

Dated the                      day of                      20

Between

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

AND

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

PROPERTY SALE AGREEMENT

(WITH/WITHOUT TITLE)

SOLICITORS

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**PROPERTY SALE AGREEMENT  
(WITH/WITHOUT TITLE)**

**AN AGREEMENT** made on the day of \_\_\_\_\_, 20.....

**BETWEEN**

**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 address set out in Item 1(a) of the First Schedule (hereinafter called "the Bank");

**AND**

The party(ies) whose name(s) and particulars are set out in Item 1 (b) of the First Schedule herein (hereinafter called "the Customer(s)").

**ARTICLE I  
RECITALS**

**Section 1.1            The ownership of the Property**

**(A)        \*Sale from Developer/Vendor/Proprietor**

The Purchaser(s) is/are the beneficial owner(s) of all that parcel/piece of property the particulars of which are set out in Item 2 of the First Schedule herein (hereinafter referred to as "the Property") pursuant to a sale and purchase agreement particulars of which are as set out in Item 3(a) of the First Schedule herein (hereinafter referred to as "the Sale and Purchase Agreement") entered into between the party(ies) whose name(s) and particulars are set out in Item 4 of the First Schedule herein (hereinafter referred to as "the Developer/Vendor/Proprietor") of the first part and the Purchaser(s) of the second part, wherein the Developer/Vendor/Proprietor has agreed to sell and the Purchaser(s) has/have agreed to purchase the Property at the sale and purchase price as set out in Item 3(b) of the First Schedule herein (hereinafter referred to as "the Sale and Purchase Price") and upon the terms and conditions contained in the Sale and Purchase Agreement and such other agreements and/or documents (if any) pertaining to the Property evidencing the Purchaser(s)' rights and/or ownership in the Property. The Property is presently assigned/charged to the party described in Item 12 of the First Schedule.

**(B)        \*Construction/Renovation of the Property**

The Purchaser(s) \*is/are the \*registered and/or beneficial owner(s) of all that parcel/piece of the Property and pursuant to a construction contract/renovation agreement the particulars of which are set out in Item 5(a) of the First Schedule herein (hereinafter referred to as the Construction Contract/Renovation Agreement) appointed the contractor, the particulars of which are set out in Item 5(b) of the First Schedule herein or the developer (hereinafter referred to as "the Contractor/Developer") to \*construct/renovate the Property and the Contractor/Developer agreed to undertake the \*construction/renovation of the Property upon the terms and conditions contained therein. The Property is presently assigned/charged to the party described in Item 12 of the First Schedule.

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**(C) \*Refinancing of the Property**

The Purchaser(s) is/are the \*beneficial/registered owner of the Property which is presently assigned/ charged to the party described in Item 12 of the First Schedule (hereinafter referred to as "the Chargee")

**(D) \*Sale by way of Auction**

The Purchaser(s) is/are the beneficial owner(s) of the Property the particulars of which are set out in Item 2 of the First Schedule herein entered into between the Vendor as set out in Item 4 of the First Schedule herein (hereinafter referred to as "the Vendor") of the first part and the Customer of the second part, wherein the Vendor by way of an Auction agreed to sell and the Customer(s) agreed to purchase the Property at the auction price as set out in Item 3(b) of the First Schedule herein (hereinafter referred to as "the Auction Price" and upon the terms and conditions contained in the Proclamation of Sale (as defined hereunder).

**Section 1.2 Title to the Property**

As at the date hereof, the individual issue document of title/separate strata title to the Property \*has/has not yet been issued by the relevant authorities.

**Section 1.3 Property Financing-*i* Facility**

Subject to the terms and conditions hereinafter set forth and relying upon each of the representations and warranties set out in Section 6.1 of this Agreement, the Bank has agreed to make available to the Customer(s) and the Customer(s) agrees to accept from the Bank the Facility of the maximum aggregate amount set out in Item 7 of the First Schedule herein made available or to be made available by the Bank to the Customer(s) in accordance with the Shariah principle of Al-Bai' Bithaman Ajil and in accordance with the financing procedure under the Shariah principle of Al-Bai' Bithaman Ajil, the Customer(s) has/have agreed to enter into this agreement (hereinafter referred to as "this Agreement") with the Bank whereby the Bank, at the Customer(s)'s request shall sell to the Customer(s) the Property at the Bank's Selling Price on a deferred payment basis and upon the terms and conditions herein contained.

## ARTICLE II DEFINITIONS AND INTERPRETATION

**Section 2.1 Definitions**

In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:-

**"Accessory Parcel"** shall have the meaning assigned to it by the Strata Titles Act, 1985, the Strata Titles Ordinance, 1995, and the Land (Subsidiary Title) Enactment, 1972, and includes any statutory amendment or re-enactment thereof.

**"Acts"** 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 Title (Amendment) Act 2007 and the Strata Titles Ordinance, 1995, and includes any statutory amendment or re-enactment thereof.

**"Al-Bai Bithaman Ajil"** means the Shariah principle relating to the contract of sale on deferred payment and instalment basis within an agreed payment period.

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**"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 herein.

**"BR-i/Islamic Base Rate"** means the Islamic base rate of the Bank as may be determined by the Bank from time to time.

**"Building"** means the building or buildings erected or to be constructed on the said Property more particularly described in Item 2 of the First Schedule herein.

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

**"CPR/Ceiling Profit Rate"** means the profit rate as agreed by the Bank and the Customer(s) for the purpose of determining the profit margin and which rate is as set out in Item 8(a) of the First Schedule hereto.

**"Charge"** means the legal charge over the Property in the form and substance acceptable to the Bank executed or to be executed by the Purchaser(s) in favour of the Bank pursuant to Section 5.1(a) hereof.

**"Construction Contract/Renovation Agreement"** means the construction contract/renovation agreement entered into or to be entered into between the Purchaser(s) and the Contractor/Developer, if applicable, the date of which is as set out in Item 5(a) of the First Schedule herein.

**"Contractor/Developer"** means the party(ies) appointed or to be appointed, if applicable, whose name(s) and particulars are set out in Item 5(b) of the First Schedule herein and includes his/her/their/its successors in title, permitted assigns, heirs, personal representatives, and permitted assigns as the case may be, to construct/renovate the Building.

**"Contract Cost"** means the financing or part financing sum of the Contract Cost/renovation agreement in the amount as set out in Item 5(c) of the First Schedule herein.

**"Customer(s)"** means the party(ies) whose name(s) and particulars are set out in Item 1(b) of the First Schedule herein 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.

**"Deed of Assignment"** means the deed of assignment in the form and substance acceptable to the Bank executed or to be executed by the Purchaser(s) in favour of the Bank pursuant to Section 5.1(b) hereof.

**"Developer/Vendor/Proprietor"** means the party(ies) whose name(s) and particulars are as set out in Item 4 of the First Schedule herein and includes his/her/their/its successors in title, permitted assigns, heirs and personal representatives, as the case may be.

**"EPR/Effective Profit Rate"** means the effective profit rate as stated in Item 8(b) of the First Schedule hereto comprising of the BR- i and Spread and where applicable, may be crystallized and fixed by the Bank at any particular intervals.

**"Event of Default"** means any of the events or state of affairs specified in Section 9.1 herein or any event which with the lapse of time and/or the giving of notice and/or a determination being made under the relevant paragraph would constitute any of the events mentioned in Section 9.1 herein.

**"Grace Period"** means a period commencing from the first release of the Bank's Purchase Price up to the completion period of the construction as mention in the Sale and Purchase Agreement/Construction Contract/Renovation Agreement, as the case may be.

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**"Grace Period Profit"** means the grace period profit as notified by the Bank from time to time payable by the Customer(s) during the Grace Period.

**"Guarantee"** means if applicable the guarantee in the form and substance acceptable to the Bank executed or to be executed by the Guarantor(s) in favour of the Bank pursuant to Section 5.1 (d) hereof or if more than one individual, then it shall mean the joint and several guarantee.

**"Guarantor(s)"** means the person(s) described in Item 11 of the First Schedule hereto and includes his/her/their/its successors in title, permitted assigns, heirs and personal representative, as the case may be.

**"Letter of Offer"** means the letter of offer issued by the Bank to the Customer(s) set out in Item 6 of the First Schedule hereto, a copy of which is annexed as the Fifth Schedule hereto and includes any amendment(s), variations and/or supplemental and/or notification made or entered into from time to time thereto.

**"Takaful"** means the Long-term Houseowner/fire takaful policy.

**"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 its place of business at the address stated in Item 1(a) of the First Schedule herein and shall, where the context so admits, include persons deriving title thereunder and its successors in title and assigns and shall include any branch office of the Bank.

**"Bank's Selling Price"** means the total the Bank's Selling Price of the Property as set out in Item 8 of the First Schedule herein which is calculated based on the CPR.

**"Month"** means a calendar month.

**"Monthly Instalments"** means the monthly instalments payable during the Tenure in respect of the Bank's Selling Price based on the CPR 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.

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

**"Original Purchaser(s)"** means (if applicable) the person(s) named as Purchaser(s) in the Principal Sale and Purchase Agreement in the case where the Customer(s) is not the first Purchaser(s) of the Property and individual title/separate strata title to the Property has not been issued.

**"Power of Attorney"** means the power of attorney in the form and substance acceptable to the Bank executed or to be executed by the Purchaser(s) appointing the Bank as the attorney pursuant to Section 5.1 (c) hereof.

**"Principal Sale and Purchase Agreement"** (in the case where the individual title to the Property has not been issued) means the sale and purchase agreement entered into between the Original Purchaser(s) and the Developer/Vendor/Proprietor for the sale and purchase of the Property upon the terms and conditions therein contained.

**"Proclamation of Sale"** means the of the Proclamation of Sale date stated in Item 3(a) of the First Schedule herein 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.

**"Progressive Releases"** means the progressive payment/release(s) (where applicable) of the Facility, as the case may be, or any part thereof by the Bank to the Developer/Vendor//Contractor or

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any other third party(ies) in accordance with the schedule of payment in the Sale and Purchase Agreement and/or Construction Contract/Renovation Agreement and as against architect certificates so issued by the Developer's/Vendor's/Contractor's architect(s) and/or any other confirmation stipulated in the Sale and Purchase Agreement and/or Construction Contract/Renovation Agreement subject to, if the Bank so deems fit, any other confirmation or certification of the same by such persons as may be required by the Bank at the expense and on the account of the Customer(s).

**"Property"** means (i) the property as described in Item 2 of the First Schedule herein and/or any building and any now or hereafter or from time to time erected thereon or affixed therein or any part or portion thereof; and (ii) where applicable shall include any Accessory Parcel appurtenant thereto under the relevant Acts.

**"Purchaser(s)"** means (if applicable) the person(s) named as Purchaser(s) in the Sale and Purchase Agreement particulars of which are as set out in Item 1(b) of the First Schedule herein.

**"Facility"** means **Property Financing-i Facility** of the maximum aggregate amount set out in Item 7 of the First Schedule herein made available or to be made available by the Bank to the Customer(s) in accordance with the Shariah principle of Al-Bai' Bithaman Ajil.

**"Sale and Purchase Agreement"** means the sale and purchase agreement of the date stated in Item 3(a) of the First Schedule herein made between the Purchaser(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) wherein the Developer/Vendor/Proprietor agreed to sell and the Purchaser(s) agreed to purchase the Property upon the terms and conditions therein contained and in the case where the Purchaser(s) is not the first purchaser, the full particulars of the Principal Sale and Purchase Agreement, all sales, sub-sales, assignments and reassignments up to the one between the Purchaser(s) and the Vendor are described in Item 3(c) of the First Schedule herein.

**"Sale and Purchase Price"** means the total Sale and Purchase Price of the Property under the Sale and Purchase Agreement as set out in Item 3(b) of the First Schedule herein.

**"Security Deposit"** means a specific sum as security deposit to be deposited by the Customer(s) with the Bank prior to or at the time of the execution of this Agreement and in the amount set out in Item 9 of the First Schedule herein.

**"Security Documents"** means the Letter of Offer, this Agreement, Charge or the Deed of Assignment (where applicable) and the other additional Security Documents as set out in Item 10 of the First Schedule herein and shall include any other security documents for the time being or from time to time constituting security for the obligations liabilities and indebtedness of the Customer(s) and reference to "Security Documents" include reference to anyone thereof.

**"Security Party(ies)"** means the Customer(s) and/or any other party from time to time required by the Bank to provide security to the Bank for the Customer(s)'s obligations under the Facility and references to "Security Party(ies)" includes reference to each or anyone thereof.

**"Spread"** means the rate of spread as stated in Item 8(b) of the First Schedule hereto being the differential amount between the EPR and BR- I.

**"Tenure"** means the payment period of the Bank's Selling Price set out in Item 13 of the First Schedule herein.

**"this Agreement"** means this property sale agreement made between the Bank and the Customer(s) under the Shariah principle of Al-Bai' Bithaman Ajil and includes variations, amendments and/or supplemental made or entered into from time to time.

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**Section 2.2 Interpretation**

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

**ARTICLE III  
AGREEMENT TO SELL****Section 3.1 Agreement to Sell**

The Bank hereby sells and the Customer(s) hereby purchase the Property free from all encumbrances subject to those conditions and restriction in interests expressed or implied in the issue document of title to the Property at the Bank's Selling Price upon the terms and subject to the conditions herein contained.

**Section 3.2 Passing of legal/beneficial ownership and/or rights**

Beneficial ownership and/or rights to the Property shall pass to the Customer(s) upon execution of this Agreement.

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### **Section 3.3 Payment of the Bank's Selling Price**

The Bank's Selling Price shall be paid during the Tenure by the Customer(s) in monthly instalments based on the EPR.

The first of such monthly instalment shall commence on the 1st of the month following the first release of Facility, the Bank shall advise the Customer(s) from time to time on the actual amount of the monthly instalment payable for the above period at its absolute discretion upon changes of the EPR.

The monthly instalments hereof shall be subject to changes from time to time in the manner as determined by the Bank upon revision by the Bank at the Bank's absolute discretion.

### **Section 3.4 Rebate/lbra'**

On profit payment date, the Bank shall grant to the Customer(s) a rebate on the profit which forms part of the The Bank's Selling Price on the differential sum between the Ceiling Profit Rate and the Effective Profit Rate, subject to the Bank's discretion.

In the event that all outstanding amounts due and payable under the Facility are paid off or settled before the end of the Tenure under any of the following circumstances:

(a) Early settlement by Customer(s)

The Customer(s) requests for full settlement of the Facility before the end of the prepayment period by serving an irrevocable written notice on the Bank to do so thirty (30) days before the proposed settlement date; or

(b) Restructuring of Facility

The Facility is restructured into another facility in any manner prior to the end of the Tenure; or

(c) Event of Default

The Facility is settled following an Event of Default; or

(d) Termination or Cancellation of Facility

The Facility is terminated or cancelled for any reason whatsoever prior to the end of the Tenure, the Customer(s) shall be entitled to lbra' (rebate) which shall be calculated based on the following formula:-

$$\text{Settlement Amount} = \text{Outstanding Selling Price} + \text{instalment due} + \text{Ta'widh (if any)} - \text{lbra' (rebate)}$$

$$\text{lbra' (Rebate)} = \text{deferred profit} - \text{early settlement charges}$$

The lbra' will be granted in accordance with the formula calculation of lbra' (Rebate) Guidelines.

"Deferred profits" mean unaccrued profit at the point of settlement of the Facility.

"Early settlement charges" mean the charges that may be imposed by the Bank on the Customer(s) for early settlement of the Facility before the end of the tenure of the Facility. Such charges may include:-



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- (i) costs that have not been recovered because a financing contract has a structure with discount elements at the initial period of financing (if applicable); and
  - (ii) initial costs that have not been recovered (e.g: legal fees, valuation fees and takaful contribution),
- but shall in any event be a reasonable estimate of the costs incurred by the Bank as a direct result of such early settlement.

Late Payment Compensation (Ta'widh) mean compensation charges which may be imposed by the Bank for late payment.

Profit Payment Date means the last day of any Profit Period or due date whichever is applicable.

### **Section 3.5 Variation of the Islamic Base Rate (BR- i)**

3.5.1 Notice on the change of the BR- i shall be notified by the Bank to the Customer(s) in the following manner:

- 3.5.1.1 by placing in one issue of a daily national newspaper a general notice of change of the BR- i addressed to the public generally; or
- 3.5.1.2 by posting a notice of such variation in any of the Bank's branch premises.

PROVIDED ALWAYS that the effective date of the change of the BR- i shall be the date as specified in the advertisement or in the notice, notwithstanding that such specified date from which the amended BR- i is applicable shall be earlier than the date of the advertisement or notice, as the case may be. Notwithstanding the issue of the general notice specified in Section 3.5.1.1 and 3.5.1.2 above, the Bank may at its absolute discretion decide (without any further notice to the Customer(s)) that such variation shall not apply to the Customer(s) and the Security Party(ies) to whom a demand hereunder had been made or legal proceedings had been commenced against the Customer(s) and/or any of the Security Party(ies).

- 3.5.2 The decision of the Bank as to what at any time is the BR- i and the date(s) from which such amendment shall take effect shall be final and conclusive and shall not be questioned on any account whatsoever.
- 3.5.3 If and whenever the BR- i payable by the Customer(s) shall be varied, the Bank may, at its absolute discretion, adjust the amount of rebate granted to the Customer(s) during the Tenure upon changes of the EPR due to the fluctuating BR- i, provided always that the total amount received by the Bank shall not exceed the Bank's Selling Price.

### **Section 3.6 Grace Period Profit**

- (a) Pending full disbursement of the Bank's Purchase Price during the Grace Period, the Customer(s) expressly agrees to pay to the Bank the Grace Period Profit.
- (b) In the event full disbursement of the Bank's Purchase Price is made prior to the expiry of the Grace Period, the payment of the Monthly Instalment shall commence on the 1st day of the month following of the full disbursement of the Bank's Purchase Price and in such case, the instalment payment of the Grace Period Profit which are not yet due for payment as at the date of full disbursement of the Bank's Purchase Price shall cease to be payable.
- (c) In the event full disbursement of the Bank's Purchase Price is not made by the expiry of the Grace Period, payment for the Monthly Instalments shall nevertheless commence in the month following the expiry of the Grace Period.

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### **Section 3.7 Late Payment Compensation (Ta'widh)**

The Customer(s) shall be liable to pay to the Bank the Late Payment Compensation (Ta'widh) on any amount overdue as follows:

- i. if default occurs during the tenure of the Facility or any part thereof, at the rate of one per centum (1%) per annum on such overdue amount under the Facility or such part thereof or such other method or rate as shall be stipulated by Shariah Advisory Committee of the Bank ("the Bank SAC") and/or Shariah Advisory Council of Bank Negara Malaysia ("BNM") from time to time; and
- ii. if default occurs after the maturity of the Facility or any part thereof, at a rate that shall not exceed the prevailing daily overnight Islamic Interbank Money Market (IIMM) rate on the outstanding balance or other method approved by the Bank SAC and/or Shariah Advisory Council of BNM from time to time.

Notwithstanding the amount of Late Payment Compensation (Ta'widh) charged, it is expressly acknowledge and agreed that the said amount of Late Payment Compensation (Ta'widh) shall not be further compounded.

## **ARTICLE IV PREPAYMENT OF THE BANK'S SELLING PRICE**

### **Section 4.1 Prepayment**

- (a) Subject to the full disbursement of the Facility and in accordance with Shariah law, the Customer(s) may make prepayment or early settlement of the Bank's Selling Price subject always to payment by the Customer(s) to the Bank of amount equivalent to three (3) months profit.
- (b) Payment of any amount equivalent to a minimum of three (3) monthly instalments will be considered as prepayment of the Bank's Selling Price whereby payment of any amount equivalent to less than three (3) monthly instalments will be considered as advance payment of the Bank's Selling Price. Any prepayment made hereunder shall in no way entitle the Customer(s) to a reduction in the amount of the Monthly Instalment.

## **ARTICLE V SECURITY**

### **Section 5.1 Security Documents**

For the purpose of better securing the payment of the Bank's Selling Price and all other monies due and owing under this Agreement and the other Security Documents, the Customer(s) execute and/or shall cause the Security Party(ies) to execute on or before the execution of this Agreement in favour of the Bank the following security documents:-

- (a) the Charge in the event the individual document of title/separate strata title has been issued by the relevant authorities; or
- (b) the Deed of Assignment;
  - (i) In the event that the individual document of title/separate strata title to the Property has not been issued by the relevant authorities, the Customer(s) shall execute and/or shall cause the Purchaser(s) to execute the Deed of Assignment in the form and substance acceptable to the Bank where the Purchaser(s) absolutely assign to the Bank the Property and the full and entire benefit of the Principal Sale and Purchase

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Agreement/Sale and Purchase Agreement together with all rights, title and interest of the Purchaser(s) therein PROVIDED ALWAYS that notwithstanding the Deed of Assignment or any other provision of this Agreement, the Purchaser(s) and/or Customer(s) shall continue to observe and be bound by all whatsoever conditions, covenants and stipulations imposed therein on and to be performed by the Purchaser(s) expressed and contained in the Principal Sale and Purchase Agreement/Sale and Purchase Agreement, as the case may be,

- (ii) Upon issuance of the individual document of title/separate strata title as the case may be, to the Property, the Customer(s) shall and/or shall cause the Purchaser(s), at the Purchaser(s) and/or Customer(s)' cost and expense immediately, take a transfer of the Property and execute the Charge in the Bank's standard form or such variation thereof as the Bank may require to secure the payment of the Bank's Selling Price failing which the Bank shall be entitled to take such cause of action to protect the Bank's interest and all costs and expenses including solicitors' costs (on a solicitor and client basis) in connection with the preparation, execution and registration of the Charge shall be borne and paid by the Customer(s),

- (c) the Power of Attorney;

In addition to the Deed of Assignment/Charge, the Customer(s) shall, execute and deliver and/or shall cause the Purchaser(s) to execute and the deliver the Power of Attorney to the Bank in the form and substance acceptable to the Bank where the Customer(s) and/or the Purchaser(s) appoint the Bank or any persons authorised by the Bank for the time being as the attorney of the Customer(s) and/or the Purchaser(s) upon the terms and subject to the conditions stipulated in the Power of Attorney; and/or

- (d) the Guarantee;

Where required by the Bank, the Customer(s) shall procure or cause the Guarantor(s) to enter into and deliver to the Bank the Guarantee guaranteeing the Bank with the payment of the Bank's Selling Price due and owing to the Bank by the Customer(s).

## **Section 5.2 Undertakings**

- (a) In consideration of:-

- (i) The Bank having at the request of the Customer(s) given its express or implied undertaking or covenant to any financial institution and/or the Developer/Vendor/Proprietor and/or the Contractor/Developer or their solicitors or firm of solicitors purporting to act for the financial institution or the Developer/Vendor/Proprietor or the Contractor/Developer, to pay;
- (ii) The Bank having at the request of the Customer(s) given its express or implied undertaking or covenant to pay the Bank's solicitors to enable the solicitors to give to the financial institution and/or the Developer/Vendor/Proprietor and/or the Contractor/Developer and/or the solicitors acting for the financial institution and/or the Developer/Vendor and/or the Contractor/Developer, their solicitors' undertaking to pay;

the Sale and Purchase Price and/or the Contract Cost payable by the Purchaser(s) under the schedule of payment set out in the Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement or quotation or any variation in the order of payment thereof the Customer(s) agree (in addition to the Property being charged or assigned as provided herein) that the Property is charged or assigned for the benefit of the Bank with the payment of all monies undertaken or guaranteed or covenanted to be paid by the Bank to the financial institution and/or Developer/Vendor/Proprietor and/or the Contractor/Developer or their

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solicitors and/or the Bank's solicitors, as the case may be; and the Customer(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 the Contractor/Developer and/or their solicitors and/or the Bank's solicitors.

- (b) For the purpose of Section 5.2(a), the Customer(s) hereby agree and undertake:-
- (i) to advise the Bank immediately of any threatened, impending or existing legal proceedings affecting the Customer(s) or any Security Party(ies);
  - (ii) that there is no change that would be detrimental to the financial standing of the Customer(s) or any Security Party(ies) provided always that the Bank has the absolute discretion to decide whether a change is detrimental or not;
  - (iii) to advise the Bank immediately of any change in the financial standing of the Customer(s) or any Security Party(ies).

### **Section 5.3 Payment of Security Deposit/ Margin**

Where applicable, the Customer(s) shall prior to or at the time of the execution of this Agreement, pay to the Bank the Security Deposit which shall be retained by the Bank for the due observance by the Customer(s) of the stipulations terms and conditions of this Agreement and the Security Documents and the Customer(s) hereby irrevocably authorises the Bank to set-off and utilise the Security Deposit for the purpose of paying any or all of the Monthly Instalments which may have become overdue and payable and/or other monies payable by the Customer(s) under this Agreement and the Security Documents at its sole discretion at any time and from time to time provided always that the Security Deposit shall at all times be maintained by the Customer(s) at the same level as required by the Bank but provided further that the Security Deposit shall be refunded to the Customer(s) upon full payment of the Monthly Instalments and all monies due and owing hereunder.

### **Section 5.4 Other Security Documents**

Notwithstanding Section 5.1, where required by the Bank, the Customer(s) shall also execute and/or cause the Security Party(ies) to execute and deliver to the Bank the other Security Documents which the Bank may require to secure the payment of the Bank's Selling Price or any part thereof.

### **Section 5.5 Continuing Security**

The security given by the Customer(s) under this Article V are expressly intended to be and shall be a continuing security for all monies whatsoever now or hereafter or from time to time owing and due to the Bank by the Customer(s) pursuant to the Facility.

### **Section 5.6 Liens and Other Securities**

Nothing contained herein 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 owing nor shall anything contained herein 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 owing hereunder or any right or remedy of the Bank hereunder.

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### Section 5.7 Covenant to Provide Further Security

- (a) The Customer(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, assignment, transfer, agreements or other assurances as the Bank shall require of and on all the Customer(s)' rights, title and interests in any property or asset or business now belonging to or which may hereafter be acquired by or belonging to the Customer(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, such mortgages, charges, assignments, transfers, agreements or other assurances to be prepared by or on behalf of the Bank at the cost of the Customer(s) and to contain all such terms and conditions for the benefit of the Bank as the Bank may require or stipulate;
- (b) The Customer(s) shall at all times 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 Customer(s) for any tenure and all or any debentures, shares, stocks or other investments or securities registered in the name of the Customer(s) or otherwise belonging to the Customer(s). Such deposit may be by way of collateral security for the payment of the Bank's Selling Price and any other monies owing and due to the Bank pursuant to the Facility.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES

### Section 6.1 Representations and warranties

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

- (a) **Valid and binding:** that the Security Documents constitute the legal, valid and binding obligations on the Customer(s) and/or the Security Party(ies) in accordance with their respective terms and conditions;
- (b) **Non-violation:** that the execution, delivery and performance of the Security Documents by the Security Party(ies) :-
- (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 Customer(s) and/or the Security Party(ies) is/are subject;
  - (ii) will not violate the provisions of any mortgage, contract or other undertaking or instrument to which the Customer(s) and/or the Security Party(ies) is a/are party(ies) or which is/are binding upon the Customer(s) and/or the Security Party(ies);
  - (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 Customer(s) and/or the Security Party(ies)'s assets or revenues pursuant to the provisions of any such mortgage, contract or other undertaking or instrument;
- (c) **Consents:** that all consents, approvals or authorisations of any relevant authority which are required on the part of the Customer(s) and/or the Security Party(ies) or which are advisable for or in connection with the execution, delivery, performance, legality and enforceability of the Security Documents have been obtained and are in full force and any conditions contained therein or otherwise applying thereto have been complied with;
- (d) **No default:** that the Customer(s) and the Security Party(ies) is/are not in default under any agreement to which the Customer(s) and/or the Security Party(ies) is/are a party or by which the Customer(s) and the Security Party(ies) are bound and no bankruptcy or winding up proceedings are pending nor any litigation, arbitration or administrative proceedings are

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presently current or pending or threatened which default bankruptcy, winding-up, arbitration or administrative proceedings as the case may be might materially affect the solvency of the Customer(s) and the Security Party(ies) and might impair the Customer(s)' and the Security Party(ies)'s ability to perform the Customer(s)' and the Security Party(ies)'s respective obligations under the Security Documents;

- (e) **Power and authorisations:** that the Customer(s) and the Security Party(ies) have the full and absolute power, right and authority to execute the Security Documents and that there is and shall be no person or party having priority over the Bank in respect of the Property and/or the security provided to the Bank, save and except as the Bank may agree in writing in its absolute discretion;
- (f) **Payment of Outgoings:** all quit rents, rates, taxes, assessments and other charges imposed or to be imposed by the Government or any other competent authorities and other charges or levies and other outgoings in respect of the Property, whether before or after the date of the execution of this Agreement shall be solely borne and paid by the Customer(s);
- (g) **Accounts:** the audited financial statements (including the income and balance sheets) of the Customer(s) for the financial year ended prior to the date of this Agreement have been prepared on a basis consistently applied in accordance with generally accepted accounting principles in Malaysia and gives a true and fair view of the results of its operations for that year and the state of its affairs at that date, and in particular accurately discloses or reserves against all the liabilities (actual or contingent) of the Customer(s) as at such date and all material unrealised or anticipated losses from any commitment entered into by it and which existed on that date;
- (h) **Material change in financial condition:** there has been no material adverse change in the financial condition or operations of the Customer(s) since the date of the Letter of Offer;
- (i) **No security:** none of the assets, properties and rights of the Customer(s) is affected by any security interest and the Customer(s) is not a party to, nor is it or any of its assets bound by, any order, agreement or instrument under which the Customer(s) is, or in certain events may be, required to create, assume or permit to arise any security interest;
- (j) **Information:** all information furnished by the Customer(s) in connection with the Customer(s) and to the best of its knowledge and belief, each Security Party(ies), do not contain any untrue statement or omit to state any fact the omission of which makes any statements made therein in the light of the circumstances under which they are made, misleading, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Customer(s) and the Customer(s) is/are not aware of any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, adversely affect the decision of a person considering whether or not to provide finance to the Customer(s);
- (k) **Disclosure:** the Customer(s) has/have fully disclosed in writing to the Bank all facts relating to the Customer(s) and the Security Party(ies) which the Customer(s) knows or should reasonably know and which are material for disclosure to the Bank in the context of the Property Financing-*i* Facility;
- (l) **Property:** subject to the 'Charge/Deed of Assignment, the Purchaser(s):
  - (i) is/are the legal and beneficial owner of the Property; and
  - (ii) on acquiring any Property forming part of the Security given by it, is the legal and beneficial owner of that Property, and no person other than the Bank holds or is entitled to hold an interest in the Property mentioned in sub-clause (l)(i) and (ii) other than under a Security Documents;

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- (m) **Event of Default:** no Event of Default has occurred and/or is continuing;
- (n) **Dissolution:** no step has been taken by the Customer(s), any Security Party(ies), its/their shareholders nor have any legal proceedings been started or threatened for the dissolution of the Customer(s) or any Security Party(ies) or for the appointment of a receiver, trustee or similar officer of the Customer(s) or any Security Party(ies), its/their assets or any of them;
- (o) **No Immunity:** the Customer(s) and each Security Party(ies) is/are subject to civil and commercial law with regard to its obligations under the Security Documents and the execution, delivery and performance of the Security Documents constitute private and commercial acts rather than governmental or public acts and neither the Customer(s), the Security Party(ies) nor any of its/their properties enjoy any immunity on the grounds of sovereignty or otherwise in respect of its/their obligations under the Security Documents;
- (p) **Conduct of Business:** the Customer(s) is conducting its business and operations in compliance with all applicable laws and regulations and all directives of governmental authorities having the force of law;
- (q) None of the directors, shareholders, managers or agents of the Customer(s) is related to any director or officer or employee of the Bank currently either as a parent, spouse or child so as to result in the participation by the Bank in the Facility contravening any prevailing acts and the Customer(s) undertakes to advise the Bank immediately if any of the said relationship is established or discovered at any time;
- (r) **Section 366 of the Companies Act, 2016 of Malaysia:** no step has been taken by the Customer(s) or any Security Party(ies), its/their creditors or any of its/their shareholdings or any other person in its/their behalf nor have any legal proceedings or applications been started or threatened under Section 366 of the Companies Act, 2016 of Malaysia;
- (s) **Insurances:** no event or circumstance has occurred, nor has there been any omission to disclose a fact which, in any such case, to the best of the Customer(s)'s knowledge and belief after due enquiry would entitle any insurer/Takaful provider to avoid or reduce its liability under any of the insurances/takaful coverage and all insurances required under the Security Documents to be effected by the Customer(s) have been so effected and are valid and binding and in full force and effect and all premiums and/or contributions due have been paid;
- (t) **BMC Guidelines:** that the Customer(s) or any Security Party(ies) or the Customer(s)' or any Security Party(ies) account is not listed under the Biro Maklumat Cek (BMC) guidelines or otherwise for that matter designated as "special" under such guidelines;
- (u) **Corporation:** if the Customer(s) or any of the other Security Party(ies) is/are a corporation:
- (i) the Customer(s) and/or the other Security Party(ies) is/are duly incorporated under the relevant law;
  - (ii) all requisite corporate shareholders or other approvals for the execution of the Security Documents have been obtained;
  - (iii) the Customer(s) and/or the Security Party(ies) is/are empowered to execute the Security Documents under their respective Memorandum and Articles of Association of the Customer(s) and/or the Security Party(ies);
- (v) **Information:** that all the financial statements, information, particulars and declarations furnished, provided or made by the Customer(s) and the Security Party(ies) in respect of the Customer(s)'s application for the Facility are complete, true, accurate and correct in all respects;

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- (w) **Other representations and warranties:** such other representations and warranties set out in the Second Schedule herein shall be binding on the Customer(s);
  - (x) **Exclusive Purpose:** that the Facility shall be exclusively applied towards the purpose stated in the Letter of Offer and the Property shall at all times be used for halal purposes and will not be used in any manner which is in contravention with the religion of Islam;
  - (y) **Termination:** that Customer(s) shall and/or shall cause the Purchaser(s) not revoke, cancel and/or terminate the Sale and Purchase Agreement or the Construction Contract/Renovation Agreement or effect a variation thereof.
  - (z) **Dishonoured Cheque Information System (DCHEQS):** in accordance with the prevailing (DCHEQS) maintained by BNM from time to time, the Customer hereby acknowledges that the Bank reserves the right without prior notice or reference to close the current account of the Customer whether held solely or jointly with others to comply with the system;

## **Section 6.2 Truth and Correctness of Representations and Warranties**

- (a) The Customer(s) acknowledge(s) that the Bank has accepted this Agreement on the basis of and in full reliance upon, the aforesaid representations and warranties, which will be correct and complied with in all material respects so long as this Agreement 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 6.1 hereof shall form the basis of the Bank's commitment to make available or continue to make available the Facility to the Customer(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.

## **ARTICLE VII UNDERTAKINGS**

### **Section 7.1 Affirmative Covenants**

In the case the Customer(s) is a corporate body, the Customer(s) hereby covenant with the Bank that from the date of this Agreement until all its liabilities and obligations hereunder and under the other Security Documents have been discharged, all undertakings that are set out in the Third Schedule herein shall be adhered.

### **Section 7.2 Negative Covenants**

In the case the Customer(s) is a corporate body, the Customer(s) hereby covenant with the Bank that from the date of this Agreement until all its liabilities and obligations hereunder and under the other Security Documents have been discharged, the Customer(s) will not without the written consent of the Bank first had and obtained do any matters that are set out in the Fourth Schedule herein.

## **ARTICLE VIII CHANGES IN CIRCUMSTANCES**

### **Section 8.1 Illegality**



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If by reason of any change after the date of this Agreement in applicable law regulation or regulatory requirement or in the interpretation or application thereof by BNM any governmental or other authority charged with the administration thereof whereby it shall become unlawful for the Bank to comply with its obligations hereunder or to continue to make available the Facility, the Bank shall promptly inform the Customer(s) of the relevant circumstances whereupon:

- (a) any outstanding obligations of the Bank shall forthwith be terminated and cancelled; and
- (b) the Customer(s) shall be obliged to forthwith upon demand refund to the Bank all monies paid to the Customer(s) together with any other monies covenanted to be paid by the Customer(s) under and in relation to this Agreement.

### **Section 8.2 Notification**

Any notification by the Bank concerning any of the matters referred to in Section 8.1 shall, save for any manifest error be conclusive and binding on the Customer(s).

### **Section 8.3 Force Majeure**

The Bank shall not be liable for any failure in performing any of their obligations hereunder or any claim in respect of any loss, damage or injury to earnings, profit, goodwill or business caused directly or indirectly or other fault if such failure, loss, damage or other fault is caused by circumstances beyond the reasonable control of the Bank including but not limited to any fire, earthquake, flood, epidemic, accident, explosion, casualty, lockout, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of God.

## **ARTICLE IX EVENTS OF DEFAULT**

### **Section 9.1 Events of Default**

If at any time and for any reason, whether within or beyond control of the Customer(s), anyone of the following events occurs, that is to say:

- (a) **Non-payment:** the Customer(s) or any Security Party(ies) fail to make payment of the monies owing to the Bank under the Security Documents on the due date or on demand, if so payable;
- (b) **Default in payment:** the Customer(s) or any Security Party(ies) shall make default in the payment on due dates of anyone or more of the Monthly Instalments or other sums or monies herein agreed or covenanted by the Customer(s) to be paid;
- (c) **Non-performance:** the Customer(s) or any Security Party(ies) fail to observe or perform any of the agreements, covenants, stipulations, terms and conditions on the part of the Customer(s) or any Security Party(ies) under the Security Documents;
- (d) **Composition winding up:** the Customer(s) or any Security Party(ies) commits any act of bankruptcy or if a body corporate convenes a meeting of its creditors or proposes or makes any arrangement or composition with, or any assignment for the benefit of, its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for making an administration order against or for winding up, dissolution or liquidation of the Customer(s) or such Security Party(ies) or a petition for winding up is presented against the Customer(s) or such Security Party(ies) (other than for the purposes of and followed by a reconstruction previously approved in writing by the Bank, unless during or

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following such reconstruction the Customer(s) or such Security Party(ies) becomes or is declared to be insolvent);

- (e) **Jeopardy:** the Bank decides in its sole discretion that the continuation of the grant of the Facility or any part thereof would be likely to be detrimental to its own position or otherwise undesirable or that its security hereunder is inadequate or in jeopardy or that any event or events has/have occurred or a situation exists which could or might prejudice the Customer(s)' or any of the other Security Party(ies)' ability to perform its and/or any of the other Security Party(ies)' obligation(s) hereunder in accordance with the terms hereof, or any of the Security Documents as the case may be;
- (f) **Bankruptcy:** in the case the Customer(s) and/or any Security Party(ies) who is/are individual(s), any step is taken for bankruptcy of the Customer(s) and/or the Security Party(ies) or a petition for bankruptcy is presented against such Security Party(ies) and/or the Customer(s) and such Customer(s) and/or Security Party(ies) commits any act of bankruptcy;
- (g) **Death or incapacity:** the Customer(s) and/or the Security Party(ies) who is/are individual(s) die or becomes incapacitated or of unsound mind or serves any custodial sentence or terminates or threatens to terminate his obligations under the Security Documents;
- (h) **Change in financial position:** if the Customer(s) or any of the Security Parties shall be affected by a material adverse change in his/their financial condition and/or employment and/or nature of business which in the opinion of the Bank is likely to prejudice the ability of the Customer(s) or the Security Party(ies) to perform his/their obligations under this Agreement in accordance with the terms hereof and/or which likely to have possible implications under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613);
- (i) **Event or events:** any event or events has or have occurred or a situation exists which could or might, in the opinion of the Bank, prejudice the ability of the Customer(s) or any Security Party(ies) to perform any of its/their respective obligations under any of the Security Documents in accordance with the terms hereof or thereof;
- (j) **Non-registration:** the transfer of the Property in favour of the Purchaser(s) or any of the Security Documents cannot be registered or perfected for any reason whatsoever or the Charge cannot be registered or is invalid for any reason whatsoever;
- (k) **Cessation of business:** the Customer(s) and/or any of the Security Party(ies) (in the case where they are body corporate) changes or threatened to change the nature or scope of its/their business, suspends or threatens to suspend a substantial part of the present business operations which it/they now conducts directly or indirectly, or any governmental authority expropriates or threatened to expropriate all or part of its/their assets or if there is any change in the major shareholders and/or management of the Customer(s) and the result of any of the foregoing is, in the determination of the Bank, materially and adversely to affect its/their financial condition or its/their ability to observe or perform its/their obligations under any of the Security Documents;
- (l) **Unlawfulness:** it is or will become unlawful by the laws of Malaysia or by the laws of any applicable jurisdiction for the Customer(s) or any Security Party(ies) to perform or comply with anyone or more of their respective obligations under the Security Documents or makes it impossible or unlawful for the Bank to continue its making available the Facility or any part thereof to the Customer(s) or the receipt by the Bank of the Bank's Selling Price or any part thereof;
- (m) **Nationalisation:** all or a material part of the Property or assets of the Customer(s) or any Security Party(ies) shall be condemned, seized or otherwise appropriated for more than sixty (60) days, or custody or control for such property or assets shall be assumed and retained for more than sixty (60) days by any person acting or purporting to act under the authority of the

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government, or the Customer(s) or any Security Party(ies) shall have been prevented for a period of more than sixty (60) days from exercising normal managerial control over all or any substantial part of its or their property or assets by any such person;

- (n) **Appointment of receiver, legal process:** an encumbrancer takes possession of, or a trustee or administrative or other receiver or similar officer is appointed in respect of, all or any part of the business or assets of the Customer(s) or any Security Party(ies) or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within seven (7) days after being levied, enforced or sued out, or any security interest which may for the time being affect any of its/their assets becomes enforceable;
- (o) **Indebtedness due:** any debt, guarantee or other obligation whatsoever constituting indebtedness of the Customer(s) or the Security Party(ies) becomes due prior to its scheduled maturity (by demand acceleration or otherwise) or such indebtedness shall not be paid at the maturity thereof or within any grace period allowed for payment thereof or if the Customer(s) or the Security Party(ies) is otherwise in breach of or default under any agreement, deed or mortgage pursuant to which such indebtedness was created, incurred or assumed;
- (p) **Judgement outstanding:** the Customer(s) or the Security Party(ies) shall fail to satisfy any judgement passed or order given against the Customer(s) or the Security Party(ies) by any court of competent jurisdiction and no appeal against such judgement or order is pending in any appropriate appellate court;
- (q) **Revocation of authorisations:** any authorisation exemption or undertaking referred to in the Security Documents shall be revoked terminated restricted or modified in a manner unacceptable to the Bank or an event or events shall have occurred which in the opinion of the Bank (which opinion shall be conclusive and binding on the Customer(s) makes it improbable that the Customer(s) or the Security Party(ies) will be able to perform or indicates that the Customer(s) or the Security Party(ies) is unwilling to perform its obligation under the Security Documents;
- (r) **Misrepresentation:** any representation or warranty or statement made (or acknowledged in writing to have been made) by the Customer(s) and/or any Security Party(ies) in connection with the delivery of the Security Documents or any request for utilisation for the Facility proves to be incorrect in any material respect, or if repeated at any time with reference to the facts and circumstances subsisting at such time would not be accurate in all material respects and written notice thereof is given to the Customer(s) and/or Security Party(ies) by the Bank requiring the remedy thereof, and the subsequent failure by the Customer(s) and/or Security Party(ies) to remedy the same within the period stipulated thereunder;

Each of paragraphs (a) to (r) above is to be construed independently and no one Event of Default limits the generality of any other Event of Default.

- (s) **Bad cheque offender:** The Customer is listed as a bad cheque offender by the Dishonoured Cheques Information System (DCHQIS) set up by BNM; or

Each of paragraphs (a) to (s) above is to be construed independently and no one Event of Default limits the generality of any other Event of Default.

## **Section 9.2 Concurrent Proceedings**

Notwithstanding any provisions hereof, it is hereby expressly agreed that upon default or breach by the Customer(s) or any Security Party(ies) of any term, covenant, stipulation and/or undertaking provided and/or contained in the Security Documents and on the part of the Customer(s) or the Security Party(ies) to be observed and performed, the Bank shall thereafter have the right to exercise

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all or any of the remedies available whether by the Security Documents or by statute or otherwise and shall be entitled to exercise such remedies concurrently to recover all monies due and owing to the Bank in any order of priority.

## **ARTICLE X REMEDIES OF THE BANK**

### **Section 10.1 Remedies**

Upon demand and/or the occurrence of any Event of Default, the Bank shall be entitled to exercise such rights that are available to it under the Security Documents and/or at law including any of the following rights and powers:

- (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 the proprietor thereof;
- (b) the right to let, lease or demise the Property or any part or parts thereof for such tenancy or term of years at such rent and generally upon such terms as the Bank in its absolute discretion shall deem fit;
- (c) the right to receive the rents and profits of the Property;
- (d) the right and power to sell and assign the Property by public auction or private treaty as the absolute and unencumbered owner thereof at such price or prices and in such manner as the Bank shall in its absolute discretion deem fit free from any interest of the Customer(s) and/or the Purchaser(s) hereunder or otherwise and the right to bid at any such sale;
- (e) the right to sue and institute by way of a civil suit or action for the recovery of the Indebtedness 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;

and the Customer(s) shall and hereby expressly agree covenant and undertake to do and execute or cause the Security Party(ies) as the case may be, 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 the beneficial owner of the Property by virtue of the Deed of Assignment/Charge.

### **Section 10.2 Application of Monies**

All monies received by the Bank from any proceedings instituted or step taken pursuant to the Security Documents shall be applied by the Bank:-

- FIRSTLY in payment of all costs, charges and expenses incurred and payments made by the Bank under the provisions of the Security Documents (if any) and any taxes payable under any written law for the time being in force on the disposal of the Property;
- SECONDLY in or towards payment to the Bank of the Bank's Selling Price due and remaining unpaid or the balance thereof for the time owing;
- THIRDLY in or towards payment to the Bank of all other monies due and remaining unpaid under the Security Documents;
- FOURTHLY in or towards payment to the Bank of the Customer(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

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available under this premise, are specifically held in trust for the Bank for the satisfaction of such liabilities;

FIFTHLY any surplus shall be paid to such person(s) 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 10.3 Deficiency in Proceeds of Sale**

If the net proceeds of any sale of the Property under the provisions herein or the applicable Acts or otherwise are less than the balance of all monies owing 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, cost, rents, rates, taxes and other outgoings and all the costs and expenses incurred in connection with the making and carrying into effect of such sale, the Customer(s) shall notwithstanding that the Bank may be the purchaser of the Property, pay the Bank the difference between all monies owing and the net proceeds of such sale PROVIDED that nothing stated herein shall be construed in any manner whatsoever to bind or require the Bank to exercise its rights of sale of the Property first before enforcing or suing on the Customer(s)' personal covenant to pay on demand or to restrict, affect or diminish the Bank's rights at law or in equity.

### **Section 10.4 Concurrent Remedies**

Notwithstanding any provision hereof, it is hereby expressly agreed that immediately upon the occurrence of the Event of Default the Bank shall thereafter have the right to concurrently exercise all or any of the rights and remedies available to the Bank whether by this Agreement or any of the Security Documents or at law or otherwise including without limitation the right to pursue its remedies of sale and possession pursuant to the provisions herein and any of the Security Documents or the applicable Acts and the right to recover by civil suit all monies due and owing by the Customer(s) or the Security Party(ies) to the Bank.

## **ARTICLE XI GOVERNMENT ACQUISITION**

### **Section 11.1 Government Acquisition**

In the event that the Property or any part thereof shall at any time become the subject matter of or be included in any notice, notification or declaration concerning or relating to acquisition by government or any government authority or any enquiry or proceeding in respect thereof, the Customer(s) shall or shall cause the Purchaser(s) to forthwith inform the Bank of the same and shall forward to the Bank a copy or copies of any such notice, notification or declaration as soon as the same shall be delivered to or served on the Customer(s) and/or Purchaser(s). In addition and without prejudice to Section 9.1 (m), the Bank shall be entitled at the expense of the Customer(s) to engage such advisers and agents (including solicitors and valuers) as it may think fit for the purpose of appearing or attending at or advising upon any enquiry or proceeding affecting, concerning or relating to any such acquisition. All monies received as or by way of compensation for any such acquisition of the Property or any part thereof shall be applied in or towards the settlement or payment of the Monthly Instalments or any part or parts thereof and the Customer(s) and/or Purchaser(s) shall and hereby declare that the Customer(s) shall and/or cause the Purchaser(s) to hold all monies if paid to and so received by the Customer(s) and/or Purchaser(s) in trust for the Bank and the Customer(s) agree and confirm that the Bank may receive and give a good discharge for all such monies. In the event of all such monies aforesaid being less than the Indebtedness due to the Bank, the Customer(s) shall and/or cause the Purchaser(s) to forthwith pay to the Bank difference between the amount due and the amount so received.

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**ARTICLE XII  
INDEMNITY****Section 12.1 Indemnity**

- (a) The Customer(s) shall not and/or cause the Purchaser(s) not to do 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 Security Documents or any Act, Ordinance, Enactment, order, rule, regulation or by-law now or hereafter affecting the same and the Customer(s) shall at all times hereafter indemnify and keep indemnified the Bank against all 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 powers, rights and remedies conferred on the Bank herein, the Customer(s) shall indemnify the Bank against any damage, 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 Customer(s) of any sum payable hereunder.
- (c) In consideration of the Bank having at the request of the Customer(s) given its undertakings, guarantee and/or covenant to any financial institution and/or the Developer/Vendor/Proprietor and/or the Contractor/Developer or their solicitors or firm of solicitors purporting to act for the financial institution or the Developer/Vendor/Proprietor and/or the Contractor/Developer or to such other persons whatsoever to pay the balance of the Sale and Purchase Price and/or the Facility and/or the Contract Cost payable (or any part thereof) by the Purchaser(s) under the Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement or quotation (if applicable) 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 and/or the Construction Contract/Renovation Agreement or quotation (if applicable), the Customer(s) agree that the aforesaid undertaking, guarantee and/or covenant are given by the Bank on behalf of and for the benefit of the Customer(s) and/or Purchaser(s) and the Customer(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 including but not limited to all claims for Late Payment Compensation and/or penalties imposed by the Vendor/Developer/Proprietor and/or the Contractor/Developer (as the case may be) such delay caused by any reason whatsoever.

**ARTICLE XIII  
TAKAFUL AND/OR INSURANCE****Section 13.1 Takaful and/or insurance**

- (a) The Customer(s) shall insure and cause the Property to be insured with the takaful company and/or insurance company acceptable by the Bank for an amount acceptable to the Bank against loss or damage by fire or 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, in default whereof the Bank may at its absolute discretion take out such takaful and/or insurance policies and all premium and/or contribution payable and costs and expenses incurred in respect thereof shall be borne and paid by the Customer(s). The Customer(s) will deposit or cause to be deposited the policy or policies of such takaful and/or insurance with the Bank and will from time to time pay or cause to be paid the premium and/or contribution thereon and deliver or cause to be delivered the receipts for the same to the Bank. Such policies of takaful and/or insurance shall not be cancelled without the prior written consent of the Bank.

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- (b) In addition to and not in derogation of the agreement and stipulations implied and the obligations imposed and the rights created by law, custom and the Security Documents, the Customer(s) will if so required by the Bank at the cost and expense of the Customer(s) and/or the Security Party(ies) to insure and keep insured the whole of the Property and effects included in this Agreement and the other Security Documents and/or any part or parts thereof of an insurable nature against loss or damage by fire and such other risks and contingencies of whatsoever nature for such amount in such names and with such takaful companies and/or insurance and through such agencies as the Bank may from time to time stipulate.

### **Section 13.2 Other Takaful and/or Insurance**

The Bank may from time to time and at any time require the Customer(s) to take out and maintain a Takaful and/or insurance. The Customer(s) hereby agree and undertake to assign absolutely all rights, title, interest and benefits to the proceeds payable under the Takaful and/or insurance to the Bank as further security and the Customer(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 Customer(s) take out and maintain such policy guaranteeing the payment of all monies owing by the Customer(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 and/or insurance shall be terminated by the Bank and the Bank shall be entitled to claim the surrender value of the policy.

### **Section 13.3 Conflicting Takaful and/or Insurance**

Save and except at the request or with the prior written consent of the Bank, the Customer(s) and/or the Security Party(ies) shall not effect or maintain any insurance or other takaful and/or insurance against any risk in respect of the aforementioned buildings, fixtures, structures, property and effect of the Property where the Bank or the Customer(s) has/have effected or maintained any such takaful and/or insurance as aforesaid.

### **Section 13.4 Application of Takaful and/or Insurance Monies**

- (a) The Bank may at its discretion require all monies received on any takaful and/or insurance policies taken as aforesaid whether effected by the Bank or by the Security Party(ies) to be applied in or towards making good the loss or damage in respect of which the monies is received or at the option of the Bank in or towards the discharge of any money owing by the Customer(s) to the Bank and the Customer(s) or the Security Party(ies) shall hold monies so received on such takaful and/or insurance 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 and/or insurance company, the Customer(s) shall continue paying to the Bank whatever monies due and payable herein and the other Security Documents.
- (c) In the event that the Bank chooses to apply the monies received under any takaful and/or insurance policies to make good the loss or damage to the Property the Customer(s) or the Security Party(ies) shall in addition to continuing to pay whatever monies due and payable herein and the other Security Documents, bear the difference between the cost of making good such loss or damage and the monies received from the takaful and/or insurance company.
- (d) In the event that the Bank chooses to utilise the monies received under any takaful and/or insurance policies to discharge all monies owing by the Customer(s) to the Bank and the monies received is less than the amount due to the Bank hereunder the Customer(s) shall pay the Bank the difference between the amount due and the amount so received within seven (7) days from the date of demand by the Bank.

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**ARTICLE XIV  
FEES AND EXPENSES**

**Section 14.1 Expenses**

- (a) All costs, charges and expenses incurred hereunder by the Bank including any expenditure incurred in the creation, preservation, enforcement, recovery and/or preparation of this Agreement and the other Security Documents and any documents related thereto or in the giving of any notice or in the making of any demand, under or pursuant to or in respect of this Agreement 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 Acts, this Agreement and the other Security Documents and any documents related thereto express or implied, shall be debited to the Customer(s)' accounts and payable by the Customer(s) to the Bank on demand calculated from the date it is due until full payment and in the case of any Late Payment Compensation, it shall be determined by the Bank from the date it is due until full payment in addition to the Facility hereby released.
- (b) In the event of default by the Customer(s) or any of the Security Party(ies) in payment of any monies payable by the Customer(s) or any of the Security Party(ies) to any person or authority whomsoever under or pursuant to the provisions of this Agreement and the other Security Documents and the Sale and Purchase Agreement and/or the Principal Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement, it shall be lawful for (but not obligatory upon) the Bank to make such payments on behalf of the Customer(s) and/or any of the Security Party(ies), whereupon the Bank reserves the absolute right to debit the Customer(s)' account(s) with all such monies expended by the Bank and the Customer(s) shall pay to the Bank the Late Payment Compensation thereon if delayed or overdue and the same shall be made on demand which shall be determined by the Bank from the date such monies having been paid or expended until full payment (both before and after demand judgement or order).

**ARTICLE XV  
FUTHER PROVISIONS**

**Section 15.1 Evidence of Indebtedness**

In any proceedings relating to this Agreement a statement as to any amount due from the Customer(s) under this Agreement which is certified as being correct by such party to whom such amount is owed, shall, in the absence of manifest error, be conclusive evidence that such amount is in fact due and payable.

**Section 15.2 Rights cumulative waivers**

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

**Section 15.3 Reconstruction of the Bank and the Customer(s)**

The security liabilities and/or obligations created by this Agreement 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 and similarly the security liabilities and/or obligations created by this Agreement shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation, reconstruction or otherwise howsoever in the constitution of the Customer(s), and it is expressly declared that no change of any sort



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whatsoever in relation to or affecting the Customer(s) shall in any way affect the security, liabilities and or obligations created hereunder to any transaction whether past present and future.

**Section 15.4 Consent to assign/transfer**

- (a) The Customer(s) hereby covenant and agree that the Bank shall be at liberty at any time with or without notice to the Customer(s) to assign and/or transfer all its rights, interests and obligations of this Agreement 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 Customer(s).
- (b) The Customer(s) shall not assign the Customer(s)' rights, interest and obligations hereunder without the prior written consent of the Bank.

**Section 15.5 Custody of documents**

- (a) The Bank shall have custody and possession of the individual document/separate strata title in respect of the Property immediately upon issuance thereof by the relevant authority.
- (b) For so long as any monies shall be owing by the Customer(s) to the Bank and during the continuance of this Agreement, the Bank shall have the custody and possession of the original copy of the Sale and Purchase Agreement/Construction Contract/Renovation Agreement and of all other whatsoever documents evidencing any title to or right in the Property or any benefits or rights annexed, appurtenant or relating thereto or in any way connected therewith.

**Section 15.6 No Inference of Condonation or Acquiescence**

Notwithstanding the fact that the Bank may not have exercised any remedy available to it immediately on default by the Customer(s) or that it may have accepted monies from the Customer(s) or any of the Security Party(ies) after such default the Bank shall not be held to have condoned 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 Agreement and the other Security Documents or statute shall not be held to prejudice its right of action in respect thereof.

**Section 15.7 Consolidation and Right of Set-off**

- (a) It is hereby expressly agreed and declared that unless the Bank otherwise agrees any security whether given now or hereafter shall not be discharged or released except on payment of not only all monies secured hereby but also all monies whatsoever and howsoever owing or payable or due from the Customer(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 financing/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 Customer(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 Customer(s), account or accounts of whatsoever nature at any branch of the Bank with any liabilities of the Customer(s) (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any account, agreement (including under this Agreement and the other Security Documents), or contract or otherwise 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 the Bank's Selling Price and any other monies owing to the Bank or under any other account or accounts of whatsoever nature (whether current, deposit or financing/loan account), agreements or

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contracts or otherwise (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint).

**Section 15.8 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 Acts or otherwise, the Bank shall be entitled to set off the unpaid the Bank's Selling Price and any other monies owing to the Bank against any monies payable by the Customer(s) as the purchaser at such sale in the event the Bank exercising its rights under this Agreement or the applicable Acts, as the case may be, to bid at such sale.

**Section 15.9 Duty to deliver vacant possession**

Unless with the consent of the Bank in writing, the Customer(s) shall not, so long as this Agreement and the other Security Documents continue in force, permit any person or party other than the Customer(s) and/or Purchaser(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 therein contained or an order of court or the land administrator as the case may be, the Customer(s) shall whenever requested to do so by the Bank at the Customer(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 15.10 Statement of Account**

The Customer(s) hereby expressly agree(s) that a statement of account signed by the Manager, Assistant Manager and any other duly authorised officer of the Bank shall be final and conclusive proof of the liability of the Customer(s) of the Bank's Selling Price and any other monies owing from the Customer(s) to the Bank.

**Section 15.11 Suspense Account**

Any monies received hereunder or any of the Security Documents, may be placed and kept to the credit of a suspense account for so long as the Bank thinks fit without any obligations in the meantime to apply the same or any part thereof in or towards the discharge of any monies or liabilities due or incurred by the Customer(s) to it. 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 monies and liabilities in the same manner as if the security provided hereunder had not been created and no monies or dividends so received by the Bank shall be treated as received in respect of this Agreement and the other Security Documents, but the full amount hereby secured shall be payable by the Customer(s) until the Bank shall have received from all sources one hundred cent in the ringgit on the ultimate balance outstanding against the Customer(s). After the Bank has received such ultimate balance in full, any claim on the part of the Customer(s) to any excess or any securities remaining with the Bank shall be a matter of adjustment between the Bank and the Customer(s) and any other person or persons laying claim thereto.

**Section 15.12 Involuntary Loss**

The Bank shall not be answerable for any involuntary loss suffered by Customer(s) as a result of or incidental to the exercise or execution of any power, right, privilege and remedy conferred on the Bank by this Agreement, and the other Security Documents or by law and nothing herein contained shall render it obligatory on the Bank either at law or in equity to make good any such involuntary loss or any part thereof.

**Section 15.13 Variation of Terms**

The terms of this Agreement 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

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supplement document and the relevant provisions of this Agreement shall be deemed to have been amended and/or varied accordingly and shall be read and construed as if such amendments and/or variations had been incorporated in and had formed part of this Agreement at the time of execution hereof. In the event of any inconsistency between the provisions of this Agreement and the terms as varied and/or amended by the aforesaid exchange of letters or formal or supplemental documents, the latter shall prevail.

#### **Section 15.14 Law**

- (a) This Agreement shall be governed by and shall be construed in all respects in accordance with the laws of Malaysia and in relation to any legal action or proceedings arising out of or in connection with this Agreement ("Proceedings") and the parties herein hereby submit to the jurisdiction of the courts of Malaysia and waives any objections to proceedings in any court on the grounds that the Proceedings have been brought in an inconvenient forum.
- (b) Such submission however shall not affect the right of the Bank to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any jurisdiction preclude the Bank from taking Proceedings in any other jurisdiction and the Bank shall be at liberty to initiate and take actions or Proceedings or otherwise against the Customer(s) in any court of Malaysia and/or elsewhere as it may deem fit.

#### **Section 15.15 Notices**

Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered personally, or by post, or facsimile to the addresses given in this Agreement or at facsimile numbers or at such other address or facsimile number as the recipient may have notified to the other party herein in writing. Any notice or communication given as provided in this clause shall be deemed received by the party to whom it is addressed:

- (a) if delivered by hand, when so delivered;
- (b) if sent by pre-paid post, on the third (3rd) Business Day after posting;
- (c) if sent by telex or cable, on the Business Day immediately after transmission; and
- (d) if by facsimile, upon the issue to the sender of a transmission control or other like report from the despatching facsimile machine which shows the relevant number of pages comprised in the notice have been successfully transmitted.

#### **Section 15.16 Service of Legal Process**

- (a) The service of any legal process may be given by prepaid registered post sent to the respective address for service of the parties herein and such legal process shall be deemed to have been duly served after the expiration of five (5) days from the date it is posted and if delivered by hand on the day when it is delivered and duly acknowledged.
- (b) No change in the address of service howsoever brought about shall be effective or binding on the Bank unless the Customer(s) has given to the Bank actual notice of the change of address for service and nothing done in reliance on Section 15.16(a) shall be affected or prejudiced by any subsequent change in the address of service over which the Bank has no actual knowledge of at the time the act or thing was done or carried out.

#### **Section 15.17 Enforcement of this Agreement**

This Agreement is in addition to and not in substitution of any other rights or securities which the Bank may have from or against the Customer(s) or under any of the Security Documents 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 Security Party(ies) as aforesaid.

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**Section 15.18 Cumulative Remedies**

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

**Section 15.19 Successors Bound**

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

**Section 15.20 Construction where Customer(s) is/are not an individual person**

If the Customer(s) herein 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 Customer(s) or person only shall be construed and take effect so as to give the Bank hereunder a security for the monies payable from that firm and every member thereof or from the limited company or corporation or committee or association or other unincorporated body as identical or analogous as may be with or to that which would have been given for the monies payable from a single individual if the Customer(s) had been a single individual and any monies shall be deemed to be so payable notwithstanding any defect informality or insufficiency in the powers of the Customer(s) or in the exercise thereof which might be a defence as between the Customer(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 payable 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 anyone 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 payable as aforesaid and secured pursuant to the terms hereunder 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 15.21 Disclosure of information**

- (a) Without limiting the subsequent provisions of this Section 15.21, the Bank may at any time without prior consent obtained from the Customer(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 Customer(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 Customer(s) provided that in respect of documents, records or information which the Customer(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 Customer(s) irrevocably permits and consent 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 Customer(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 Customer(s):
  - (i) to the Central Credit Bureau, BMC/DCHEQS,, 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
  - (iii) for or in connection with the enforcement of preservation of any rights of the Bank under this Agreement and the other Security Documents; or

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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 Customer(s); or
  - (vi) for and in connection with any legal action, suit or relating to the Facility or security (ies); or
  - (vii) to the Bank auditors, legal counsel and other professional advisers; or
  - (viii) to the Security Party(ies).
- (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 Customer(s) in relation to the Facility or the Security Documents as shall have been made available to the Bank generally.

**Section 15.22 Unincorporated body**

In amplification to and not in derogation of any other provision contained in this Agreement it is expressly agreed that notwithstanding that the Customer(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 Customer(s) was/were a principal obligor.

**Section 15.23 Time**

Time shall be of essence with regard to performance of the Customer(s)'s obligation under this Agreement.

**Section 15.24 Avoidance of Payments**

No assurance, security or payment which may be avoided under any law relating to winding up or insolvency and no release, settlement or discharge given or made by the Bank on the faith of any such assurance, security or payment, shall prejudice or affect the Bank's rights to recover from the Customer(s) the monies hereby owing to the full extent hereunder. Any such release, settlement or discharge shall be deemed to be made subject to the condition that it will be void if any payment or security which the Bank may previously have received or may hereafter receive from any person in respect of the monies hereby owing is set aside under any applicable law or proves to have been for any reason invalid.

**Section 15.25 Applicability of Malay Reservation Enactment(s)**

For the avoidance of doubt it is hereby agreed and declared that this Agreement and the other Security Documents are entered into for the purpose of and in order to effect the financing transaction in accordance with the Shariah principle of Al-Bai Bithaman Ajil and in the event that the provisions of the respective Acts or any Malay Reservation Enactment(s) 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 Customer(s) to obtain such approval prior to the execution of this Agreement and the other Security Documents and the Customer(s) hereby undertake with the Bank to obtain or cause to obtain such approval.

**Section 15.26 Compliance with Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement**

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The Customer(s) shall duly observe and perform all terms and conditions, covenants, and stipulations to be performed by the Customer(s) under the Sale and Purchase Agreement and where applicable the Principal Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement subject to the provisions of the Security Documents and the Customer(s) shall indemnify and save and hold the Bank harmless against all damages, losses, claims, proceedings, demands, actions and penalties and expenses including legal costs that may be incurred, made or brought at any time by the Developer/Vendor/Proprietor or Contractor/Developer or any other party(ies) against the Bank for any act or default under or for any breach of any provision of the Sale and Purchase Agreement and/or the Construction Contract/Renovation Agreement and where applicable the Principal Sale and Purchase Agreement by the Customer(s) or which may be incurred by the Bank as a result thereof and the Customer(s) shall promptly upon a demand being made by the Bank pay to the Bank all amounts so paid or suffered by the Bank.

#### **Section 15.27 Modification and Indulgence**

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

- (a) determine, vary or increase any credit or other facility granted to the Customer(s); and/or
- (b) grant to the Customer(s) or any surety or guarantor any time of indulgence; and/or
- (c) renew any bills notes or other negotiable securities; and/or
- (d) compound with the Customer(s) or any surety or guarantor or any other person; and/or
- (e) deal with exchange, release vary or modify or obtain from perfecting or enforcing the security documents and any security held or to be held by the Bank for or on accounts for or on accounts of the monies hereby secured or any part thereof.

#### **Section 15.28 Severability**

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

#### **Section 15.29 Further Assurance**

The Customer(s) shall from time to time and at any time, whether before or after this Agreement or any of the Security Documents shall have become enforceable, execute and do or cause to be executed and done all such transfer, 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 discretion 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 15.30 Letter of Offer**

The Letter of Offer shall form an integral part and partial of this Agreement and in the event of conflict between the terms of this Agreement and the Letter of Offer, terms of the Letter of Offer shall prevail.

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**Section 15.31 Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 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, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, 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, Anti-Terrorism Financing and Proceeds of Unlawful Activities 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 15.32 Personal Data Protection Act 2010 (Act 709)**

In the course of the Customer's dealing with the Bank, the Bank may request the Customer(s) to provide personal data of the Customer(s) and its employees, agents, directors, contact persons, shareholders, representatives, authorized person and shareholdings details of the Customer(s)'s shareholders as disclosed by the Customer(s) prior to or during the course of performance of this contact for the performance of contract, marketing, legitimate business activity, administration and economic efficiency purposes. The personal data of the Customer(s)'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(s) hereby warrants that the Personal Data Protection Act 2010 has been complied with and that consents have been obtained from the Customer(s)'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 15.33 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 15.34 Right of Upstamping**

This Agreement and the Security Documents are intended to regulate and secure any further financing to the Customer(s) and in the event such further financing is made by 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.

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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(s), to upstamp this Agreement to secure also the 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 15.35 Guidelines on Credit Transactions and Exposures with Connected Parties for Islamic Banks by BNM**

The Customer(s) hereby declares that the Customer(s) has had notice of the Guidelines and hereby agrees that the approval and operation or utilization from time to time of the Facility is strictly conditional by the Customer(s) representation and undertaking that it shall not infringe, contravene nor be in breach of the Guidelines and/or of any replacement guidelines/specifications/circulars issued pursuant to the Islamic Financial Services Act 2013 and also hereby undertakes to advise the Bank if any of infringement as set out in the said Guidelines is established or discovered at any time. If at any time during the continuance of this Facility, the Bank discovers that there had been an infringement of the said Guidelines and/or that the continued utilisation of the Facility shall be in violation of the said Guidelines, the Bank shall be entitled forthwith to exercise all of its rights contained herein.

**Section 15.36 Imposition of Terms by BNM**

The transaction arising from this Agreement shall at all times be subject to all procedures, terms, rules, directives regulations (whether or not having the force of law) as may be imposed by BNM or such other authority having jurisdiction over the Bank from time to time.

**Section 15.37 Exchange Control of Malaysia (ECM) Notices**

The Customer shall procure any approval as may be required from time to time pursuant to Foreign Exchange Controls for Malaysia which is determined by the Foreign Exchange Administration (FEA) Department of BNM.

**Section 15.38 Credit Facilities To Connected Parties:** The approval of the Facility to the Customer shall be upon the condition that the Bank will fully comply with any applicable law, legislation or regulation including, the provision of Section 57 of Islamic Financial Services Act 2013 (IFSA) read together with BNM's Guidelines on Credit Transactions and Exposures with Connected Parties for Islamic Bank and/or of any replacement guidelines/specifications/circulars issued by BNM from time to time in connection therewith. In addition to the above, the Customer hereby declares to the Bank that the Customer is not related to/a guarantor to/in control of/controlled by any of the directors, controlling shareholders, officers of the the Bank, member of the Shariah Committee of the Bank and their respective close relatives (spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses). None of the directors, controlling shareholders, officers of the the Bank, member of the Shariah Committee of the Bank and their respective close relatives is a director, partner, executive officer, agent or guarantor in the Customer's firm / partnership / company / legal entity and/or subsidiaries/entities controlled by the Customer. The Customer shall at all material times covenant to declare to the the Bank should any connected party relationship materializes throughout the duration of the Facility. In the event any undisclosed connected party relationship is established or discovered subsequently, the Bank reserves the right to terminate and recall the Facility immediately.

**Section 15.39 Stamp Duty Declarations**

**IT IS HEREBY AGREED AND DECLARED** that the Security Documents are all instruments employed in one transaction relating to the Bank's Selling Price and for the purpose of Section 4(3) of Stamp Act, 1949, (Consolidated and Revised in 1989), this Agreement shall be deemed to be the



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principal instrument and the other Security Documents shall be the secondary or subsidiary instruments.

*(The remaining space of this page is intentionally left blank)*

**IN WITNESS WHEREOF** the hands/Common Seal of the Customer(s) and the hand of the Attorney of MBSB Bank Berhad were hereunto set/affixed respectively.

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

**THE BANK**  
By its Attorneys

.....  
Date and Time of Execution

\*(If by Common Seal)  
The Common Seal of the Customer(s) )  
was hereunto affixed )  
in the presence of:- )

Date and Time of Execution:

.....  
Name:  
Designation:  
N.R.I.C No:  
Date and Time of Execution:

.....  
Name:  
Designation:  
N.R.I.C No:  
Date and Time of Execution:

\*(If under hand)

SIGNED by )  
 )  
 )  
The Customer(s) )  
in the presence of:- )

.....  
Name:  
N.R.I.C No:  
Date and Time of Execution:

.....  
Name:  
N.R.I.C No:  
Date and Time of Execution:

<b>THE FIRST SCHEDULE</b> (which shall be taken read and construed as an integral part of this Agreement)		
<b>ITEM</b>	<b>MATTER</b>	<b>PARTICULARS</b>
1(a)	<b>PLACE OF BUSINESS OF THE BANK</b>	
(b)	<b>PARTICULARS OF THE CUSTOMER(S)/PURCHASER(S)</b>	<b>Customer(s):-</b>  <b>Purchaser(s):-</b>
2.	<b>PARTICULARS OF THE PROPERTY AND THE LAND:-</b> a.Address of the property; b.Particulars of the land; c.Type of building erected or to be erected d.The description of the previous title; e.The land/built-up area.	
3(a).	<b>*SALE AND PURCHASE AGREEMENT/ PROCLAMATION OF SALE</b>	Date :
(b)	<b>*SALE AND PURCHASE PRICE/ AUCTION PRICE</b>	Ringgit Malaysia  (RM ) only
(c)	<b>PARTICULARS OF PRIOR SALE AND PURCHASE AGREEMENTS</b>	
4.	<b>PARTICULARS OF THE DEVELOPER/VENDOR/PROPRIETOR</b>  (Please provide Proprietor's particulars, in case of Developer/Vendor is not the proprietor.)	

5(a)	<b>CONSTRUCTION CONTRACT/ RENOVATION AGREEMENT</b>	
5(b)	<b>PARTICULARS OF THE CONTRACTOR/DEVELOPER</b>	
5(c)	<b>CONTRACT COST</b>	
6.	<b>LETTER OF OFFER AND SUPPLEMENTARY LETTER OF OFFER (IF ANY)</b>	DATE :  and includes any amendment(s), variations and/or supplemental and/or notification made or entered into from time to time thereto.
7.	<b>PROPERTY FINANCING-<i>i</i> FACILITY</b>	RINGGIT MALAYSIA  (RM ) ONLY
8.	<b>THE BANK'S SELLING PRICE</b>	RINGGIT MALAYSIA  (RM ) ONLY
(a)	<b>CPR/CEILING PROFIT RATE</b>	
(b)	<b>EPR/EFFECTIVE PROFIT RATE</b>	
9.	<b>SECURITY DEPOSIT</b>	RINGGIT MALAYSIA  (RM ) ONLY
10.	<b>SECURITY DOCUMENTS</b> (to fill in relevant Security Documents only)	

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11.	<b>PARTICULARS OF GUARANTOR(S)</b>	
12.	<b>CHARGE (if applicable)</b>	
13.	<b>TENURE</b>	

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**THE SECOND SCHEDULE**

(which shall be taken read and construed as an integral part of this Agreement)

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Additional Representations and Warranties  
(Section 6.1 (w))

The obligations of the Bank to grant the Facility or to permit the payment of the Bank's Selling Price upon deferred payment terms under the Property Sale Agreement shall also be subject to the following conditions:-

- (a) The Bank is satisfied that no event has occurred so as to render the Bank's Selling Price immediately payable and no event of default under any agreement or arrangement referred to in this Agreement and the other Security Documents shall have happened and be continuing;
- (b) there shall not have been occurred any default in the performance by any party therein of any covenant or agreement contained in any of the agreements and arrangements referred to in clause (a) hereof;
- (c) the matters represented by the Customer(s) set out in Section 6.1 herein are true and correct in all respects;
- (d) no extraordinary circumstances or changes of law or other governmental action shall have occurred which shall make it improbable that the Customer(s) will be able to observe and perform the covenants and obligations on the Customer(s)' part to be observed and performed under the provisions of this Agreement and the other Security Documents;
- (e) no extraordinary circumstances or change of law or circumstances or other governmental action shall have occurred or is likely in the opinion of the Bank to occur which shall in the opinion of the Bank render it unlawful to grant the Facility or to permit payment of the Bank's Selling Price upon deferred payment terms on the security contemplated under the Security Documents.

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**THE THIRD SCHEDULE**

(which shall be taken read and construed as an integral part of this Agreement)

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Affirmative covenants

(Section 7.1)

The Customer(s) hereby covenant with the Bank that it shall at all times during the grant of the Facility and payment of the Bank's Selling Price:-

- (a) where the Customer(s) is a corporation or firm, it shall:-
  - (i) submit to the Bank its audited accounts within six (6) months after each financial closing and its audited accounts within sixty (60) days from the end of the each half year;
  - (ii) forthwith notify the Bank of any changes on its major shareholders and/or management; and
- (b) forthwith notify or cause to be notified to the Bank of the occurrence of any Event of Default or any event of default in relation to other indebtedness of the Customer(s) which in its reasonable opinion might adversely affect its ability to comply with its obligations hereunder

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**THE FOURTH SCHEDULE**

(which shall be taken read and construed as an integral part of this Agreement)

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Negative covenants

(Applicable only where the Customer(s) is a corporation/firm)  
(Section 7.2)

- (a) grant any financing or guarantee any person except for normal trade credit or trade guarantee in the ordinary course of business;
- (b) incur, assume or permit to exist any indebtedness or financing except:-
  - (i) those already disclosed in writing and consented by the Bank; and
  - (ii) unsecured indebtedness incurred in the ordinary course of business of the Customer(s);
- (c) create or permit to subsist any security interest over any of its assets, business or undertaking except liens arising by operation of law and in the normal course of business which in the Bank's opinion is not material;
- (d) effect or permit any form of merger, reconstruction, consolidation, amalgamation or reduction in share capital or otherwise approve or permit any change of its ownership or control;
- (e) dispose or lease all or a substantial part of its assets or undertaking except in the ordinary course of its business, on ordinary commercial terms and on arm's length basis;
- (f) declare any dividends in excess of ten per cent (10%) of its paid up capital or any amount in excess of fifty per cent (50%) of its annual net income after tax provided always any such permissible declaration of dividends may only be made if debt serving is current;
- (g) enter into profit sharing or other similar arrangement whereby the Customer(s)' income or profits are shared with any other person or company unless such arrangement is entered into in the ordinary course of business on ordinary commercial terms and on arm's length basis, or enter into any management agreement whereby its business is managed by a third party.