



**DEED OF ASSIGNMENT**

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD.**  
(Company No. 271809 K)

**AND**

Property

**THIS DEED OF ASSIGNMENT** is made on the date stated in Section 1 of the First Schedule between –

**UNITED OVERSEAS BANK (MALAYSIA) BHD.** (Company No. 271809 K) a company incorporated in Malaysia having a place of business as stated in Section 3 of the First Schedule (“the Bank”).

and

The party named and described in Section 2 of the First Schedule (“the Assignor”).

## **1 RECITALS**

- (a) The Landowner is the registered owner of the Land.
- (b) The Developer has, with the Landowner’s consent, developed the whole of the Land into a project under the name stated in Section 7 of the First Schedule.
- (c) By the Sale Agreement, the Developer sold the Property to the First Purchaser.
- \*(d) The benefits, rights, title and interest in, to and under the Sale Agreement and in the Property has been assigned to the parties and by way of the instruments of assignment described in Section 11 of the First Schedule.
- (e) A separate document of title to the Property has not yet been issued by the relevant authorities.
- (f) At the request of the Borrower, the Bank has agreed to make available and/or to continue to make available to the Borrower the Banking Facilities upon the terms and conditions in the Letter of Offer and this Assignment.

## **2 DEFINITIONS AND INTERPRETATION**

### **2.1 Definitions**

In this Assignment, the following expressions have the meanings given below, unless expressly provided otherwise:-

<b><u>Words</u></b>	<b><u>Meaning</u></b>
Assignor	The person named in Section 2 of the First Schedule. Where the Borrower and the Assignor are the same person, “the Borrower” will be used interchangeably with “the Assignor”.
Associated Party	Any of the following:- <ul style="list-style-type: none"><li>(a) The Borrower’s director.</li><li>(b) The Borrower’s shareholder.</li><li>(c) A company in which any of the Borrower’s directors is a director or shareholder.</li><li>(d) A company in which any of the Borrower’s shareholders is a shareholder or director.</li></ul>

	<ul style="list-style-type: none"> <li>(e) The Borrower's holding company.</li> <li>(f) The Borrower's subsidiary company.</li> <li>(g) A company in which the Borrower is directly or indirectly a shareholder.</li> <li>(h) A partnership in which the Borrower is a partner.</li> <li>(i) A sole-proprietorship in which the Borrower is a proprietor.</li> <li>(j) A company in which the Borrower is a director.</li> </ul>
Bank Negara Malaysia	The Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 and 2009.
Banking Facilities	The banking facility or facilities offered by the Bank to the Borrower in the Letter of Offer and refers to all the banking facilities if more than one banking facility is offered to the Borrower in the Letter of Offer; if further or other banking facilities are offered by the Bank in letters of offer issued after this Assignment or if any of the Banking Facilities is varied in any way by a letter from the Bank to the Borrower, "Banking Facilities" will also refer to such further or other banking facilities accepted by the Borrower and to the Banking Facilities as varied, "Banking Facility" means any one of the Banking Facilities.
Base Lending Rate	The rate of interest (fixed by the Bank from time to time based on guidelines issued by Bank Negara Malaysia from time to time) which is reflective of the total cost to the Bank for maintaining the Banking Facilities plus a margin of profit the Bank is allowed to include by Bank Negara Malaysia or any other authority having jurisdiction over the Bank.
Borrower	The person named in the Third Schedule. Where the Borrower and the Assignor are the same person, "the Borrower" will be used interchangeably with "the Assignor".
Developer	The developer of the Property described in Section 6 of the First Schedule.
Event of Default	Any of the events or matters specified in Section 10.
Facilities Agreement	The facilities agreement or loan agreement made between the Borrower and the Bank.
First Purchaser	The person described in Section 10 of the First Schedule.
Indebtedness	The aggregate of all monies whether principal, interest, capitalised interest, commission, fees, costs or charges outstanding or payable or agreed to be payable by the Borrower, Assignor and/or any other Security Party to the Bank from time to time in respect of the Banking Facilities or any account and includes all liabilities incurred by the Borrower to the Bank in respect of –

- (a) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Borrower; or
- (b) any other payments, loans, credit or advances made to or for the use or accommodation or on behalf of the Borrower; or
- (c) any bond, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Borrower's request; or
- (d) foreign exchange transactions, and any contracts for the forward delivery of goods, bills, or specie; or
- (e) any other banking facilities, trust receipts, or any other security,

whether present or future, actual or contingent, alone or jointly with any other person and in whatever style or name, and whether as principal or surety.

Group	The Bank's branches, agencies, representative offices, affiliated, associated or related corporations, and their respective officers, servants or agents, whether situated in or out of Malaysia.
Land	The parcel of land described in Section 5 of the First Schedule.
Land Code	The National Land Code 1965, including the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be.
Landowner	The registered owner of the Land described in Section 4 of the First Schedule.
Letter of Offer	The letter(s) of offer or facility letter(s) issued by the Bank and accepted by the Borrower from time to time by which the Bank agreed to grant and the Borrower agreed to accept the Banking Facilities, including any amendments, additions, supplements, or substitutions.
Prescribed Rate	Such rate fixed by the Bank from time to time having regard to, amongst others, the nature of each Banking Facility, including the rate as changed from time to time.
Property	The property described in Section 9 of the First Schedule.
Sale Agreement	The written agreement made on the date stated in Section 8 of the First Schedule, including all agreements, assignments and other documents evidencing any title or right in or to the Property.
Security	The security or securities required to be created in favour of the Bank or given to the Bank in exchange for the Bank's granting to the Borrower of the Banking Facilities; the Security is more particularly described in the Letter of Offer.

Security Documents	Any document relating to the Banking Facilities and the Security and includes the Letter of Offer, the Facilities Agreement, this Assignment and any other agreement entered into between the Bank and the Borrower.
Security Party	Any person creating or giving the Security and can also mean the Borrower if the Borrower is the person creating or giving the Security.
Strata Titles Act	The Strata Titles Act, 1985 or the Sabah Land Ordinance (Cap. 68) and Land (Subsidiary Title) Enactment, 1972 (Sabah) or the Strata Titles Ordinance, 1974, as the case may be.

## 2.2 Interpretation

- (a) In this Assignment, unless the context requires otherwise –
- (i) words referring to the singular include the plural (and vice versa);
  - (ii) words referring to a gender include all genders;
  - (iii) a reference to a person includes its personal representatives, successors-in-title, assigns, and transferees;
  - (iv) words applicable to natural persons include any body or persons, company, corporation, firm, or incorporated or unincorporated partnership;
  - (v) a reference to “this Assignment” or other similar reference refers to this Deed of Assignment as a whole, and not to any particular provision of this Deed of Assignment; and
  - (vi) a reference to Sections is a reference to Sections of this Assignment unless otherwise specified.
- (b) The headings and sub-headings of this Assignment are inserted for convenience only, and are to be ignored when interpreting the provisions of this Assignment.
- (c) The expressions “month” and “year” mean a calendar month and a period of 365 days respectively.
- (d) Where an act is required to be done within a specified number of days after or from a specified date, the period excludes the specified date. Similarly, a period from the occurrence of an event or the doing of an act excludes the day on which the event happens or the act is done or required to be done.
- (e) References to any statute, rules or regulations made under the statute are references to the statute, rules or regulations as amended or re-enacted from time to time.
- (f) Where the Borrower and/or the Assignor is a company, any references relating to bankruptcy will be read as references relating to the winding-

up, liquidation, amalgamation or reconstruction of the Borrower and/or the Assignor.

- (g) Where there are two or more persons or parties included in the expressions “the Borrower” and/or “the Assignor”, agreements and other matters expressed to be made by or on the part of the Borrower and/or the Assignor are deemed to be made by or binding upon such persons jointly and severally.
- (h) Where the expression “the Borrower and/or the Assignor” is used, agreements and other matters expressed to be made by or on the part of the Borrower and/or the Assignor are deemed to be made by or binding upon such persons jointly and severally.
- (h) The expressions “including” or “for example” (or other similar words) when introducing an example does not limit the meaning of words to those examples.
- (i) A reference to “payment” includes repayment, as the case may be.
- (j) A reference to costs or fees “on a solicitor and client basis” means the expenses that a client has to pay his lawyer.
- (k) A reference to “principal” includes all sums and monies advanced or paid to or on behalf of the Borrower and/or the Assignor by the Bank or otherwise howsoever payable by the Borrower and/or the Assignor to the Bank under this Assignment (whether or not it forms part of the Banking Facilities), and “interest” includes interest at the relevant Prescribed Rate or at such other rates fixed by the Bank from time to time on all such sums and monies.  
Accordingly “principal and interest” includes all such sums and monies and interest.
- (l) The Schedules to this Assignment will be deemed essential parts of this Assignment.

### **3 ASSIGNMENT AS SECURITY FOR INDEBTEDNESS**

#### **3.1 Assignment as security**

- (a) In consideration of the Bank agreeing to grant, or continuing to grant or make available to and for the benefit of the Borrower, Banking Facilities as the Bank thinks fit, and as security for the repayment of the Indebtedness, the Assignor assigns to the Bank the Assignor’s benefits, rights, title, and interest in and to the Sale Agreement and in the Property, together with the Assignor’s right of enforcement, upon the terms and conditions in this Assignment.
- (b) Regardless of this Assignment, the Assignor will continue to be solely responsible for observing all the terms and conditions and obligations of the Assignor in the Sale Agreement.

### 3.2 Covenant to pay

- (a) The Assignor covenants and undertakes that it will on demand pay the Bank the Indebtedness.
- (b) The Assignor's covenant and undertaking above is up to aggregate principal sum referred to in Section 16.29 with interest accruing on the principal (as well after as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower and/or the Assignor has ceased or been terminated) to the date of full payment at the Prescribed Rate, together with commission, discount, other banking charges, and all costs, charges, and other expenses the Bank may charge in respect of the Banking Facilities or any of the matters under this Assignment, or which the Bank may pay or incur under this Assignment.

### 3.3 Notice of assignment

The Assignor undertakes to the Bank that, immediately upon the execution of this Assignment, it will –

- (a) give notice of the assignment of the Property in this Assignment to the Developer and/or the Landowner and/or such other parties as the Bank may specify; and
- (b) deliver to the Bank the original acknowledgements from the parties mentioned in **Section 3.3(a)**.

### 3.4 Continuing security

The security created by this Assignment is and will be a continuing security for the Indebtedness, and will continue to be held by the Bank until –

- (a) all amounts outstanding under the Banking Facilities, including contingent liabilities, have been fully settled by the Borrower and/or the Assignor; and
- (b) the Bank has been fully released from all its obligations or contingent liabilities under the Banking Facilities or under any other instrument issued by the Bank for the account of the Borrower,

even if the Borrower and/or the Assignor ceases to be indebted to the Bank for any period(s), and regardless of –

- (c) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
- (d) the death, insanity or bankruptcy of the Borrower and/or the Assignor;
- (e) the voluntary or compulsory liquidation of the Borrower and/or the Assignor;
- (f) any change by amalgamation, consolidation or otherwise which may be made in the constitution of the company by which the business of the Borrower and/or the Assignor is currently being carried on; or

- (g) any change in the constitution or composition of the firm by which the Borrower's business is currently being carried on, whether by death, retirement, admission of partners, or any other reason.

### **3.5 Restriction against other charges**

- (a) The Assignor declares that there is no mortgage, charge, pledge, lien, security assignment, right of set-off, caveats, or other security interests or any other similar agreement or arrangement having priority over, or ranked equal, to the assignment under this Assignment.
- (b) The Assignor agrees not to sell, charge, mortgage, assign, execute any form of debenture (whether fixed or floating), pledge or lien, lease, agree to lease, let, or part with possession of all or part of the Property, or raise money on the security of the Assignor's rights in the Property, or deal with the Property in any manner without the Bank's prior written consent. The Bank's consent can be given or withheld at the Bank's absolute discretion.
- (c) This Assignment will not affect any collateral security now or in future given to the Bank, whether the same is to secure full payment of the Indebtedness, and whether the security is taken as additional or collateral security or otherwise.

### **3.6 Liens and other security not affected**

- (a) Nothing in this Assignment will affect any lien to which the Bank is entitled, or any other security which the Bank may from time to time hold for or on account of the Indebtedness.
- (b) Nothing in this Assignment will operate to merge or otherwise affect any bill, note, guarantee, mortgage, or other security which the Bank may for the time being have for any Indebtedness, or any right or remedy of the Bank.

### **3.7 Procedure on notice of further charge**

- (a) If the Assignor (or any one or more of them) executes or creates any further or subsequent charge, mortgage, or encumbrance over all or any part of the Property in favour of any other corporation or persons, and the Bank receives actual or constructive notice of this, the Bank can immediately open a new or separate account with the Assignor in its books.
- (b) If the Bank does not open such new or separate account, the Bank will nevertheless be deemed to have done so at the time when the Bank received or was deemed to have received such notice ("the time of notice").
- (c) From the time of notice, all payments in account made by the Borrower and/or the Assignor and/or any party to the Bank will (regardless of any legal or equitable rule of presumption to the contrary) be placed or deemed to have been placed to the credit of the new or separate account so opened or deemed to have been opened. Such payments will not go towards reducing the amount due by the Borrower and/or the Assignor to the Bank at the time of notice.



- (d) Nothing in this Section will affect the security which the Bank otherwise would have had under this Assignment for the payment of the Indebtedness, even though it may become due or owing or be incurred after the time of notice.

### **3.8 Covenant to perfect and provide further security**

- (a) The Assignor will, whenever required by the Bank, execute in favour of the Bank (or as the Bank may direct) legal or other mortgages, charges, assignments, transfers, or agreements as required by the Bank of and on the Assignor's estate, assets, or business, which now or in future will belong to the Assignor (including any vendor's lien) and the benefit of all licences held in connection with such estate, assets, or business to secure the Indebtedness.
- (b) Such mortgages, charges, assignments, transfers, or agreements will be prepared by or on behalf of the Bank at the Borrower's and/or the Assignor's cost, and will contain all terms and conditions required by the Bank to protect its interest.

### **3.9 Licence**

- (a) Regardless of anything in this Assignment, the Bank has full authority to deal with the Property in such manner it deems fit at its absolute discretion.
- (b) During the continuance of this Assignment, the Assignor retains possession of the Property merely as the Bank's licensee.
- (c) Within 7 days after the Assignor's licence to occupy the Property has been terminated by a written notice from the Bank, the Assignor must give immediate vacant possession of the Property to the Bank or to such persons as the Bank may direct.

## **4 BANKING FACILITY**

### **4.1 Progressive release**

- (a) The Bank can, and is expressly authorised by the Assignor to, advance or pay (where applicable) all or part of the Banking Facilities to the builder, developer, contractor, architect or such other persons responsible for or concerned with the construction of any building ("the said building") or the vendor of the said building at such times, on such terms, in such manner, by such amounts, and upon such contingencies and conditions, as the Bank decides in its absolute discretion.
- (b) The authorisation given by the Assignor is irrevocable. All advances and payments to the said person(s) will be deemed to be part of the monies secured by and owing under this Assignment.
- (c) The acknowledgement or receipt of such person(s) will be as good and sufficient and effective as if it had been made or given by the Assignor.
- (d) The Assignor irrevocably agrees and confirms that the Assignor cannot object to or to restrain such payment by the Bank.

- (e) If the Bank has given or agreed to give on the Assignor's authority (which authority is hereby confirmed by the Assignor) its express or implied undertaking, guarantee, or covenant to –
- (i) any of the persons mentioned in Section 4.1(a) (“the Vendor”) or its solicitors or firm of solicitors purporting to act for the Vendor to pay; or
  - (ii) pay the Bank's solicitors to enable the Bank's solicitors to give the Vendor or the Vendor's solicitors their solicitor's undertaking to pay,

the balance purchase price payable by the Borrower and/or the Assignor under the agreement of sale of the said building progressively in accordance with the terms in the said agreement, the Assignor agrees (in addition the Property being charged to secure the Indebtedness) that –

- (iii) the payment of all monies undertaken, guaranteed, or covenanted to be paid by the Bank to the Vendor, the Vendor's solicitors, or the Bank's solicitors (as the case may be) will be secured under this Assignment; and
- (iv) the Borrower and/or the Assignor will at all times 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 Bank's aforesaid undertaking given to the Vendor, the Vendor's solicitors, or the Bank's solicitors (as the case may be).

#### **4.2 No obligation to make further advances**

- (a) The Banking Facilities granted or to be granted to the Borrower will be reviewed by the Bank from time to time and at any time.
- (b) Nothing in this Assignment will be deemed to impose an obligation on the Bank to make or continue to make any advances or to afford any other accommodation or facility to the Borrower.

#### **4.3 Further advances**

- (a) The Bank can at its discretion from time to time and if requested by the Borrower, advance to the Borrower without any reference to the Assignor further sums of money beyond the limit approved by the Bank.
- (b) The Borrower must pay interest at such rate(s) prescribed by the Bank over and above the Prescribed Rate on such sums advanced.
- (c) All interest and such sums advanced will form part of the monies secured by this Assignment.

## **5 INTEREST**

### **5.1 Calculation of interest**

- (a) Interest will be calculated in accordance with the Bank's usual practice, having regard to, amongst others, the nature of each Banking Facility, up to the date of full payment.
- (b) Interest will be charged on all amounts outstanding under the Banking Facilities.

### **5.2 Capitalisation**

- (a) Subject always to Section 5.2(c), the interest on any principal monies for the time being secured by this Assignment including capitalised interest will, at the end of each calendar month or such other periods as fixed by the Bank be capitalised and added to the principal sum then owing.
- (b) The interest will then bear interest at the relevant Prescribed Rate and/or at any increased rate and be secured and payable accordingly, all the covenants and conditions contained in or implied by this Assignment, all powers and remedies conferred by law or by this Assignment, and all rules of law or equity in relation to the said principal sum and interest will equally apply to such capitalised arrears of interest and to interest on such arrears.
- (c) To determine whether the limit of the principal intended to be secured by this Assignment has been extended or not, all accumulated and capitalised interest will be deemed to be interest and not principal sum.

### **5.3 Change of interest rate**

- (a) Regardless of the other provisions relating to the rate of interest in this Assignment, the Bank can, from time to time at its absolute discretion, change the rate of interest by notifying the Borrower in writing of such intention.
- (b) The amended rate of interest will be effective from the date specified in the notice. Such notice will be binding on the Assignor, and can be served in the manner provided in Section 14.
- (c) The Assignor hereby agrees to irrevocably waive the requirement of the service of the notice if the change of interest rate relates only to the change in the Bank's Base Lending Rate.
- (d) If the rate of interest changes at any time, the amount of interest due will be recalculated such that –
  - (i) the interest at the former rate will be charged from the date on which the Banking Facility was advanced or paid, or the first day the former rate of interest takes effect, as case may be, up to the day preceding the date when the new rate of interest takes effect; and
  - (ii) interest at the new rate will be calculated from the date the new rate of interest takes effect up to the day prior to a subsequent

change in the interest rate. Interest at the new rate will be deemed to be due as at the date when the variation takes effect.

- (e) No part of any payments to be made by the Borrower and/or the Assignor to the Bank will be deemed to be a repayment of principal until all interest due or deemed to be due to the Bank has been paid.
- (f) Where repayment is by instalment, if and whenever the rate of interest payable by the Borrower and/or the Assignor or the mode of computation of interest is changed, the Bank may at its absolute discretion make the necessary adjustment, consequent upon any change required by the Bank.
- (g) The Bank also may (without affecting the above) –
  - (i) change the amount of any instalment payments; and/or
  - (ii) change the number of any instalment payments.

#### **5.4 Interest rates in other security**

- (a) When the payment of any monies secured or intended to be secured by this Assignment is further secured to the Bank by any bill of exchange, promissory note, draft, trust receipt, or other instrument reserving a higher rate of interest to be paid than that covenanted to be paid in this Assignment, the higher rate of interest will be payable in respect of such monies.
- (b) Nothing contained in or to be implied from this Assignment will affect the Bank's right to enforce and recover payment of the higher rate of interest or the difference between the higher rate and the rate payable pursuant to this Assignment.

#### **5.5 Commitment fee**

- (a) The Assignor agrees and undertakes to pay in addition to the interest payable, a commitment fee of 1% per annum (or at such other rate fixed by the Bank from time to time) on any portion of any banking facilities unutilised by the Borrower.
- (b) The commitment fee will be debited to the Borrower's account at the end of each calendar month, or such other periods decided by the Bank, and it will be capitalised and added to the principal sum then owing, and after that will bear interest at the relevant Prescribed Rate and be secured and payable accordingly.
- (c) All covenants and conditions contained in or implied by this Assignment, and all powers and remedies conferred by law or by the terms and conditions of this Assignment, and all rules of law or equity in relation to the said principal sum and interest will apply equally to the commitment fee, capitalised arrears of the commitment fee, and to interest on such arrears.
- (d) To ascertain whether the limit of the principal intended to be secured by this Assignment has been exceeded or not, all accumulated and

capitalised commitment fee will be deemed to be interest and not the principal sum.

#### **5.6 Additional interest and default rate**

- (a) Regardless of the other terms and conditions in this Assignment, if the agreed limit on any Banking Facility fixed by the Bank is exceeded, the Bank can at any time levy or impose interest at such rates fixed by the Bank at its sole and absolute discretion at any time on any such excess amount in the respective Banking Facility calculated on a daily basis with monthly or other periodic rests in accordance with the type of Banking Facility applicable.
- (b) In addition to and without affecting the powers, rights, and remedies granted under this Assignment, if the Borrower and/or the Assignor defaults in the payment on the due date of any money payable by the Borrower and/or the Assignor to the Bank, the Borrower and/or the Assignor will pay the Bank interest at the rate fixed by the Bank at its absolute discretion from time to time.
- (c) This interest will be calculated from the date of such default until the date of full payment of the said amount with monthly or other periodic rests, in accordance with the type of Banking Facility applicable, as well after as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated.

#### **5.7 Interest where Banking Facilities are withdrawn or revoked**

- (a) If the Banking Facilities are withdrawn or revoked and/or the said account(s) (current or otherwise) are closed either by demand or by the death of the Assignor (or where the Borrower and/or the Assignor consists of more than one person, by the death of any one of them) or liquidation of the Borrower and/or the Assignor, and a balance is owing to the Bank by the Borrower and/or the Assignor, the Borrower and/or the Assignor or the personal representative or successors-in-title of the Borrower and/or the Assignor will, so long as all or any part of the same remains owing, pay to the Bank interest on the sums owing at the rate specified in Section 5.6(b), or such higher rate prescribed by the Bank from time to time.
- (b) The interest will be calculated on a daily basis with monthly or such other periodic rests in accordance with the type of Banking Facility applicable, both after as well as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated, when such balance has been ascertained until full payment is received by the Bank.
- (c) The statement of the manager, acting manager, or any other officer of the Bank as to the amount of such balance will be final and conclusive against the Borrower and/or the Assignor, its estate executor, administrator, legal representative, or successor-in-title for all purposes, including legal proceedings.

## **6 THE PROPERTY**

### **6.1 Custody of documents**

During the continuance of this Assignment, and as long as any amount is owing by the Borrower and/or the Assignor and/or any Security Party to the Bank, the Bank will have custody or possession of the original, signed and stamped copy of the Sale Agreement.

### **6.2 Execution of charge**

- (a) When the relevant authorities have issued the separate document of title to the Property, the Assignor must immediately at its own cost and expense –
  - (i) sign the necessary Memorandum of Transfer and all other documents needed to take a transfer of the Property (collectively “Transfer Documents”);
  - (ii) deliver and deposit with the Bank or its solicitors –
    - (aa) the relevant document of title;
    - (bb) the Transfer Documents; and
    - (cc) all other documents and fees needed to register the transfer of the Property free from encumbrances;
  - (iii) execute a charge under the Land Code over the Property to secure the Indebtedness, which must be in such form and contain such terms and conditions required by the Bank.
- (b) The Assignor must reimburse the Bank all money paid by the Bank to facilitate the delivery of the required documents to register the transfer of the Property in the Assignor’s name.
- (c) This Assignment will as regards any antecedent default by the Assignor remain in full force and effect irrespective of the completion and perfection of the said charge.

### **6.3 Payment of outgoings**

- (a) The Assignor will punctually pay all quit rents, assessment, rates, taxes, and all other outgoings payable from time to time in connection with the Property.
- (b) The Assignor must produce to the Bank the receipts for all such payments. If the Assignor fails to pay any of the said monies, the Bank can (but is not obliged to) pay all or any part of the said monies.

### **6.4 Repairs**

- (a) The Assignor will –
  - (i) keep the Property, including all fixture and additions, in good and substantial repair and condition to the satisfaction of the Bank;

- (ii) permit the Bank or its agent with or without workmen and others at any time at convenient daytime hours to enter into or upon the Property and examine its state and condition; and
  - (iii) immediately repair and make good all defects and want of repair which are notified in writing by the Bank to the Assignor.
- (b) If the Assignor fails to do so –
- (i) the Assignor will permit the Bank to enter the Property and effect such repairs as the Bank considers necessary; and
  - (ii) the Assignor shall bear the cost and expense of such repairs.
- (c) Nothing in this Section and no act of the Bank its servants or agents done pursuant to the provisions of this Section will render the Bank liable as chargee in possession.

#### **6.5 Maintenance**

- (a) The Assignor will not –
- (i) pull down or remove any building or fixture now or in future erected on or affixed to the Property or any part of the Property; or
  - (ii) make any alterations or erect any addition, or execute any improvement to the Property without the prior written consent of the Bank.
- (b) The Assignor will immediately replace and make good the same if such alteration, pulling down or removal, or any alteration or erection of any additional improvement occurs. If the Assignor fails to do so, the Bank can (but is not obliged to) replace and make good the same, and the Assignor shall bear the cost and expense of such replacement or action.
- (c) Nothing in this Section and no act of the Bank its servants or agents done pursuant to the provisions of this Section will render the Bank liable as chargee in possession.

#### **6.6 Compliance with land title conditions**

- (a) The Assignor will observe and comply with any express or implied conditions, covenants, restrictions, and category of land use binding on the Property, and will not do, omit to do, or suffer to be done or omitted, any act, matter, or thing in or in respect of the Property, which will contravene the provisions of any law.
- (b) The Assignor will at all times indemnify and keep the Bank indemnified against all claims, demands, actions, proceedings, costs, and expenses in respect of any such act, matter, or thing done or omitted to be done which contravenes such provisions.

**6.7 Information on matters affecting security**

- (a) The Assignor must inform the Bank of any application, demand, notice, order or any other document or transaction which in any way affects, concerns, or touches the Property or any part of the Property immediately upon the issuance, publication, service, or occurrence of the same, and produce the same to the Bank if requested.
- (b) The Assignor must do all acts and take all steps to safeguard and preserve all or any part of the Property, or the title or ownership of the Property.
- (c) The Assignor agrees that the Bank may at the Bank's absolute discretion, on behalf or in the name and at the expense of the Assignor, do any acts and employ any persons as the Bank deems fit for the purpose of safeguarding and preserving the Property and every part of the Property.

**6.8 User of building and land**

- (a) The Assignor will not –
  - (i) use, or allow to be used, any building on the Property for purposes other than those for which it was built;
  - (ii) store or bring any articles of a combustible, inflammable, or dangerous nature into the Property; or
  - (iii) do or allow to be done anything which may cause any insurance policies to be void or voidable.
- (b) If required by the Bank via a written notice, the Assignor will discontinue any use of the Property or part of the Property, or any building on it, that in the Bank's opinion affects the Bank's security.

**6.9 Dealings with security**

The Assignor will not, without the Bank's prior written consent –

- (a) sell, transfer, charge or otherwise deal in any way with all or any part of the Property or any interest in the Property; or
- (b) make the same subject to any burden, charge, encumbrance, liability, or lien; or
- (c) make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Property, or for rescission removal or amendment of any condition or restriction affecting the Property.

**6.10 Leasing and possession**

- (a) The Assignor will not lease, let out, or grant any licence or otherwise in any manner part with the possession or make or accept the surrender of any lease of or in respect of the Property or any part of the Property to



any person, firms, or companies without the prior written consent of the Bank.

- (b) The Bank's consent may be given or refused at the Bank's absolute discretion, and the decision of the Bank will be final and conclusive.
- (c) The Assignor assigns and covenants to assign absolutely to the Bank all the present and future rent, licence fees, rights and benefits accruing to the Assignor under any lease, tenancy, grant or licence in respect of the Property.

#### **6.11 Cultivation**

- (a) During the term of this security, the Assignor will continue to maintain the Property in a proper and workmanlike manner. The Bank can at all reasonable times enter the Property to view and inspect the state of the Property.
- (b) The Bank can employ visiting agents or any other persons from time to time to inspect the Property, and to produce a report at the Assignor's cost and expense.
- (c) During the term of this security, the Assignor will keep the Property clean, weeded, and free from lallang and other undergrowths.
- (d) If the Assignor fails to do the above, the Bank can (but is not obliged to) employ, at the Assignor's cost and expense, labourers or workmen to keep the Land clean, weeded, and free from lallang and other undergrowths.
- (e) Nothing in this Section and no act of the Bank its servants or agents done pursuant to the provisions of this Section will render the Bank liable as chargee in possession.

#### **6.12 Right of inspection**

- (a) The Bank and its agents and workmen can, at all reasonable times of the day, enter the Property and access and inspect any fixture on the Property.
- (b) Such access and inspection will not deem the Bank liable as chargee in possession.

#### **6.13 Valuation**

- (a) The Assignor authorises the Bank to value the Property at such interval as the Bank decides by any valuer or qualified person chosen by the Bank, at the Assignor's sole cost and expense.
- (b) If the valuation reveals that the sale value of the Property is lower than that at the date of this Assignment, the Bank can at its absolute discretion terminate the Banking Facilities or require the Borrower and/or the Assignor to provide further security within 14 days from the date of the Bank's written notice.

**6.14 Power of attorney**

Together with the execution of this Assignment, the Assignor will execute an irrevocable power of attorney in the form required by the Bank to enable the Bank to exercise the rights, remedies and powers conferred upon the Bank in respect of the Property.

**6.15 Assignor's liabilities and obligations under the Sale Agreement**

- (a) Regardless of this Assignment, the Assignor undertakes to comply with its obligations in the Sale Agreement.
- (b) The Assignor will indemnify the Bank against all claims, demands, actions, fines, penalties and legal proceedings made against the Bank in respect of the Property and the Sale Agreement.

**6.16 Payment of service charges**

The Assignor must punctually pay the Developer or the Management Corporation constituted under the Strata Titles Act all service charges and maintenance fees payable in respect of the Property, and pay and contribute towards the insurance premium, if any, mentioned in the Sale Agreement, and other fees, costs, and outgoings, and all sums of money mentioned in the Sale Agreement, and to pay such deposits required as security for such payments. If the Assignor fails to do so, the Bank can (but is not obliged to) pay all or any part of the said monies.

**6.17 Payment of balance purchase price**

The Assignor will be responsible for and will pay any money payable by the Assignor in respect of the Property. In particular, the Assignor undertakes to pay the balance of the purchase price for the Property if it has not been paid for in full at the date of this Assignment.

**7 INSURANCE****7.1 Insurance on the Property**

- (a) The Assignor will at all times that this security continues to exist keep any building, fixture, or structure now or in future erected on or affixed to the Property properly insured against loss or damage by fire and such other risks as the Bank requires. The policy will be on a full reinstatement value basis up to its full insurable value. The policy will be taken up in the Assignor's name with the insurance company appointed by the Bank from time to time. The Bank's interest as chargee and loss payee will be endorsed on the policies.
- (b) The Assignor will deposit the insurance policies with the Bank as chargee, and will from time to time pay the premium and deliver the relevant receipts to the Bank.
- (c) In addition to, and without affecting the agreements and stipulations implied, the obligations imposed, and the rights created, by law, custom and this Assignment, the Assignor will, if required by the Bank, keep insured the whole or any parts of the Property and effects included in this

Assignment of an insurable nature against loss or damage by fire and all other such risks and contingencies.

- (d) The above insurance will be for such amount, in such names, with such insurers, and through such agencies as the Bank requires from time to time.
- (e) The cost and expense of taking up the above insurance will be borne by the Borrower and/or the Assignor.
- (f) If the Assignor does not effect, maintain or renew any such insurance stated above, the Bank can (but is not obliged to), at the Borrower's and/or the Assignor's cost and expense, effect, maintain, or renew any such insurance as the Bank may think fit.
- (g) Without affecting the earlier provisions of this Section (and whether or not the Assignor is in default) it is agreed that, if the Bank in its absolute discretion considers it necessary, the Bank can and is hereby expressly authorised by the Assignor to, effect, maintain, or renew any such insurance as the Bank may think fit at the Assignor's cost and expense.
- (h) The Assignor agrees that the Assignor will not hold the Bank liable for any negligence as a result of any action taken or omission to effect, take out, maintain, renew or increase any such insurance or otherwise. The Bank can retain for its own use and benefit any commission paid or allowed to it as agent to such insurers.
- (i) The Assignor will allow all insurance policies and receipts or other evidence of payment paid by the Assignor to remain in the custody of the Bank. When required, the Assignor will deliver or produce to the Bank or to such persons directed by the Bank, any policy of insurance effected by the Assignor and the receipt or other evidence of payment of the current premium.

## **7.2 Conflicting insurance**

Unless requested or consented to by the Bank, the Assignor will not effect or keep on foot any insurance against any risk in respect of the Property, fixture, structures, premises, and effects where the Bank or the Assignor has effected or kept on foot any such insurance.

## **7.3 Application of insurance money**

- (a) The Bank can at its discretion require all monies received on any insurance of the Property and effects, whether effected by the Bank or by the Assignor, to be applied –
  - (i) in or towards making good the loss or damage in respect of which the money is received; or
  - (ii) at the option of the Bank, in or towards the discharge of any Indebtedness.
- (b) The Assignor will hold all monies so received on such insurance in trust for the Bank, and the Bank may receive and give a good discharge for all such monies.

#### **7.4 Other policy**

- (a) The Bank can at any time at its absolute discretion require the Borrower and/or the Assignor to take up and maintain a life assurance policy and/or any other policy guaranteeing the repayment of the Indebtedness, whether absolute and/or on the happening of a contingency, and to assign the policy and all connected benefits and advantages to the Bank as further security for the Indebtedness.
- (b) If the Borrower and/or the Assignor fails to take up and maintain the said policy and assigning the same when required, the Bank can at its absolute discretion take up and maintain a policy guaranteeing the repayment of the Indebtedness on such terms the Bank thinks fit. In this case, all costs and expenses incurred by the Bank in taking out and maintaining the policies will be payable by the Borrower and/or the Assignor to the Bank with interest payable at the rate specified in Section 5.6(b), and until payment will form part of the Indebtedness.
- (c) The Borrower and/or the Assignor will allow all insurance policies and the receipts or other evidence of payment paid by the Borrower and/or the Assignor to be kept by the Bank. The Borrower and/or the Assignor will when required deliver or produce to the Bank or to such persons designated by the Bank, any insurance policy effected by the Borrower and/or the Assignor and the receipt or other evidence of payment of the current premium for the policy.

#### **8 GOVERNMENT ACQUISITION**

- (a) If –
  - (i) all or any part of the Property at any time becomes the subject matter of, or is included in any notice, notification, or declaration concerning or relating to an acquisition by the government or any governmental authority, or any enquiry or proceedings in respect of the same; or
  - (ii) any government or governmental authority condemns, nationalises, seizes, or otherwise expropriates all or any part of the Land or assumes custody or control of all or part of the Property,

the Assignor must immediately inform the Bank, and send the Bank copies of any such notice, notification, or declaration as soon as it is delivered to or served on the Assignor.

- (b) The Bank can, at the Borrower's and/or the Assignor's expense, engage such advisors and agents (including solicitors and valuers) as it thinks fit to appear at, attend, or advise on any enquiry or proceedings relating to any acquisition, expropriation, or any of the matters in paragraph (a) above.
- (c) All monies received as or by way of compensation in respect of any of the matters in paragraph (a) above will be applied in or towards the discharge or payment of any monies or liability secured by this Assignment, and the Assignor will and hereby declares that it will hold all

such monies so received in trust for the Bank, and the Assignor agrees and confirms that the Bank may receive and give a good discharge for all such monies.

- (d) If all such monies are less than the amount due to the Bank under this Assignment, including interest and all monies and other charges due and payable by the Borrower and/or the Assignor to the Bank under this Assignment, the Assignor will immediately pay the Bank the difference between the amount due and the amount received, and until such payment will pay interest on such balance at the rate in Section 5.6(b) with monthly or other periodic rests in accordance with the type of Banking Facility applicable, as well after as before any demand or judgment and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated.

## **9 REPRESENTATIONS AND WARRANTIES**

The Assignor represents and warrants to and undertakes with the Bank as follows:-

- (a) **Capacity.** The Assignor has the power or capacity to execute, deliver and perform the terms of this Assignment, and that all necessary action has been taken to authorise the execution, delivery and performance of this Assignment.
- (b) **Contractual obligations.** This Assignment constitutes, or when executed will constitute, the legal, valid and binding obligations of the Assignor in accordance with its terms.
- (c) **Authorisations and consents.** All consents, licences, approvals, authorisations, orders, and exemptions of any Ministry, agency, department, or authority in Malaysia and elsewhere which may be required or advisable for or in connection with the Banking Facilities, the execution, delivery, performance, legality, or enforceability of this Assignment, have been obtained, and are in full force and effect.
- (d) **Proceedings.** Neither the Borrower, the Assignor nor any Security Party is in default under any agreement to which it is a party, or by which it is bound, and no litigation, arbitration, or administration proceedings are presently current, pending, or threatened, which might materially affect its solvency or its ability to perform its obligations.
- (e) **Material adverse change.** There has been no material adverse change in the financial condition or operations of the Borrower and/or the Assignor and/or any Security Party since the Borrower first applied for the Banking Facilities.
- (f) **Assignor's title to Property.** The Assignor's title to the Property is regular, and the Assignor's beneficial interests in the Property are free from all defects and encumbrances.
- (g) **Compliance with laws.** The financing by the Bank under this Assignment, and the Bank's agreement to make and continue to make available the Banking Facilities to the Borrower will not contravene or

breach of any Act of Parliament, Ordinance, enactment, rule or law, regulation, order, or other statutory provision in force now or in future, including the provisions of the Financial Services Act, 2013, the Companies Act, 1965, any lending limit or restriction imposed on the Bank, guidelines, directives, or policies introduced from time to time by Bank Negara Malaysia or such other authority having jurisdiction over the Bank.

- (h) **No default.** No Event of Default has occurred, is continuing, or will occur as a result of the Bank making any advance or continuing to make the Banking Facilities available to the Borrower.
- (i) **Information.** All information furnished by the Borrower and/or the Assignor and/or any Security Party in connection with the application for the Banking Facilities do not contain any untrue statement, or omit to state any fact (the omission of which makes any statement made in those circumstances misleading), and the Borrower and/or the Assignor and/or any Security Party are not aware of any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, adversely affect the Bank's decision to grant the Banking Facilities (or part of the same), or to take the security.
- (j) **Incorporation.** Where the Assignor is a corporation, that the Assignor is duly incorporated and validly existing under the laws of the country of its incorporation, and has full power and authority to own its assets and carry on its business.
- (k) **No conflict or limitation.** Where the Assignor is a corporation, that neither –
  - (i) the execution and delivery of this Assignment by the Assignor; nor
  - (ii) the performance or observance of any of the Assignor's obligations under this Assignment or any security document;will –
  - (v) conflict with, or result in a breach of its Memorandum and Articles of Association, any law, statute, regulation, judgment, order, mortgage, contract, agreement, trust deed, or other instrument, arrangement, obligation, or duty by which it is bound; or
  - (vi) cause any limitation on any of its powers, howsoever imposed, or on the right or ability of its directors to exercise such powers, to be exceeded.
- (l) **Accounts.** Where the Assignor is a corporation that the Assignor's accounts provided to the Bank –
  - (i) were prepared in accordance with accounting principles and practices generally accepted in Malaysia, and consistently applied, and have been prepared, examined, reported on, and approved in accordance with all procedures required by law and the Memorandum and Articles of Association of the Assignor;

- (ii) together with the notes to the accounts, give a true and fair view of the financial condition and operations of the Assignor as at the date of such accounts and for the period then ended; and
  - (iii) together with those notes, disclose or reserve against the liabilities (contingent or otherwise) of the Assignor as at the date of the said accounts and all material unrealised or anticipated losses from any commitment entered into by it and which existed on such date.
- (m) **Repeated at utilisation.** Prior to and on each of the dates of the utilisation of the Banking Facilities, the above representations and warranties are true and accurate in all respects as if made on each such date, and as if repeated by reference to the then existing circumstances, except that each reference to accounts in paragraph (l) above will be construed as a reference to the then latest available annual accounts of the Assignor.

## 10 **DEFAULT**

### 10.1 **Events of default**

- (a) When an Event of Default happens:-
- (i) the Bank will not be under any further obligation and/or commitment to the Borrower in relation to the Banking Facilities;
  - (ii) all moneys and interest then owing to the Bank under the Banking Facilities and any other moneys then owing to the Bank by the Borrower or under this Assignment will immediately become payable on demand by the Bank; and
  - (iii) the Bank will be entitled to exercise any right or power –
    - (A) which the Bank may have upon an Event of Default by virtue of this Assignment and the Security Documents; and
    - (B) which may be available to the Bank in lawwithout any previous notice to the Assignor.
- (b) The following are the Events of Default referred to above:-
- (i) **Non-payment or non-compliance.** The Borrower and/or the Assignor fails to pay on the due date any money or discharge any obligation or liability payable by the Borrower and/or the Assignor from time to time due to the Bank, or fails to comply with any term or condition of any Banking Facility from the Bank.
  - (ii) **Representation, warranty or undertaking.** If any representation, warranty or undertaking made to the Bank by the Borrower and/or the Assignor and/or any Security Party is or will become incorrect or misleading in a material respect.



- (iii) **Non-observance or non-performance.** The Borrower and/or the Assignor and/or any Security Party fails to observe or perform any of the agreements, covenants, stipulations, terms and conditions on the part of the Borrower and/or the Assignor and/or any Security Party contained in this Assignment, or under any other charge or Security Documents.
- (iv) **Cessation of business.** The Borrower and/or the Assignor and/or any Security Party ceases or threatens to cease to carry on its business.
- (v) **Death or winding-up.** The Borrower and/or the Assignor and/or any Security Party dies, or a petition is presented, an order is made, or a resolution is passed for the winding-up of the Borrower and/or the Assignor and/or any Security Party.
- (vi) **Receiver and Manager appointed.** A Receiver and/or Manager is appointed to receive and/or manage all or part of the assets, undertaking or property of the Borrower and/or the Assignor and/or any Security Party pursuant to any charge, debenture, security document or otherwise.
- (vii) **Bankruptcy.** The Borrower and/or the Assignor and/or any Security Party becomes bankrupt or allows any judgment against the Borrower and/or the Assignor and/or any Security Party to remain unsatisfied for 21 days.
- (viii) **Inability to pay debts.** The Borrower and/or the Assignor and/or any Security Party commits an act of bankruptcy, is unable to pay its debts, or suspends the payment of its debts, or enters into any composition or arrangement with or for the benefit of the creditors of the Borrower and/or the Assignor and/or any Security Party.
- (ix) **Compulsory acquisition.** A notice, proposal, or intention for compulsory acquisition of all or part of the Property is issued or made under or by virtue of an Act of Parliament, Ordinance, enactment, or rule of law, regulation, order, or other statutory provision in force now or in future.
- (x) **Bank's discretion.** The Bank decides in its sole and absolute discretion that the continuation of the Banking Facilities would be likely to be detrimental to its own position, or is otherwise undesirable, or that its security under this Assignment or under any other security documents is in jeopardy. The Bank's opinion will be final and binding on the Borrower and/or the Assignor and/or the Security Party.
- (xi) **Other indebtedness.** Any indebtedness of the Borrower and/or the Assignor and/or any Security Party becomes capable, in accordance with its terms, of being declared due prematurely because –
  - (A) of a default by the Borrower and/or the Assignor and/or any Security Party in its respective obligations;



- (B) the Borrower and/or the Assignor and/or any Security Party fails to make any relevant payment on its due date, or if due on demand when demanded; or
  - (C) the security for any such indebtedness becomes enforceable.
- (xii) **Sale Agreement and Charge.** If –
  - (A) the Assignor breaches any of the terms and conditions of the Sale Agreement;
  - (B) the Developer terminates or threatens to terminate the Sale Agreement; or
  - (C) the transfer and/or the charge referred to in **Section 6.2** is not or cannot be registered for any reason.
- (xiii) **Security.** The security created under this Assignment, or any guarantee, indemnity, or other security for all or part of the Banking Facilities –
  - (A) fails or ceases to have full force and effect or to be continuing;
  - (B) is terminated or disputed or jeopardised or invalidated; or
  - (C) is unenforceable.
- (xiv) **Other events.** Any other event or series of events whether related or not (including any adverse change in the financial condition of the Borrower and/or the Assignor and/or any Security Party) could or might affect the ability or willingness of the Borrower and/or the Assignor and/or any Security Party to comply with all or any of its obligations under this Assignment, or under any other security documents.
- (xv) **Cross default.** The Borrower and/or the Assignor and/or any Security Party and/or any Associated Party fails to discharge any obligation or liability with the Bank or any other party, or default in the payment of any monies to the Bank or any other financial institution or other party.
- (xvi) **Enforcement by creditor.** The Borrower and/or the Assignor and/or any Security Party and/or any Associated Party defaults under any loan, facility or accommodation granted to them (whether by the Bank or any other party) which gives the right to the creditor concerned or the holder of the obligation concerned the right to accelerate repayment of, withdraw; and/or enforce security for, such loan, facility or accommodation.
- (xvii) **Default in other accounts.** There is a default in the payment of any monies under the accounts of any other party for which the Borrower and/or the Assignor and/or any Security Party and/or any Associated Party are providing security or guarantee.

- (xviii) **Facilities Agreement.** An event of default has occurred under the Facilities Agreement or any Security Document.

## 10.2 Discontinuance of progressive release

Regardless of anything in this Assignment, the Bank can, at its absolute discretion and without having to give any reason, and without discharging or affecting the security created by this Assignment, refuse and/or discontinue the progressive release of all or any part of the Banking Facilities for the Borrower's and/or the Assignor's use or benefit if –

- (a) the Borrower and/or the Assignor fails and/or refuses and/or neglects to promptly pay the interest due on any of the progressive releases in accordance with the terms and conditions in any other security document, or any other charges, expenses, or outgoings due by the Borrower and/or the Assignor under this Assignment; or
- (b) the Borrower and/or the Assignor breaches any of the express or implied terms and conditions in this Assignment.

## 11 REMEDIES

### 11.1 Remedies of the Bank

- (a) Upon demand or upon the occurrence of an Event of Default, the Bank can exercise all or any of the following rights and powers:-
  - (i) To enter and take possession of all or part of the Property, and to terminate summarily the Assignor's licence to occupy the Property.
  - (ii) To exercise or enforce any of the Assignor's rights under the Sale Agreement.
  - (iii) To let or lease all or part of the Property for such term of years, at such rent, and generally on such terms the Bank decides at its absolute discretion.
  - (iv) To receive rents and profits of the Property.
  - (v) To sell the Property by public auction or private treaty at such price, in such manner, and generally on such terms the Bank decides at its absolute discretion. The Bank can bid at any such sale.
  - (vi) To sue and bring a civil action to recover the Indebtedness.
- (b) The Borrower and/or the Assignor must do all things and execute all documents required by the Bank in respect of the above.
- (c) No person dealing with the Bank will be required to check whether the power exercised by the Bank in enforcing this Assignment has become exercisable.

**11.2 Demands**

- (a) Any demand for payment of the Indebtedness required or permitted to be given or made under this Assignment to the Borrower and/or the Assignor may be made by a notice in writing requiring payment within 7 days from the date of demand.
- (b) The said demand by the Bank may be signed on behalf of the Bank by the manager, acting manager, or any other officer of the Bank or by any solicitor or firm of solicitors purporting to act for the Bank.
- (c) Such demand will be deemed to have been sufficiently served on the Borrower and/or the Assignor if it is served in accordance with Section 14.

**11.3 Proceeds of sale**

- (a) All monies received by the Bank from any proceedings instituted or steps taken under this Assignment will be applied in the following order:-
  - (i) Firstly, to pay the quit rent, rates, taxes, assessments and other outgoings due to the relevant authorities.
  - (ii) Secondly, to pay all costs (including the Bank's solicitors costs on a solicitor and client basis), charges, expenses, and liabilities incurred by the Bank and every receiver or other person appointed by the Bank in realising the Property or in performing any duties or exercising any powers.
  - (iii) Thirdly, to pay the Bank all interests, costs, charges, commission and other monies which are outstanding in connection with the Banking Facilities.
  - (iv) Fourthly, to pay all principal monies owing to the Bank in connection with the Banking Facilities.
  - (v) Fifthly, to pay the Bank all other monies due and remaining unpaid under any of the Security Documents.
  - (vi) Sixthly, to pay the Bank any of the Borrower's and/or the Assignor's liabilities to the Bank (whether present, future, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any account, agreement, or contract with the Bank.
  - (vii) Seventhly, towards settlement of any monies owing by any other company in the Borrower's and/or the Assignor's group of companies (including holding, subsidiary, and associated companies) to the Bank (if any).
  - (viii) Eighthly, to the Borrower and/or the Assignor or any other entitled persons.
- (b) The Bank can at its sole and absolute discretion change the order of payment above, or keep such amounts in a non-interest bearing suspense account. However, the change in the order of payment will not

affect the Bank's right to receive the full amount to which the Bank would have been entitled to receive if the primary order of payment had been observed, or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

#### **11.4 Insufficiency in proceeds of sale**

- (a) If the amount realised by the Bank in a sale of the Property under the provisions of this Assignment after deduction and payment from the proceeds of such sale of all fees, dues, costs, rents, rates, taxes, and other outgoings on the Property, is less than the amount due to the Bank (and whether at such sale the Bank is the purchaser or otherwise) the Borrower and/or the Assignor must pay the Bank the difference between the amount due and the amount so realised.
- (b) Until the payment in the preceding paragraph is made, the Borrower and/or the Assignor will also pay interest on such balance at the rate specified in Section 5.6(b) with monthly or other periodic rests (as the case may be) in accordance with the type of Banking Facility applicable, both after as well as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated.

#### **11.5 Vacant possession**

When the powers of sale under this Assignment becomes exercisable by the Bank, the Assignor will deliver vacant possession of the Property to the Bank, or any person authorised by it, immediately on receiving the Bank's written demand.

#### **11.6 Indemnity**

In addition and without affecting the powers, rights, and remedies granted under this Assignment, the Assignor will indemnify the Bank against any loss or expenses (including legal expenses on a solicitor and client basis) which the Bank sustains or incurs because of –

- (a) any default in payment by the Borrower and/or the Assignor of any sum due under this Assignment, including any interest or fees paid or payable on account of, or in respect of, any funds borrowed or deposits from third parties in order to maintain the amount in default, or in liquidating or re-employing such funds or deposits; or
- (b) the occurrence of any Event of Default.

The Bank's certification of the amount of the said loss or expenses will be conclusive and binding upon the Assignor unless there is any obvious mistake.

#### **11.7 Rights to concurrent remedies**

- (a) Regardless of Section 11.4, and any contrary provision in this Assignment, it is agreed that, upon the occurrence of an Event of Default or breach of any of the provisions in this Assignment or other Security Documents by the Borrower and/or the Assignor and/or any Security Party, the Bank can concurrently exercise all or any of the remedies available under this Assignment or other Security Documents, or by statute or otherwise.

- (b) The remedies referred to in the previous paragraph include pursuing all remedies of sale or possession pursuant to this Assignment or other Security Documents, and a civil suit to recover all Indebtedness.

#### **11.8 Involuntary loss**

- (a) In exercising or executing any of the Bank's powers under this Assignment or by law, the Bank will not be liable to the Borrower and/or the Assignor for any loss or damage incurred, or alleged to be incurred, by the Borrower and/or the Assignor.
- (b) The Bank is not obliged to obtain the true or best market value of the Property.

### **12 CONSOLIDATION**

Unless the Bank agrees otherwise, this Assignment will not be released and discharged except on full payment by the Borrower and/or the Assignor of not only all monies secured under this Assignment, but also all monies which may become due or owing to the Bank under any other loans and/or banking facilities granted to the Borrower and/or the Assignor and/or any third parties from time to time (whether such liabilities be present, future, actual, contingent, primary, collateral, several, or joint) and whether secured by any other charge or security created now or in future secured by the Borrower and/or the Assignor (or by any person through whom the Borrower and/or the Assignor claims in favour of or vested in the Bank) or otherwise, and the Bank's right of consolidation will apply to this security.

### **13. MODIFICATION AND INDULGENCE**

The Assignor expressly consents and agrees that the Bank may at any time and without in any way affecting the validity of the security, liabilities, and obligations created under this Assignment –

- (a) determine, change, or increase the Banking Facilities granted to the Borrower, and open and/or continue any account or accounts current or otherwise with the Borrower and/or the Assignor and/or any Security Party at any branch or branches of the Bank;
- (b) grant to the Borrower and/or the Assignor and/or any Security Party any time or indulgence;
- (c) renew any bills, notes, or other negotiable securities;
- (d) deal with, exchange, release, modify, or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or in future have from or against the Borrower and/or the Assignor and/or any Security Party or any other person;
- (e) compound with the Borrower and/or the Assignor and/or any Security Party and/or any other person;
- (f) at the request of the Borrower and/or the Assignor and/or any Security Party accept payment of any monies due or becoming due under this

Assignment by such increased or reduced instalments as may be agreed, or agree to suspend payments in reduction of principal or give such further time for payment or grant such indulgences as may be agreed;

- (g) grant further facilities to the Borrower, reinstate, vary, interchange, substitute or convert the Banking Facilities or any of them, or any of the principal limits or sub-principal limits of the Banking Facilities;
- (h) review, amend, or vary the Banking Facilities granted to the Borrower or its terms and conditions; and
- (i) have recourse to all or any remedies or means for recovering the monies hereby secured which may be available for such purpose at such time and in such order and manner as the Bank may think fit.

#### **14 NOTICES**

- (a) **Language.** Any demand, request, notice or other communication (“Notices”) by or on behalf of the Assignor, or the Bank must be in writing in English or Bahasa Malaysia.
- (b) **Notices to Assignor.** Notices can be given by the Bank to the Assignor by –
  - (i) personal delivery to the usual last known place of residence, or at the last known registered office of the Assignor, or at the address of the Assignor stated in this Assignment, or at the usual or last known place of business of the Assignor;
  - (ii) ordinary mail to any such addresses referred to in Section 14(b)(i);
  - (iii) facsimile transmission to the Assignor’s facsimile number in the Bank’s records;
  - (iv) sending an email to the Assignor’s email address in the Bank’s records;
  - (v) sending a short message system (SMS) to the Assignor’s mobile phone number in the Bank’s records;
  - (vi) being displayed at the Bank’s business premises;
  - (vii) being displayed on the Bank’s website; or
  - (viii) insertion in any statement of account sent by the Bank to the Borrower.
- (c) **Deemed delivery.** Notices are deemed delivered to the Assignor as follows:-
  - (i) If sent by personal delivery, at the time of delivery.

- (ii) If sent by ordinary mail, the service will be deemed to be made 48 hours after posting, even if it is undelivered or returned undelivered. In proving service, it will be sufficient to prove that the notice was properly addressed and posted.
  - (iii) If sent by facsimile, SMS, email, or displayed at the Bank's business premises or website, the service will be deemed to be made upon the facsimile, SMS or email being sent, or the notice being displayed.
- (d) **Notice from the Assignor.**
- (i) Notices from the Assignor to the Bank may be sent by personal delivery or ordinary mail.
  - (ii) Notices by the Assignor to the Bank must be duly signed by the Assignor or, if permitted by the Bank, the Assignor's authorised signatory. The Notice must be served on the Bank at the address specified by the Bank from time to time. Notices are deemed received by the Bank upon actual receipt of the Notice and any additional documents or information which the Bank may require to verify the source of the Notice.

## 15 **DISCLOSURE**

The Assignor agrees that the Bank (including the Bank's officials, employees, agents or any other persons who the Bank grants access to their records, correspondence or any material relating to the Borrower and/or the Assignor or the Banking Facilities) can disclose at any time at the Bank's absolute discretion without notifying the Borrower and/or the Assignor beforehand, any information relating to the Borrower and/or the Assignor, a Security Party, the Borrower's and/or the Assignor's accounts with the Bank, the Banking Facilities, and this Assignment to the following persons:-

- (a) Any members of the Group, for any of the following purposes:-
- (i) Providing the Borrower and/or the Assignor with banking services.
  - (ii) Reporting.
  - (iii) Data matching.
  - (iv) Improving and furthering the provision of other services by the Bank.
  - (v) Fraud or crime prevention.
  - (vi) Investigating, preventing or otherwise in relation to money laundering and criminal activities.
  - (vii) Debt collection.
  - (viii) Outsourcing the Bank's operations.
  - (ix) Performance of duties as an officer of the bank or in connection with the conduct of audit or the performance of risk management.
  - (x) Facilitating the performance of the Bank's or any members of the Bank's Group's function.
  - (xi) Compliance with the Bank's Group's policies, guidelines, directives or requirements.
  - (xii) Corporate exercise.

- (xiii) Any legal process initiated by or served on the Bank.
- (b) Any person, whether in Malaysia or elsewhere, who provides electronic or other services to the Bank for the purpose of providing, updating, maintaining and upgrading the said services, including but not limited to investigating discrepancies, errors or claims.
- (c) Any person, whether in Malaysia or elsewhere, which the Bank engages for the purpose of performing or in connection with the performance of services or operational functions which have been out-sourced.
- (d) The police or any public officer conducting an investigation in connection with any offence including suspected offences.
- (e) Credit card companies and financial institutions in connection with credit card enquiries.
- (f) Other banks, financial institutions, credit bureau or credit reference agents (only for credit information).
- (g) The Bank's auditors, solicitors, and professional advisors.
- (h) The Bank's stationery printers, vendors of the computer systems the Bank uses, and to such persons installing and maintaining them and other suppliers of goods or service providers the Bank engages.
- (i) Any receiver the Bank appoints or appointed by any other party.
- (j) Any credit bureau of which the Bank is a member, and any other members and/or compliance committee of such credit bureau.
- (k) Any rating agency, insurer or insurance broker or direct or indirect provider of credit protection.
- (l) Any actual or potential participant or sub-participant in relation to any of the Bank's obligations under the banking agreement between the Borrower and/or the Assignor and the Bank, or assignee, novatee or transferee (or any officer, employee, agent or adviser) of any of them.
- (m) For transactions effected or processed with or without the Borrower's and/or the Assignor's authority in or through the ATMs of other banks or financial or non-financial institutions or terminals or other card operated machines or devices the Bank approves, to the bank, financial institution or non-financial institution, trader or other party accepting the use of the ATM card and their respective agents or contractors.
- (n) Any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over the Bank or any members of the Bank's Group.
- (o) The Central Credit Bureau or such other authority or body established by Bank Negara Malaysia, or any other authority with jurisdiction over the Bank.
- (p) Any person to whom the Bank or any members of the Bank's Group is permitted or required to disclose to under the law of any country.



- (q) Any other person to whom such disclosure is considered by the Bank to be in the Bank's interest, or the interest of any members of the Bank's Group (not applicable to strategic alliance for marketing and promotional purposes).
- (r) Any person in connection with enforcing or protecting any right under this Assignment or any Security Documents.
- (s) Any person intending to settle any monies outstanding under the Banking Facilities.

## **16 MISCELLANEOUS**

### **16.1 Payments by Bank**

- (a) All costs, charges, and expenses incurred by the Bank under this Assignment, including –
  - (i) any expenditure incurred in the creation, registration, enforcement, and/or preparation of this Assignment, or in the giving of any notice, or in the making of any demand for any monies secured by this Assignment (including legal fees on a solicitor and client basis);
  - (ii) paying any expenses or outgoings in respect of insuring, repairing, maintaining, managing, or realising the Property and/or any fixtures, crops, or plants on the Property;
  - (iii) all other monies whatsoever paid by the Bank in respect of the said costs, charges, expenses, and expenditure, or otherwise howsoever;
  - (iv) defending, prosecuting, or otherwise taking part in or attending (whether on a watching brief as observer or otherwise) any action, enquiry, hearing, suit, or other proceedings affecting the Property and/or any fixture, crops, or plants on the Property, and all other payments and sums stipulated on a full indemnity basis; and
  - (v) all or any other sums and monies paid or expended by the Bank under or pursuant to the express or implied provisions of the Land Code and/or this Assignment, and other usual banker's charges,

will be payable by the Borrower and/or the Assignor to the Bank.

- (b) Until full payment the said sums will bear interest at the rate specified in Section 5.6(b) with monthly or such other periodic rests in accordance with the type of banking facilities applicable, as well after as before any demand or judgment and regardless of whether or not the banker-customer relationship between the Bank and the Borrower and/or the Assignor has ceased or been terminated, from the date of the sums having been paid or extended, to the date of full payment.

- (c) The said sums together with interest will be debited to the Borrower's and/or the Assignor's account, and will be deemed to be charged on the Property in addition to the principal sum hereby advanced and will form part of the first payment due under this Assignment.

#### **16.2 Waiver**

- (a) Time will be the essence of this Assignment.
- (b) No failure or delay by the Bank in exercising, or any omission to exercise, any right, power, privilege or remedy accruing to the Bank upon any default by the Borrower and/or the Assignor will –
  - (i) affect or impair any such right, power, privilege, or remedy;
  - (ii) be construed to be a waiver of such right, power, privilege, or remedy; or
  - (iii) an agreement to such default.
- (c) No waiver or action of the Bank in respect of any default or any agreement to any such default will affect or impair any of the Bank's rights, powers, privileges, or remedies in respect of any other or subsequent default.

#### **16.3 Suspense account and proof of debt**

- (a) The Bank can place and keep any money received under this Assignment in a non-interest bearing suspense account for as long as the Bank thinks fit, without being obliged to use any part of it towards discharging any liability due or incurred by the Borrower and/or the Assignor.
- (b) Regardless of such payment in the event of any proceedings in or analogous to bankruptcy or insolvency of the Borrower and/or the Assignor, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money.
- (c) After the Bank has received such ultimate balance in full, any claim on the part of the Borrower and/or the Assignor to any excess or any security remaining with the Bank will be a matter of adjustment between the Bank and the Borrower and/or the Assignor and/or any other person or persons laying claim to the same.

#### **16.4 Payment in gross**

- (a) All monies received from or on account of the Borrower and/or the Assignor, from any other persons or estate, from the realisation of this Assignment or any security, or otherwise for the purpose of being applied in the reduction of the Borrower's and/or the Assignor's account or of the monies covenanted to be paid under this Assignment, will be treated for all purposes as payments in gross, and not as appropriated or attributable to any specific part or item of the said monies covenanted to be paid, even if appropriated as such by the Bank.

- (b) All securities held by the Bank now or in future will be treated as security for the said general balance.
- (c) The Borrower and/or the Assignor, his estate or any other persons deriving or claiming title under the Borrower and/or the Assignor will have no claim to such security, and any part or interest in such security, unless the Bank has received the full amount owing to the Bank by the Borrower and/or the Assignor.

#### **16.5 Right of set-off**

- (a) The Bank can at any time after an Event of Default or in making a demand, regardless of any settlement of account or any other matter, combine or consolidate all or any of the Borrower's and/or the Assignor's then existing accounts, including accounts in the Bank's name, or of the Borrower and/or the Assignor jointly with others.
- (b) In addition, the Bank can, after giving 7 days' notice to the Borrower, set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any Indebtedness.
- (c) The Bank's right above is applicable to all accounts, whether current, deposit, loan, or of any other nature, whether subject to notice or not, in any currency, and wherever situated.
- (d) If any of the Borrower's and/or the Assignor's liabilities are contingent, the Bank can set-off and transfer any sum standing to the credit of any of the Borrower's and/or the Assignor's accounts towards the satisfaction of the Borrower's and/or the Assignor's contingent liabilities.
- (e) If the Borrower's and/or the Assignor's actual liabilities are less than the amount set-off by the Bank, the Bank will refund the surplus to the Borrower and/or the Assignor.
- (f) Where a combination set-off or transfer requires the conversion between currencies, the conversion will be calculated at the Bank's then prevailing spot rate of exchange (as fixed by the Bank at its absolute discretion) for purchasing the currency for which the Borrower and/or the Assignor is liable.

#### **16.6 Change in Bank**

The security, liabilities, and/or obligations created by this Assignment will continue to be valid and binding for all purposes, regardless of any transfer or assignment of the Bank's business, operations, assets, or liabilities, or any change by amalgamation, consolidation, reconstruction, or otherwise in the Bank's constitution, or of any company by which the Bank's business is carried on, and will be available by the company carrying on that business.

#### **16.7 Change in the Borrower and/or the Assignor**

- (a) The security, liabilities, and/or obligations created by this Assignment will continue to be valid and binding for all purposes, regardless of any change (whether by bankruptcy, death, incorporation, amalgamation, liquidation, reconstruction, or otherwise) in the Borrower's and/or the Assignor's name, style, constitution, or composition.

- (b) The expressions “the Borrower” and “the Assignor” in this Assignment includes persons for the time being deriving title under the Borrower and/or the Assignor respectively, and no change of any sort in relation to or affecting the Borrower and/or the Assignor will in any way affect the security, liabilities, and/or obligations created by this Assignment in relation to any transaction, whether past, present, or future.

#### **16.8 Assignment or transfer of Assignment**

- (a) The Bank can at any time at its absolute discretion and without notifying the Borrower and/or the Assignor, assign all or any part of its rights, interests, and obligations in this Assignment, and/or transfer the benefit of this Assignment to any person or corporation.
- (b) The costs and expenses of the Bank and the assignee or transferee will be paid by the Borrower and/or the Assignor.
- (c) Following such assignment or transfer, the assignee or transferee will assume and be entitled to the rights, interests, and obligations of the Bank in this Assignment as if the assignee or transferee had been a party to this Assignment in place of the Bank.
- (d) Any recital or statement in this Assignment of the amount due to the Bank under or by virtue of this Assignment will be conclusive and binding for all purposes against the Borrower and/or the Assignor.

#### **16.9 Successors bound**

- (a) This Assignment will be binding on the Borrower’s and/or the Assignor’s heirs, liquidators, receivers, personal representatives, and successors-in-title, and on the Bank’s successors-in-title and assigns of the Bank.
- (b) The Borrower and/or the Assignor cannot assign its rights or obligations under this Assignment.

#### **16.10 Severability**

If any of the provisions in this Assignment is or becomes invalid or unenforceable, the invalid or unenforceable provision is to be treated as not having been included in this Assignment, and will not affect the remainder of this Assignment, which will continue to be effective and in force.

#### **16.11 Other terms and conditions**

- (a) The terms and conditions in this Assignment will be in addition to and not in derogation of any specific agreement or arrangement with regard to each Banking Facility now or from time to time existing between the Bank and the Borrower, or any terms and conditions that may be specified in any letters (including letters of offer) given by the Bank to the Borrower and/or the Assignor from time to time.
- (b) If there is any inconsistency between the provisions of this Assignment and the Letter of Offer, the Letter of Offer will prevail to the extent of the inconsistency.

**16.12 Irrevocable right to debit account**

- (a) The Bank can (but is not obliged to) at any time without prior notice and without affecting the Bank's other rights and remedies debit the Borrower's and/or the Assignor's current or other accounts with the Bank and/or to debit the balance of any overdraft facility with –
- (i) all accrued interest;
  - (ii) unpaid loan instalment of principal and interest;
  - (iii) overdue trust receipts;
  - (iv) term bills;
  - (v) banker's acceptances;
  - (vi) outstandings in respect of performance guarantees;
  - (vii) indemnities;
  - (viii) bonds;
  - (ix) valuation fees;
  - (x) insurance premiums;
  - (xi) fees;
  - (xii) commissions;
  - (xiii) charges;
  - (xiv) the costs and expenses referred to in Section 16.1 of this Assignment; and
  - (xv) all other monies due on the Banking Facilities
- (b) No such debiting will be deemed to be payment of the amount due (except to the extent of any amount in credit in the Borrower's and/or the Assignor's current or other accounts), or a waiver of any Event of Default under this Assignment, or any other agreement relating to the Banking Facilities.
- (c) If such debiting causes the Borrower's and/or the Assignor's accounts to be overdrawn, the rate as specified in Section 5.6(a) will be payable.

**16.13 Statement by Bank**

A certificate signed by the Manager, Acting Manager, or any other officer by the Bank as to the monies or liabilities due, or owing to, or incurred by the Bank on account of the Borrower and/or the Assignor will be conclusive evidence that the stated balance or amount is due or owing by the Borrower and/or the Assignor for all purposes, including any legal proceedings.

**16.14 Costs**

- (a) The Assignor will be liable to pay all fees and expense in connection with or incidental to this Assignment, including the Bank's solicitors fees in connection with the preparation and execution of this Assignment and all related documents.
- (b) If any monies payable by the Assignor under this Assignment are required to be recovered by any legal process, or if any such monies are placed with solicitors for collection, the Assignor will pay (in addition to the monies then due and payable under this Assignment) the Bank's solicitors fees (on a full indemnity basis) and any other fees and expenses incurred in respect of such collection.

**16.15 Release**

- (a) Subject to Section 12 and the Bank's rights under this Assignment, upon repayment to the Bank of the Indebtedness, the Assignor can obtain the discharge and release of the Property from the Bank, at the Assignor's sole cost and expense (including the cost of the solicitors acting for the Bank on a solicitor and client basis).
- (b) The discharge and release must be prepared by a firm of solicitors, and must be in the form as the Bank considers appropriate.

**16.16 Currency Indemnity**

Unless otherwise specifically agreed in writing by the Bank in relation to the Banking Facilities:-

- (a) The obligation of the Borrower and/or the Assignor shall be to pay the obligations or liabilities in the same currency in which the said obligations or liabilities are incurred ("Currency of Account").
- (b) Any amount received or recovered by the Bank in respect of any sums expressed to be due to it from the Borrower and/or the Assignor under this Assignment and/or the Security Documents in a currency ("Relevant Currency") other than the Currency of Account (whether as a result of, or arising from the enforcement of, a judgement or order of court of any jurisdiction or the death or bankruptcy of the Borrower and/or the Assignor or otherwise) shall only constitute a discharge to the Borrower and/or the Assignor to the extent of the amount in the Currency of Account which the Bank is able, in accordance with its usual practice, to purchase with the Relevant Currency so received or recovered on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount in the Currency of Account purchased with the Relevant Currency is less than the amount of the Currency of Account expressed to be due to the Bank under this Assignment and/or the Security Documents, the Borrower and/or the Assignor shall indemnify the Bank against any loss sustained by it as a result thereof. In any event, the Borrower and/or the Assignor shall indemnify the Bank against the cost of making any such purchase.

**16.17 Independent payment obligations**

The Borrower and/or the Assignor expressly agrees that each of its obligations to pay or repay under this Assignment or the Security Documents –

- (a) constitute separate and independent obligations;
- (b) give rise to separate and independent causes of action;
- (c) apply regardless of any waiver or indulgence given by the Bank for any other obligation;
- (d) remain in full force and effect regardless of any judgment, order, claim or proof for a liquidated amount in respect of any other obligation; and

- (e) can be relied upon and enforced by the Bank independently or, or together with, any other action under such obligations or under the Security Documents, and the Bank does not need to first use any other remedy available to the Bank.

**16.18 No proof in competition with the Bank**

- (a) Until all the Indebtedness is paid or discharged in full, the Assignor will not –
  - (i) claim any set-off or counterclaim against the Borrower in respect of any liability from the Borrower to the Assignor;
  - (ii) claim or prove in competition with the Bank in respect of any payment by the Borrower; or
  - (iii) be entitled to claim or have the benefit of any set-off, counterclaim, payment, distribution, or security from or on account of the Borrower.
- (b) This applies whether or not the Assignor pays off any sum recoverable under this Assignment, or on any other ground.

**16.19 Assignor as principal debtor**

- (a) Although as between the Borrower and the Assignor, the Assignor is a surety for the Borrower, between the Assignor and the Bank, the Assignor is a principal debtor.
- (b) The Assignor and the Property will not be released at any time by any indulgence given to the Borrower, or by any act, omission or thing which may release or discharge the Property or the Assignor's position as a surety for the Borrower.

**16.20 Construction where Borrower and/or Assignor is not an individual person**

If the Borrower's and/or the Assignor's name is that either of a firm, a limited company, or other corporation, committee, association or other unincorporated body, any of the provisions of this Assignment that are primarily and literally applicable to natural persons –

- (a) will be construed and take effect as if the Borrower and/or the Assignor was an individual;
- (b) will bind all of the Borrower's and/or the Assignor's assigns and successors-in-title; and
- (c) if the Borrower and/or the Assignor is a firm, will bind the firm and every member of that firm carrying on business in the name of or in succession to the firm.

**16.21 Unincorporated body**

In addition to, and without affecting the other provisions of this Assignment, it is agreed that even though the Borrower and/or the Assignor is a committee, an association, or other unincorporated body which has no legal existence, or which

is under no legal liability to discharge obligations undertaken or purported to be undertaken by it or on its behalf, this security will be valid and have effect as though the Assignor were the principal debtor.

#### **16.22 Borrowing and assigning powers**

Where any monies are owing and secured by this Assignment, they will be deemed to be so owing and secured regardless of –

- (a) any legal limitation, incapacity or otherwise of the Borrower in respect of the borrowing of the Banking Facilities which might be a defence as between the Borrower and the Bank;
- (b) the Assignor's power to enter into this Assignment; or
- (c) any legal limitation in the power of any director, attorney, partner, agent or other person purporting to act or acting on behalf of the Borrower and/or the Assignor or any other irregularity in such borrowing or incurring of such liabilities.

#### **16.23 Circumstances beyond the Bank's control**

If the Bank is unable to perform any of its obligations under this Assignment, or carry out any operations or provide any service due to any reason beyond the Bank's control, including –

- (a) fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbances, industrial disputes, acts of terrorism, embargo, war, act of God;
- (b) any failure or disruption to telecommunications, internet, electricity, water, fuel supply; or
- (c) any circumstance in the nature of a force majeure (an unforeseeable event that prevents the Bank from performing its obligations under this Assignment or any Security Document),

the Bank will not be in any way liable for any failure of performance or for any inconvenience, loss, injury, and damages suffered or incurred by the Borrower and/or the Assignor directly or indirectly as a result.

#### **16.24 Market disruption**

Regardless of what is stated in this Assignment or any Security Document, the Bank can –

- (a) at any time at the Bank's absolute discretion; and
- (b) without having to give the Borrower and/or the Assignor any reason,

cancel or suspend the Banking Facilities by written notice, if in the Bank's opinion there is any change in the national or international monetary, financial, political or economic conditions, or currency exchange rates, which would cause the continuation of the Banking Facilities to be temporarily or permanently impractical or not commercially possible.



**16.25 Illegality**

If the Bank deems that because of –

- (a) any change after the date of this Assignment in applicable law, regulation, or regulatory requirement; or
- (b) in the way any applicable law, regulation, or regulatory requirement is interpreted or applied by any relevant governmental or other authority,

it becomes unlawful or impractical for the Bank to comply with its obligations under this Assignment, or to continue to make available the Banking Facilities granted to the Borrower or to charge or receive interest at the rate applicable –

- (c) the Bank will notify the Borrower, and following that notification the Banking Facilities and the Bank's obligations under the Banking Facilities will be suspended immediately; and
- (d) following such notification, the Borrower must prepay the Banking Facilities to the Bank, and any other moneys then owing to the Bank by the Borrower or under this Assignment will immediately become payable on demand by the Bank, together with accrued interest and all other amounts payable to the Bank on the date deemed necessary by the Bank to comply with the relevant law; and
- (e) the Bank will have no further obligations under the Banking Facilities, which will be deemed cancelled.

**16.26 Data protection**

- (a) The Assignor agrees that the Group is permitted to process the Assignor's Personal Data. For the purpose of this Assignment, the term "process", "processing" and "processed" shall include but not limited to, collecting, recording, holding, storing or using.
- (b) "Personal Data" may include, but is not limited to, the Assignor's name, date of birth, identification card (NRIC), sex, marital status, race, current residential address, home number, office number, mobile number, email address, credit card details, name of employer, name of business owned by the Assignor, occupation, mother's maiden name, highest educational qualification, annual income, the Assignor's user ID and password for internet banking, the information contained in any accounts the Assignor may have with the Bank either singly or jointly with any other person and/or any other information which the Bank may receive in relation to any accounts the Assignor may have with the Bank either singly or jointly with any other person.
- (c) The purpose in which the Bank collects the Personal Data ("Purpose") include the following:-
  - (i) to process the Assignor's applications for any banking products and services;
  - (ii) to enable the Bank to consider whether to provide or continue to provide to the Assignor, any banking products and services;

- (iii) to provide the Assignor with banking services;
  - (iv) for data processing or reporting purposes;
  - (v) to respond to any inquiries or complaints from the Assignor;
  - (vi) to promote, improve and further the provision of other services by the Bank or any member of the Group to the Assignor;
  - (vii) for debt collection purposes;
  - (viii) for enforcement of the Bank's rights and obligations under this Assignment;
  - (ix) to comply with any legal and/or regulatory requirements;
  - (x) for processing the Assignor's instructions and generating any correspondences, confirmation, advices and/or statement of account;
  - (xi) to ensure that the information in the Bank's "Customer Due Diligence" records are accurate; or
  - (xii) for any direct marketing of the Bank's banking and/or insurance products and services.
- (d) The Assignor's Personal Data was collected from the information the Assignor has provided the Bank in the application form and any other document provided in relation to the Purpose.
- (e) It is obligatory that the Assignor provides the Bank with the Personal Data the Bank requests from the Assignor. If the Assignor fails to provide the Bank with its Personal Data, the Bank may not be able to process and/or disclose such Personal Data in relation to the Purpose.
- (f) The Assignor agrees and consents that the Bank may transfer the Personal Data outside of Malaysia. Other countries may not provide the same level of protection for data as compared to Malaysia. All Personal Data held by the Bank and the Group will be accorded a reasonable level of protection against any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or deletion.
- (g) The Assignor is entitled to request in writing:-
- (i) for any information in relation to their respective Personal Data that Bank holds or stores, upon payment of a prescribed fee;
  - (ii) for any information held or stored by the Bank to be updated, amended and/or corrected;
  - (iii) for the Bank to limit the processing of their respective Personal Data held or stored by the Bank; and
  - (iv) to make an enquiry or complaint in respect of the Bank's processing of their respective Personal Data.

The Assignor may direct its request to the address stated in Section 3 of the First Schedule or such other address notified by the Bank

The Bank may charge a fee for processing the Assignor's request for access or correction. The Bank may also refuse to comply with the Assignor's request in respect of (i) or (ii) above if the information supplied by any of them is insufficient (as determined by the Bank) or where such request may breach or violate any law or regulation or any other reason which the Bank deems not to be in its interest to do so. If the Bank refuses to comply with such request, the Bank will inform the Assignor of its refusal and reason for its refusal.

- (h) The Assignor is responsible for ensuring that the information they provide to the Bank is accurate, complete and not misleading and that such information is kept up to date.
- (i) If the Assignor subsequently withdraws its consent to process its Personal Data (other than for direct marketing purposes), the Bank will not be able to process and/or disclose such Personal Data in relation to the Purpose.
- (j) The Assignor may choose not to receive any direct marketing materials about the Bank's services and products. The Assignor must write to the address stated in Section 3 of the First Schedule or such other address notified by the Bank with its request and the Bank will delete the Assignor's name from its direct marketing mailing lists.

#### **16.27 Laws applicable**

This Assignment will be governed by and interpreted in accordance with the laws of Malaysia, and the Borrower and/or the Assignor hereby irrevocably –

- (a) submits to the non-exclusive jurisdiction of the Courts in Malaysia;
- (b) waives any objections on the ground of venue or unsuitability of forum or any similar grounds; and
- (c) consents to service of process by registered mail or in any other manner permitted by the relevant law.

#### **16.28 Compliance with court orders**

The Bank and the Group can act in any way they see fit, without consulting the Borrower and/or the Assignor beforehand, if they are served with a court order issued by a court of any jurisdiction. The Assignor agrees not to hold the Bank or the Group liable for any loss or damage in connection with their actions.

#### **16.29 Stamping to secure additional Banking Facilities**

This Assignment will secure the repayment by the Borrower and/or the Assignor to the Bank of the Banking Facilities in such sum for principal as the ad valorem stamp duty paid and endorsed from time to time on the original of the principal instruments described in the Second Schedule together with interest and all other monies payable by the Borrower and/or the Assignor under this Assignment.

The Borrower and/or the Assignor will pay all fees and expenses incurred in connection with the further stamping of this Assignment, including the Bank's solicitors' fees (on a solicitor and client basis).

- End of Page -

**NOTICE TO THIRD PARTY ASSIGNORS**

1. By signing this document, you may be liable instead of or as well as the Borrower for all monies due and owing by the Borrower to the Bank from time to time.
2. You are advised to seek independent legal advice before signing this document.

Signed by the parties on the day and year stated in Section 1 of the First Schedule.

**Assignor**

\*Signed by the Assignor )  
in the presence of: )

\*The Assignor's common seal )  
was affixed to this document )  
in the presence of: )

.....  
Director

.....  
Director/Secretary

**Bank**

Signed for and on behalf of )  
the Bank by its Attorney )  
in the presence of: )

\*Delete wherever inappropriate

**CONSENT BY DEVELOPER/LANDOWNER**

To: **UNITED OVERSEAS BANK (MALAYSIA) BHD.**

We hereby –

1. consent to the above Assignment and confirm that the Assignment has been entered in our records;
2. confirm with you that there is no assignment or agreement to assign prior to the Assignment;
- \*3. confirm that we have taken all steps necessary and applied for the separate issue document of title or strata title (as applicable) to the Property;
- \*3. undertake to take all necessary steps to apply for the separate issue document of title or strata title (as applicable) to the Property;
4. undertake to deliver to you the separate issue document of title or strata title (as applicable) to the Property together with a memorandum of transfer in accordance with the Sale Agreement duly executed in favour of the Assignor, or in your favour, or in favour of your nominee(s) (as applicable) free from all encumbrances and all other documents necessary to register the transfer, upon the issuance of the said issue document of title or strata title (as the case may be) by the relevant authority;
- #5. undertake to immediately refund to you all sums which have been released by you to us if the transfer of the Property in favour of the Assignor and the charge in your favour cannot be registered free from encumbrances for any reason;
6. confirm that, if we intend to further encumber the Land on which the Property is situated, we undertake to obtain from the chargee and/or encumbrancer of the Land and deliver to you –
  - (a) a letter of disclaimer of interest in respect of the Property; and
  - (b) an undertaking from the chargee/encumbrancer that it will exclude the Property from any application made by it for an order for sale of the Land; and
7. undertake to immediately inform you upon notification by the relevant authority that the separate issue document of title or strata title (as applicable) to the Property is ready for issue, and the particulars of the same.

\*Delete wherever inappropriate

#Delete if the Bank is NOT releasing any monies to the Developer/Landowner

Signed by )  
)  
for and on behalf of the Developer )  
in the presence of )

\*Signed by the Landowner )  
in the presence of )

\*Signed by )  
)  
for and on behalf of the Landowner )  
in the presence of )

**FIRST SCHEDULE**

**Section 1: Date of this Assignment**

**Section 2: Particulars of the Assignor:**

**Section 3: Place of business of the Bank:**

**Section 4: Particulars of the Landowner:**

**Section 5: Particulars of the Land:**

**Section 6: Particulars of the Developer:**

**Section 7: Name of Project:**



**Section 8: Date of the Sale Agreement:**

**Section 9: \*\*Particulars of the Property:**

**Section 10: Particulars of the First Purchaser from the Developer:**

**\*Section 11: Details of series of assignments of the Property subsequent to the Sale Agreement:**

\*Delete wherever inappropriate

\*\*Please include particulars of accessory parcels, if any

**SECOND SCHEDULE**

(Pursuant to Section 16.29 of the Assignment)

**STAMP DUTY ENDORSEMENT**

1. For the purpose of Section 4(3) of the Stamp Act, 1949, this Assignment will be deemed to be the \*Principal/Subsidiary/Collateral/and Substitute Instrument.
- \*2. The following instruments:

together with all other charges, documents and agreements created or to be created in favour of the Bank to secure the Banking Facilities granted or to be granted to the Borrower by the Bank from time to time on which ad valorem stamp duty has been and will be paid, shall for the purpose of Section 4(3) of the Stamp Act, 1949, be deemed to be the Principal Instrument(s).

\*Delete wherever inappropriate

- \*3 For the purpose of Section 4(3) of the Stamp Act, 1949, the following Loan Agreements/Loan Agreements cum Deed of Assignment \*is/are the \*Principal Instrument(s)/Subsidiary Instrument(s):

("the Existing Assignments"), and it is agreed and declared by the Borrower and the Assignor that the Banking Facilities are granted by the Bank to the Borrower upon the terms and subject to the conditions, stipulations, covenants, undertakings, representations and warranties contained in this Assignment in place of the terms and conditions in the Existing Assignments, and that this Assignment will be the substitute instrument.

**THIRD SCHEDULE**

(Pursuant to Section 2.1 of the Deed of Assignment dated \_\_\_\_\_ )

All terms referred to in this Third Schedule will have the same meaning as the terms in the above Deed of Assignment (“Assignment”).

This Third Schedule is a supplemental agreement to the Assignment, and the Assignor confirms and agrees that the Banking Facilities secured by the Assignment will include the banking facilities agreed to be granted or granted from time to time to the Borrower listed below.

1 **Particulars of Borrower**

Name:

NRIC No.:

Address:

2 **Amount secured by this Assignment:**

Dated

**Bank**

Signed for and on behalf of \_\_\_\_\_ )  
the Bank by its Attorney \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**Assignor**

\*Signed by the Assignor )  
in the presence of: )

\*Signed by )  
for and on behalf of the Assignor )  
in the presence of: )

\*The Assignor's common seal )  
was affixed to this document )  
in the presence of: )

.....  
Director

.....  
Director/Secretary

\*Delete wherever inappropriate

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NRIC No.:

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2 **Amount secured by this Assignment:**

Dated

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in the presence of: \_\_\_\_\_ )

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Director

.....  
Director/Secretary

\*Delete wherever inappropriate

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Dated

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in the presence of: \_\_\_\_\_ )



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the Bank by its Attorney \_\_\_\_\_ )  
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Director/Secretary

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