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Dated the                      day of                      20

Between

**MBSB BANK BERHAD**  
**(Company No. 716122-P)**  
**(“the Bank”)**

AND

THE PARTY AS SET OUT IN ITEM 1 (A) OF THE SCHEDULE HEREIN

**ANNEXURE**

SOLICITORS

**MBSB BANK BERHAD (Company No.: 716122-P)**

\*Delete whichever not applicable

MBSB Bank Berhad/Annexure-1<sup>st</sup> Party/PF-i/2018

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## ANNEXURE

I/We, the party(ies) whose name(s) and particulars are as set out in Item 1(a) of the Schedule hereto (hereinafter called "the Chargor(s)") **DO HEREBY EXPRESSLY COVENANT DECLARE AND UNDERTAKE with MBSB BANK BERHAD (Company No.: 716122-P) , a company incorporated in Malaysia pursuant to the Companies Act, 2016 and having its registered office at 11th Floor, Wisma MBSB, 48, Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur ("the Bank" and includes its successors in title and lawful assigns)** and a place of business at the address as set out in Item 1(b) of the Schedule (hereinafter called "the Bank") as follows:-

### ARTICLE I RECITALS

#### Section 1.1 The Property

The Chargor(s) is/are the registered and/or beneficial owner(s) of all that piece of property which particulars are set out in Item 2 of the Schedule hereto (hereinafter referred to as "the Property") pursuant to a Sale and Purchase Agreement/Proclamation of Sale particulars of which are as set out in Item 3 of the Schedule hereto (hereinafter referred to as "the Sale and Purchase Agreement") entered into between the party(ies) whose name(s) and particulars are as set out in Item 4 of the Schedule hereto (hereinafter referred to as "the Developer/Vendor/Proprietor") of the first part and the Chargor(s) of the second part, the Developer/Vendor/Proprietor agreed to sell and the Chargor(s) agreed to purchase the Property at the purchase price and upon the terms and conditions contained in the Sale and Purchase Agreement.

#### Section 1.2 The Facility

The Chargor(s) has/have applied to the Bank for the Facility (as herein defined) and the Bank has approved the said application upon the terms of the Bank's letter of offer which particulars are as set out in Item 6 of the Schedule hereto (hereinafter referred to as "the Letter of Offer").

#### Section 1.3 Execution of this Charge

It is a term of the Letter of Offer and the Security Documents that the payment of the Instalments and all monies due and payable by the Chargor(s) to the Bank under the Facility or in connection with or arising from the Facility granted by the Bank at any time and from time to time is to be secured by this Charge to be executed by the Chargor(s) in favour of the Bank in accordance with the terms and subject to the conditions hereinafter contained.

\*Delete whichever not applicable

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## ARTICLE II DEFINITIONS AND INTERPRETATION

### Section 2.1 Definitions

In this Charge unless the context otherwise requires the following words and expressions shall have the same respective meanings that are ascribed to them following meanings:-

**“Acts”** means the National Land Code (Act 56 of 1965) of Peninsular Malaysia, Sarawak Land Code (Cap. 81) and Sabah Land Ordinance (Cap. 68) the Land (Subsidiary Title) Enactment, 1972, the Strata Titles Act, 1985, and the Strata Titles Ordinance, 1995, and includes any statutory amendment or re-enactment thereof.

**“Bai’ Inah”** means an arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent purchase of the asset at a cash price lower than the deferred sale price or vice versa, and which complies with the specific requirements of *bai` inah*.

**“Bai’ Bithaman Ajil”** means a contract of sale and purchase of an asset in which the payment of price is deferred and paid in instalment within an agreed period of time. The selling price includes profit.

**“Auction Price”** means the total Auction Price of the Property under the Proclamation of Sale as set out in Item 3(b) of the First Schedule of the Property Sale Agreement.

**“Business Day”** means a day on which the Bank is open for business on which transactions of the nature required by this Agreement are carried out.

**“Chargor(s)”** means the Customer as described in Item 1(b) of the First Schedule of the Property Sale Agreement and shall, where the context so admits, include his/her/their/its successors in title, permitted assigns, heirs, personal representatives, as the case may be.

**“Event of Default”** means any of the events or state of affairs specified in Section 9.1 of the Property Sale Agreement or any other event rendering the Facility and any other monies payable to the Bank under or pursuant to this Charge immediately due and payable to the Bank.

**“Indebtedness”** means the Sale Price and all monies payable by the Chargor(s) to the Bank pursuant to or under the Security Documents.

**“Instalments”** means the monthly instalments payable during the Tenure in respect of the Bank’s Selling Price based on the EPR whereby the number and amount of the monthly instalments as well as the payment date of each instalment are to be advised by the Bank upon expiry of the Grace Period or full disbursement of the Facility whichever is earlier.

**“Letter of Offer”** means the letter or letters of offer issued or to be issued by the Bank from time to time and include without limitation the letter(s) of offer set out in the Property Sale Agreement where the Bank had granted or agrees to grant and the Customer(s) agree(s) to accept the Facility or any additional or further facility or any variation, restructuring, conversion, interchange or substitution of the Facility and includes any amendments and supplements thereto and the term “Letter of Offer” shall refer to any one of the Letters of Offer.

**“The Bank”** means **MBSB BANK BERHAD (Company No.: 716122-P)** a company incorporated in Malaysia under the Companies Act 2016 and having its registered office at 11th Floor, Wisma MBSB, 48, Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur and having its place of business at the

\*Delete whichever not applicable

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address set out in Item 1(b) of the Schedule herein and shall, where the context so admits, includes persons deriving title thereunder and its successors in title and assigns and shall include any branch office of the Bank.

**“Month”** means a calendar month.

**“National Land Code”** means the National Land Code, 1965, including any statutory amendment or re-enactment thereof.

**“Proclamation of Sale”** means the of the Proclamation of Sale as stated in Item 3(a) of the First Schedule of the Property Sale Agreement made between the Customer(s) of the first part and the Vendor of the second part wherein the Vendor agreed to sell and the Customer(s) agreed to purchase the Property upon the terms and conditions therein contained in the Proclamation of Sale.

**“Property”** shall mean (i) the property described under Item 2 of the Schedule hereto and/or any building and fixture now or hereafter or from time to time erected thereon or affixed thereto or any part or portion thereof; and (ii) where applicable shall include any Accessory Parcel appurtenant thereto under the relevant Acts.

**“Facility”** means a facility of the maximum aggregate amount set out in Item 5 of the Schedule hereto made available or to be made available by the Bank to the Chargor(s).

**“Property Purchase Agreement”** means the property purchase agreement entered between the Chargor(s) of the one part and the Bank of the other part the date of which is set out in Item 7 of the Schedule hereto.

**“Property Sale Agreement”** means the property sale agreement entered between the Chargor(s) of the one part and the Bank of the other part the date of which is set out in Item 8 of the Schedule hereto.

**“Sale and Purchase Agreement”** means the sale and purchase agreement of the date stated in Item 3 of the Schedule hereto made between the Chargor(s) of the first part and the Developer/Vendor/Proprietor of the second part (which expression shall where the context so permits include any agreement for the purchase of any Accessory Parcel) and (if applicable) the Proprietor of the final part wherein the Developer/Vendor/Proprietor (where applicable) agreed to sell and the Chargor(s) agreed to purchase the Property upon the terms and conditions contained therein.

**“Secured Amounts”** means all monies due and owing to the Bank by the Chargor(s) from time to time pursuant to the Letter of Offer(s) issued by the Bank at the Chargor(s)' request and accepted by the Chargor(s) from time to time.

**“Security Documents”** means the Letter of Offer, Property Purchase Agreement, the Property Sale Agreement, this Charge and the other additional security documents as set out in Item 10 of the First Schedule of the Property Sale Agreement and/or Letter of Offer and shall include any other documents for the time being or from time to time constituting security for the obligations liabilities and indebtedness of the Assignor(s) and reference to “Security Document” include references to any one thereof.

**“Security Party(ies)”** means the party(ies) executing the Security Documents and includes any party or parties providing any security to the Bank to secure the payment by the Chargor(s) of all monies, costs, charges and other monies arising from or in connection with the Facility or in connection with or arising from the Facilities granted by the Bank at any time and from time to time.

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“**Tenure**” means the payment period of the Sale Price as set out in Item 13 of the First Schedule of the Property Sale Agreement.

## **Section 2.2 Interpretation**

- (a) Words importing the masculine gender only include the feminine and neuter genders.
- (b) Words importing the singular number only include the plural number and vice versa and where there are two or more persons included in the expression “the Chargor(s)” covenants expressed to be made by the Chargor(s) shall be deemed to be made by such persons jointly and severally.
- (c) The heading in this Charge are inserted for convenience only and shall be ignored in construing the provisions of this Charge.
- (d) References to Articles and Sections are to be construed as references to Articles and Sections of this Charge, unless stated otherwise.
- (e) Any reference to the provisions of any legislation includes any statutory modification or re-enactment thereof.
- (f) Any liberty or power which may be exercised or any determination which may hereunder by the Bank may be exercised or made at the Bank absolute or unfettered discretion and the Bank shall not be under any obligation to give any reason thereof to the Chargor(s).
- (g) Words applicable to natural persons include any body, person, company, corporation, firm or partnership, corporate or otherwise and vice versa.
- (h) The words “herein”, “hereinafter”, “hereinbefore”, “hereof”, “hereunder”, and other words of similar import shall refer to this Charge as a whole and not to any particular provision.
- (i) The words “monies”, “Ringgit Malaysia” and the symbol “RM” shall construed as Malaysian currency.
- (j) The Schedule hereto shall form an integral part of this Charge and shall be taken, read and construed as an essential part thereof.
- (k) Where there are two (2) or more persons or parties included or comprised in the expression “the Chargor(s)”, all 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.

## **Section 2.3 Property Sale Agreement and Property Purchase Agreement incorporated into this Charge**

All the provisions of the Property Sale Agreement and the Property Purchase Agreement whether repeated herein or not are incorporated into and form part of this Charge and all representations, warranties and covenants made therein by the Customer(s) and/or the Chargor(s) shall be deemed to have been made by the Chargor(s) and references to the Customer(s) and/or the Chargor(s) in the Property Sale Agreement and the Property Purchase Agreement shall be read as if they were

\*Delete whichever not applicable

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references to the Customer(s) and/or the Chargor(s). Subject to such alterations or variations where necessary to make the provisions of the Property Sale Agreement consistent with the provisions of this Charge, in the event of any conflict or discrepancy between the provisions of the Property Sale Agreement and this Charge, the provisions of this Charge shall prevail for the purpose of interpretation and enforcement of this Charge.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

#### **Section 3.1 Representations and warranties**

The Chargor (s) hereby represent (s) and warrant (s) to the Bank as follows:

- (a) that this Charge constitutes the legal, valid and binding obligations of the Chargor(s) in accordance with their terms and conditions;
- (b) that the execution, delivery and performance of this Charge by the Chargor(s) :-
  - (i) will not violate the provisions of any law or regulation or any order or decree of any governmental authority, agency or court to which the Chargor(s) is subject;
  - (ii) will not violate the provisions of any mortgage, contract or other undertaking or instrument to which the Chargor(s) is a party or which is binding upon the Chargor(s);
  - (iii) will not result in the creation or imposition of any obligation to create or impose any mortgage, lien, pledge or charge on any of the Chargor(s)' assets or revenues pursuant to the provisions of any such mortgage, contract or other undertaking or instrument;
- (c) that all consents, approvals or authorisations 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 has been obtained and are in full force and any conditions contained therein or otherwise applying thereto have been complied with;
- (d) that the Chargor(s) is/are not in default under any agreement to which the Chargor(s) or any one of them is/are a party or by which the Chargor(s) or any one of them may be bound and no litigation, arbitration or administrative proceedings are presently current or 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)' ability to perform the Chargor(s)'s obligations under this Charge;
- (e) that the Chargor(s) has/have the full and absolute power, right and authority to execute this Charge and that there is and shall be no person or party having priority over the Bank in respect of the Property and/or this Charge, save and except as the Bank may agree in writing in its absolute discretion;
- (f) that the Chargor(s) or the Chargor(s)' account is not listed under the Biro Maklumat Cek (BMC) guidelines or otherwise for that matter the Chargor(s)' account be designated as "special" under such guidelines;
- (g) if the Chargor(s) is/are a corporation:

\*Delete whichever not applicable

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- (i) the Chargor(s) is/are duly incorporated under the relevant law;
  - (ii) all requisite corporate shareholders or other approvals for the execution of this Charge have been obtained; and
  - (iii) the Chargor(s) is/are empowered to execute this Charge under their respective constitutive document;
- (h) that all the particulars and declarations furnished, provided or made by the Chargor(s) in respect of the Chargor(s) application for the Facility are true, accurate and correct in all respects.

### **Section 3.2 Truth and correctness of representations and warranties**

- (a) The Chargor(s) acknowledge(s) that the Bank has accepted this Charge on the basis of and in full reliance upon, the aforesaid representations and warranties and the representations and warranties in the Property Sale Agreement, 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 Facility shall remain available.
- (b) The truth and correctness of all the matters stated in the representations and warranties under Section 3.1 hereof shall form the basis of the Bank's commitment to make available or continue to make available the Facility under the terms of the Property Sale Agreement and/or any other security documents created from time to time to secure the Facility 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 the Bank shall have the right at its absolute discretion to review, suspend, recall or terminate the Facility or any part thereof.

### **Section 3.3 Charge**

As security for the payment of the Instalments and such sums and monies as are due or payable under the Facility, the Chargor(s) hereby charge(s) the Property by way of a fixed charge upon the terms and conditions hereinafter contained.

## **ARTICLE IV COVENANT TO PAY**

### **Section 4.1 Covenant to pay**

- (a) In consideration of the Bank having agreed at the request of the Chargor(s) to grant and make available and continue to grant and make available the Facility to the Chargor, the Chargor(s) hereby agree(s), covenant(s) and undertake(s) to pay the Bank, on demand, the Secured Amounts and to pay such sums and monies as are or may become payable by the Chargor(s) under the Facility pursuant to this Charge and the Security Documents (if any).

Any written statement of the Manager, Assistant Manager or any other authorised officer of the Bank or any solicitor or firm of solicitors acting for the Bank as to the amount(s) of the Instalments or the balance thereof and/or any sums due and payable in respect of the Facility pursuant to the Property Sale Agreement and/or this Charge and/or any other security documents created from time to time to secure the Facility shall be final and conclusive evidence against the Chargor(s).

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## Section 4.2 Demands/notices

- (a) The Chargor(s) hereby covenant(s) and agree(s) to forthwith pay to the Bank on demand the Instalments failing which the Bank may, where such failure to pay has continued for a period of seven (7) days, forthwith give the statutory notice pursuant to the relevant provisions of the applicable Act requiring the Chargor(s) to remedy the said failure or refusal to pay within a period of not less than one (1) month calculated from the date such statutory notice is deemed to have been served. If under the provisions of the applicable Acts, the duration of the statutory notice is longer than one (1) month then the statutory notice given pursuant to such Act shall be for the duration prescribed under that Act.
- (b) Without prejudice to the generality of Section 4.2(a) above, the Instalments and any monies payable under the Facility shall become forthwith due and payable and must be discharged by the Chargor(s) immediately upon the happening of any of the events stipulated in Section 9.1 of the Property Sale Agreement or if the Chargor(s) threaten(s) to commit or commit(s) a breach of any of the terms contained in this Charge (other than the covenant or undertaking for payment of monies due under Section 4.2(a) above) which is capable of remedy and is not remedied within a period of one (1) month from the date of happening of such breach. In the event that the Chargor(s) shall fail to pay the Instalments and any monies payable under the Facility or shall fail to remedy the breach, the Bank shall be entitled to exercise its rights as provided in Section 4.2(a) above.
- (c) If and when the Instalments and monies payable under the Facility hereby covenanted to be paid by the Chargor(s) to the Bank shall be demanded as aforesaid or shall otherwise be required to be settled the monies owing by the Chargor(s) to the Bank shall be ascertained by the Bank and when such monies shall be ascertained the Chargor(s) agree(s) that the statement of the Manager, Assistant Manager or any other authorised officer of the Bank or by any solicitor or firm of solicitors acting for the Bank as to the amount of the monies in respect of the Facility and all monies due and payable under this Charge shall be final and conclusive.
- (d) Any demand for payment of the monies intended to be hereby secured may be made by a notice in writing requiring payment within one (1) month from the date of the said notice or in the case where the statutory notice under any of the applicable Act must by law be for a period longer than one (1) month, then the notice requiring payment shall be for such period as may be prescribed by or under the applicable Act and may be signed on behalf of the Bank by any Manager, Assistant Manager or any other Officer of the Bank or by any solicitors purporting to act for the Bank 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 address abovestated of the Chargor(s) or at the usual or last known place of business of the Chargor(s) or sent by registered or ordinary mail 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 or ordinary mail would in the ordinary course of post be delivered or if it is served in such manner as may be prescribed by the applicable Act.
- (e) Any notice required or permitted to be served by the Bank under or pursuant to this Charge may be served and shall be deemed served in the like manner as a notice demanding payment as provided in Section 4.2(d) hereof.

\*Delete whichever not applicable

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**ARTICLE V  
UNDERTAKINGS**

**Section 5.1      Undertakings**

- (a) In consideration of:
- (i) The Bank having at the request of the Chargor(s) given its express or implied undertaking or covenant to any financial institution and/or the Developer/Vendor/Proprietor or their solicitors or firm of solicitors purporting to act for the financial institution or the Developer/Vendor/Proprietor, to pay;
  - (ii) The Bank having at the request of the Chargor(s) given its express or implied undertaking or covenant to pay the Bank's solicitors to enable the Bank's solicitors to give to the financial institution and/or the Developer/Vendor/Proprietor and/or the solicitors acting for the financial institution and/or the Developer/Vendor/Proprietor and/or 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 or any variation in the order of payment thereof or under any other relevant sale and purchase agreement, the Chargor(s) agree(s) (in addition to the Property being charged as provided herein) that the Property is charged for the benefit of the Bank with payment of all monies undertaken or guaranteed or covenanted to be paid by the Bank to the financial institution and/or the Developer/Vendor/Proprietor or their solicitors and/or the Bank's solicitors, as the case may be, and the Chargor(s) will at all times hereafter indemnify and keep the Bank indemnified against all actions, proceedings, costs, expenses, claims and demands which may be taken incurred or suffered by the Bank arising from the aforesaid undertaking given by the Bank to the financial institution and/or the Developer/Vendor/Proprietor and/or their solicitors and/or the Bank's solicitors.
- (b) In the event that any of the Chargor(s) is/are declared a bankrupt or is/are already a bankrupt at the time of the grant of the Facility and the Bank does not realise its security under this Charge within six (6) months from the date of the receiving order, the other Chargor(s) (if applicable) who is not bankrupt hereby agree(s) to pay the full amount of the Instalments and any monies outstanding in respect of the Facility and the Bank is entitled to recover the same under this Charge notwithstanding Section 8(2A) of the Bankruptcy Act, 1967.

**ARTICLE VI  
SECURITY**

**Section 6.1      Continuing security**

This Charge is expressly intended to be and shall be a continuing security for the repayment and payment of the Secured Amounts notwithstanding that the account or accounts of the Chargor(s) with the Bank shall cease to be current for any reason whatsoever and notwithstanding any settlement of account or accounts or otherwise.

**Section 6.2      Covenant to provide further security**

- (a) The Chargor(s) will at any time and when required by the Bank execute in favour of the Bank or as the Bank shall direct such further legal or other mortgages, charges, debentures, assignments, transfer, agreements or other assurances as the Bank shall require of and on all the Chargor(s) rights, title and interests in any property or assets or business now belonging

\*Delete whichever not applicable

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to or which may hereafter be acquired by or belonging to the Chargor(s) (including any vendor's lien) and the benefit of all licences held in connection therewith to secure all monies and liabilities hereby agreed to be paid or intended to be hereby secured such mortgages, charges, assignment, transfers, agreements or other assurances to be prepared by or on behalf of the Bank at the cost of the Chargor(s) and to contain all such terms and conditions for the benefit of the Bank as the Bank may require or stipulate.

- (b) The Chargor(s) shall at any time if and when required by the Bank to do so deposit with the Bank the document(s) of title of any or all immovable properties vested in the Chargor(s) for any tenure and all or any debentures, 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 payment of monies and liabilities hereby secured and may also or otherwise be for the purpose of securing any other monies owing to the Bank and not secured hereby.

### **Section 6.3          Restriction against other charges**

The Chargor(s) hereby declare(s), covenant(s), warrant(s) and undertake(s) that there is no mortgage, charge, pledge, lien or security interest over the Property having priority to this Charge and that :-

- (a) The Chargor(s) shall not during the subsistence of this Charge without the prior consent in writing of the Bank execute any form of charge, mortgage, debenture, pledge, lien or security interest or permit to exist any caveat or prohibitory order in respect of the Property;
- (b) This Charge shall be without prejudice to and shall not operate so as to merge or otherwise affect any lien or security already given by the Chargor(s) or any other security which may hereafter be given to the Bank by the Chargor(s) or any other Security Party(ies) or to which the Bank is entitled whether the same be for securing payment of the Secured Amounts and whether such security is taken as additional or collateral security or otherwise howsoever.

## **ARTICLE VII TAKAFUL**

### **Section 7.1          Takaful**

- (a) The Chargor(s) shall insure and cause the Property to be insured with a Takaful company approved by the Bank for an amount acceptable to the Bank against loss or damage by fire and against such other risks as the Bank may deem expedient and shall cause the Bank's interest to be endorsed thereto as "Loss Payee" on the policy so taken out.
- (b) In the event of the Chargor(s)'s default in complying with the provisions of any of the preceding paragraph of this Section then it shall be lawful for but not obligatory upon the Bank to effect such coverage in accordance with Section 7.1(a) with respect to which such default has occurred and all monies expended by the Bank from the date of demand shall be recoverable from the Chargor(s) and shall be repaid on demand for the same being made by the Bank.

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## **Section 7.2 Other Takaful**

The Bank may from time to time and at any time require the Chargor(s) to take out and maintain a Takaful Mortgage Plan or a life Takaful policy. The Chargor(s) hereby agree and undertake to assign absolutely all rights, title, interest and benefits to the proceeds payable under the Takaful Mortgage Plan policy or such life policy the Bank as further security and the Chargor(s) shall name the Bank as the sole beneficiary, in default whereof, the Bank may at its absolute discretion at the cost and expense of the Chargor(s) take out and maintain such policy guaranteeing the payment of all monies owing by the Chargor(s) to the Bank or any part thereof on such terms as the Bank may think fit. In the event of an Event of Default, the Takaful Mortgage Plan shall be terminated by the Bank and the Bank shall be entitled to claim the surrender of the policy.

## **Section 7.3 Restriction against additional Takaful/insurance**

The Chargor(s) shall not except at the request or with the consent in writing of the Bank effect or keep on foot any Takaful/insurance against such risk in respect of the Property or any works buildings or fixtures on or in respect of the Property or any property charged or secured to the Bank when the Bank or the Chargor(s) has effected or has kept on foot the Takaful/insurance policy referred to in Section 7.1(a).

## **Section 7.4 Premium/Contribution receipts**

Upon request by the Bank, the Chargor(s) shall deliver all Takaful/insurance policies or copies thereof as the case may be including receipts or other evidence of payment of premium(s)/contribution(s) paid by the Chargor(s) towards account of the Takaful/insurance, to be deposited with the Bank.

## **Section 7.5 Application of Takaful/ insurance monies**

- (a) The Bank may require any monies received on any Takaful/insurance policies as aforesaid whether effected by the Bank or by the Chargor(s) to be applied in or towards making good the loss or damage to the Property in respect of which the monies is received OR at the option of the Bank in or towards the payment of the Instalments secured hereby and the Chargor(s) shall hold the monies so received from the Takaful/insurance policy in trust for the Bank and the Bank may receive and give a good discharge of all such monies.
- (b) Pending the receipt of any monies by the Bank from the Takaful/insurance company, the Chargor(s) shall continue paying to the Bank whatever monies due and payable herein.
- (c) In the event that the Chargor(s) choose(s) with the consent of the Bank to apply the monies received under any Takaful/insurance policies to make good the loss or damage to the Property the Chargor(s) shall in addition to paying the Instalments, bear the difference between the cost of making good such loss or damage to the Property and the compensation received under the Takaful/insurance policy.
- (d) In the event (if applicable) that the Chargor(s) choose(s) to utilise the monies received under any Takaful/insurance policies to settle the payment of the Instalments hereby secured or any part thereof and the monies so received is less than the total Instalments and other monies payable under the Facility, the Chargor(s) shall pay to the Bank the difference between the total amount received under the Takaful/insurance policies and the total Instalments and other monies payable under the Facility due within seven (7) days from the date of demand by the Bank.

\*Delete whichever not applicable

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**ARTICLE VIII  
BREACH OF COVENANT**

**Section 8.1 Breach of covenant**

In the event of any breach by the Chargor(s) of any of the agreement, covenant, term, stipulation and undertaking herein and on the part of the Chargor(s) to be observed and performed (including the agreement or covenant to pay the Instalments and other monies owing to the Bank on demand) occurring and continuing for a period of not less than seven (7) days it shall be lawful for the Bank forthwith to give notice to the Chargor(s) under the relevant provisions of the applicable Act requiring the Chargor(s) to remedy the said breach within the period prescribed in the applicable Act and service of such notice shall be effected in the same manner as a notice demanding payment of the balance due as hereinbefore provided.

**Section 8.2 No Acquiescence**

Notwithstanding the fact that the Bank may not have exercised any remedy available to it immediately on default by the Chargor(s) or that it may have accepted monies from the Chargor(s) after such default the Bank shall not be held to have waived or acquiesced in such default and may at any time thereafter exercise all or any of the remedies available to it and any delay on the part of the Bank in taking steps to enforce the remedies conferred on and/or available to it by this Charge or statute shall not be held to prejudice its right of action in respect thereof.

**ARTICLE IX  
REMEDIES**

**Section 9.1 Remedies of the Bank**

Upon demand or upon the occurrence of any Events of Default the Bank shall be entitled to exercise such rights as the Bank may have under the Property Sale Agreement and/or any of the Security Documents or at law including without limitation to all or any of the rights and powers as follows:

- (a) the right to enter and take possession of the Property or any part or parts thereof and if permissible under any of the applicable Acts, to be registered as proprietor thereof;
- (b) the right to let, lease or demise the Property or any part or parts thereof for such term of years at such rent and generally upon such terms as the Bank in its absolute discretion shall think fit;
- (c) the right to receive the rents and profits of the Property;
- (d) the right and power to sell the Property by public auction or private treaty as the absolute unencumbered owner thereof at such price or prices and in such manner as the Bank shall in its absolute discretion think fit free from any interest of the Chargor(s) hereunder or otherwise and the right to bid at any such sale;
- (e) the right to sue and institute by way of civil suit or action for the recovery of the Secured Amounts, whether before first realising the Property or otherwise or concurrently with any of the other rights and remedies of the Bank herein or at law.

\*Delete whichever not applicable

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AND the Chargor(s) shall and hereby expressly agree(s), covenant(s) and undertake(s) to do and execute all acts, deeds, instruments and things which the Bank may require or stipulate for the purpose of effecting and/or completing anything and/or any transaction mentioned in this Section herein but without prejudice to the powers or the rights of the Bank in its capacity as Chargee herein.

### **Section 9.2 Proceeds of sale**

All monies received by the Bank from any proceedings instituted or steps taken under this Charge or any other Security Documents (if any) shall be applied by the Bank:-

- FIRSTLY in or towards payment to quit rent, rates, taxes, assessments and other outgoings due to the Government;
- SECONDLY in payment of all costs, charges and expenses incurred and payments made by the Bank 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 Property;
- THIRDLY in or towards payment to the Bank of the Instalments due and remaining unpaid under the Facility;
- FOURTHLY in or towards payment to the Bank of all other monies due and remaining unpaid under this Charge or any other Security Documents (if any);
- FIFTHLY in or towards payment to the Bank of the Chargor(s)' liabilities to the Bank (whether such liabilities be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any other accounts of whatsoever nature, agreement or contract or otherwise with the Bank and all such monies available under this premise are specially held in trust for the Bank for the satisfaction of such liabilities;
- SIXTHLY any surplus shall be paid to such persons entitled thereto.

PROVIDED ALWAYS THAT if the Bank shall be of the opinion that the security may prove deficient the same shall not prejudice the right of the Bank to receive the full amount to which it would have been entitled or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

### **Section 9.3 Personal liability of the Chargor(s)**

If the amount realised by the Bank on a sale of the Property after deduction and payment from the proceeds of such sale of all fees (including the fees of the Bank's solicitors on a full indemnity basis), dues, costs, rents, rates, taxes and other outgoings on the Property is less than the amount due to the Bank and whether at such sale the Bank is the purchaser or otherwise the Chargor(s) shall pay to the Bank the difference between the amount due and the amount so realised and until payment will also pay any applicable expenses incurred by the Bank as the Bank may impose from time to time PROVIDED THAT nothing stated herein shall be construed in any manner whatsoever to bind or require the Bank to exercise its right of sale of the Property first before enforcing or suing on the Chargor's personal covenant to pay on demand or to restrict, affect or diminish the Bank's rights at law or in equity.

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#### **Section 9.4 Concurrent exercise of remedies**

The Bank shall have absolute liberty to concurrently exercise all or any of the rights and remedies available to the Bank whether by this Charge or at law or otherwise including without limitation the right to pursue its remedies of sale and possession pursuant to the provisions of the applicable Act and the right to recover by civil suit all monies howsoever due and owing by the Chargor(s), the Guarantor(s) (if any) or any other person(s) to the Bank.

### **ARTICLE X COVENANTS IN RESPECT OF THE PROPERTY**

#### **Section 10.1 Delivery of vacant possession**

Notwithstanding anything in this Charge contained, it is hereby declared that during the continuance of this Charge, the Bank shall have the sole and absolute right and power to deal with the Property in any manner in its absolute discretion thinks fit, including the right and power of sale whether by public auction or private contract as if it were the sole beneficial owner thereof and the Chargor(s) shall, at the Chargor(s) own cost and expense, peaceably deliver immediate vacant possession of the Property to the Bank or to such other person as the Bank may direct.

#### **Section 10.2 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 Property or to which the 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.

#### **Section 10.3 User of the Property**

The Chargor(s) shall not use the Property or any fixture or any building upon the Property or suffer the same to be used for unlawful and will not be used in any manner which is in contravention with the religion of Islam other than those for which the same has been intended nor to store or bring upon the Property any articles of a specially combustible, inflammable or dangerous nature nor to do or suffer to be done anything by reason whereof the Takaful policies referred to in Section 7.1 hereof may be rendered void or voidable. Upon receipt of notice in writing from the Bank that in the opinion of the Bank any user by the Chargor(s) of the Property or any structure or fixture thereon or any part thereof whether by reason of overcrowding or for any reason whatsoever is calculated to affect adversely the security of the Bank, the Chargor(s) shall forthwith discontinue such user.

#### **Section 10.4 Payment of outgoings**

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

\*Delete whichever not applicable

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### **Section 10.5 Information on matters affecting security**

The Chargor(s) shall inform the Bank of any application, demand, notice, order or any other whatsoever notice document or transaction in any way affecting, concerning or touching on the Property or any structure, 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 the Bank 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 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 that the Bank 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 the Bank shall deem fit for the purposes of safeguarding and preserving the Property or any structure or fixture or erection thereon as aforesaid.

### **Section 10.6 Dealings with security**

The Chargor(s) shall not transfer, sell, charge or otherwise howsoever deal with the 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 Property or for rescission, removal or amendment of any condition or restriction affecting the Property without the written consent of the Bank first had and obtained.

### **Section 10.7 Leasing and possession**

The Chargor(s) shall not let out or lease or grant or 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 Property or any fixture or any part thereof to any person, firm or company without the consent in writing of the Bank 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 the Bank deems fit and the decision of the Bank shall be final and conclusive AND it is hereby expressly agreed and declared that the provisions of Section 251 of the National Land Code shall not apply to this Charge.

### **Section 10.8 Repairs**

The Chargor(s) shall at all times during the continuance of this Charge keep any building, structure or fixture now or at any time hereafter erected on or affixed to the Property in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon the Bank to effect such repairs as may be necessary at the cost and expense of the Chargor(s) PROVIDED HOWEVER that if the Bank enters and effects such repairs it shall not be liable as a chargee in possession.

### **Section 10.9 Maintenance**

The Chargor(s) shall not alter, pull down or remove any building, structure or fixture now or at any time hereafter erected on or affixed to the Property or any part thereof without the prior consent in writing of the Bank and shall forthwith replace or make good the same in the event of any such alteration, pulling down or removal. Where it is intended that there is to be erected any new building or additional structure on the Property or there is to be renovation of the Property or that the Facility is to be utilised for the purpose thereof, the Chargor(s) shall complete the erection of such new building or additional structure or renovation in accordance with the approved plans therefor or such amendments thereof as may have been agreed in writing by the Bank with all reasonable speed and shall complete the erection or renovation thereof so as to comply with all requirements of any

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municipal local or such other competent authorities necessary for the obtaining of and shall obtain a certificate of fitness for occupation not later than such date as the Bank may stipulate.

**Section 10.10 Right of inspection**

The Bank and its agents and workmen shall be at liberty at all reasonable times of the day to enter into the Property and may have access to any fixture thereon and to view and inspect the condition of repair thereof PROVIDED ALWAYS THAT if the Bank should enter and repair the same it shall not be liable as a chargee in possession nor shall it be answerable for any involuntary loss happening in or about the exercise or execution of any power conferred on the Bank as a chargee under this Charge or by law.

**Section 10.11 Discharge on full payment**

Subject to and without prejudice to the Bank's rights and remedies against the Chargor(s) under Section 9.1 herein or in respect of any antecedent claim or breach of covenant by the Chargor(s) the provisions of this Charge shall cease to be of any effect on the satisfaction by payment or otherwise of all monies and liabilities due or owing or payable by the Chargor(s) to the Bank under this Charge or otherwise intended to be hereby secured and upon registration of a registrable discharge of this Charge which has been duly executed by the Bank at the cost and expense of the Chargor(s).

**Section 10.12 Duties of Chargor(s) to comply with laws and regulation (where applicable)**

The Chargor(s) hereby covenant(s) and undertake(s) to perform, observe, discharge and abide by all and singular the duties, responsibilities, liabilities, obligations and covenants imposed on the Chargor(s) by the applicable Act or the by-laws established thereunder or any regulations, resolutions, by-laws passed by the Developer or the Management Corporation, as the case may be, in relation to the Chargor(s)' right, use and enjoyment of to or in the Property and the common property and the Chargor(s) further covenant(s) and undertake(s) not to do or cause to be done anything contrary to or inconsistent with the aforesaid duties, responsibilities, liabilities, obligations and covenants respecting the Chargor(s)' use, enjoyment and right of to or in the Property and the common property.

**Section 10.13 Management Fund (where applicable)**

The Chargor(s) shall promptly pay such contributions, subscription, dues and levies to the Management Fund in such manner and at such time as may be determined by the Developer/Vendor/Proprietor or the Management Corporation, as the case may be, for the purposes of maintaining, controlling, managing and administering the common property, paying rents, rates, assessments, taxes and Takaful contributions and discharging any other obligations on the part of the Developer/Vendor/Proprietor or the Management Corporation, as the case may be. In default whereof it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof and such payment including all other monies paid out or expended by the Bank under any of the Section of this Article X shall constitute a debt due from the Chargor(s) to the Bank and shall form part of the Indebtedness.

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**ARTICLE XI  
SERVICE OF ORIGINATING PROCESS**

**Section 11.1 Service of originating process**

In the event legal proceedings are instituted by the Bank against the Chargor(s) the originating process shall be deemed to have been duly served on the Chargor(s):

- (a) if the originating process is sent by hand, at the time a copy of the originating process is left at the address of the Chargor(s) above written or at such other address as the Chargor(s) may notify the Bank by way of AR registered post from time to time which address shall be within Malaysia;
- (b) if the originating process is sent by prepaid registered post on the seventh (7th) day (including the day of posting) from the date the originating process is put into post addressed to the Chargor(s) at the address of the Chargor(s) here instated or such other address as the Chargor(s) may notify the Bank by way of AR Registered post from time to time which address shall be within Malaysia.

PROVIDED ALWAYS that the Bank shall only be deemed to have notification of the Chargor(s)' change of address if the Bank has actually received the notice of such change sent by the Chargor(s).

The provisions in this Section 11.1(a) and Section 11.1(b) shall apply to the service of any other legal processes whatsoever by or on behalf of the Bank on the Chargor(s).

**ARTICLE XII  
GENERAL TERMS**

**Section 12.1 Change in the Bank**

The securities liabilities and obligations created by this Charge pursuant to the Facility 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 the Bank or of any company by which the business of the Bank may for the time being be carried on and shall be available to the company carrying on that business for the time being.

**Section 12.2 Change in the Chargor(s)**

- (a) The securities liabilities and/or obligations created by this Charge pursuant to the Facility 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 howsoever in the name, style, constitution or composition of the Chargor(s) and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Chargor(s) shall in any way affect the securities liabilities and/or obligations pursuant to the Facility created by this Charge in relation to any transaction whatsoever whether past, present or future.
- (b) If the Chargor(s) being a firm is dissolved by reason of the introduction of a further partner or partners into the firm or the death or retirement of any existing partners from the firm or the amalgamation of the firm with another firm or in consequent of a corporation taking over all

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the assets of the firm this Charge shall continue and in addition to the debts and liabilities of the old firm shall apply to all monies and liabilities due or incurred to the Bank from or by the new firm or corporation as aforesaid thereby constituted as though there had been no change in the firm as previously constituted.

### **Section 12.3 Consolidation**

- (a) The provisions (if any) of the applicable Act (restricting the right of consolidation) shall not apply to this Charge. In addition to and without prejudice to any other right of consolidation it is hereby declared that unless the Bank otherwise agrees, the Chargor(s) shall not be entitled to redeem or release or discharge any security given by the Chargor(s) to the Bank hereunder or any security whether given now or hereafter except on payment to the Bank of not only all monies secured hereby but also all monies whatsoever or howsoever owing or payable or due from the Chargor(s) to the Bank (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any other account or accounts of whatsoever nature (whether current, deposit or loan account), agreement or contract or otherwise with the Bank.
- (b) Without prejudice to any other remedies which the Bank may have, the Bank 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 of whatsoever nature (whether current, deposit or loan account), at any branch of the Bank of whatsoever nature with any liabilities of the Chargor(s) (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any account (whether current, deposit or loan account), agreement or contract with the Bank and set off or transfer any sum (whether in the same or different currencies) standing to the credit of any such account, agreement or contract in or towards the satisfaction of any of the Chargor(s)' liabilities to the Bank under the Property Sale Agreement and under this Charge or under any other account or accounts of whatsoever nature (whether current, deposit or loan account), agreements or contracts or otherwise (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint).

### **Section 12.4 Modification and indulgence**

The Bank may at any time and without in any way affecting the security hereby created :-

- (a) vary or depart from the terms and conditions governing the Facility and/or the provisions of this Charge and/or the Security Documents and the Chargor(s) hereby irrevocably and expressly consent(s) to any and all such variations and/or departure (howsoever substantial);
- (b) grant to the Chargor(s) or the Security Party(ies) or any other person any time or indulgence;
- (c) renew any bills, notes or other negotiable securities;
- (d) deal with exchange release or modify or abstain from perfecting or enforcing any Security Documents or other guarantee 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;
- (e) compound with the Chargor(s), or Security Party(ies) or any other person;
- (f) vary from time to time the terms and conditions of the Facility given herein to comply with all relevant rules, decisions and rulings of Bank Negara Malaysia (BNM) and/or the Association

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of Banks/Finance Companies of Malaysia whether the same be made before or after the creation of this Charge herein;

- (g) vary the number of and/or the amount of the Instalments to be paid by the Chargor(s) to the Bank ; or
- (h) have recourse to all or any remedies or means for recovering the monies hereby secured which may be available for such purpose at such time and in such order and manner as the Bank may think fit.

#### **Section 12.5 Waiver**

No failure or delay on the part of the Bank in exercising nor any omission to exercise any right, power, privilege or remedy occurring to the Bank under this Charge or any of the other Security Documents 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 the Bank in respect of any default or any acquiescence in any such default, affect or impair any right, power, privilege or remedy of the Bank in respect of any other subsequent default.

#### **Section 12.6 Suspense account**

Any monies received hereunder may be placed and kept to the credit of a suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of any monies or liabilities due or incurred by the Chargor(s) to the Bank. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy, liquidation, composition or arrangement, the Bank 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 monies or dividends so received by the Bank shall be treated as received in respect of this Charge, but the full amount hereby secured shall be payable by the Chargor(s) until the Bank shall have received from all sources one hundred sen in the Ringgit on the ultimate balance outstanding against the Chargor(s). After the Bank has received such ultimate balance in full, any claim on the part of the Chargor(s) to any excess or any securities remaining with the Bank shall be a matter of adjustment between the Bank and the Chargor(s) and any person or persons laying claim thereto.

#### **Section 12.7 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 encumbrance over the Property or any or parts thereof in favour of any other corporation, persons of which the Bank shall receive notice either actual or constructive the Bank may on receiving such notice forthwith open a new or separate account with the Chargor(s) in its books and if the Bank does not in fact open such new or separate account the Bank shall nevertheless be deemed to have done so at the time when the Bank received or was deemed to have such notice (hereinafter called the "Time of Notice") and so as from and after the Time of Notice all payments into the account made by the Chargor(s) (or any other Security Party(ies) or any one or more of them) to the Bank shall (notwithstanding any legal or equitable rule of 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 to the Bank at the Time Of Notice PROVIDED ALWAYS THAT nothing in this Section contained shall prejudice the security which the Bank otherwise would have had hereunder for the payment of the monies, costs, charges and expenses herein this Charge referred to notwithstanding that the same may become due or owing or be incurred after the Time Of Notice.

\*Delete whichever not applicable

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**Section 12.8 Liens and other securities**

Nothing herein contained shall prejudice or affect any lien to which the Bank is entitled or any other securities which the Bank may at any time or from time to time hold for or on account of the monies 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 the Bank may for the time being have for any money intended to be hereby or otherwise secured or any right or remedy of the Bank thereunder.

**Section 12.9 Payments by Chargor(s)**

The Chargor(s) shall pay all stamp duties, fees or other charges payable on or incidental to the execution, issue, delivery, registration and enforcement of this Charge, the other Security Documents and any documents related thereto and all legal costs and expenses in connection with or incidental to this Charge including the fees of the Bank's solicitors (on a solicitor and client basis) whether or not the Facility may be aborted before utilisation for any reason whatsoever. The Bank reserves the right to debit all such expenses from the Chargor(s)' account(s) with the Bank. If the monies hereby secured or any part thereof are required to be recovered through any process of law, the Chargor(s) shall pay (in addition to the monies hereby secured then due and payable) the fees on the Bank's solicitors (on solicitor and client basis) and any other fees and expenses incurred in respect of such recovery.

**Section 12.10 Costs and expenses**

- (a) All costs, charges and expenses incurred hereunder by the Bank including any expenditure incurred in the creation, recovery, enforcement and/or preparation of this Charge and the other Security Documents or in the giving of any notice or in the making of any demand, under or pursuant to or in respect of this Charge and all other monies whatsoever paid by the Bank in respect of the said costs, charges, expenses and expenditure or otherwise howsoever and all or any sums of monies paid or expended by the Bank under or pursuant to the provisions of the applicable Act and/or this Charge and the other Security Documents express or implied, shall be debited to the Chargor(s) accounts and payable by the Chargor(s) to the Bank on demand and shall pay any applicable late payment charges or if more than one facility is granted, then in the amount(s) as may be determined by the Bank from the date of the sums having been paid or expended and such sums shall on demand be paid to the Bank and until payment shall bear any applicable late payment charges as the case may be from the date of such monies having been paid or expended until full payment (both before and after demand judgement or order) and shall be charged on the Property as part of the Secured Amounts under the Facility.
- (b) In the event of default by the Chargor(s) in payment of any monies payable by the Chargor(s) to any person or authority whomsoever under or pursuant to the provisions of this Charge, the Property Sale Agreement, the Property Purchase Agreement, the Sale and Purchase Agreement, it shall be lawful for but not obligatory upon the Bank to make such payments on behalf of the Chargor(s), whereupon the Bank reserves the absolute right to debit the Chargor(s) account with all such monies expended by the Bank.
- (c) The payments made by the Bank under the provisions of this Section 12.10(a) and 12.10(b) shall constitute a debt due from the Chargor(s) to the Bank and shall form part of the Secured Amounts.

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**Section 12.11 Indemnity**

- (a) The Chargor(s) shall not do or omit or suffer to be done any act, matter or thing in or respecting the Property which contravenes the provisions of the Sale and Purchase Agreement, the Property Purchase Agreement, the Property Sale Agreement, this Charge or any Act, Ordinance, Enactment, Order, rule, regulation or by-law now or hereafter affecting the same and the Chargor(s) shall at all times hereafter indemnify and keep indemnified the Bank against all losses, actions, proceedings, costs, expenses, claims and demands in respect of any such act, matter or thing done or omitted to be done in contravention of the said provisions.
- (b) In addition and without prejudice to the power, rights and remedies conferred on the Bank herein, the Chargor(s) shall indemnify the Bank against any damages, loss or expense (including but not limited to legal expenses on a solicitor and client basis) which the Bank may sustain or incur as a consequence of any default in payment by the Chargor(s) of any sum due hereunder including (but not limited to) any late payment charges or fees paid or payable on account of or in respect of any funds borrowed or deposits from third parties in order to maintain the amount in default or in liquidating or re-employing such funds or deposits.
- (c) In consideration of the Bank having at the request of the Chargor(s) given its express or implied undertaking, guarantee and/or covenant to any financial institution and/or the Developer/Vendor/Proprietor or their solicitors or firm of solicitors purporting to act for the financial institution or the Developer/Vendor/Proprietor or to such other persons whatsoever to pay the balance purchase price or Contract Cost payable by the Chargor(s) under the Sale and Purchase Agreement or any part thereof or any variation in the order of payment thereof either progressively or in such other manner in accordance with the terms and conditions of the Sale and Purchase Agreement, the Chargor(s) agree(s) that the aforesaid undertaking, guarantee and/or covenant whether express or implied are given by the Bank on behalf of and for the benefit of the Chargor(s) and the Chargor(s) will at all times hereafter indemnify and keep the Bank indemnified against all actions, proceedings and costs suffered by the Bank arising from the aforesaid undertaking guarantee and/or covenant.

**Section 12.12 Consent to assign/transfer**

- (a) The Chargor(s) hereby covenant(s) and agree(s) that the Bank shall be at liberty at any time with or without notice to the Chargor(s) to assign and/or transfer all its rights, interests, benefits and obligations of this Charge to any person or financial institution upon such terms as the Bank shall deem fit and a statement therein of the amount due to the Bank shall be conclusive and binding for all purposes against the Chargor(s).
- (b) The Chargor(s) shall not assign the Chargor(s)' rights, interests and obligations hereunder without the prior written consent of the Bank.

**Section 12.13 Custody of documents**

The Bank shall have custody and possession of the issue document(s) of title/strata title in respect of the Property. The bank shall be under no obligation to surrender or part with possession of the issue document(s) of title/strata title of the Property unless the production of any such document is required for purposes of any action or matter initiated or instituted by the Government or any government authority or department and not where such document is required for any other purpose or to effect any transaction conducted or initiated by the Chargor(s).

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**Section 12.14 Further assurance**

The Chargor(s) shall from time to time and at any time, whether before or after the security constituted by this Charge or any other Security Documents shall have become enforceable, execute and do all such transfers, assignments, assurances, charges, debentures, instruments, documents, acts and things as the Bank may reasonably require for perfecting the security intended to be hereby constituted and for facilitating the realisation of the property charged or to be charged to the Bank and the exercise by it of all the powers, authorities and discretions hereby conferred on the Bank and the Chargor(s) shall also give all notices, orders and directions which the Bank may think expedient. For such purposes a certificate in writing signed by or on behalf of the Bank to the effect that any particular transfer, assignment, assurance, charge, debenture, instrument, document, act or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

**Section 12.15 Threatened proceedings etc.**

The Chargor(s) hereby agree(s) and undertake(s):

- (a) to advise the Bank immediately of any threatened, impending or existing legal proceedings affecting the Chargor(s) and/or the other Security Party(ies) (if any);
- (b) that there is no change that would be detrimental to the financial standing of the Chargor(s) and/or the other Security Party(ies) (if any) provided always that the Bank has the absolute discretion to decide whether a change is detrimental or not; and
- (c) to advise the Bank immediately of any change in the financial standing of the Chargor(s) and/or the other Security Party(ies) (if any).

**Section 12.16 Right to Disclose Information**

- (a) Without limiting the subsequent provisions of this Section 12.16, the Bank may at any time without prior consent obtained from the Chargor(s), disclose to any person who may, in the Bank's absolute discretion, require such information or access thereof any documents or records of, or information about the Security Documents or assets, business or affairs of the Chargor(s) whether or not confidential and whether or not the disclosure would be in breach of any law or of any duty owed to the Chargor(s) provided that in respect of documents, records or information which the Chargor(s) has informed the Bank to be confidential, the person receiving such information from the Bank may be required to undertake to maintain the confidentiality of documents, records or information received.
- (b) The Chargor(s) permits the Bank to disclose any documents or records of, or information about the Security Documents, the Facility, or the assets, business or affairs of the Chargor(s), whether or not confidential and whether or not the disclosure would be in breach of any law or of any duty owed to the Chargor(s):
  - (i) to the Central Credit Unit, BMC, BNM, any Governmental Agency or such other authority having jurisdiction over the Bank; or
  - (ii) to any branch, subsidiary or parent company of the Bank; or
  - (iv) for or in connection with the enforcement or preservation of any rights of the Bank under the Security Documents; or

\*Delete whichever not applicable

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- (iv) to any third party, if required by any law, regulation or by-law; or
  - (v) to any party pursuant to any arrangement, composition, restructuring or any proposed arrangement, composition or restructuring between the creditors of the Chargor(s) .
- (c) The Bank may disclose to any person who derives or may derive rights or obligation under or by reference to the Security Documents (including but not limited to an assignee or transferee or prospective assignee or transferee) such information about the Chargor(s) in relation to the Facility or the Security Documents as shall have been made available to the Bank generally.

**Section 12.17 Disclosure among Branches, Subsidiaries or Parent Company:** The Chargor(s) hereby agrees that for so long as this Agreement continues and/or for so long as the Indebtedness remains outstanding, the Bank shall be entitled to disclose information on the Chargor(s) 's business with the Bank's (including its account and/or future accounts) solicitors, auditors, branches, subsidiaries, parent company or companies which are or which in future may be a subsidiary of the Bank and the branches, subsidiaries or parent company of the Bank shall also be entitled to make such disclosure to the Bank and the Bank shall take all reasonable care to ensure that such information shall remain confidential between the Bank's group of subsidiaries.

**Section 12.18 Severability**

If at any time during the continuance of this Charge, any provision, term, condition, stipulation, covenant or undertaking of this Charge and/or the other Security Documents is or becomes illegal, void, invalid, prohibited or unenforceable in any respect the same shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability without invalidating in any manner whatsoever the remaining provisions hereof.

**Section 12.19 No inference of waiver or acquiescence**

NOTWITHSTANDING the fact that the Bank may not have exercised any remedy available to it immediately on default by the Chargor(s) or that it may have accepted monies from the Chargor(s) after such default the Bank shall not be held to have waived or acquiesced in such default and may at any time thereafter exercise all or any of the remedies available to it and any delay on the part of the Bank in taking steps to enforce the remedies conferred on or available to it by this Charge, the other Security Documents or statute shall not be held to prejudice its right of action in respect thereof.

**Section 12.20 Legal incapacity of Chargor(s)**

When any monies are owing and secured by this Charge, they shall be deemed to be so owing and so secured notwithstanding any legal limitation, incapacity or otherwise of the Chargor(s) in respect of the Facility which might be a defence as between the Chargor(s) and the Bank.

**Section 12.21 No set-off or counterclaim by Chargor(s)**

- (a) Until all monies and liabilities due or incurred by the Chargor(s) to the Bank shall have been paid or discharged in full, the Chargor(s) shall not by paying off any sum recoverable hereunder or by any other means or on any other ground claim any set-off or counterclaim against the Bank in respect of any liability from the Bank to the Chargor(s).
- (b) All sums payable by the Chargor(s) under this Charge shall be paid free and clear of and without any deduction or withholding on account of any tax (except to the extent required by law). If (a) the Chargor(s) or any other person is required by law to make any deduction or

\*Delete whichever not applicable

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withholding on account of any tax or any other amount from any sum paid or payable by the Chargor(s) or any Security Party(ies) to the Bank under this Charge and the other Security Documents or (b) the Bank (or any person on its behalf) or any Security Party(ies) is required by law to make any deduction or withholding from any payment (except on account of tax on the overall net income of the Bank) under this Charge and the other Security Documents, the Chargor(s) shall notify the Bank of any such requirement or any change in any such requirement as soon as the Chargor(s) becomes aware of it and shall:-

- (i) by giving the Bank thirty (30) days' prior written notice, be at liberty to settle fully the Instalments (including any such tax or other amount) without any penalty together with the net cost to the Bank in funding or maintaining the Facility up to and including the date such settlement is actually received by the Bank and with an additional amount to be determined by the Bank at its sole and absolute discretion representing any loss (including but not limited to any funding loss) incurred by the Bank as a result of or arising from such settlement and on such settlement the Facility shall be cancelled;
  - (ii) pay any such tax or other amount before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on the Chargor(s) or, where applicable, any Security Party(ies) for the account of the Chargor(s) or such Security Party(ies) or (if that liability is imposed on the Bank) on behalf of and in the name of the Bank;
  - (iii) pay such additional sum to the extent necessary to ensure that, after the making of that deduction, withholding or payment the Bank receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what the Bank would have received and retained had no such deduction, withholding or payment been required or made; and
  - (iv) as soon as the Chargor(s) or, where applicable, the Security Party(ies) is required by law to do so, pay over to the relevant taxation or other authorities the full amount of the deduction or withholding which shall have been made by the Chargor(s) or such Security Party(ies) and as soon as possible thereafter furnish to the Bank a copy of the official receipt in respect thereof in the name of the Bank, issued by the relevant taxation or other authorities and such other documentation as the Bank may reasonably require for the purpose of the taxation authorities of the Bank.
- (c) Without prejudice to the survival of any other agreement of the Chargor(s) hereunder, the agreements and obligations of the Chargor(s) contained in Sections 12.21(a) and 12.21(b) above shall survive the payment in full of the Facility hereunder and under any instrument delivered hereunder.

#### **Section 12.22 Set-off**

If the Property is put up for sale by way of auction pursuant to the provisions herein contained or the provisions of the applicable Act or otherwise, the Bank shall be entitled to set off the monies due by the Chargor(s) to the Bank pursuant to this Charge against any monies payable by the Bank as the purchaser at such sale in the event of the Bank exercising its rights under this Charge or the applicable Act, as the case may be, to bid at such sale.

\*Delete whichever not applicable

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**Section 12.23 Duty to deliver vacant possession**

Unless with the consent of the Bank in writing, the Chargor(s) shall not, so long as this Charge continues in force and remains undischarged, permit any person or party other than the Chargor(s) to be the occupier of the Property and in the event of the Property being sold at a public auction pursuant to the provisions herein contained or an order of court or the Land Administrator as the case may be, the Chargor(s) shall whenever requested to do so by the Bank at the Chargor(s)' own cost and expense deliver vacant possession of the Property to the Bank or to such other person(s) as the Bank may direct.

**Section 12.24 Force majeure**

The Bank shall not be liable for any failure on its part to perform any obligations hereunder resulting directly or indirectly from the action or inaction of any governmental or local authority or any strike, boycott, blockade, act of God, civil disturbance or cause beyond the control of the Bank.

**Section 12.25 Statement of account**

The Chargor(s) hereby expressly agree(s) that a statement of account signed by the Manager, Assistant Manager or any other duly authorised Officer of the Bank shall be final and conclusive proof of the indebtedness of the Chargor(s).

**Section 12.26 Involuntary loss**

The Bank shall not be answerable for any involuntary loss happening in or about the exercise or execution of any power, right, privilege and remedy conferred on the Bank by this Charge or by law.

**Section 12.27 Further advances**

Nothing contained herein shall be deemed to render it obligatory upon the Bank either at law or in equity to make or to continue to make any advances or to afford any other accommodation of facility whatsoever to the Chargor(s).

**Section 12.28 Cross default**

The Bank reserves the right to proceed with legal proceedings against the Chargor(s) or any Security Party(ies) or to recall the Facility and all other monies payable to the Bank under this Charge or withhold or withdraw the Facility 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 Party(ies) under any other account with the Bank 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 Party(ies) is/are a guarantor or when the Chargor(s) and/or any Security Party(ies) or any subsidiary or holding company of 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 Party(ies) or the subsidiary or holding company of the Chargor(s) and/or any Security Party(ies).

**Section 12.29 Variation of terms**

The terms of this Charge may be varied and/or amended at the Bank's absolute discretion with additional terms and conditions and it shall be varied and/or amended by written notice. The variation or amendment 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

\*Delete whichever not applicable

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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 the time of execution hereof. In the event of any inconsistency between the provisions of this Charge and the terms as varied and/or amended by the aforesaid exchange of letters or formal or supplemental documents, the latter shall prevail.

### **Section 12.30      Applicable law and jurisdiction**

This Charge shall be governed by and construed in all respects in accordance with the laws of Malaysia but in enforcing this Charge, the Bank shall be at liberty to initiate and take actions or proceedings or otherwise against the Chargor(s) in Malaysia and/or elsewhere as the Bank may deem fit and the parties hereto hereby agree that where any actions or proceedings are initiated and taken in Malaysia they shall submit to the non-exclusive jurisdiction of the Courts of the States of Malaya or Sabah and Sarawak as the case may be in all matters connected with the obligations and liabilities of the parties hereto under or arising out of this Charge.

### **Section 12.31      Enforcement of this Charge**

This Charge is in addition to and not in substitution of any other rights or securities which the Bank may have from or against the Chargor(s) or any other Security Parties 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 of the other Security Parties as aforesaid.

### **Section 12.32      Cumulative remedies**

The remedies provided herein are cumulative and are not exclusive of any other remedies provided by law.

### **Section 12.33      Successors bound**

This Charge shall be binding upon the heirs, liquidators, receivers, personal representatives, permitted assigns and successors in title of the Chargor(s) and enforceable by the successors in title and assigns of the Bank.

### **Section 12.34      Entire agreement**

The Security Documents as listed in Item 9 of the Schedule hereto and any document or instrument attached hereto or referred to herein or therein or executed in connection with the Facility integrate all the terms and conditions mentioned herein and incidental hereto and supercede all oral negotiations and prior correspondences in respect of the subject matter hereof.

### **Section 12.35      Construction where Chargor(s) is/are not an individual person**

If the name of the Chargor(s) herein inserted is that of either a firm or a limited company or other corporation or of any committee or association or other unincorporated body, any of the provisions hereinbefore contained which are primarily and literally applicable to the case of a single and individual Chargor(s) or person only shall be construed and take effect so as to give the Bank hereunder a security for the monies 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 analogue as may be with or to that which would have been given for the monies owing from a single individual if the Chargor(s) had been a single individual and any monies shall be deemed to be so owing notwithstanding any defect informality or insufficiency in the financing or other powers of the

\*Delete whichever not applicable

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Chargor(s) or in the exercise thereof which might be a defence as between the Chargor(s) and the Bank. In the case of a firm, the security provided herein shall be deemed to be a continuing security for all monies owing on any such account as hereinbefore mentioned from the person or persons carrying on business in the name of or in succession to the firm or from any one or more of such persons although by death, retirement or admission of partners or other causes the constitution of the firm may have been in part or wholly varied. In the case of a limited company or other corporation any reference to bankruptcy or death shall be deemed to be a reference to liquidation, winding up or other analogous proceedings and the monies owing as aforesaid and hereby secured shall be deemed to include any monies owing in respect of debentures or debenture stock of the limited company or other corporation held by or on behalf of the Bank.

#### **Section 12.36 Unincorporated body**

In amplification to and not in derogation of any other provision contained in this Charge it is expressly agreed that notwithstanding that the Chargor(s) is/are a committee or association or other unincorporated body which has no legal entity the security provided herein shall be valid and have effect as though the Chargor(s) was/were a principal obligor.

#### **Section 12.37 Time**

Time wherever mentioned shall be of the essence of this Charge.

#### **Section 12.38 Provisions of Property Sale Agreement**

The Chargor(s) expressly acknowledge(s) having understood the provisions of the Property Sale Agreement and this Charge.

#### **Section 12.39 Application of payments**

Notwithstanding any other provisions contained in this Charge to the contrary, the Bank is entitled to apply any payments received from the Chargor(s) or from any person making payments on behalf of the Chargor(s) (irrespective of whether the purpose of the payment is specified or not) towards satisfaction in whole or in part of the Instalments or other sums of monies then due and payable from the Chargor(s) under this Charge and/or the Property Sale Agreement in any order that the Bank in its absolute discretion deems fit.

#### **Section 12.40 Applicability of Malay Reservation Enactment**

For the avoidance of doubt it is hereby agreed and declared that this Charge is entered into for the purpose of and in order to effect the financing transaction in accordance with the principles of Bai' 'Inah and Bai' Bithaman Ajil and in the event that the provisions of the respective Acts or any Malay Reservation Enactments of the States of Peninsular Malaysia shall become applicable or would be contravened in the process unless an approval of a Ruler in Council or any other approval required under the applicable Acts is obtained or become necessary, it shall be the sole responsibility of the Chargor(s) to obtain such approval prior to the execution of this Charge and/or the other Security Documents and the Chargor(s) hereby undertake(s) with the Bank to obtain or cause to obtain such approval.

#### **Section 12.41 Effective date**

The parties hereto agree that this Charge shall come into force on the date of this Charge irrespective of the diverse dates upon which the parties may have each executed this Charge respectively.

\*Delete whichever not applicable

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#### **Section 12.42 Anti Money Laundering 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 the Bank 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 the Bank 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), the Bank 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).

#### **Section 12.43 Regulatory Taxes**

In the event, there is a requirement to pay taxes of any nature or description as imposed and determined by the Government, the same will be borne by the relevant party. All payments will be made, free and clear of and without reduction for, any withholding taxes. Any such taxes will be the sole responsibility of the Supplier to be paid to the appropriate tax authority

#### **Section 12.44 Personal Data Protection Act 2010 (Act 709)**

In the course of your dealing with the Bank, the Bank may request the Customer to provide personal data of the Customer and its employees, agents, directors, contact persons, shareholders, representatives, authorized person and shareholdings details of the Customer's shareholders as disclosed by the Customer 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 Customer's employees, agents, directors, contact persons, shareholders, representatives and authorized persons may be disclosed and shared with other related corporations and subsidiaries of the Bank within and outside Malaysia for the aforesaid purposes. The Customer hereby warrants that the Personal Data Protection Act 2010 has been complied with and that consents have been obtained from the Customer's employees, agents, directors, contact persons, shareholders, representatives and authorized persons in relation to the disclosure and processing of their personal data by the Bank for the aforesaid purposes.

#### **Section 12.45 Right of Upstamping**

This Agreement and the Security Documents are intended to regulate and secure any further financing to the Customer, and in the event such further financing is made by the Bank, the Bank is hereby duly authorised to pay such additional stamp duty on this Agreement 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, the Bank shall also have the right, at any time and from time to time, without any prior notice to the Customer, to upstamp this Agreement to secure also the

\*Delete whichever not applicable

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excess of any Indebtedness (including all profits thereon) due or owing to the Bank over the principal amount for which this Agreement shall for the time being be stamped.

**Section 12.46      Principal and secondary instruments**

IT IS HEREBY AGREED AND DECLARED that the Security Documents are all instruments employed in one transaction relating to the Sale Price and for the purpose of Section 4(3) of Stamp Act, 1949, (Consolidated and Revised in 1989), the Property Sale Agreement shall be deemed to be the principal instrument and the other Security Documents shall be the secondary or subsidiary instruments.

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**IN WITNESS WHEREOF** the hand of the Attorney of the Bank and the hand(s)/common seal of the Chargor(s) were hereto set/affixed respectively.

SIGNED by ) MBSB BANK BERHAD (Company No.: 716122-P)  
)  
)  
) By its Attorneys,  
)  
as Attorney of MBSB BANK BERHAD )  
(Company No.: 716122-P) )  
)  
in the presence of:- )  
.....

(where Chargor is an individual)

SIGNED by )  
the Chargor(s) )  
in the presence of:- )  
.....

(where Chargor is a company) )  
The Common Seal of )  
the Chargor )  
was hereunto affixed )  
in the presence of:- )

.....  
Director  
Name :  
NRIC No :

.....  
Director/Secretary  
Name :  
NRIC No :

<b>THE SCHEDULE</b> (which shall be taken read and construed as an integral part of this Assignment)		
<b>ITEM</b>	<b>MATTER</b>	<b>PARTICULARS</b>
1(a)	<b>NAME, PARTICULARS AND ADDRESS OF THE CHARGOR(S)</b>	As described in Item 1(b) of the First Schedule of the Property Sale Agreement
(b)	<b>PLACE OF BUSINESS OF THE BANK</b>	
2.	<b>PARTICULARS OF THE PROPERTY</b>	As described in Item 2 of the First Schedule of the Property Sale Agreement
3.	<b>SALE AND PURCHASE AGREEMENT</b>	Date:
4.	<b>NAME, PARTICULARS AND ADDRESS OF THE DEVELOPER/VENDOR/PROPRIETOR</b>	As described in Item 4 of the First Schedule of the Property Sale Agreement
5.	<b>FACILITY</b>	All monies due and owing to the Bank by the Chargor(s) from time to time pursuant to the Letter of Offer(s) issued by the Bank at the Chargor(s)' request and accepted by the Chargor(s) from time to time
6.	<b>LETTER OF OFFER(S) AND SUPPLEMENTARY LETTER OF OFFER(S) (IF ANY)</b>	Date:  And any other letter of offer(s) issued by the Bank at the Chargor(s)' request and accepted by the Chargor(s) from time to time
7.	<b>PROPERTY PURCHASE AGREEMENT</b>	Date: for the the Bank's Purchase Price of Ringgit Malaysia. (RM )
8.	<b>PROPERTY SALE AGREEMENT</b>	Date: for the the Bank's Selling Price of Ringgit Malaysia. (RM )
9.	<b>SECURITY DOCUMENTS</b>	

\*Delete whichever not applicable