



## **LOAN AGREEMENT**

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD.  
(Company No. 199301017069) (271809 K)  
("Bank")**

**AND**

**THE PARTY(IES) NAMED IN SECTION 3  
OF THE FIRST SCHEDULE  
("Borrower")**

**THIS LOAN AGREEMENT** is made on the date stated in **Section 1 of the First Schedule**.

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD.** (Company No. 199301017069) (271809 K) a company incorporated in Malaysia having a place of business as stated in **Section 2 of the First Schedule ("Bank")**.

**AND**

The party named and described in **Section 3 of the First Schedule ("Borrower")**

**WHEREAS**

- I. At the request of the Borrower, the Bank has agreed via its Letter of Offer (hereinafter defined) to make available and/or to continue to make available to the Borrower the Banking Facilities (hereinafter defined) and upon the terms and conditions stated in the Letter of Offer and this Agreement.
- II. The Borrower agrees that the Bank can and is entitled, at the application or request of the Borrower, to grant and/or make available to the Borrower any further loan or other credit facilities and in such circumstance, the terms and conditions of this Agreement shall also apply to all such further loan or other credit facilities offered by the Bank and accepted by the Borrower.

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

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

<b><u>Words</u></b>	<b><u>Meaning</u></b>
Associated Party	Any of the following:- <ol style="list-style-type: none"><li>(a) the directors of the Borrower;</li><li>(b) the shareholders of the Borrower;</li><li>(c) a company in which any of the Borrower's directors and/or shareholder is a director and/or a shareholder;</li><li>(d) the Borrower's parent/holding company or the subsidiary company;</li><li>(e) a company in which the Borrower is a director and/or shareholder, whether directly or indirectly;</li><li>(f) a partnership in which the Borrower is a partner; or</li><li>(g) a sole-proprietorship in which the Borrower is a proprietor.</li></ol>

Bank Negara Malaysia	The Central Bank of Malaysia established under the Central Bank of Malaysia Act 2009.
Banking Facilities	All of the advances or banking or credit facilities made available or agreed to be made available or which will continue to be made available by the Bank to the Borrower now or from time to time under the Letter of Offer and shall include any part of such banking facilities then remaining outstanding, whether restructured or otherwise from time to time. "Banking Facility" means any one of the Banking Facilities.
Base Rate	The rate of interest determined and stated by the Bank from time to time as its base rate. If at any time the term Base Rate is no longer used, Base Rate shall mean the rate of interest stated by the Bank to be applied for the purposes of this Agreement.
Borrower	The person named in <b>Section 3 of the First Schedule</b> .
Business Day	The day on which the Bank is open in the state where the place of business of the Bank as stated in <b>Section 2 of the First Schedule</b> is located for transaction of business of the nature required or contemplated by this Agreement.
Code	The Internal Revenue Code of 1986 issued by the US.
Commitment	The commitment of the Bank to the Borrower to make available the Banking Facilities upon the terms and conditions of this Agreement.
Constitution	Means:- <ul style="list-style-type: none"> <li>(i) the constitution of a company; or</li> <li>(ii) for an entity which is not a company registered under the Companies Act 2016, such documents analogous to the constitution of a company as stated in (i) above.</li> </ul>
Event of Default	Any of the events or matters specified in Clause 9.1 of this Agreement.
FATCA	Means:- <ul style="list-style-type: none"> <li>(i) the Code or any associated regulations or other official guidance;</li> <li>(ii) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (i) above; or</li> </ul>

- (iii) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**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, and includes the Bank.

**Indebtedness** The aggregate of all monies whether principal, interest, capitalized interest, commission, fees, costs or charges outstanding or payable or agreed to be payable by the Borrower and/or any other Security Party to the Bank from time to time in respect of:-

- (i) the Banking Facilities or any account and includes all liabilities incurred by the Borrower to the Bank in respect of:-

- (a) any loans, credit, advances or payments made to or for the use, benefit or accommodation or on behalf of the Borrower;
- (b) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Borrower;
- (c) any bond, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Borrower's request;
- (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; and

- (ii) all commission, fees, charges, legal fees (including the legal fees and expenses of the Bank's solicitors), and all other costs, charges and expenses which may be incurred by the Bank, including any costs and expense incurred in enforcing this Agreement or any other Security Documents.

**Land Code** The National Land Code (Revised) 2020 , the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be and as revised or amended from time to time.

Legal Process	Include, but is not limited to, any originating process including writ of summons and originating summons as well as any other forms of originating process, pleadings, interlocutory applications, affidavits, orders, judgments and any other documents which are required to be served under any written law and such notices under the Companies Act 2016 and the Insolvency Act 1967 and the Land Code.
Letter of Offer	The letter(s) of offer (including the Bank's standard terms and conditions governing banking facilities and all other documents annexed thereto) bearing the date stated in <b>Section 4 of the First Schedule</b> issued by the Bank to the Borrower and shall include the letters of offer referred to in the <b>Seventh Schedule</b> and such other letter(s) of offer or facility letter(s) issued by the Bank after the date of this Agreement and accepted by the Borrower by which the Bank agreed to grant and the Borrower agreed to accept the Banking Facilities stated therein, whether by way of addition, revision, variation or substitution.
partnership	A partnership has the meaning ascribed to it by the Partnership Act 1961 and includes a partnership registered under the Registration of Business Act 1956, a limited liability partnership or a foreign limited liability partnership registered under the Limited Liability Partnerships Act 2012.
Personal Data	Include, but is not limited to, the Borrower and/or the Security Party's name, address, occupation, contact details, information captured on security systems (including a recording of the Borrower and/or the Security Party's image on Closed Circuit Television (CCTV)), the information contained in any of the Borrower and/or the Security Party's account(s) the Borrower and/or the Security Party may have with the Bank either singly or jointly with any other person, the type of products and/or services that the Borrower and/or the Security Party has subscribed to with the Bank and such other necessary data regarding the Borrower and/or the Security Party and the transactions between the Bank with the Borrower and/or the Security Party.
Prescribed Rate	Such rate fixed by the Bank from time to time for each of the Banking Facility which comprise the Base Rate and interest at such rate as stated in the Letter of Offer, including the rate as changed from time to time.
Process Service Agent	An agent appointed by the Borrower and who has accepted appointment by the Borrower, to accept service on behalf of the Borrower of all Legal Process arising out of or connected to the Banking Facilities and/or the Security Documents.

Ringgit Malaysia	The lawful currency of Malaysia.
Sanctions	The sanctions, embargoes or restrictive measures administered, enacted or enforced by any government, governmental institutions or agencies, regulator or authority.
Schedule	The Schedules to this Agreement.
Security	The security or securities required to be created in favour of the Bank or given to the Bank in consideration of the Bank's agreeing to grant, granting, having granted or continuing to grant the Borrower of the Banking Facilities or any part thereof, which Security is more particularly described in the Letter of Offer.
Security Documents	The Letter of Offer, this Agreement and any other guarantee, charge, assignment, deposit, lien, indemnity, debenture, and any other security documents that have been or will be executed to secure the payment or repayment of the Indebtedness.
Security Party	Any party, including the Borrower who executes or from time to time executes the Security Documents and/or provides any Security to secure the payment of all or part of the Indebtedness.
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, 1995 (Cap 18) (Sarawak), as the case may be.
this Agreement	This Loan Agreement and shall include the Schedules and all annexures to the Agreement.
US	United States of America.
US Tax Obligor	Means:- <ul style="list-style-type: none"> <li>(i) a Borrower which is resident for a tax purposes in the US; or</li> <li>(ii) an obligor, some or all of whose payments under the Security Documents are from sources within the US for US federal income tax purposes.</li> </ul>
Vendor	The seller of the property and shall mean the vendor and developer, as the case may be including their heirs, liquidators, receivers, personal representatives and successors-in-title.

## 1.2 Interpretation

### 1.2.1 In this Agreement, unless the context requires otherwise:-

- (i) words referring to the singular include the plural (and vice versa) and words referring to a gender include all genders;
  - (ii) words applicable to natural persons include anybody or persons, company, corporation, firm, or incorporated or unincorporated partnership;
  - (iii) a reference to a person includes his/its personal representatives, administrators, executors and/or executrix successors-in-title, assigns, and transferees;
  - (iv) a reference to “this Agreement” or other similar reference refers to this Agreement as a whole, and not to any particular provision of this Agreement but shall include any supplemental agreements, amendments, variations and changes made to this Agreement;
  - (v) a reference to Sections is a reference to Sections to the Schedules of this Agreement unless otherwise specified; and
  - (vi) a reference to Clauses is a reference to the Clauses of this Agreement unless otherwise specified.
- 1.2.2 The headings and sub-headings of this Agreement are inserted for convenience only, and are to be ignored when interpreting the provisions of this Agreement.
- 1.2.3 The expressions “month” and “year” mean a calendar month and a period of 365 days respectively.
- 1.2.4 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.
- 1.2.5 References to any statute, rules or regulations made under the statute are references to the statute, rules or regulations as amended, re-enacted, re-stated, substituted or replaced from time to time.
- 1.2.6 Where the Borrower and/or the Security Party is a company, any references relating to insolvency/bankruptcy will be read as references relating to the winding-up, liquidation, amalgamation or reconstruction of the Borrower and/or the Security Party.
- 1.2.7 Where there are two or more persons or parties included in any expression, all agreements and other matters expressed to be made by or on the part of such persons or parties are deemed to be made by or binding upon such persons or parties jointly and severally.
- 1.2.8 Where the expression “the Borrower and/or the Security Party” is used, all agreements and other matters expressed to be made by or on the part of the Borrower and/or the Security Party are deemed to be made by or binding upon the Borrower and/or the Security Party jointly and severally.
- 1.2.9 The expressions “including” or “for example” (or other similar words) when introducing an example does not limit the meaning of words to those examples.
- 1.2.10 A reference to “payment” includes repayment, as the case may be.

- 1.2.11 A reference to costs or fees “on a solicitor and client basis” means the expenses that a client has to pay his lawyer.
- 1.2.12 A reference to “principal” includes all sums and monies advanced or paid by the Bank to or on behalf of the Borrower and/or the Security Party or otherwise howsoever payable by the Borrower and/or the Security Party to the Bank under this Agreement (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.
- 1.2.13 The expressions “the Borrower” and “the Security Party” in this Agreement includes persons for the time being deriving title under the Borrower and/or the Security Party respectively, and no change of any sort in relation to or affecting the Borrower and/or the Security Party will in any way affect the security, liabilities, and/or obligations created by this Agreement in relation to any transaction, whether past, present, or future.
- 1.2.14 Where the Borrower and/or the Security Party is not a natural person, then any of the provisions of this Agreement that are primarily and literally applicable to natural persons:-
- (i) shall be construed and take effect as if the Borrower and/or the Security Party was an individual;
  - (ii) will bind all of the Borrower’s and/or the Security Party’s assigns and successors-in-title; and
  - (iii) if the Borrower and/or the Security Party 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.
- 1.2.15 The Schedules to this Agreement are and shall be treated as essential parts of this Agreement.

## 2. REPRESENTATIONS AND WARRANTIES

- 2.1 Upon the signing of this Agreement, the Borrower represents and warrants to the Bank as follows:-
- 2.1.1 **Capacity.** The Borrower and the Security Party have the power, right and capacity to execute, deliver and perform the terms of this Agreement, and that all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and the Security Documents.
- 2.1.2 **Contractual obligations.** This Agreement and the Security Documents constitute, or when executed will constitute, the legal, valid and binding obligations of the Borrower and the Security Party in accordance with their respective terms and that the execution, delivery and performance of this Agreement and the Security Documents:-
- (i) will not breach any law, rule, regulation, order or decree of any governmental authority, agency or court to which the Borrower and/or the Security Party is/are subject; and
  - (ii) will not breach any provision of any contract, mortgage, undertaking or instrument to which the Borrower and/or the



Security Party is/are a party or which is binding on them and will not result in the creation or imposition of any obligation to create or impose any mortgage, charge, lien, pledge or other security interest in the Security or in the Security Document or on the assets or moneys of the Borrower and or any of the Security Party.

- 2.1.3 **Authorisations and consents.** All consents, permissions, licences, approvals, authorisations, orders, and exemptions of any Ministry, agency, department, or authority in Malaysia (including if relevant, foreign exchange approval) 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 Agreement and the Security Documents, have been obtained, and are in full force and effect as all the terms and conditions contained in all of such consent, permissions, licences, approvals, authorizations, orders or exemptions obtained have been duly complied with.
- 2.1.4 **Proceedings.** Neither the Borrower 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 (whether civil or criminal), arbitration, or administration proceedings are presently current, pending, or threatened, which might affect their solvency or ability to perform their respective obligations and where the Borrower and/or the Security Party is/are:-
- (i) an individual or an ordinary person, that the Borrower and/or the Security Party has/have not committed any act of insolvency/bankruptcy and that no insolvency/bankruptcy proceedings have been commenced or is/are pending or being threatened against the Borrower and/or any of the Security Party; or
  - (ii) a company or corporation, that no steps have been taken or are being taken to appoint a receiver, receiver and/or manager or liquidator to take over the assets or undertakings of the Borrower and/or the Security Party or to wind-up the Borrower and/or any of the Security Party.
- 2.1.5 **Material adverse change.** There has been no change in the financial condition, operating environment or management of the Borrower and/or the Security Party which would materially affect in an adverse way the ability of the Borrower and/or the Security Party to perform the obligations of the Borrower and/or the Security Party under this Agreement and the Security Documents since the Borrower first applied for the Banking Facilities.
- 2.1.6 **Increase in debt obligations.** There has been no increase in the Borrower's debt obligations which would affect in an adverse way the ability of the Borrower to perform the obligations under this Agreement and the Security Documents.
- 2.1.7 **Security Party's title to the Security.** The Security Party is the legal and beneficial owner of the Security and the Security Party's interests in the Security are free from all defects and encumbrances.
- 2.1.8 **Compliance with laws.** The financing by the Bank under this Agreement, and the Bank's agreement to make and continue to make available the Banking Facilities to the Borrower will not contravene or be in breach of any Act of Parliament, Ordinance, enactment, rule or

law, regulation, order, or other statutory provisions in force now or in future 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.

2.1.9 **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 or any part of the same available to the Borrower.

2.1.10 **Information/Disclosure.** All information furnished to the Bank by the Borrower and the Security Party in connection with the application for the Banking Facilities do not contain any untrue or misleading statement, or omit to state any fact (the omission of which makes any statement made in those circumstances misleading or incorrect), and the Borrower and the Security Party are not aware of:-

- (i) any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, may adversely affect the Bank's decision to grant the Banking Facilities (or part of the same), or to take the security and that all expressions of expectation, intention, belief and opinion and all projections contained in such information were honestly made based on reasonable grounds after due and careful enquiry; and
- (ii) any information or fact being intentionally withheld which may result in or give rise to the Bank offering, granting, grant or agreeing to grant the Banking Facilities in breach of any law or regulation including, without limitation, the Financial Services Act 2013, or any lending limits or restrictions that govern, regulate or as may be imposed upon the Bank from time to time by Bank Negara Malaysia or such other authority or authorities having jurisdiction over the Bank.

2.1.11 **No conflict or limitation.** Where the Borrower and/or any Security Party is a company or corporation, that neither (a) the execution and delivery of this Agreement and the Security Documents by the Borrower and/or the Security Party; (b) the performance or observance by the Borrower and/or the Security Party of any of their respective obligations under the Banking Facilities and/or this Agreement; (c) the execution and delivery of the Security Document by the Security Party; nor (d) the performance or observance of any of the Borrower's and/or the Security Party's obligations under any security document, will:-

- (i) conflict with, or result in a breach of its Constitution or any other constituent documents, any law, statute, regulation, judgment, order, mortgage, contract, agreement, trust deed, or other instrument, arrangement, obligation, or duty by which it is bound; or
- (ii) 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.

2.1.12 **Accounts/Financial Statements.** Where the Borrower and any Security Party is a company or corporation, that the financial statements or accounts provided by the Borrower and such Security Party 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 Constitution or other constituent documents of the Borrower and such Security Party;
- (ii) are complete and correct and that they fairly and correctly represent and disclose the financial condition of the Borrower and/or the Security Party and the results of the operations of the Borrower and/or the Security Party for the period stated in accordance with generally accepted accounting principles applied on a consistent basis and together with the notes to the financial statements or accounts:-
  - (a) give a true and fair view of the financial condition and operations of the Borrower and/or the Security Party as at the date of such accounts and for the period as covered by the accounts; and
  - (b) disclose or reserve against the liabilities (contingent or otherwise) of the Borrower and/or the Security Party as at the date of the said accounts and all material unrealized or anticipated losses from any commitment entered into by it and which existed on such date.

2.1.13 **Tax Returns.** The Borrower and the Security Party have filed all their tax returns which the Borrower and the Security Party are required by law to file and have paid or made adequate provision for the payment of all taxes, assessments, fees and other governmental charges assessed against each of them or upon any of their respective properties, assets, businesses or incomes.

2.1.14 **Conviction.** Where the Borrower and any Security Party is an individual, the Borrower and such the Security Party have not been charged or convicted for any criminal offences or have any criminal records.

2.1.15 **Illegality.** The Borrower and the Security Party are not involved in any illegal activities and all moneys and properties provided to the Bank are not derived in any way from illegal activities.

2.1.16 **Sanctions.** The Borrower and the Security Party are not:-

- (i) nationals of any country which is subjected to any Sanctions;
- (ii) entities incorporated under the laws of or owned or controlled (directly or indirectly) by a person located in or organized under the laws of a country which is subject to any Sanctions; or
- (iii) persons listed on or owned or controlled (directly or indirectly) by any person listed on, any sanctioned persons list published by any government, governmental institutions or agencies, regulator or authority or prepared by the Group.

2.1.17 **Connected Parties.** Unless permitted by guidelines issued by any authority which has jurisdiction over the Bank:-

- (i) the Borrower and/or any of his close relatives are not a director (including alternate director) in the Bank or any of the financial institutions in the Group;
- (ii) the Borrower and/or his close relatives are not a controlling shareholder or influential shareholder in the Bank or any of the financial institutions in the Group;
- (iii) the Borrower is not an executive officer or designated officer of the Bank;
- (iv) the Borrower is not a firm, partnership, company or any other legal entity:-
  - (a) which is in control of or is controlled by any persons stated in Clause 2.1.16(i) to (iii); or
  - (b) in which any person (including their close relatives in the case of individual) listed in Clause 2.1.19(i) to (iii) other than a designated officer is interested as a director, partner, executive officer, agent or guarantor and their subsidiaries or entities controlled by them.

2.1.18 For the purpose of this Clause:-

**“close relatives”** in relation to an individual means his/her spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses

**“controlling shareholder”** of a company means a shareholder who fulfils any of the following criteria, whether individually or with parties acting in concert with such shareholder:-

- (aa) controls more than 50% of the voting rights of the company;
- (bb) holds more than 50% of the issued shares, whether directly or indirectly (excluding preference shares) of the company;
- (cc) controls the composition of the board of directors of the company;
- (dd) has the power to appoint and/or remove all or a majority of the board of directors of the company;
- (ee) control the controlling shareholder of the company; or
- (ff) is a person in accordance with whose direction or instruction, the director or a director of the company's holding company are accustomed to act.

**“director”** shall include a person who has ceased to be a director of the Bank or of the Group for less than twelve (12) months from the date of a credit transaction origination's request.

**“influential shareholder”** means a shareholder who fulfils any of the following criteria, whether individually or with parties acting in concert with him:-

- (aa) holds 20% or more of the shares of the company but is not a controlling shareholder;

- (bb) has the power to appoint at least one director to the board of directors of the company;

**“executive officer”** means a person who is a member of the Bank’s management having authority and responsibility for planning, directing and/or controlling the Bank’s activities (other than in the capacity as a director) whether or not the officer has an official title, or is entitled to salary or other compensation and shall also include such person who has ceased to be in the employment of the Bank or of the Group for less than twelve (12) months from the date of a credit transaction origination’s request .

**“designated officer”** means a person who is responsible for or has the authority to appraise and/or approve credit transactions or review the status of existing credit transactions of the Bank, either as a member of a committee or individually, and his close relatives. None of the Bank’s directors, controlling shareholders, officers and their respective close relatives is a director, partner, executive officer, agent or guarantor of the Borrower and/or subsidiaries/entities controlled by the Borrower. For the purpose of this Clause 2.1.16, “close relatives” refers to spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses.

- 2.1.19 **FATCA.** Each of the Borrower and the Security Parties is not a US Tax Obligor.
- 2.1.20 **Additional Representations and Warranties.** Such additional representations and warranties as set out in the **Second Schedule** of this Agreement, if any.
- 2.1.21 **Financial Crime Representations and Warranties.**
  - (i) The Bank shall be entitled to take all actions the Bank considers appropriate in order for the Bank to meet any obligation or requirement, either in Malaysia or elsewhere, in connection with the detection, investigation and prevention of financial crime including fraud, money laundering, terrorism financing, bribery, corruption, or tax evasion or the enforcement of any economic or trade sanction (**“Financial Crime”**).
  - (ii) The Borrower understands and agrees that if any activities, conduct or circumstances the Borrower is involved in (directly or indirectly) may expose the Bank to legal or reputational risk, or actual or potential regulatory or enforcement actions, the Bank shall at any time, without giving any reason, have the right to immediately:-
    - (a) exercise all the Bank’s rights stated in Clause 10;
    - (b) close all accounts and terminate all services the Borrower has with the Bank;
    - (c) make reports and take such other actions as the Bank may deem appropriate.
  - (iii) The Borrower undertakes that it will not initiate, engage in or effect a transaction (directly or indirectly) that may involve

Financial Crime and agrees to hold the Bank harmless, indemnify the Bank and keep the Bank indemnified from and against any and all liabilities, claims, obligations, losses, damages, penalties, actions, judgments, suits, costs (including, but not limited to, legal costs on a full indemnity basis), expenses and disbursements of any kind whatsoever which the Bank may suffer or incur in connection with or arising from any breach by the Borrower of this undertaking.

- 2.2 Prior to and on each of the dates of 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 Clause 2.1.11 above will be construed as a reference to the then latest available annual accounts of the Borrower and/or the Security Party.
- 2.3 The Borrower acknowledges that the Bank has entered into this Agreement on the basis of and in full reliance on the representations and warranties above and the Borrower agrees, covenants, undertakes and confirms that each of the representations and warranties given shall survive and continue to have full force and effect after the execution of this Agreement and the Security Documents and will be true and correct and fully observed on each and every date that any of the Banking Facilities is utilized and until the Indebtedness has been fully and completely discharged.
- 2.4 The Bank's rights and remedies in relation to any misrepresentation or breach of warranty shall not be affected in any way by any investigation made by or on behalf of the Bank into the affairs of the Borrower or the Security Party or by the execution or the performance by the Bank of this Agreement, or by any other act or thing which may be done by or on behalf of the Bank in connection with this Agreement or which might, apart from this Clause, affect such rights or remedies of the Bank.

### 3. **THE BANKING FACILITY**

#### 3.1 **The Banking Facility and Review**

- 3.1.1 At the request of the Borrower and/or the Security Party, the Bank has agreed to make available to the Borrower the Banking Facilities upon the terms and subject to the terms and conditions contained in this Agreement and the Letter of Offer.
- 3.1.2 Notwithstanding Clause 3.1.1 and other provisions in this Agreement which provide to the contrary, the Borrower understands and agrees that the Bank has the right to review the Banking Facilities at any time. Upon such review, the Bank may, with prior notice from the Bank to the Borrower, impose such terms and conditions as the Bank deems fit, including and not limited to (except for fixed or term loan) decrease or otherwise vary the principal limit of all or each of the Banking Facilities or to cease to grant all or any of the Banking Facilities and require immediate payment and repayment of any Indebtedness.

### 3.2 Purpose of the Banking Facility

- 3.2.1 Each of the Banking Facilities shall be utilized by the Borrower for the purpose specified in the Letter of Offer or such other purpose as the Bank may permit or allow.
- 3.2.2 Notwithstanding the provisions herein, the Bank is not obliged to monitor or to ensure that any of the Banking Facility is utilized by the Borrower in accordance with the purpose so stipulated in the Letter of Offer or otherwise permitted by the Bank and the Bank shall have no liability whatsoever to the Borrower, the Security Party and any other party for any breach by the Borrower of this Clause.

### 3.3 Conditions precedent to utilisation

- 3.3.1 The Bank is not obliged (but may agree) to permit any utilisation or release such relevant Banking Facility or any part thereof until:-
  - (i) all conditions precedent as stipulated in the Letter of Offer and the **Third Schedule** of this Agreement, if any, pertaining to the relevant Banking Facility are satisfied or fulfilled; and
  - (ii) the Bank is satisfied that:-
    - (a) no event has occurred so as to render any of the Indebtedness to be immediately repayable and no Event of Default has happened and continuing;
    - (b) no extraordinary circumstances or change of law or other government action have occurred which may render the Borrower and/or the Security Party to be unable to observe and perform their respective covenants and obligations in this Agreement and/or the Security Documents; and
    - (c) no event has occurred and no circumstances exist which could or might, in the opinion of the Bank (which shall be final and conclusive) affect the financial condition of the Borrower and/or the Security Party so as to render any of them unable to perform their obligations under this Agreement and/or the Security Documents.
- 3.3.2 Notwithstanding Clause 3.3.1, the Borrower agrees that during the course of disbursement or utilisation of the Banking Facilities, the Bank may by notice to the Borrower impose such other conditions precedent as the Bank considers necessary for further disbursement or utilisation of the remaining Banking Facilities and the Borrower shall upon receipt of such notice, comply with such additional conditions precedent. Until such additional conditions precedent are complied with to the satisfaction of the Bank, the Bank is entitled to withhold any further disbursement or utilisation of the remaining Banking Facilities without being liable to the Borrower and any other parties for any loss and/or damages that may arise from such withholding.
- 3.3.3 The Borrower agrees that all conditions precedent are for the Bank's sole benefit and the Bank is entitled to waive or defer the fulfilment of any one or more of such conditions precedent. Any waiver shall not prevent the Bank from insisting on compliance with any waived condition precedent at a later time.



- 3.3.4 Until the conditions precedent contained in Clause 3.3.1 have been satisfied or fulfilled to the satisfaction of the Bank, the Bank may terminate, suspend or cancel the whole or any part of the Banking Facilities.

3.4 **Progressive release**

- 3.4.1 Each of the Banking Facility will only be available for utilisation by the Borrower during the period as specified by the Bank in the relevant Letter of Offer unless extended by the Bank in writing. Notwithstanding this, any utilisation permitted by the Bank after the said period shall not constitute a waiver by the Bank and shall not prejudice the Bank's right to disallow, stop or cease any further utilisation of the remaining Banking Facility after the said period.
- 3.4.2 Where the Banking Facilities is to finance the purchase or construction of any property, the Borrower hereby irrevocably authorises the Bank to advance or pay all or part of the Banking Facilities to the financial institutions, Vendor, contractor or such other persons responsible for the sale and/or construction of the property on such terms and in such manner, as the Bank decides.
- 3.4.3 All advances and payments made by the Bank to the person(s) mentioned in Clause 3.4.2 ("**Third Party**") shall be deemed to have been paid to the Borrower and shall constitute and form part of the monies secured by and owing under this Agreement and the Security Documents. The acknowledgement or receipt of such Third Party will be as good, sufficient and effective as if it has been made or given by the Borrower.
- 3.4.4 The Borrower hereby irrevocably authorises the Bank and the Bank is entitled:-
- (i) to issue to the Third Party or firm of solicitors purporting to act for the Third Party, an undertaking, guarantee or covenant to release or pay to such Third Party all or such part of the Banking Facilities at such time and in such manner as the Bank may agree;
  - (ii) to release or pay the financial institution, firm of solicitors or Vendor all or part of the Banking Facilities; and
  - (iii) where the release of the Banking Facilities is to be made against a schedule of payment in an agreement, to release or pay to the Third Party on or before the due date as stated in the progressive billing submitted by the Third Party to the Bank upon terms that:-
    - (a) if any sum billed is to be paid on the date the Borrower or the purchaser takes vacant possession of the property, the Bank shall be entitled to make such payment to the Third Party at any time, whether or not the Borrower or the purchaser have actually taken vacant possession of the property; and
    - (b) in making such payment, the Bank shall not be obliged to verify or ascertain whether such progressive billing is in order or otherwise or whether the sums billed is properly due or otherwise



and the Borrower irrevocably agrees and confirms that the Bank shall be entitled to release or pay the Banking Facilities to the Third Party notwithstanding any protest or objection from the Borrower, the Security Party and/or any other parties to restrain the Bank from making such release or payment. In the event any sum released by the Bank to the Third Party is subsequently found to be not due for payment when paid, the Borrower agree that the Borrower shall only claim against such Third Party in respect of such sum released and the Borrower shall have no claim and shall not make any claim whatsoever against the Bank arising from such release unless it is due to the Bank's negligence or default.

- 3.4.5 If the Bank have given or agreed to give their undertaking, guarantee, or covenant referred to in Clause 3.4.4 above to release or pay, all or part of the Banking Facilities in settlement of such sums payable by the Borrower and/or the Security Party under the relevant agreement, whether progressively or otherwise in accordance with the terms in the said agreement, the Borrower agrees (in addition to the Security) that:-
- (i) the payment of all monies undertaken, guaranteed, or covenanted to be paid by the Bank to the Third Party, the Third Party's solicitors, or the Bank's solicitors (as the case may be) will be secured under this Agreement and the Security Documents;
  - (ii) the Borrower may not cancel all or part of the Banking Facilities without the prior written consent from the Bank in which the Bank is not contractually bound to give; and
  - (iii) the Borrower will and will also cause the Security Party to at all times indemnify and keep the Bank or the Bank's solicitors indemnified against all actions, proceedings, costs, expenses, claims, and demands which may be taken, incurred, or suffered by the Bank or the Bank's solicitors arising from the Bank's or the Bank's solicitors aforesaid undertaking given to the Third Party, the Third Party's solicitors, or the Bank's solicitors, as the case may be.

### 3.5 Further advances

- 3.5.1 The Bank can from time to time and if requested by the Borrower, advance to the Borrower further sums of money beyond the limit approved by the Bank.
- 3.5.2 The Borrower must pay interest at such rate(s) prescribed by the Bank over and above the Prescribed Rate or such other rate as imposed by the Bank on such sums advanced beyond the limit approved by the Bank.
- 3.5.3 All interest and such sums advanced beyond the limit approved by the Bank together with all cost, charges, expenses and other monies incurred thereby will form part of the monies secured by this Agreement and will be deemed to be charged on and secured against the Security in addition to the principal sum hereby advanced and will form part of the payment due under this Agreement.

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

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

## 4. **INTEREST**

### 4.1 **Rate of interest and calculation**

Interest will be charged on all amounts outstanding under the Banking Facilities unless otherwise stated in the Letter of Offer and will be calculated in accordance with the Bank's usual practice, which may be stated in the Letter of Offer, having regard to, amongst others, the nature of each Banking Facility, up to the date of full payment. Such rate of interest and the other rates of interest stipulated in this Agreement shall be 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 for any reason whatsoever until the date of full payment.

### 4.2 **Change in interest rate / rests period**

4.2.1 Regardless of the other provisions relating to the rate of interest and/or rests period in this Agreement or the Letter of Offer, the Bank can change the rate of interest and/or rests period from time to time by notifying the Borrower in writing of such change.

4.2.2 The changed rate of interest and/or rests period above will be effective from the date specified in the notice which will not be less than twenty-one (21) days from the date of notice. Such notice will be binding on the Borrower and/or the Security Party, and can be served in the manner provided in Clause 23.

4.2.3 The Borrower hereby irrevocably waives the requirement of the Bank to serve any notice on the Borrower if the change of interest rate relates only to the change in the Base Rate and such change in Base Rate shall be deemed to have been notified to the Borrower upon the same being published in the Bank's website or any daily national newspaper as selected by the Bank.

4.2.4 If the rate of interest is changed 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 the 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.

4.2.5 No part of any payments made or to be made by the Borrower and/or the Security Party 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 fully paid.

4.2.6 Where repayment is by instalments, if and whenever the rate of interest payable by the Borrower or the mode of computation of interest is changed, the Bank shall be entitled to make the necessary adjustments:-

- (i) to the amount of any instalment payments; and/or
- (ii) to the number of instalments remaining payable
- (iii) as stated in the Letter of Offer and notify the Borrower of the revised amount and/or number of instalments prior to the changed amount and/or number of instalments comes into effect.

4.2.7 The Borrower shall pay the changed instalment amount commencing from the effective date unless the Bank agrees, at the Borrower's written request, to permit the then instalment amount to remain unchanged and for this purpose, the Borrower hereby represents and warrants to the Bank that at the time of the Borrower's request, the Borrower is fully aware of the implications, effects and consequences of the Borrower's request to maintain the then instalment amount.

#### 4.3 **Additional interest and default rate**

4.3.1 Regardless of the other terms and conditions in this Agreement, if the agreed limit on any Banking Facility fixed by the Bank is exceeded, the Bank can at any time levy or impose additional interest on any such excess amount in the respective Banking Facility calculated at such rates stated in the Letter of Offer or as may be determined by the Bank at any time on a daily basis with monthly or other periodic rests in accordance with the type of Banking Facility applicable.

4.3.2 In addition to and without affecting the powers, rights, and remedies granted under this Agreement, if the Borrower defaults in the payment on the due date of any money payable by the Borrower to the Bank, the Borrower will pay the Bank interest at the default rate stated in the Letter of Offer or at such other rate as may be determined by the Bank from time to time.

4.3.3 The additional and/or default interest payable will be calculated from the date of such additional interest was levied or imposed or such default until the date of full payment of the said amount with such periodic rests:-

- (i) as stated in the Letter of Offer; or
- (ii) as may be determined by the Bank from time to time in accordance with the type of Banking Facility.

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

4.4.1 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 Borrower and/or any of the Security Party (or where the Borrower and/or any of the Security Party consists of more than one person, by the death of any one of them) or liquidation of the Borrower and/or any of the Security Party, and a balance is owing to the Bank by

the Borrower, the Borrower shall so long as all or any part of the same remains owing, pay to the Bank interest on the sums owing at the rate, upon such rest period and in such manner as specified in the Letter of Offer or at such other rate, rest period and manner prescribed by the Bank from time to time.

- 4.4.2 Any statement signed by any officer of the Bank or a print out from the Bank's computer system which need not bear any signature as to the amount of such interest payable by the Borrower to the Bank shall, save for obvious mistake, be final and conclusive against and be binding on the Borrower for all purposes, including legal proceedings.

4.5 **Interest rates in other security**

4.5.1 When the payment of any monies secured or intended to be secured by this Agreement 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 Agreement, the higher rate of interest will be payable in respect of such monies. Nothing contained in or may be implied from this Agreement 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 Agreement.

4.6 **Capitalization**

- 4.6.1 Subject always to Clause 4.6.3, the interest on any principal monies for the time being secured by this Agreement including capitalized interest will, at the end of each calendar month or such other periods as fixed by the Bank be capitalized and added to the principal sum then owing.
- 4.6.2 The capitalized 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 Agreement, all powers and remedies conferred by law or by this Agreement, and all rules of law or equity in relation to the said principal sum and interest will equally apply to such capitalized interest in arrears and to interest on such arrears.
- 4.6.3 To determine whether the limit of the principal intended to be secured by this Agreement has been exceeded or not, all accumulated and capitalized interest will be deemed to be interest and not principal sum.

5. **FEES, CHARGES, COSTS & EXPENSES**

5.1 **Fees**

The Borrower shall pay to the Bank all fees that are payable by the Borrower to the Bank as required under the Letter of Offer in respect of the Banking Facilities (which shall include but not limited to all fees and expenses incurred in connection with the further stamping of this Agreement), which fees shall be non-refundable.

5.2 **Commitment fee**

- 5.2.1 The Borrower agrees and undertakes to pay the Bank a commitment fee at the rate stipulated in the Letter of Offer (or such other rate fixed by the Bank from time to time) on any portion of any Banking Facilities

unutilized by the Borrower and unless stated otherwise in the Letter of Offer, commences from the date the relevant Banking Facility is made available to the Borrower and during the period when the relevant Banking Facility is available for use by the Borrower.

- 5.2.2 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 capitalized and added to the principal sum then owing, and will then bear interest at the relevant Prescribed Rate and be secured and payable accordingly.
- 5.2.3 All covenants and conditions contained in or implied by this Agreement, and all powers and remedies conferred by law or by the terms and conditions of this Agreement, and all rules of law or equity in relation to the said principal sum and interest will apply equally to the commitment fee, capitalized arrears of the commitment fee, and to interest on such arrears.
- 5.2.4 To ascertain whether the limit of the principal of any Banking Facilities intended to be secured by this Agreement has been exceeded or not, all accumulated and capitalized commitment fee will be deemed to be interest and not the principal sum.

### 5.3 **Costs & Expenses**

- 5.3.1 All costs, charges, and expenses incurred by the Bank and/or expended by the Bank on behalf of the Security Party and/or the Borrower under or pursuant to this Agreement, including but not limited to the following, shall be borne and paid by the Borrower to the Bank:-
  - (i) any cost and expenditure (including solicitors' costs on a solicitor and client basis and all out-of-pocket expenses) incurred in:-
    - (a) the preparation, execution and enforcement by the Bank (including stamp duties on a full indemnity basis) of this Agreement and/or the Security Documents; and
    - (b) the exercise, preservation, protection or enforcement or the attempted exercise, preservation, protection or enforcement of its rights, powers and remedies under or in relation to this Agreement and/or the Security Documents; and
    - (c) the giving of any notice or in the making of any demand for any monies secured by this Agreement and/or the Security Documents; and
    - (d) defending the Bank's position when made or joined as a defendant in any proceedings between the Borrower and any other party, including any of the Third Party referred to in Clause 3.4.2;
  - (ii) paying any expenses or outgoings in respect of insurance, repairs, maintenance, management, or disposal of the Security and/or any fixtures, crops, or plants in, on or within the Security;

- (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 Security and/or any fixture, crops, or plants on the Security, 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 Agreement, and other usual banker's charges.

5.3.2 If the Borrower defaults in the payment of any of the said sums in Clause 5.3.1, the Bank shall be entitled (but not obliged) to pay and debit all monies so paid together with interest thereon to the Borrower's account(s) with the Bank for the relevant Banking Facilities in accordance with the terms of this Agreement and the same will be deemed to be charged on and secured against the Security in addition to the principal sum hereby advanced and will form part of the payment due under this Agreement.

5.3.3 Until the said sums in Clause 5.3.1 is paid in full within the time stipulated by the Bank or in this Agreement (as applicable), the same will bear interest at the default rate stated in the Letter of Offer with monthly or such other periodic rests in accordance with the type of Banking Facilities applicable from the date of the sums having been incurred, paid or extended, to the date of full payment.

5.3.4 If any monies payable by the Borrower and/or the Security Party under this Agreement are required to be recovered by any legal process, or if any such monies are placed with solicitors for collection, the Borrower shall also pay (in addition to the monies then due and payable under this Agreement) the solicitors fees and charges (on a full indemnity basis) and any other fees and expenses incurred in respect of such collection.

#### **5.4 Indemnity for costs, expenses & stamp duty**

5.4.1 The Borrower shall fully indemnify the Bank from and against any expense, damage, loss, penalty or liability which the Bank may incur or suffer as a result of any delay or failure by the Borrower and the Security Party to pay any of the said sums in Clause 5.3.1.

#### **5.5 Taxes, Duties or Levies**

5.5.1 The Borrower is liable to pay any taxes or levies which as at the date of the Letter of Offer or at any date subsequent to the date of the Letter of Offer, is required by law or regulations, guidelines, decisions or directives issued under such laws (and shall include any amendments made to such laws, regulations, guidelines, decisions or directives) to be paid to anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank during the continuation of the Banking Facilities so long as the Banking Facilities or any part of it remains outstanding and unpaid. Unless otherwise stated by the Bank at any time, any fees and charges notified to the

Borrower are inclusive of any applicable tax at the prevailing rate. Where the Bank has stated otherwise, the Borrower shall be liable to pay the applicable tax in addition to the Bank's fees and charges.

- 5.5.2 Any taxes or levies incurred by the Bank in relation to the Banking Facilities and any other goods or services provided under the Banking Facilities shall be borne by and charged to the Borrower and in the event that the Bank shall effect any payment, the Borrower shall be liable to reimburse the Bank for such amounts paid.

## 6. **SECURITY FOR INDEBTEDNESS**

### 6.1 **Execution of Security Documents**

As security for the repayment of the Indebtedness, the Borrower will simultaneously with the execution of this Agreement or at such other time directed by the Bank:-

- 6.1.1 execute all such Security Documents over such Security as stated in the Letter of Offer; and/or
- 6.1.2 cause the Security Party to execute all such Security Documents over such Security as stated in the Letter of Offer.

### 6.2 **Assignment**

If any of the Security Documents is an assignment ("Assignment") of any lease or the rights, title, benefits, entitlements and interests in, to and under any agreement ("Sale Agreement") and the lease or the property comprised in the Sale Agreement ("Property"), then notwithstanding the provisions of the Assignment, the Borrower shall and shall also cause the Security Party:-

- 6.2.1 to continue to be solely responsible for observing all the terms and conditions and obligations of the Borrower and/or the Security Party under the Sale Agreement; and
- 6.2.2 to immediately upon the execution of the Assignment:-
  - (i) to give written notice of the Assignment to the relevant party or parties to the Sale Agreement, including the Developer and/or the Landowner and/or such other parties as the Bank may specify; and
  - (ii) deliver to the Bank the original acknowledgements of receipt from the parties mentioned in Clause 6.2.2(i); and
- 6.2.3 to deliver to the Bank and the Bank shall have custody or possession of the stamped original of the Sale Agreement and the stamped originals of all other documents pertaining to the Property so assigned to the Bank for so long as any amount under the Banking Facilities is owing by the Borrower to the Bank.
- 6.2.4 to immediately sign at their own cost and expense, the necessary instrument of transfer and all other documents needed to take a transfer of the Property (collectively "Transfer Documents") and a charge under the Land Code over the Property to secure the Indebtedness, which charge shall be in such form and contain such terms and conditions required by the Bank ("Charge") when an individual issue document of



title to the Property is issued and deliver and deposit with the Bank or its solicitors:-

- (i) the relevant document of title to the Property;
- (ii) the Transfer Documents;
- (iii) the Charge; and
- (iv) all other documents and fees needed to register the transfer of the Property in favour of the Borrower and/or the Security Party and the Charge in favour of the Bank free from encumbrances; and

- 6.2.5 to reimburse the Bank all money incurred or paid by the Bank to facilitate the delivery of the required documents and/or to register the transfer of the Property in the name of the Borrower and/or the Security Party and to register the Charge in favour of the Bank.

Notwithstanding the completion and perfection of the Charge pursuant to Clause 6.2.4, any antecedent default by the Borrower and/or the Security Party will not be deemed waived in any manner and all rights and remedies for such default shall remain fully enforceable by the Bank against the Borrower and/or the Security Party.

### 6.3 Continuing security

The Security created by the Security Documents is and will be a continuing security for the Indebtedness, and will continue to be held by the Bank until:-

- 6.3.1 all the Indebtedness has been paid and fully settled by the Borrower and/or the Security Party; and
- 6.3.2 the Bank has been fully released from all its obligations or contingent liabilities, if any under the Banking Facilities or under any other instrument issued by the Bank for the account of the Borrower notwithstanding that the Borrower may cease to be indebted to the Bank for any period(s), and regardless of:-
- (i) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
  - (ii) the death, insanity or insolvency/bankruptcy of the Borrower and/or the Security Party;
  - (iii) the voluntary or compulsory liquidation of the Borrower and/or the Security Party;
  - (iv) 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 Security Party is currently being carried on; or
  - (v) 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.

### 6.4 Restriction against other charges

- 6.4.1 The Borrower 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 securities under the Security Documents.

- 6.4.2 The Borrower agrees and will also cause the Security Party 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 Borrower's and/or the Security Party's rights in the Property, or deal with the Property in any manner without the Bank's prior written consent. The Security Documents 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.

**6.5 Liens and other security not affected**

Nothing in this Agreement and/or the Security Documents will:-

- 6.5.1 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; and
- 6.5.2 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.

**6.6 Covenant to perfect and provide further security**

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

**6.7 Further Assurances**

The Borrower will, whenever required by the Bank, at the Borrower's own cost and expense make, sign, do and perform and cause to be made, signed, done and performed all such further acts, agreements, assignments, assurances, deeds, mortgages, charges and documents of any nature as reasonably required to perfect the security created or intended to be created under this Agreement and the Security Documents.

**7. PAYMENT OF BANKING FACILITIES**

**7.1 Covenant to Pay**

The Borrower covenants and undertakes that the Borrower will pay to the Bank upon demand the Indebtedness and until so demanded by the Bank, the

Borrower shall pay to the Bank the Indebtedness at the times and in the manner stipulated in the Letter of Offer and this Agreement.

## 7.2 Prepayment

7.2.1 If the Banking Facility is subject to any restriction and/or bonding period, the Borrower can only make any prepayment of the Banking Facility subject to and in compliance with the terms and conditions for prepayment as stipulated in the Letter of Offer. If the Banking Facility is not subject to any restriction and/or bonding period or such restriction or bonding period has lapsed, the Borrower can after:-

- (i) payment of all accrued interest up to the date of prepayment of all or any part of the outstanding sum of the loan;
- (ii) giving to the Bank notice in writing of not less than the period stated in the Letter of Offer (or such other notice period fixed by the Bank from time to time), or upon payment of interest in lieu of such notice;
- (iii) payment of a premium, if any calculated at such rates fixed by the Bank from time to time;
- (iv) paying to the Bank such compensation for any funding loss suffered by the Bank as a result of the prepayment, the amount of which will be determined by the Bank; and
- (v) fulfillment of such other terms and conditions as set out in the Letter of Offer,

prepay that is, to repay to the Bank the whole of the Banking Facility or such lesser amount as the Bank may accept, which prepayment is subject to the terms in Clause 7.2.2 to 7.2.6 and such other terms as set out in the Letter of Offer.

7.2.2 The acceptance by the Bank of such lesser amount prepaid will in no way entitle the Borrower to a reduction in the amount of any instalments, but only to a reduction in the number of instalments unless the Bank otherwise agrees in writing.

7.2.3 The amount paid shall first be applied towards settlement of any instalments and any excess will be applied in prepaying the instalments in the inverse order of maturity.

7.2.4 The right to prepay as provided in this Clause is not exercisable by the Borrower unless and until the whole of the loan has been lent to or advanced or disbursed to or for the benefit of the Borrower and the Bank has given its written consent for such prepayment in which the Bank is not contractually bound to give.

7.2.5 Where the Borrower is required under the Letter of Offer to give the Bank a prepayment notice, the Borrower is not allowed to make any prepayments under any prepayment notice which has lapsed or expired.

7.2.6 Unless permitted under the Letter of Offer, the amount prepaid may not be redrawn or re-borrowed by the Borrower.

### 7.3 **No Deduction or Withholding**

7.3.1 All moneys to be paid or repaid to the Bank under this Agreement and the Security Documents must be paid:-

- (i) unconditionally and without any restriction or condition; and
- (ii) without any deduction of any kind including, without limitation, deductions for any bank charges or commissions, any kind of withholding, set-off or counterclaim against the Bank for any matter or on account of any taxes or duties or charges.

### 7.4 **Currency of Payment**

7.4.1 All payments to be made by the Borrower under this Agreement shall be made in Ringgit Malaysia in immediately available funds on the due date.

7.4.2 For Banking Facilities in foreign currencies, the Bank may convert the Banking Facility to a Ringgit Malaysia facility upon such terms as the Bank may prescribe. If that happens, the Banking Facility is to be repaid in Ringgit Malaysia or in such currencies in which the Banking Facilities were provided. The Borrower agrees to pay the Bank the conversion cost and compensate the Bank for any other costs and expenses which the Bank may incur as a result of the conversion.

### 7.5 **Payment on Business Day**

If any moneys are due to be paid or repaid to the Bank on a day which is not a Business Day, the payment or repayment shall be made on a Business Day immediately following that day. If the Business Day immediately following that day falls in a different calendar month, the payment or repayment shall be made on a Business Day immediately before that day.

## 8. **BORROWER'S COVENANTS**

8.1 The Borrower agrees and undertakes with the Bank that, as long as the Banking Facilities remain available, or as long as the Indebtedness remains payable, the Borrower will do the following:-

8.1.1 **Default.** Immediately inform the Bank of the occurrence of any Events of Default or of any event of default in relation to any other indebtedness of the Borrower, or of any other occurrence of which it becomes aware and which in its reasonable opinion might adversely affect its ability to perform any of its obligations under this Agreement.

8.1.2 **Additional Covenants.** Comply with all such additional covenants as set out in **Fourth Schedule** of this Agreement, if any.

## 9. **DEFAULT**

### 9.1 **Events of default**

The occurrence of any one or more of the following events shall constitute an Event of Default:-

- 9.1.1 **Non-payment or non-compliance.** The Borrower and/or the Security Party fails to pay on the due date any money or discharge any obligation or liability payable by the Borrower and/or the Security Party from time to time due to the Bank, or fails to comply with any term or condition of any Banking Facility.
- 9.1.2 **Representation, warranty or undertaking.** If any representation, warranty or undertaking made to the Bank by the Borrower and/or the Security Party is or will become incorrect or misleading in a material respect.
- 9.1.3 **Non-observance or non-performance.** The Borrower and/or the 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 Security Party contained in this Agreement, or under any other charge or Security Documents.
- 9.1.4 **Death.** The Borrower and/or the Security Party dies or become insane.
- 9.1.5 **Insolvency.** The Borrower and/or the Security Party becomes insolvent or allows any judgment against the Borrower and/or the Security Party to remain unsatisfied for twenty-one (21) days.
- 9.1.6 **Inability to pay debts.** The Borrower and/or the Security Party commits an act of insolvency/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 Security Party.
- 9.1.7 **Compulsory acquisition.** A notice, proposal, or intention for compulsory acquisition of all or part of the Borrower's or the Security Party's properties 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.
- 9.1.8 **Bank's security interest.** The Bank decides 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 Agreement or under any other Security Documents is in jeopardy. The Bank's opinion will be final and binding on the Borrower and/or the Security Party.
- 9.1.9 **Other indebtedness.** Any indebtedness of the Borrower and/or the Security Party becomes capable, in accordance with its terms, of being declared due prematurely because:-
- (i) of a default by the Borrower and/or the Security Party in its respective obligations;
  - (ii) the Borrower and/or the Security Party fails to make any relevant payment on its due date, or if due on demand when demanded; or
  - (iii) the security for any such indebtedness becomes enforceable.
- 9.1.10 **Security.** Any of the Security:-
- (i) fails or ceases to have full force and effect or to be continuing or any of the Security Party breaches any of the terms or covenants of the agreement in which such Security Party derives title to any Security;

- (ii) is terminated or disputed or in jeopardy or is invalidated; or
- (iii) is unenforceable.

- 9.1.11 **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 Security Party) could or might affect the ability or willingness of the Borrower and/or the Security Party to comply with all or any of its obligations under this Agreement, or under any other Security Documents.
- 9.1.12 **Debt service ratio.** There is any change in the debt service ratio of the Borrower which might, in the opinion of the Bank, affect the ability of the Borrower to discharge any obligation or liability with the Bank. "Debt Service Ratio" is computed based on all outstanding debt obligations of the Borrower as against the income of the Borrower as declared to the Bank based on the documents and information submitted.
- 9.1.13 **Cross default.** The Borrower and/or the 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.
- 9.1.14 **Enforcement by creditor.** The Borrower and/or the 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.
- 9.1.15 **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 Security Party and/or any Associated Party are providing security or guarantee.
- 9.1.16 **Additional Events of Default.** There occurs any event of default stipulated in the Letter of Offer or any schedule or annexure thereto or any of the events stated in the **Fifth Schedule** of this Agreement, if any

## 9.2 Consequences upon occurrence of Event of Default

If an Event of Default occurs:-

- 9.2.1 the Bank will forthwith cease to be under any further obligation and/or commitment to the Borrower in relation to the Banking Facilities;
- 9.2.2 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 will immediately become payable on demand by the Bank;
- 9.2.3 the Bank will immediately become entitled to recover all moneys and interest then owing to the Bank with interest thereon at the rate stated in the Letter of Offer with monthly rests or at such other rate and/or other periodic rests as the Bank may prescribe from time to time;
- 9.2.4 the Borrower will upon demand pay to the Bank such amount in cash to cover all the Borrower's contingent liabilities to the Bank, and for all notes or bills accepted, endorsed, or discounted, and all bonds, guarantees, indemnities, documentary or other credits, or any

instruments whatsoever entered into from time to time by the Bank for or at the Borrower's request; and

9.2.5 the Bank will be entitled, to exercise all or any of its rights or powers with reasonable notice to the Borrower:-

- (i) which the Bank have upon the occurrence of an Event of Default under this Agreement and/or the Security Documents; and
- (ii) which is/are available to the Bank, both in law or equity.

### 9.3 **Proceeds of Recovery**

9.3.1 All monies received by the Bank from any proceedings instituted or steps taken under this Agreement and any of the Security Documents will be applied in the following order:-

- (i) Firstly, to pay the quit rent, rates, taxes, assessments, maintenance and sewerage charges, sinking funds, insurance premium, utilities charges and other outgoings due to the relevant authorities and other parties entitled to the same.
- (ii) Secondly, to pay all costs (including solicitors costs on a solicitor and client basis), charges, expenses, and liabilities incurred by the Bank in realising the Security, and to pay all other parties appointed in respect of such realization.
- (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 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 to the Bank (if any) by any other company in the Borrower's group of companies (including holding, subsidiary, and associated companies).
- (viii) Eighthly, to the Borrower and/or the Security Party or any other persons entitled to the monies.

9.3.2 The Bank can 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 realized from the security may be sufficient to pay.

#### 9.4 **Insufficiency in proceeds of recovery**

- 9.4.1 If the amount recovered or realized by the Bank, after the deduction and payment of all monies due in Clause 9.3 is less than the amount due to the Bank (and whether in the process of such recovery or realization the Bank is the purchaser or otherwise) the Borrower and/or the Security Party must pay to the Bank the difference between the amount due and the amount so realized.
- 9.4.2 Until the shortfall referred to in Clause 9.4.1 is made, the Borrower will also pay interest on such shortfall at the rate at the rate fixed by the Bank from time to time 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.

#### 9.5 **Application of Moneys**

If any moneys paid to or recovered by the Bank in respect of the Borrower's liabilities under this Agreement is less than the amount then owing to the Bank, the Bank may apply the moneys towards payment of interest, fees, principal or any amount due to the Bank in such proportions and order and generally in such manner as the Bank considers fit; the Bank may also choose to credit the moneys or any part of the moneys into a non-interest bearing suspense account without any obligation to apply the moneys or any part of the moneys in or towards the settlement of the Borrower's liabilities under this Agreement.

#### 9.6 **New or separate account**

- 9.6.1 If the Borrower and/or the Security Party execute or create any further or subsequent encumbrance over the Security in favour of any other person(s) and the Bank receives notice of such execution or creation (whether actual or constructive):-
- (i) the Bank may immediately open a new account with the Borrower in its books and if the Bank does not open such new or separate account with the Borrower in its books, the Bank shall nevertheless be deemed to have done so as at the time when the Bank received or was deemed to have received such notice; and
  - (ii) all payment in account made by the Borrower and/or the Security Party or other person to the Bank shall, (notwithstanding any legal or equitable rule of presumption to the contrary), be placed to the credit of the new or separate account opened or deemed opened and shall not go towards reduction of the Indebtedness due by the Borrower to the Bank at the time when the Bank received notice as aforesaid.
- 9.6.2 The provisions of this clause shall not affect the Security notwithstanding that the Indebtedness may become due or owing or be incurred after the time when the Bank received notice of the execution or creation by the Borrower and/or the Security Party of any further or subsequent encumbrance over the Security.



## 9.7 **Rights to concurrent remedies**

- 9.7.1 The Borrower agrees that the obligations to pay and repay the Bank under this Agreement and the Security Documents are separate and independent obligations which give the Bank separate and independent rights and causes of action regardless of any waiver or indulgence which may have been granted by the Bank in respect of any one or more of those obligations.
- 9.7.2 Accordingly, the Bank shall have the right to exercise simultaneously and concurrently all or any of the remedies available to the Bank against the Borrower and/or the Security Parties and/or any other person as the Bank deems fit, whether by this Agreement or such other Security Documents or by statute or otherwise including without limitation by the sale or possession of any land pursuant to the Land Code and by civil suit, to recover the Indebtedness due and owing to the Bank by the Borrower and/or the Security Parties without having first resorted to any other remedy or having first sold or disposed of any Security.

## 10. **INDEMNITY**

### 10.1 **General Indemnity**

- 10.1.1 In addition and without affecting the powers, rights, and remedies granted under this Agreement, unless it is due to the Bank's negligence or misconduct, the Borrower 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:-
- (i) any cancellation or failure of the Borrower to draw the whole or any part of the Banking Facilities;
  - (ii) any prepayment of the Banking Facilities or any part of it unless otherwise provided under this Agreement or the Letter of Offer;
  - (iii) any default in payment by the Borrower of any sum due under this Agreement, 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;
  - (iv) the Bank agreeing to grant or continue to grant the Banking Facilities at the request of the Borrower; or
  - (v) the occurrence of any Event of Default.
- 10.1.2 The Bank's certification of the amount of the said loss or expenses will be conclusive and binding upon the Borrower unless there is any obvious mistake.

### 10.2 **Currency Indemnity**

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



- 10.2.1 The Borrower shall pay its obligations or liabilities in the same currency in which the said obligations or liabilities are incurred ("**Currency of Account**").
- 10.2.2 Any amount received or recovered by the Bank in respect of any sums expressed to be due to it from the Borrower under this Agreement 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 judgment or order of court of any jurisdiction or the death or insolvency/bankruptcy of the Borrower or otherwise) shall only constitute a discharge to the Borrower 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).
- 10.2.3 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 Agreement and/or the Security Documents, the Borrower shall indemnify the Bank against any loss sustained by it as a result thereof. In any event, the Borrower shall indemnify the Bank against the cost of making any such purchase.

## 11. **MODIFICATION AND INDULGENCE**

- 11.1 The Borrower expressly consents and agrees that the Bank may at any time and with prior notice from the Bank to the Borrower, without in any way affecting the validity of the security, liabilities, and obligations created under this Agreement and the Security Documents:-
  - 11.1.1 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 at any branch or branches of the Bank;
  - 11.1.2 grant to the Borrower and/or the Security Party any time or indulgence;
  - 11.1.3 renew any bills, notes, or other negotiable securities;
  - 11.1.4 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 Security Party or any other person;
  - 11.1.5 compound with the Borrower and/or the Security Party and/or any other person;
  - 11.1.6 at the request of the Borrower and/or the Security Party accept payment of any monies due or becoming due under this Agreement 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;
  - 11.1.7 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;

- 11.1.8 review, amend, or vary the Banking Facilities granted to the Borrower or its terms and conditions; and/or
  - 11.1.9 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.
- 11.2 If the Bank at any time and from time to time grants additional or further banking facilities or vary or substitute the Banking Facilities (or any of them if more than one) with any other banking facility upon such terms and conditions as may be prescribed by the Bank, all the provisions of this Agreement and the Security Documents, except for those provisions which are inconsistent with the terms and conditions prescribed by the Bank for the additional or further banking facilities or varied or substituted Banking Facilities, shall continue to apply unless otherwise stated by the Bank.

## 12. **DISCHARGE OF SECURITY**

- 12.1 If the whole of the Indebtedness is fully settled by the Borrower, then the Bank shall, without affecting the Bank's rights of consolidation, upon the request by the Borrower or the relevant Security Party made at any time after the whole of the Indebtedness is fully settled, discharge or release (which discharge and release must be prepared by a firm of solicitors, and must be in the form and substance as the Bank considers appropriate) at the cost and expense of the Borrower, the securities created and release to the Borrower or the relevant Security Party such security or other documents of title to such security provided:-
- 12.1.1 the Borrower's liabilities and obligations under this Agreement shall not be discharged until the Borrower has received from the Bank an absolute discharge or release duly signed by the Bank, which absolute discharge or release and other security documents may, notwithstanding the Indebtedness has been fully settled, be withheld by the Bank until the cost and expense of the Borrower for the discharge or release have been paid in full; and
  - 12.1.2 any discharge or release of the securities created shall be deemed made subject to the condition that such discharge or release shall be void if any payment received by the Bank in respect of the Indebtedness is set aside under any applicable law or process to have been for any reason invalid.

## 13. **IRREVOCABLE RIGHT TO DEBIT ACCOUNT**

- 13.1 The Bank can (but is not obliged to) at any time without affecting the Bank's other rights and remedies, debit the Borrower's current or other accounts with the Bank and/or to debit the balance of any overdraft facility with all other monies due under and arising from the Banking Facilities.
- 13.2 No debiting by the Bank of any of the above to the said accounts of the Borrower shall be treated or deemed to be payment of the amount so debited (except to the extent of any amount in credit in the Borrower's said accounts), or a waiver of any Event of Default under this Agreement, or any other agreement relating to the Banking Facilities.

- 13.3 If such debiting causes the Borrower's said accounts to be overdrawn, interest at the rate fixed by the Bank from time to time with monthly or other periodic rests (as the case may be) will be payable on the overdrawn amount.

**14. CONSOLIDATION AND RIGHT OF SET-OFF**

- 14.1 The Bank can at any time after the occurrence of an Event of Default or the making of a demand and notwithstanding any settlement of account or any other matter whatsoever, combine or consolidate all or any of the Borrower's then existing accounts (whether current, deposit, loan, credit card(s) or of any other nature whatsoever, whether subject to notice or not and whether in Ringgit or in any other currency) where ever situated, including accounts in the Borrower's name, or of the Borrower jointly with others.
- 14.2 In addition, the Bank can, after giving seven (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.
- 14.3 If any of the Borrower's liabilities are contingent, the Bank can set-off and transfer any sum standing to the credit of any of the Borrower's accounts towards the satisfaction of the Borrower's contingent liabilities and if the Borrower's actual liabilities are less than the amount set-off by the Bank, the Bank will refund the surplus to the Borrower.
- 14.4 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) for purchasing the currency for which the Borrower is liable.
- 14.5 Upon the issuance of the notice mentioned in Clause 14.2, the Bank can earmark or to place a hold on any monies standing to the credit of all or any of the Borrower's accounts with the Bank prior to effecting the setting-off in Clause 14.2, and the Borrower shall not be entitled to withdraw the monies without the Bank's prior written consent.

**15. SUSPENSE ACCOUNT AND PROOF OF DEBT**

- 15.1 The Bank can place and keep any money received under this Agreement in a non-interest bearing suspense account for as long as the Bank thinks fit, without any obligation in the meantime to use any part of it towards discharging any liability due or incurred by the Borrower and/or the Security Party.
- 15.2 Regardless of such payment in Clause 15.1, in the event of any proceedings in or analogous to bankruptcy or insolvency of the Borrower and/or the Security Party, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such payment in Clause 15.1 until the Bank is in receipt from all sources the ultimate balance outstanding by the Borrower and/or the Security Party in full.
- 15.3 After the Bank has received the ultimate balance outstanding in full, any claim on the part of the Borrower and/or the Security Party 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 Security Party and/or any other person or persons laying claim to the same.

16. **CHANGE IN BANK, THE BORROWER AND/OR THE SECURITY PARTY**

16.1 The security, liabilities, and/or obligations created by this Agreement and the Security Documents will continue to be valid and binding for all purposes, regardless of:-

16.1.1 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; and

16.1.2 any change (whether by insolvency/bankruptcy, death, incorporation, amalgamation, liquidation, reconstruction, or otherwise) in the Borrower's and/or the Security Party's name, style, constitution, or composition.

17. **CHANGES IN CIRCUMSTANCES**

17.1 **Market Disruption**

Regardless of whatever is stated in this Agreement or any Security Document, if in the Bank's opinion there is any change in 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, the Bank can:-

- (i) at any time; and
- (ii) upon notification in writing to the Borrower,

if the notification is given prior to any disbursement, no drawdown will be made and if such notification is given after a partial disbursement, the Bank may explore with the Borrower an alternative arrangement, failing which:-

- (i) the Banking Facilities shall be cancelled;
- (ii) the total aggregate principal amounts outstanding under the Banking Facilities together with interest and all other sums payable under this Agreement will immediately become due and payable on demand;
- (iii) the Bank's obligations under this Agreement or any Security Document shall terminate.

17.2 **Increased Costs**

If the Bank decides as a result of any new law, guideline, directive or regulation, or as a result of any change (including any change in the interpretation or application of) to any existing law, guideline, directive or regulation or the removal or modification of any exemption currently in force in favour of the Bank or compliance by the Bank with any directive (including, but without limitation, a directive which affects the manner in which the Bank allocates capital reserves to its obligations under this Agreement):-

- 17.2.1 the Bank would incur increased costs in granting or continuing to grant to the Borrower the Banking Facilities and having to continue to perform

the Bank's obligations under the Banking Facilities or the Security Documents;

- 17.2.2 any sum received or to be received by the Bank under this Agreement or the effective return to the Bank under this Agreement is reduced (except on account of tax on the Bank's overall net income); or
- 17.2.3 the Bank has to forego any interest or other return on or calculated by reference to the amount of any sum received or receivable by the Bank in its grant of the Banking Facilities under the Letter of Offer and/or this Agreement,

the Borrower must indemnify the Bank against that increased cost and other sums stated above and must pay to the Bank when demanded by the Bank from time to time, the amount sufficient to indemnify the Bank.

### 17.3 **Illegality**

If any change in applicable law, regulation or regulatory requirement or in the interpretation or application thereof by any governmental or other authority charged with the administration, request or requirement (whether or not having the force of law) of any governmental or other authority in Malaysia make it or makes apparent that it is unlawful or impracticable for the Bank to grant or continue to grant the Banking Facilities or any part thereof or to charge or receive interest at the rate applicable upon the terms and conditions contained in the Letter of Offer and/or this Agreement, then:-

- 17.3.1 the Bank will comply with the applicable law, regulation or regulatory requirements or the interpretation or application thereof in such manner as the Bank deem fit;
- 17.3.2 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
- 17.3.3 the Borrower must following such notice from the Bank, prepay the Banking Facilities together with accrued interest and all other amounts payable to the Bank on the date required by the Bank to enable the Bank to comply with the relevant law; and
- 17.3.4 the Bank will have no further obligations under the Banking Facilities, which will be deemed cancelled.

### 17.4 **Circumstance beyond the Bank's control**

The Borrower agrees that the Bank will not be liable in any way to the Borrower for any loss, injury or damage or inconvenience caused to the Borrower, which the Borrower may suffer, whether directly or indirectly as a result of any failure by the Bank to perform or is unable to perform any of the Bank's obligations under the Letter of Offer, this Agreement or any Security Document or to carry out any of the Bank's usual business operations or to provide any service due to any reason beyond the Bank's control including, but not limited to:-

- 17.4.1 any strike, lock-out, industrial dispute, boycott, blockade, sanction, war, hostilities (whether war is declared or not), terrorist activity, insurrection, riot or civil commotion or unrest;

- 17.4.2 any fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbance, industrial dispute, act of terrorism, embargo, war or Act of God;
- 17.4.3 any failure, stoppage or disruption of any telecommunication services, internet, electricity supply, water supply or fuel supply;
- 17.4.4 any action or inaction of any governmental, local or other authority; or
- 17.4.5 any circumstance in the nature of a force majeure, that is, an unforeseeable event that prevents the Bank from performing any of the Bank's obligations under this Agreement or any Security Document.

## 18. **MISCELLANEOUS**

### 18.1 **Searches**

- 18.1.1 The Bank may but is not obliged to conduct insolvency/bankruptcy/winding up searches or credit related searches from any credit reference agencies, database or system on any person, including but not limited to the Borrower and the Security Party, before and at any time after the disbursement of any of the Banking Facilities.
- 18.1.2 The Borrower consents to and shall cause the Security Party to consent to the Bank carrying out all such searches stated in Clause 18.1.1 on the Borrower and the Security Party to the extent permitted by law and all charges incurred in connection with bankruptcy/winding up searches will be borne and paid by the Borrower.

### 18.2 **Other terms and conditions**

- 18.2.1 The terms and conditions in this Agreement 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 the Letter of Offer) given by the Bank to the Borrower from time to time.
- 18.2.2 The terms and conditions in the Letter of Offer are deemed incorporated into this Agreement as if set forth herein at length. If there is any inconsistency between the terms and conditions herein this Agreement and the terms and conditions:-
  - (i) in the Letter of Offer, the terms and conditions in the Letter of Offer shall prevail over the terms and conditions in this Agreement; and
  - (ii) in the terms and condition in the Schedules, the terms and conditions in the Schedule shall prevail over the terms and conditions in this Agreement.

### 18.3 **Statement by Bank**

Any certificate or statement issued by the Bank showing the outstanding amount due and owing from the Borrower to the Bank in relation to the Banking Facilities will be conclusive evidence as to the amount outstanding due and owing from the Borrower to the Bank in relation to the Banking Facilities. This certificate or

statement will be binding on the Borrower for all purposes whatsoever including for the purposes of any legal proceedings.

#### **18.4 Independent payment obligations**

The Borrower expressly agrees that each of its obligations to pay or repay under this Agreement or the Security Documents:-

- 18.4.1 constitute separate and independent obligations and give rise to separate and independent causes of action;
- 18.4.2 shall apply regardless of any waiver or indulgence given by the Bank for any other obligation and 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
- 18.4.3 can be relied upon and enforced by the Bank independently or together with any other action under such other obligations or under the Security Documents, and the Bank is not obliged to first use any other remedy available to the Bank.

#### **18.5 Powers of borrower and the security**

Where any monies are owing and secured by this Agreement and/or any Security Document which the Borrower is a party, they will be deemed to be so owing and secured regardless of any legal limitation, incapacity or otherwise of the Borrower:-

- 18.5.1 the Borrower's borrowing of the Banking Facilities which might be a defence as between the Borrower and the Bank; or
- 18.5.2 the Borrower's power to enter into this Agreement and/or any of the Security Documents.

#### **18.6 Sanctions**

- 18.6.1 The Borrower must provide and disclose to the Bank within such time prescribed by the Bank, any information which the Bank deemed necessary in order to:-
  - (i) comply with the laws or sanctions of Malaysia or any other country (including but not limited those relating to anti-money laundering or anti-terrorism); and/or
  - (ii) manage money-laundering risk or terrorism-financing risk or economic and trade sanctions risk.
- 18.6.2 Pending the Bank's receipt of the information from the Borrower and until the Bank has verified the information to the Bank's satisfaction, the Bank is not obliged to proceed with any transactions or disbursements.
- 18.6.3 The Borrower declares and undertakes to the Bank that the processing of any transactions will not breach any laws or sanctions in Malaysia or any other country. The Bank will not be liable for any loss arising from any delay or failure to process any transactions due to inadequate information and documentation provided by the Borrower.



#### 18.7 **Retention of Records**

The Borrower agrees that the Bank is not obligated to maintain any records of the Borrower's account, including but not limited to the Security Documents, transaction documents, statements of account, correspondences or documents provided to the Bank by the Borrower or any other third party, exceeding any retention period as set out under the Bank's internal policies, guidelines and procedures and/or as provided under any applicable laws or regulations of any country having jurisdiction over the Bank.

#### 18.8 **Compliance with court orders**

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

#### 18.9 **Time of the Essence**

Time, wherever referred to in this Agreement, shall be of the essence of this Agreement.

#### 18.10 **Variation**

The Borrower acknowledges and agrees that the provisions of this Agreement and the Security Documents, and the availability, limits, interest rates, commission, fees and charges of and relating to the Banking Facilities are subject to the following and if there is a change in any fees and charges, the Bank will, unless otherwise provided in this Agreement or the Letter of Offer, give the Borrower twenty-one (21) days' prior notice before the change takes effect:-

18.10.1 guidelines issued from time to time by Bank Negara Malaysia or any other authority having jurisdiction over the Bank; and

18.10.2 the Bank's review and variation from time to time.

#### 18.11 **Non-Waiver**

18.11.1 The Borrower agrees that if the Borrower breaches any of the terms and conditions governing the Banking Facilities or the Security, the Bank may decide not to exercise any right which the Bank may have in relation to the Borrower's breach.

18.11.2 Any decision of the Bank not to exercise any right which the Bank may have in relation to the Borrower's breach is not to be treated as a waiver of the Bank's rights and the Bank retains the right at any time afterwards to strictly enforce or to insist on the Bank's rights in relation to that breach or any subsequent breach by the Borrower.

#### 18.12 **Non-Acquiescence**

The Borrower agrees that, even if the Bank may not have exercised any remedy available to the Bank immediately upon default by the Borrower or even if the Bank may have accepted moneys from the Borrower or any Security Party after such default, the Bank shall not be held to have acquiesced to such default and the Bank may at any time after that exercise all or any of the remedies available to the Bank under this Agreement, the Security Documents and any applicable law. Any delay on the part of the Bank in taking steps to enforce the remedies



available to it under this Agreement, the Security Documents or any applicable law shall not in any way affect the Bank's right to take those steps.

**18.13 Cumulative Remedies**

The rights, remedies, powers, and privileges provided under this Agreement are cumulative and are not exclusive of any rights, remedies, and privileges provided by law, in any other agreement between the parties or otherwise.

**18.14 Preservation of Rights and Entitlement**

The Borrower agrees that, regardless of what is stated anywhere else in this Agreement or the Security Documents, the Bank's rights as stated in this Agreement or the Security Documents will continue to remain in full force and effect and shall survive any cancellation, revocation or suspension of the Banking Facilities by the Bank.

**18.15 Cessation of Relationship**

The cessation of the banker-customer relationship between the Bank and the Borrower will not in any circumstances or in any manner affect the Bank's right to capitalize any interest payable on any outstanding balance.

**18.16 Additional Terms and Conditions**

If there are additional terms and conditions stated in **Sixth Schedule**, such additional terms and conditions shall be considered as part of this Agreement and shall bind the Borrower accordingly.

**19. ASSIGNMENT OR TRANSFER OF THIS AGREEMENT**

19.1 The Bank can at any time assign all or any part of its rights, interests, and obligations in this Agreement, and/or transfer the benefit of this Agreement to any person or corporation. Following such assignment or transfer:-

19.1.1 the assignee or transferee will assume and be entitled to the rights, interests, and obligations of the Bank in this Agreement as if the assignee or transferee had been a party to this Agreement in place of the Bank; and

19.1.2 any recital or statement in this Agreement of the amount due to the Bank under or by virtue of this Agreement shall, in the absence of manifest error, be conclusive and binding for all purposes against the Borrower.

19.2 The Borrower cannot assign its rights or obligations under this Agreement.

**20. DISCLOSURE**

**20.1 Disclosure by the Bank**

The Borrower agrees and consents 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 Security Party or the Banking Facilities) can and has the authority to disclose at

any time without notifying the Borrower and/or the Security Party, whether before or after any disclosure, any information relating to the Borrower and/or the Security Party, the Borrower's and/or the Security Party's accounts with the Bank, the Banking Facilities, and this Agreement to the following persons:-

- 20.1.1 any members of the Group, for any of the following purposes:-
  - (i) providing the Borrower and/or the Security Party with banking services;
  - (ii) reporting or data matching;
  - (iii) improving and furthering the provision of other services by the Bank;
  - (iv) fraud or crime prevention or investigating, preventing or otherwise in relation to money laundering and criminal activities;
  - (v) debt collection or outsourcing of the Bank's operations;
  - (vi) performance of duties as an officer of the Bank or in connection with the conduct of audit or the performance of risk management;
  - (vii) facilitating the performance of the Bank's or any members of the Group's function;
  - (viii) compliance with the Group's policies, guidelines, directives or requirements or any corporate exercise;
  - (ix) any legal process initiated by or served on the Bank;
- 20.1.2 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;
- 20.1.3 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;
- 20.1.4 the police or any public officer conducting an investigation in connection with any offence including suspected offences;
- 20.1.5 other banks, financial institutions, credit bureau or credit reference agents (only for credit information);
- 20.1.6 the Bank's auditors, solicitors, and professional advisors;
- 20.1.7 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;
- 20.1.8 any receiver the Bank appoints or appointed by any other party;
- 20.1.9 any credit bureau of which the Bank is a member, and any other members and/or compliance committee of such credit bureau;
- 20.1.10 any rating agency, business partner, insurer or insurance broker or direct or indirect provider of credit protection;

- 20.1.11 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 Security Party and the Bank, or assignee, novatee or transferee or any officer, employee, agent or adviser of any of them;
- 20.1.12 for transactions effected or processed with or without the Borrower's and/or the Security Party'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;
- 20.1.13 any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over the Bank or any members of the Group;
- 20.1.14 the Central Credit Bureau or such other authority or body established by Bank Negara Malaysia, or any other authority with jurisdiction over the Bank;
- 20.1.15 any person to whom the Bank or any members of the Group is permitted or required to disclose for the purposes of complying with the disclosure requirements of any law, regulation, guidelines, or guidance given or issued by any legal, regulatory, governmental, tax, law enforcement or other authorities of any country;
- 20.1.16 any person in connection with enforcing or protecting any right under this Agreement or any Security Documents;
- 20.1.17 any person intending to settle any monies outstanding under the Banking Facilities; and
- 20.1.18 any Security Party.

**20.2 Disclosure in compliance with court order**

The Customer agrees that the Bank and the Group can act in any way the Bank sees fit, without consulting the Customer beforehand, if the Bank is served with a court order issued by a court of any jurisdiction. The Customer agrees that the Customer will not hold the Bank liable for any loss or damage in connection with the Bank's actions.

**20.3 No liability for disclosure**

The Borrower agrees that no disclosure of information and/or provision of any documents made pursuant to Clause 20.1 shall render 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 Security Party or the Banking Facilities) to be liable in any manner under any law, including the provisions of the Financial Services Act, 2013 and the Companies Act, 2016.

**21. DATA PROTECTION**

- 21.1 The Borrower hereby confirms that the Borrower have received, read, understood and agreed to be bound by the Privacy Notice issued by the Bank (which is available at the Bank's branches as well as at the Bank's website at [www.uob.com.my](http://www.uob.com.my)) and the clauses in this Agreement as may relate to the

processing of their Personal Data. For the avoidance of doubt, the Borrower agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Agreement.

- 21.2 The Borrower agrees and consents that the Bank and any member of the Group may collect, store and disclose to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Borrower and to governmental authorities as required by law or other agreement by or between governments and also to transfer the Personal Data outside of Malaysia. The Borrower's consent shall be effective notwithstanding any applicable nondisclosure agreement. All Personal Data held by the Bank and the Group will be accorded a reasonable level of protection against any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or deletion.
- 21.3 In the event the Borrower provides Personal Data relating to third parties, including data relating to their next-of-kin and dependents (where the Borrower is an individual) or data relating to their directors, shareholders, officers, individual guarantors and security providers (where the Borrower is a corporation), for the purpose of the Banking Facilities, the Borrower:-
- 21.3.1 confirm that the Borrower have obtained their consents and waiver necessary or are otherwise entitled to provide their data to the Bank and for the Bank to use it in accordance with this Agreement and/or the Banking Facilities and that the Borrower will secure such consents and waivers in advance of providing similar information to the Bank in the future;
  - 21.3.2 undertake that the Borrower have informed the said third parties to read the Privacy Notice at the Bank's website at [www.uob.com.my](http://www.uob.com.my);
  - 21.3.3 have informed the said third parties:-
    - (i) that the Bank may collect or verify their personal and financial data with third party sources;
    - (ii) that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Notice;
  - 21.3.4 agree to ensure that the personal and financial data of the said third parties is accurate;
  - 21.3.5 agree to update the Bank in writing in the event of any material change to the said personal and financial data; and
  - 21.3.6 agree to the Bank's right to terminate the Banking Facilities should such consent be withdrawn by the said third parties.
- 21.4 Where the Borrower instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including data relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on the Borrower's behalf, the Borrower agrees to the abovesaid disclosures on behalf of the Borrower and others involved in the said cross-border transaction.

- 21.5 Additionally, but always subject to any laws (including regulations, guidelines and/or obligations) applicable to the Bank or the Group (whether in or outside Malaysia), the Borrower agrees that the Bank and the Group, and the Bank's merchants and strategic partners may contact the Borrower about products, services and offers, which the Bank believes may be of interest to the Borrower or benefit the Borrower financially. Notwithstanding the foregoing, the Bank will only disclose the Borrower's Personal Data (excluding data relating to the Borrower's affairs or account) to the Bank's merchants and strategic partners where the Borrower's express prior consent has been obtained.
- 21.6 The Borrower may choose not to receive any direct marketing materials from the Bank or the Group by making a request at any of the Bank's branches or by sending a written request via email to [uobcustomerservice@uob.com.my](mailto:uobcustomerservice@uob.com.my) (or such other address notified by the Bank) and the Bank will abide by the Borrower's latest written instructions to the Bank.
- 21.7 The Borrower acknowledges that certain communications such as statements of account and the Bank's websites contain standard information regarding the Bank's other products and services that cannot be removed without affecting the delivery/provision of the Bank's services and/or products, the operation of the Banking Facilities and/or without imposing additional costs to the Borrower.
- 21.8 The Borrower is entitled to request in writing:-
- 21.8.1 for any information in relation to their respective Personal Data that the Bank holds or stores, upon payment of a prescribed fee;
  - 21.8.2 for any information held or stored by the Bank to be updated, amended and/or corrected;
  - 21.8.3 for the Bank to limit the processing of their respective Personal Data held or stored by the Bank; and
  - 21.8.4 to make an enquiry or complaint in respect of the Bank's processing of their respective Personal Data.

For requests under Clause 21.8.1 or 21.8.2, the Borrower may make a request to the Bank via the Bank's Data Access Request Form or Data Correction Request Form respectively. These forms are available at the Bank's branches as well as at the Bank's website at [www.uob.com.my](http://www.uob.com.my).

The Borrower may direct all their requests to any of the Bank's branches or by sending a written request via email to [uobcustomerservice@uob.com.my](mailto:uobcustomerservice@uob.com.my) (or such other address notified by the Bank).

The Bank may charge a fee for processing the Borrower's request for access. The Bank may also refuse to comply with the Borrower's request in respect of Clause 21.8.1 or 21.8.2 above if the information supplied by the Borrower 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 the Bank's interest to do so. If the Bank refuses to comply with such request, the Bank will inform the Borrower of the Bank's refusal and reason for the Bank's refusal.

- 21.9 The Borrower is responsible for ensuring that the information they provide the Bank is accurate, complete and not misleading and that such information is kept up to date.

- 21.10 The Borrower acknowledges that if the Borrower subsequently withdraws the Borrower's consent to process the Borrower's Personal Data as given earlier to the Bank, as the Bank will not be able to process and/or disclose the Borrower's Personal Data in relation to the purposes set out in the Privacy Notice, the Bank will have the right to not provide or discontinue the provision of any product, service, account and/or facilities that is linked to such Personal Data.
- 21.11 The Bank reserves the right to amend this clause from time to time and shall provide prior notification to the Borrower in writing and place any such amendments on the Bank's websites or by placing notices at the banking halls or at prominent locations within the Bank's branches or by such other means of communication deemed suitable by the Bank.
- 21.12 This clause shall be without prejudice to any other clause in this Agreement which provides for the disclosure of data.

## 22. **COMPLIANCE WITH FATCA**

### 22.1 **Information**

#### 22.1.1 The Borrower shall:-

- (i) provide all required documentation or information, including but not limited to date of birth, countries of citizenship, countries of permanent residence, countries of tax residency and associated taxpayer identification numbers, that may be required to enable the Bank or any member of the Group to comply with all requirements of FATCA or other agreement by or between governments; and
- (ii) notify the Bank in writing within thirty (30) days of any change that affects the Borrower's tax status in relation to FATCA under any laws, regulations or other agreement by or between governments.

#### 22.1.2 The Borrower represents and warrants that the Borrower has provided to the Bank all documentation or other information as may be required by the Bank for compliance with FATCA and in connection with change in tax status and shall provide all required documentation or other information within seven (7) days of a request from the Bank in writing or otherwise.

The Borrower further acknowledges that any failure on the Borrower's part to provide accurate and timely information pursuant to requirements and requests by the Bank may result in the Bank having to deem the Borrower recalcitrant and/or reportable and take all necessary action against the Borrower in order for the Bank to be compliant with requirements under FATCA, local legislation in connection with FATCA and any other provision arising out of an agreement between governments pertaining to FATCA.

#### 22.1.3 For individual Borrowers, the Borrower consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Personal Data to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Borrower and to governmental authorities as required by law or other agreement by or between governments. The Borrower's consent shall be effective

notwithstanding any applicable nondisclosure agreement. The Borrower represents that the Borrower has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 22.1.3, and that the Borrower will secure such consents and waivers in advance of providing similar information to the Bank in the future.

- 22.1.4 For Borrower who is a sole proprietorship, partnership or other business entity, a corporation, or an association, club or society or trust, the Borrower consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Confidential Information to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Borrower and to governmental authorities as required by law or other agreement by or between governments. "Confidential Information" includes the Borrower's Personal Data, the Borrower's bank account details, transactional information, and any other information that a reasonable person would consider being of a confidential or proprietary nature. The Borrower's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Borrower represents that the Borrower has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 22, and that the Borrower will secure such consents and waivers in advance of providing similar information to the Bank in the future.
- 22.2 The Borrower agrees and acknowledges that the Bank is entitled to take all necessary action to be and remain compliant with FATCA as is required by law or other agreement by or between governments. If some of the Borrower's income is reportable and some is not, the Bank will report all income unless the Bank can reasonably determine the reportable amount. The Borrower hereby authorizes the Bank or any member of the Group, where appropriate, to withhold or otherwise collect from any payment any required tax or other government assessment, including but not limited to any requirement to withhold or deduct an amount under FATCA.
- 22.3 The Bank or any member of the Group, may take whatever action the Bank consider appropriate to meet any obligations, either in Malaysia or elsewhere in the world, relating to the prevention of tax evasion. This may include, but is not limited to, investigating and intercepting payments into and out of the Borrower's account(s) (particularly in the case of international transfer of funds), investigating the source of or intended recipient of funds, sharing information and documents with domestic and international tax authorities and withholding income from the Borrower's account(s) and transferring it to such tax authorities. If the Bank is not satisfied that a payment in or out of the Borrower's account(s) is lawful, the Bank may refuse to deal with it.
- 22.4 To the fullest extent as may be permitted by law, the Bank will not be liable to the Borrower for any losses, costs, expenses, damages, liabilities the Borrower may suffer as a result of the Bank complying with legislation, regulations, orders or agreements with tax authorities or by and between tax authorities or if the Bank make an incorrect determination as to whether or not the Borrower should be treated as being subject to tax or tax reporting obligations.
- 22.5 This Clause 22 will override any inconsistent term or consent provided by the Borrower under any agreement with the Bank to the extent that such agreement



provides fewer or lesser rights for Bank, whether before or after the date of this Agreement. This Clause 22 shall be without prejudice to any other clause in this Agreement which provides for the Bank's right to request for information or disclosure of data.

## **23. NOTICES, LEGAL PROCESS AND PROCESS SERVICE AGENT**

### **23.1 Notices**

23.1.1 Any demand, request, notice (including a notice generated by the Bank's computer which need not be signed) or communication ("Notices") by or on behalf of the Borrower or the Bank must be in writing in English or Bahasa Malaysia.

23.1.2 Any Notices that the Bank send to the Borrower may be:-

- (i) delivered by hand to the address of the Borrower as stated in this Agreement or such other address last known to the Bank;
- (ii) sent by post (registered, AR registered, ordinary or otherwise) to the Borrower as stated in this Agreement or such other address last known to the Bank;
- (iii) sent by facsimile transmission to the facsimile number last known to the Bank;
- (iv) sent by electronic mail to the electronic mail address last known to the Bank;
- (v) sent by short messaging system (SMS) to the mobile phone number last known to the Bank;
- (vi) by posting on the Bank's website; or
- (vii) by insertion in any statement of account which the Bank send to the Borrower.

23.1.3 The Notices will be deemed to have been received by the Borrower:-

- (i) at the time of delivery at the address of the Borrower, if delivered by hand;
- (ii) on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted;
- (iii) at the time the facsimile transmission is completed;
- (iv) at the time the electronic mailing is completed;
- (v) at the time the sending by short message system (SMS) is completed;
- (vi) at the time of posting on the Bank's website; or
- (vii) at the time the statement of account is deemed to have been received by the Borrower.

23.1.4 The Bank also reserves the right to serve on the Borrower any notice in connection with the Banking Facilities or the Security by:-

- (i) advertisement in any one daily newspaper and such notice will be deemed to have been served on the Borrower on the day the advertisement appears in the newspaper; or



- (ii) displaying at any of the Bank's place of business, any of its branches or premises and such notice will be deemed to have been served on the Borrower on the day of such display.

23.1.5 The Borrower must notify the Bank in writing immediately on any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower.

23.1.6 If the Borrower does not inform the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower, the Borrower agrees that the Bank may rely on:-

- (i) any address as stated in this Agreement; or
- (ii) any address, facsimile number, electronic mail address or mobile phone number the Bank obtain from any communication purportedly issued by the Borrower to the Bank or last known to the Bank.

23.1.7 The Bank's rights under this Agreement and the Security Documents are not to be affected by any failure on the part of the Borrower and/or the Security Party to notify the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower and/or the Security Party.

23.1.8 Notices from the Borrower to the Bank may be sent by personal delivery or ordinary mail.

23.1.9 Notices by the Borrower to the Bank must be duly signed by the Borrower or, if permitted by the Bank, the Borrower's authorized signatories. The Notices 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 Notices and any additional documents or information which the Bank may require to verify the source of the Notices.

## 23.2 Legal Process

In addition to and not in substitution of any mode of service that may be permitted or prescribed by any written law in force for the time being, any service of Legal Process by or on behalf of the Bank can be effected on the Borrower:-

23.2.1 by leaving a copy at the address as stated in this Agreement or in any communication purportedly issued by the Borrower to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Borrower on the day it was left at the address; or

23.2.2 by sending a copy via prepaid registered or ordinary post to the address as stated in this Agreement or in any communication purportedly issued by the Borrower to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Borrower on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted.

## 23.3 Agent for Service of Legal Process

23.3.1 If the Borrower resides outside Malaysia or does not have permanent address in Malaysia, the Borrower is required at all times to appoint and maintain a Process Service Agent in Malaysia to accept service of all Legal Process on behalf of the Borrower arising out of or connected to

the Banking Facilities and the Security Documents. The Borrower shall not revoke, cancel or withdraw the authority of the Process Service Agent without having first appointed a new Process Service Agent and notified the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

23.3.2 If for any reason whatsoever the Process Service Agent no longer serves as the Borrower's Process Service Agent, the Borrower shall be required to immediately appoint another Process Service Agent and notify the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

23.3.3 Service on the Process Service Agent shall be effected in the same manner specified in Clause 24.2.

## 24. **SEVERABILITY**

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

## 25. **WAIVER**

25.1 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 Security Party will:-

25.1.1 affect or impair any such right, power, privilege, or remedy;

25.1.2 be construed to be a waiver of such right, power, privilege, or remedy;  
or

25.1.3 an agreement to such default.

25.2 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.

## 26. **PAYMENT IN GROSS**

26.1 All monies received from or on account of the Borrower and/or the Security Party, from any other persons or estate, from the realization of any security, or otherwise for the purpose of being applied in the reduction of the Indebtedness, 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.

26.2 All securities held by the Bank now or in future will be treated as security for the Indebtedness. The Borrower and/or the Security Party, his estate or any other persons deriving or claiming title under the Borrower and/or the Security Party 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 Security Party.

27. **NO PROOF IN COMPETITION WITH THE BANK**

27.1 Until all the Indebtedness is paid or discharged in full, the Borrower shall not:-

27.1.1 claim any set-off or counterclaim against the Security Party in respect of any liability from the Security Party to the Borrower;

27.1.2 claim or prove in competition with the Bank in respect of any payment by the Security Party; or

27.1.3 be entitled to claim or have the benefit of any set-off, counterclaim, payment, distribution, or security from or on account of the Security Party.

27.2 The Borrower's obligations in this Clause applies whether or not the Borrower pays off any sum recoverable under this Agreement, or on any other ground.

28. **APPLICABLE LAWS**

This Agreement and the Security Documents are to be governed by and interpreted in accordance with the laws of Malaysia and the Borrower agrees that, upon the Borrower's acceptance of the Banking Facility, the Borrower is deemed to have unconditionally and irrevocably:-

28.1 agreed that any dispute involving this Agreement and the Security Documents may be submitted to the courts of law within and outside of Malaysia;

28.2 agreed not to raise any objection to any dispute being submitted in any particular court of law on the basis that it is not the correct or most convenient court for the dispute to be submitted to; and

28.3 consented to the service on the Borrower of any demand by the Bank and of any court documents by registered mail or by any other manner allowed by the relevant laws.

29. **SUCCESSORS BOUND**

This Agreement will be binding on the Borrower's heirs, personal and legal representatives and successors-in-title, and on the Bank's successors-in-title and assigns of the Bank.

30. **INDEPENDENT ADVICE**

The Borrower hereby confirms, represents and warrants to the Bank that in the execution and delivery of this Agreement, the Borrower has sought, obtained and relied upon its own independent legal advice and has not relied upon any representation, statement or advice from the solicitors, agents or officers of the Bank.

31. **STAMPING TO SECURE ADDITIONAL BANKING FACILITIES**

This Agreement will secure the repayment by the Borrower to the Bank of the Indebtedness under 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 this Agreement and such other principal instruments described in the **Eighth Schedule** together with interest and all other monies payable by the Borrower under this Agreement and such other principal instruments described in the **Eighth Schedule**.

*(The remainder of this page is intentionally left blank)*

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

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the aforesaid Bank by its Attorney )  
in the presence of:

**Borrower**

Signed by )  
 )  
 )  
 )  
the aforesaid Borrower(s) )  
in the presence of:

**FIRST SCHEDULE**

**Section 1 : Date of this Agreement**

**Section 2 : Place of business of the Bank**

**Section 3 : Particulars of the Borrower**

**Section 4 : Date of the Letter of Offer**

**SECOND SCHEDULE**

(Pursuant to Clause 2.1.18 of this Agreement)

**ADDITIONAL REPRESENTATIONS & WARRANTIES**



**THIRD SCHEDULE**

(Pursuant to Clause 3.3.1(i) of this Agreement)

**ADDITIONAL CONDITIONS PRECEDENT**

**FOURTH SCHEDULE**

(Pursuant to Clause 8.1.2 of this Agreement)

**ADDITIONAL COVENANTS**

**FIFTH SCHEDULE**

(Pursuant to Clause 9.1.15 of this Agreement)

**ADDITIONAL EVENTS OF DEFAULT**

**SIXTH SCHEDULE**

(Pursuant to Clause 18.16 of this Agreement)

**ADDITIONAL TERMS AND CONDITIONS**

1. **Additional terms and conditions if any Security to be provided comprise of immovable property**

1.1 All moneys payable on the property which is charged or assigned to the Bank, such as quit rent, assessment rates and maintenance, sewerage and utilities charges, sinking funds, insurance premium must be paid up to date; the Borrower must submit proof of payment to the Bank every year.

1.2 The Borrower shall adequately insure or cause to be adequately insured at all times any landed property charged or assigned to the Bank on a full reinstatement value basis up to its full insurable value against loss or damage by fire, lightning, tempest, flood, riot, civil commotion, malicious acts and strikes, landslides, earth movement, subsistence and such other risks as the Bank may from time to time require with an insurance company acceptable to the Bank in the name of the Borrower or, where applicable, the Security Party, with the endorsements below on the insurance policy and deposit or cause to be deposited with the Bank a certified true copy of the insurance policy effected under this clause together with the evidence of payment of the current premium payable under such policy:-

- (a) that the Bank as the chargee, assignee and loss payee; and
- (b) that the interests of the Bank under the policy shall not be invalidated by any one or more of the following:-
  - (i) act or neglect of the Borrower or, where applicable, the Security Party as owner of the property;
  - (ii) any foreclosure or other proceedings or notice of sale relating to the property;
  - (iii) any change in the title or ownership of the property; or
  - (iv) the occupation of the property for the purposes more hazardous than what is permitted by the policy

provided that in case the Borrower or, where applicable, the Security Party as owner of the property neglect to pay any premium due under the policy, the Bank shall on demand pay the same. Additionally, if so required by the Bank, the Borrower or, where applicable, the Security Party shall also keep insured the whole or any parts of the property and effects included in the property charged or assigned to the Bank of an insurable nature against loss or damage by fire and all other such risks and contingencies.

Such policy shall also provide that the insurer must give reasonable written notice to the Bank if the insurer cancels the policy or refuses to renew it. If the insured has failed to pay the premium, the insurer must notify the Bank at least ten (10) days in advance before canceling the policy. If the insurer cancels the policy for any reason other than non-payment of the premium, it must provide thirty (30) days' advance notice to the Bank. Should the insurer decide not to renew the policy, it must provide the Bank ten (10) days' notice.

The Borrower or, where applicable, the Security Party shall deposit and cause to be deposited with the Bank a copy of the insurance policies and will from time to time pay all premium to ensure the effectiveness of the insurance policies and deliver the relevant receipts to the Bank.

- 1.3 If the property charged or assigned to the Bank is:-
- (a) landed residential property, a House owner's Policy shall be effected by the Borrower or, where applicable, the Security Party;
  - (b) landed commercial or industrial property, a Fire Policy shall be effected by the Borrower or, where applicable, the Security Party; and
  - (c) covered by the Strata Titles Act 1985, the Borrower or, where applicable, the Security Party shall give to the Bank proof that the building comprising and including the property securing the Banking Facilities is insured against fire and such other risks as prescribed in the Strata Titles Act 1985 for its full reinstatement value

and if the Bank is not in receipt from the Borrower or, where applicable, the Security Party of such proof, a House owner's Policy shall be effected by the Borrower or, where applicable, the Security Party. Notwithstanding the provision herein, in the event the Borrower does not effect, maintain or renew any such insurance stated above, the Bank can (but is not obliged to), at the Borrower's or, where applicable, the Security Party's cost and expense, effect, maintain, or renew any such insurance as the Bank may think fit.

- 1.4 Without affecting the provisions above (and whether or not the Borrower is in default), the Borrower agrees that if the Bank considers necessary, the Borrower authorizes the Bank to take out, maintain or renew the insurances referred to above and:-
- (a) all moneys and expenses incurred by the Bank with interest thereon calculated at the default rate stated in the Letter of Offer shall form part of the Banking Facilities and Indebtedness be repayable to the Bank on demand by the Bank; and
  - (b) any commission which may be paid to the Bank as a commission agent of the insurance company belongs to the Bank.

For the avoidance of doubt, the Borrower or, where applicable, the Security Party agrees that:-

- (a) unless requested or consented to by the Bank, the Borrower or, where applicable, the Security Party will not take out or keep on foot any insurance against any risk in respect of the property, fixture, structures, premises, and effects where the Bank or the Borrower or, where applicable, the Security Party has effected or kept on foot any such insurance; and
- (b) the Bank shall not be held liable to the Borrower and/or the Security Party for anything whatsoever if the Bank took out or fails to take out, maintain, renew or increase any such insurance or otherwise.

- 1.5 The Bank can at require all monies received on any insurance of the property and effects, whether effected by the Bank or by the Borrower and/or the Security Party, to be applied:-

- (a) in or towards making good the loss or damage in respect of which the money is received if it is decided by the joint management body or management corporation that the property is to be reinstated; or
- (b) at the option of the Bank, in or towards the discharge of any Indebtedness if it is decided by the joint management body or management corporation that the property is not to be reinstated

The Borrower and/or the Security Party shall ensure that all insurance proceeds received pursuant to the policy referred to above are applied as above unless the Bank shall decide otherwise. If the insurance proceeds is paid to or received by the Borrower or the Security Party, such insurance proceeds shall be held by the Borrower and/or the Security Party in trust for the Bank.

- 1.6 The Borrower must not renovate or refurbish the property without first obtaining the Bank's written consent. If the Bank gives its consent, the Bank has the right to impose such terms and conditions as the Bank deems fit which may include the Borrower taking up of a Contractors' All Risk Policy for the renovation or refurbishment work before the start of the work with an insurance company appointed by the Bank and with the Bank named as chargee and loss payee. If the Borrower does not give the Bank proof acceptable to the Bank that the Borrower has taken up the Policy, the Bank may arrange for insurance coverage at the Borrower's expense by debiting the Borrower's account.

- 1.7 The Borrower and/or the Security Party shall, if at any time required by the Bank 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 to the Bank such policy and all connected benefits and advantages as further security for the Indebtedness.

If the Borrower and/or the Security Party fails to take up and maintain the insurance policy above and assigning the same when required, the Bank can at the costs and expense of the Borrower and/or the Security Party, take up and maintain a policy guaranteeing the repayment of the Indebtedness on such terms as the Bank thinks fit and such costs and expenses incurred by the Bank shall be payable by the Borrower and/or the Security Party with interest at the default rate as specified in this Agreement and until payment will form part of the Indebtedness.

The Borrower and/or the Security Party will allow all insurance policies and the receipts or other evidence of payment of premium to be kept by the Bank. The Borrower and/or the Security Party 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 Security Party and the receipt or other evidence of payment of the current premium for the policy.

- 1.8 If the property is charged or assigned to some other party, the Bank has the right to use the Banking Facilities or any part of it to pay the redemption sum to redeem the property. If the Bank exercises this right, the acknowledgement or receipt of that other party will be binding on the Borrower as if it was the Borrower who had received payment from the Bank.

- 1.9 The Bank also has the right to use the Banking Facilities or any part of it to pay the balance of the purchase price of the property to the vendor who sold the property to the Borrower or the Security Party. If the Bank exercises this right, the acknowledgement or receipt of that other party will be binding on the Borrower as if it was the Borrower who had received payment from the Bank.

2. **Bank's right to withhold release**

- 2.1 The Bank shall cease to be under any obligation or commitment to grant the Banking Facilities if at any time:-
- (a) before the release of the Banking Facilities, the Bank decides that the granting of the Banking Facilities would likely to be detrimental to its own position or otherwise undesirable; or
  - (b) before the full release of the Banking Facilities, the Bank decides that any condition precedent or additional term or condition for any release or further release of any part of the Banking Facilities has not been fulfilled to the Bank's satisfaction.



**SEVENTH SCHEDULE**

(Pursuant to Clause 1.1 of this Agreement)

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the above Loan Agreement dated \_\_\_\_\_ (“Agreement”) made between the Bank and the Borrower.

This Seventh Schedule will upon execution thereof forms part of the Agreement and the Borrower confirms and agrees that the Banking Facilities secured by the Agreement shall include the banking facilities listed below agreed to be granted or granted from time to time to the Borrower under the letter of offer dated \_\_\_\_\_, and the Borrower confirms and agrees to be jointly and severally bound by all the terms and conditions, stipulations, undertakings, covenants, representations and warranties in the Agreement and the aforesaid letter of offer.

**Additional Amount granted and secured by the Agreement:**

Signed by the parties on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**Bank**

Signed by \_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**United Overseas Bank** \_\_\_\_\_ )  
**(Malaysia) Bhd** \_\_\_\_\_ )  
the aforesaid Bank by its Attorney \_\_\_\_\_ )  
in the presence of:

**Borrower**

Signed by \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
the aforesaid Borrower(s) \_\_\_\_\_ )  
in the presence of:

**EIGHTH SCHEDULE**

(Pursuant to Clause 31 of this Agreement)

**STAMP DUTY ENDORSEMENT**

1. For the purpose of Section 4(3) of the Stamp Act, 1949, this Agreement will be deemed to be the Principal Instrument.
2. The following instruments listed below 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 from time to time by the Bank to the Borrower on which ad valorem stamp duty has been paid 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):
  - (a)
  - (b)
3. For the purpose of Section 4(3) of the Stamp Act, 1949, the following existing agreements listed below \*is/are the \*Principal Instrument(s)/ Subsidiary Instrument(s) ("the Existing Agreements") and it is agreed and declared by the Borrower 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 Agreement in place of the terms and conditions in the Existing Agreements, and that this Agreement will be the substituted instrument:
  - (a)
  - (b)

*\*Delete whichever is not applicable*