) that from time to time, enquiries may be made by third parties (including Central Credit Bureau Bank Negara Malaysia) about the Chargor's(s') account and personal particulars completed by the Chargor(s) in his/her/their Loan Application Form leading to the granting of the Loan. In such an event the Chargor(s) consent(s) and authorise(s) MBSB to disclose to any such person all such information MBSB deems relevant in the circumstances.

#### **52. SEVERABILITY**

Any term, condition, stipulation, provision, covenant or undertaking contained herein which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, voidness, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or enforceable any such term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.

### **53. ENFORCEMENT OF THIS CHARGE**

This Charge is in addition to and not in substitution for any other rights or securities which MBSB may have from or against the Chargor(s) or any Guarantor(s) or other person under this Charge, the Loan Agreement (if any) or any Guarantee or other instruments and may be enforced in accordance with the terms hereof without first having recourse to any of such other rights or securities and without taking any steps or proceedings against any Guarantor(s) or other person as aforesaid.

### **54. FULL REPAYMENT OF THE LOAN**

It is hereby agreed that subject to and without prejudice to MBSB's rights and remedies against the Chargor(s) under Clause 39 herein or in respect of any antecedent claim or breach of covenant by the Chargor(s) all the provisions of this Charge shall cease to be of any effect on the satisfaction by repayment or otherwise of all moneys and liabilities due or owing or payable by the Chargor(s) to MBSB under this Charge or otherwise intended to be hereby secured and MBSB shall at the cost and expense of the Chargor(s) execute a registrable discharge of this Charge.

### **55. OTHER TERMS AND CONDITIONS**

The Loan shall in addition to the terms of this Charge be subject to the terms and conditions:-

- (a) Set out in the Letter of Offer for the Loan whether duly acknowledged by the Chargor(s) or not. All the terms and conditions in the Letter of Offer including appendices shall in so far as not superseded by this Charge be deemed to be incorporated into and form part of this Charge.
- (b) Set out in any charge guarantee indemnity and any other instrument by which any part of the Loan may for the time being be secured.
- (c) Set out in the Second Schedule hereto and in the event of any conflict, discrepancies or variances the special express conditions set out in the Second Schedule shall prevail. The Second Schedule hereto shall be taken read and construed as essential parts of this Charge.
- (d) A breach of the terms of the aforesaid Letter of Offer charge guarantee indemnity and/or any other instrument shall be deemed to be an event of default under this Charge.

### **56. INVOLUNTARY LOSS**

MBSB shall not be answerable for any involuntary loss to the Chargor(s) suffered as a result of or incidental to the exercise or the execution by MBSB of any power conferred on MBSB by this Charge or by Statute and nothing herein contained shall render it obligatory on MBSB either at Law or in equity to make good any such involuntary loss or any part thereof.

### **57. VARIATION OF DATES FOR PAYMENT OF INTEREST AND INSTALMENT**

It is hereby expressly agreed and declared by the parties hereto that notwithstanding the provisions herein contained, the dates and manner herein provided for the payment of interest and repayment of the Loan may at any time and from time to time be varied at the sole discretion of MBSB and thereupon such variation in the manner aforesaid, such variation shall be deemed to become effective and the dates and manner for payment interest, instalments and the principal amount of the Loan shall be deemed to have been amended accordingly and shall be read and construed as if such variation had been incorporated and formed part of this charge at the date of execution thereof.

### **58. VACANT POSSESSION**

When the power to sell the Said Property pursuant to the provisions of the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Ordinance (CAP 68) (where applicable) becomes

exercisable by MBSB the Chargor(s) hereby declares and agrees that the Chargor(s) shall deliver or cause the delivery of vacant possession of the Said Property to MBSB or any person authorized by it immediately on receiving written demand in that behalf by MBSB.

#### **59. MBSB'S RIGHT TO COMMENCE FORECLOSURE AND LEGAL PROCEEDING CONCURRENTLY**

Notwithstanding any provision hereof, it is hereby expressly agreed that upon default or breach by the Chargor(s) to be observed and performed, MBSB shall thereafter have the right to exercise all or any of the remedies available whether by this Charge, the National Land Code and/or Sarawak Land Code (CAP 81) and/or Sabah Land Code (CAP 68) (where applicable) or by any other statute or otherwise and shall be entitled to exercise such remedies concurrently including pursuing all remedies of sale or possession pursuant to this Charge and civil suit to recover all monies due and owing to MBSB.

#### **60. CONSTRUCTION WHERE CHARGOR(S) NOT AN INDIVIDUAL PERSON**

- (a) If the name of the Chargor(s) herein inserted is that either of a firm or of a limited company or of other corporation or of any committee or association or other unincorporated body any of the provisions herein contained which are primarily and literally applicable to the case of a single and individual person only shall be construed and take effect so as to give MBSB herein a security for the moneys owing from that firm and every member thereof or from the limited company or corporation or committee or association or other unincorporated body as identical or analogous as may be with or to that which would have given for moneys owing from a single individual(s) if the Chargor(s) had been a single individual(s) and any moneys shall be deemed to be so owing and secured by this Charge notwithstanding any defect informality and/or insufficiency in the powers of the Chargor(s) to charge the said Land herein and/or in the borrowing powers of the Chargor(s) or in the exercise thereof which might be a defence as between the Chargor(s) and MBSB.
- (b) In the case of a firm this Charge shall be deemed to be a continuing security for and of all moneys owing on any such account as herein mentioned from the person(s) carrying on business in the name of or in succession to the firm or from any one or more of such person(s) although by death retirement or admission of partners or other causes the constitution of the firm may have been in part or wholly varied.
- (c) In the case of a limited company or other corporation any reference bankruptcy shall be deemed to be a reference to liquidation winding up or other analogous proceedings and the moneys owing as aforesaid and hereby secured shall be deemed to include any moneys owing in respect of debentures of debenture stock of the limited company or other corporation held by or on behalf of the MBSB.

#### **61. SUCCESSOR BOUND**

This Charge shall be binding upon the heirs liquidators receivers representatives assigns and successors in title of the Chargor(s) and on the successors in title of MBSB.

#### **62. TIME**

Time whenever mentioned shall be of the essence of this Annexure.

#### **63. EFFECT OF HEADING**

The headings of the Clauses hereto are inserted for convenience and shall not form part of this Annexure.



## **64. CROSS DEFAULT**

MBSB reserves the right to proceed with legal proceedings against the Chargor(s) or any Security Parties or to recall the Loan and all other monies payable to MBSB under this Charge or withhold or withdraw the Loan if there is a default in the payment of any monies due by the Chargor(s) hereunder or a default by the Chargor(s) and/or any Security Parties under any other account with MBSB or any other financial institution or if there is a default in the payment of any monies under the accounts of any other party of which the Chargor(s) and/or any Security Parties is/are a guarantor or when the Chargor(s) and/or any security party(ies) cease(s) or threaten(s) to cease to carry on its business or a petition is presented or a resolution passed for the winding up of the Chargor(s) and/or any Security Parties or the subsidiary or holding company of the Chargor(s) and/or any Security Parties.

## **65. DEFINITIONS**

In this Charge unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided:

- (a) words importing the masculine gender include the feminine and neuter genders;
- (b) words applicable to natural person include any body or persons company corporation firm or partnership corporate or unincorporate;
- (c) words in the singular include the plural and words in the plural include the singular;
- (d) where there are two (2) or more persons or parties included or comprised in the expression "Chargor(s)" the agreements covenants terms stipulations and undertakings expressed to be made by and on the part of the Chargor(s) shall be deemed to be made by or binding upon such persons or parties jointly and severally;
- (e) the term "principal" shall include all sums and moneys whatsoever advanced or paid to or on behalf of the Chargor(s) by MBSB or otherwise howsoever payable by the Chargor(s) to MBSB pursuant to this Charge (whether or not same shall form part of the Loan) and the term "interest" shall include interest at the Prescribed Rate on all such sums and moneys aforesaid accordingly the expression "principal" or "interest" shall include all such sums and moneys and interest thereon as aforesaid;
- (f) the term "the Said Property" includes the buildings erected thereon described as and any other building(s) structure(s) fixture(s) thereon;
- (g) Any reference made in this Agreement to any Land Code/Land Ordinance or other legislation shall include National Land Code and/or Sarawak Land Code (CAP 81) and / or Sabah Land Ordinance (CAP 68) (where applicable) and includes any statutory amendments or re-enactment thereof;
- (h) the term "Vendor/Developer" refers the party/parties named as the vendor and/or the developer in the Sale and Purchase Agreement;
- (i) the term "Sale And Purchase Agreement" refers to the agreement referred to in Section 6 of the First Schedule hereto made between the Chargor(s) of the one part and the Vendor/Developer of the other part wherein in the Vendor/Developer agreed to sell and the Chargor(s) agreed to purchase the Said Property upon the terms and conditions stated therein;
- (j) the term "Security Documents" shall include this Charge, the Guarantee (if any) and other security documents which MBSB may from time to time require as security for the Loan;
- (k) the term "Security Parties" refers to the parties executing this Charge, the Guarantee (if any) and any other security documents which MBSB may require from time to time and include any party or

parties providing any security to MBSB to secure the repayment and payment by the Chargor(s) of all moneys, interests, costs, charges and other monies arising from or in connection with the Loan;

- (l) the term “MBSB’s Effective Cost of Funds” or “ECOF” means the interest rate determined by MBSB from time to time as its borrowing cost to finance the lending activities of MBSB which is inclusive of but not limited to the incidental administrative cost incurred by MBSB.

#### **66. RIGHT OF UPSTAMPING**

This Charge and the Security Documents are intended to regulate and secure any further financing to the Chargor(s), and in the event such further financing is made by MBSB, MBSB is hereby duly authorised to pay such additional stamp duty on this Charge to regulate and secure such further financing at such rate as such additional financing shall attract based on the then prevailing legislations pertaining to stamp duty.

Notwithstanding anything herein written, MBSB shall also have the right, at any time and from time to time, without any prior notice to the Chargor(s), to upstamp this Charge to secure also the excess of any Indebtedness (including all profits thereon) due or owing to MBSB over the principal amount for which this Charge shall for the time being be stamped.

#### **67. REGULATORY TAXES**

If any supply or services made pursuant to this Charge and the Transaction Documents is a taxable supply or service, MBSB reserves its right to levy the taxes at the prescribed rate and the Chargor (as the recipient of the supply or service) agrees to pay the amount of taxes which will be advised by MBSB accordingly.

#### **68. PERSONAL DATA PROTECTION ACT 2010 (ACT 709)**

In the course of your dealing with MBSB, MBSB may request the Chargor(s) to provide personal data of the Chargor(s) and its employees, agents, directors, contact persons, shareholders, representatives, authorized person and shareholdings details of the Chargor(s)’s shareholders as disclosed by the Chargor(s) prior to or during the course of performance of this contract for the performance of contract, marketing, legitimate business activity, administration and economic efficiency purposes. The personal data of the Chargor(s)’s employees, agents, directors, contact persons, shareholders, representatives and authorized persons may be disclosed and shared with other related corporations and subsidiaries of MBSB within and outside Malaysia for the aforesaid purposes. The Chargor(s) hereby warrants that the Personal Data Protection Act 2010 has been complied with and that consents have been obtained from the Chargor(s)’s employees, agents, directors, contact persons, shareholders, representatives and authorized persons in relation to the disclosure and processing of their personal data by MBSB for the aforesaid purposes.

#### **69. ANTI-MONEY LAUNDERING ACT AND ANTI-TERRORISM FINANCING ACT 2001 (ACT 613)**

The Customer(s) hereby further covenants and undertakes that from the date of this Agreement, it shall ensure that it has never and would not:

- (i) engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- (ii) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into Malaysia proceeds of any unlawful activity; or
- (iii) conceal, disguise or impede the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity; and

The Customer(s) confirms to MBSB that it is not involved in any money laundering activity within the meaning of Section 3 of the Anti-Money Laundering and Anti-Terrorism Act, 2001.

In the event MBSB is of the view that any transaction herein has or shall have possible implications under the Anti-Money Laundering and Anti-Terrorism Financing, Act 2001 (ACT 613), MBSB may at its

sole discretion, close the account(s) and/or terminate the financier-customer relationship without giving any notice whatsoever to the Customer(s).

*-“The remaining of this page is intentionally left blank”-*

**IN WITNESS WHEREOF** the hands of the Chargor(s) and MBSB were hereunto written and affixed respectively.

SIGNED by the abovenamed )  
 )  
**CHARGOR(S)** in the )  
 )  
presence of:- )  
 )  
 )

SIGNED for and on behalf of )  
**MALAYSIA BUILDING SOCIETY BERHAD** )  
**(Company No. 197001000172/ 9417-K)** )  
by its Attorneys )  
 )  
in the presence of:- )  
 )

**THE FIRST SCHEDULE**

(which is to be taken read and construed as an essential part of this Charge)

SECTION	PARTICULARS	
1.	CHARGOR(S)	
2.	SAID PROPERTY	
3.	THE LOAN AMOUNT	All monies due and owing to MBSB by the Chargor(s) from time to time pursuant to the Letter of Offer(s) issued by MBSB at the Chargor(s)' request and accepted by the Chargor(s) from time to time.
4.	INTEREST (The Prescribed Rate which is calculated on monthly rests before as well as after judgement)	As per Letter of Offer
5.	MONTHLY INSTALMENT	As per Letter of Offer
6.	DATE OF SALE AND PURCHASE AGREEMENT	
7.	TERM	A period of _____ months commencing from the date on which the Loan is fully released.

**THE SECOND SCHEDULE  
SPECIAL CONDITIONS / SPECIAL EXPRESS CONDITIONS**

(reference to **Section 55 (c)** which is to be taken read and construed as essential part of this **ANNEXURE**)

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Refer to Letter of Offer attached hereto which shall includes any amendments, variations and/or supplemental and/or notification made or entered into from time to time.