

DATED THIS

BETWEEN



AMBANK ISLAMIC BERHAD (COMPANY NO. 295576-U)  
(Formerly known as AmIslamic Bank Berhad)

AND

[NAME OF CUSTOMER]

\*\*\*\*\*

**PROPERTY SALE AGREEMENT**

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Prepared by:

## PROPERTY SALE AGREEMENT

AN AGREEMENT made the day and year stated in Section 1 of the First Schedule hereto.

### BETWEEN:-

AmBank Islamic Berhad (Company No. 295576-U) (Formerly known as AmIslamic Bank Berhad), a company incorporated in Malaysia and an Islamic Bank licensed under the Islamic Financial Services Act 2013, having its registered office at 22<sup>nd</sup> Floor, Bangunan AmBank Group, No. 55, Jalan Raja Chulan, 50200 Kuala Lumpur and having a place of business as stated in Section 2 of the First Schedule hereto (hereinafter called "the Bank") of the one part;

### AND

The party whose name and description are stated in Section 3 of the First Schedule hereto (hereinafter referred to as "the Customer") of the other part.

### RECITALS

#### WHEREAS:-

- I. The Bank has on even date obtained beneficial ownership/rights over the Property.
- II. The Parties hereby confirm, acknowledge and agree that the transactions envisaged herein conform to the Shariah Principle.

NOW IT IS HEREBY AGREED as follows: -

### ARTICLE I

#### DEFINITION & INTERPRETATION

##### SECTION 1.01 DEFINITIONS

In this Agreement unless the context otherwise requires or unless it is otherwise expressly provided the following expressions shall have the meaning respectively assigned to them in this Agreement:-

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

**"AmBank Group"** shall mean all the related corporations and associate corporations of:  
(i) the Bank; and  
(ii) its holding company

	(iii)	it ultimate holding company,  incorporated inside or outside Malaysia, whether existing now or in the future.
<b>“BNM”</b>		means Bank Negara Malaysia and includes any of its subsidiaries and bureaus established by it.
<b>“Address for Service”</b>	(a)	the Bank  The Address as stated in Section 2 of the First Schedule hereto.
	(b)	the Customer  The Address as stated in Section 3 of the First Schedule hereto.
<b>“Bai’ Bithaman Ajil”</b>		means a contract of sale based on deferred payment at certain price.
<b>“Business Day”</b>		means a day (excluding Saturdays, Sundays and Public Holidays) on which the Bank is open for business.
<b>“Calendar Month”</b>		means that period of time commencing on the first (1 <sup>st</sup> ) day of a calendar and ending on the last day of the same calendar.
<b>“Events of Default”</b>		means committal (whether by acts of commission or omission) by the Customer of any breach of the terms of this Agreement including the happening of any of the events specified in Section 8.01 hereof.
<b>“Facility”</b>		means the financing facility as more particularly described in the Letter of Offer granted by the Bank to the Customer.
<b>“Grace Period Profit”</b>		means the period of time for payment of the profit as stated in the Letter of Offer which commence upon first disbursement of the Facility.
<b>“GST”</b>		means any tax payable on the supply of goods, services or other things in accordance with the provisions of the GST Law.
<b>“GST Law”</b>		means the Goods and Services Tax Act 2014, subsidiary legislations, statutory orders and regulations governing the application of GST, as amended from time to time.
<b>“Indebtedness”</b>		means the Selling Price or any part thereof and any other monies howsoever due and payable to the Bank under the terms of this Agreement which include any obligation for the payment of any other debts or liabilities.

<b>“Legal Process”</b>	means pleadings, all forms of originating processes, interlocutory applications of whatever nature, affidavits, orders and such documents other than the aforesaid which are required to be served under the Rules of Court.
<b>“Letter of Offer”</b>	means the Letter of Offer made on the day and year stated in Section 7 of the First Schedule hereto issued by the Bank and accepted by the Customer and includes any other correspondence or documents which may thereafter be issued by the Bank for the variation of or addition to any terms and conditions applicable to the Facility.
<b>“Month”</b>	means that period of time which ends on the same date as it commenced in the previous month but if there is no numerically corresponding date in the following month, the period shall end on the last day of that month.
<b>“Sale and Purchase Agreement”</b>	means the Agreement made on the day and year stated in Section 5 of the First Schedule hereto entered into between the developer/vendor whose name(s) and particulars are set out in the Sale and Purchase Agreement (hereinafter referred to as “the Vendor”) of the first part and where applicable, the proprietor whose name and particulars are set out in the Sale and Purchase Agreement (hereinafter referred to as “the Proprietor”) of the second part and the Owner whose name(s) and particulars are set out in the Sale and Purchase Agreement (hereinafter referred to as “the Owner”), evidencing the Owner’s rights and or ownership in the Property.
<b>“Property”</b>	means the Property as described in Section 4 of the First Schedule hereto and includes any part thereof.
<b>“Ringgit Malaysia” and the abbreviation of “RM”</b>	means the lawful currency of Malaysia.
<b>“Selling Price”</b>	means the total Selling Price to be paid by the Customer to the Bank particularly stated in Section 6 of the First Schedule hereto which amount shall include the ceiling profit rate prescribed by the Bank in the Letter of Offer.
<b>“Security Party(ies)”</b>	means the Customer, the Owner, the chargor, the assignor, the guarantor (as the case may be) and any other parties referred to in Section 8 of the First Schedule hereto executing any documents creating security to the Facility to secure the payment of the Selling Price and all other moneys due to the Bank under the terms of the said documents.
<b>“Shariah Committee”</b>	means the committee established by the Bank for the purposes of advising the Bank on all Shariah related matters pertaining to Islamic banking.

<b>“Shariah Principle”</b>	means the Islamic principles of banking and finance as adopted and approved by the Shariah Advisory Council and the Bank’s Shariah Committee.
<b>“Shariah Advisory Council”</b>	means the body established under section 51 of the Central Bank of Malaysia Act 2009.
<b>“this Agreement”</b>	means this Property Sale Agreement.

## **SECTION 1.02 INTERPRETATION**

- (a) Unless the context otherwise requires any reference in this Agreement relating to:-
- (i) “encumbrances” shall include any lease, mortgage, charge (whether fixed or floating), pledge, lien hypothecation, assignment, security interest, title retention or other encumbrances of any kind securing or any right conferring priority and payment in respect of any obligation of any person but does not include liens arising in the ordinary course of business by operation of law and not by way of contract; and
  - (ii) “law” includes common law or custom and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed).
- (b) Words importing the masculine gender only shall include the feminine and neuter genders and vice versa.
- (c) Words and expressions denoting the singular number only shall include the plural and vice versa.
- (d) References to clauses and Schedules shall unless otherwise expressly provided be references to the clauses of and Schedules to this Agreement.
- (e) Headings and the table of contents are for ease of reference only.
- (f) Where an act is required within a specified number of days after or from a specified date, the period is inclusive of and begins to run from the date so specified.
- (g) Any reference to statutes and the rules made thereunder includes all amendments which may be enacted from time to time.
- (h) Where the Customer is a company, the provisions contained herein which are primarily and literally applicable to the case of natural persons shall be construed and take effect as if the Customer were a natural person, and shall bind all of its permitted assigns and successors-in-title. Accordingly, any references herein relating to bankruptcy shall thereafter be reference relating to the winding-up, liquidation, amalgamation or reconstruction, as the case may be, of the Customer.
- (i) The term “Party” refers to either one of the party to this Agreement and the term “Parties” shall refer collectively to both parties to this Agreement.

- (j) The words “herein” and “hereunder” and words of similar import, when used in this Agreement, shall where the context requires or allows, refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (k) No rule of construction shall apply to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of this Agreement.
- (l) Monetary references and currency, wherever mentioned in this Agreement are to Ringgit Malaysia (RM).
- (m) Unless otherwise specified, any term which had been defined in any of the Section in this Agreement shall have the same meaning when used elsewhere in this Agreement.

## ARTICLE II

### PROPERTY

#### SECTION 2.01 SALE OF PROPERTY

The Bank hereby sells and the Customer hereby purchases the Property free from all encumbrances but subject to those conditions of title express or implied and restrictions in interest, if any, in the issue document of title/strata title to the Property at the Selling Price.

## ARTICLE III

### PAYMENTS

#### SECTION 3.01 MODE OF PAYMENTS

The Bank hereby sells and the Customer hereby purchases the Property free from all encumbrances but subject to those conditions of title express or implied and restrictions in interest, if any, in the issue document of title/strata title, as the case may be, to the at the Selling Price at the times and in the manner sets out in the Letter of Offer.

#### SECTION 3.02 PREPAYMENT / EARLY SETTLEMENT CHARGE

- (1) Prepayment
  - (a) Notice of (1) month is required for prepayment or early settlement, otherwise (1) month profit may be charged.
  - (b) Notwithstanding the provision stated herein, the Bank shall be entitled to claim all sums or expenses or charges or fees incurred as a consequence of such prepayment.
- (2) Ibra' (Rebate)

The Bank will grant ibra' (rebate), if any, on such amount of the balance Selling Price remaining unpaid by the Customer based on the following situations:-

- (a) For variable rate financing, the difference between the ceiling profit rate and the effective profit rate.
- (b) Upon full settlement of the Facility by the Customer in the following scenario:-
  - (i) Redemption or prepayment of the Facility.
  - (ii) Due to restructuring exercise.
  - (iii) In the case of default by the Customer.
  - (iv) In the event of termination or cancellation of the Facility before the expiry date.

Ibra' (rebate) will be calculated based on the following formula or any other calculation method or formula as may be prescribed by BNM:-

$$\text{Ibra' (rebate)} = \text{deferred profit} - \text{early settlement charges}$$

### SECTION 3.03 LATE PAYMENT CHARGE

The Customer hereby agrees and acknowledges that the Bank shall be entitled to impose and demand from Customer the late payment charges for the failure of the Customer to make:

- (i) payment of any installment due and/or sum covenanted to be paid by the Customer to the Bank; and/or
- (ii) payment upon expiry or cancellation of the Facility,

at the rates mentioned in the table below:

No.	Applicable Period	Late Payment Charge Rate	On the Amount
1.	Prior to maturity date.	1% per annum calculated on daily basis.	(a) On the overdue instalments, to be calculated after the due date until full settlement of the overdue instalments; and/or  (b) On the outstanding balance, to be calculated from the date of cancellation until full settlement of the outstanding balance.
2.	After maturity date.	Islamic Interbank Money Market Rate ("IIMM") per annum calculated on daily basis.	On the outstanding balance, to be calculated from the date of maturity until full settlement
3.	After the Bank had obtained court judgment against the Customer.	At IIMM per annum calculated on daily basis from the date of court judgment to the settlement date.	On the outstanding balance (excluding legal costs and late payment charges as stated in the judgment), to be calculated from the date of judgment until full settlement of the judgment sum.

Note:

- i. The late payment charges shall not be compounded.
- ii. Total late payment charges shall not be more than the outstanding principal.
- iii. The late payment charges and the method of calculation thereof are subject to change as may be prescribed by BNM.
- iv. Outstanding balance refers to outstanding principal and earned profit.
- v. The late payment charges are cumulative subject to the applicable period.

**ARTICLE IV**

**OWNERSHIP OF PROPERTY**

**SECTION 4.01            PASSING OF BENEFICIAL OWNERSHIP AND/OR RIGHT**

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

**ARTICLE V**

**SECURITY**

**SECTION 5.01            EXECUTION OF CHARGE**

For better securing the payment of the Selling Price or any part thereof as shall be outstanding and all other moneys whatsoever now or hereafter owing to the Bank by the Customer, the Customer shall:-

- (a) in the case where the issue document of title/strata title to the Property has been issued, cause the execution by the Owner of a third party charge under the respective Acts over the Property in favour of the Bank (hereinafter referred to as "the Third Party Charge") in the form and substance acceptable to the Bank ;
- (b) in the case the issue document of title/strata title to the Property has yet to be issued by the appropriate authority, cause the execution by the Owner of a Third Party Deed of Assignment in respect of the Property in favour of the Bank in the form and substance acceptable to the Bank and upon the issuance of the issue document of title/strata title to the Property, cause the Owner to execute a registrable Third Party Charge in favour of the Bank over the Property in the form and substance acceptable to the Bank;
- (c) cause the Security Party(ies) to execute in favour of the Bank in the form and substance acceptable to the Bank guaranteeing the due performance and observance of the Customer(s) of all the terms and conditions covenants undertakings and to secure the payment of the Selling Price and other moneys due and payable to the Bank;
- (d) any other agreements/documents as the Bank may require.

**SECTION 5.02            COVENANT TO PROVIDE FURTHER SECURITY**

The Customer shall at the request of the Bank charge to, or deposit with the Bank the Customer's other assets, movable property and the issue document of title/strata title to any or all immovable properties vested in the Customer for any tenure. Such charge or deposit may be by way of further or



additional security for the payment of the Indebtedness and all other moneys and may also or otherwise be for the purpose of securing any other moneys owing to the Bank and not secured hereby.

### **SECTION 5.03 CONTINUING SECURITY**

The security herein created is expressly intended to be and shall be a continuing security for all moneys whatsoever now or hereafter from time to time owing to the Bank by the Customer under this Agreement.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES**

#### **SECTION 6.01 REPRESENTATIONS AND WARRANTIES**

- (1) The Customer hereby represent and warrant to and undertake with the Bank as follows:-
- (a) that the Customer has the power or capacity to execute, deliver and perform the terms of this Agreement;
  - (b) that this Agreement constitutes the legal valid and binding obligations of the Customer;
  - (c) that the execution, delivery and performance of this Agreement by the Customer do not and will not violate or contravene the provisions of:-
    - (i) any law, or regulation, or any order, or decree of any governmental authority, agency or court to which the Customer is subject;
    - (ii) any contract of whatever nature, or other undertaking, or instrument, to which the Customer is a party or which are binding, upon the Customer or any of the Customer's assets and will not result in the creation, imposition of or any obligation to create, or impose, any mortgage, lien, pledge or charge on any of the Customer's assets pursuant to the provisions of any such contract, or other undertaking, or instrument;
    - (iii) the Customer's Memorandum and/or Articles of Association (if applicable);
  - (d) that all consents, licences, approvals authorisations, orders and/or exemptions of any Ministry, agency, department or authority in Malaysia which are required or advisable to be obtained in connection with the execution, delivery, performance, legality or enforceability of this Agreement and are in full force and effect and no further consent, licence, approval, authorisation, order and/or exemption is required therefore;
  - (e) that the Customer is not in default under any agreement to which the Customer is a party or by which the Customer may be bound and no litigation, arbitration or administrative proceedings are presently current, pending or threatened and which default, litigation, arbitration or administrative proceedings (as the case may be) might materially affect the Customer solvency or might affect the Customer's ability to perform the Customer's obligation under this Agreement;

- (f) that the granting of the Facility is not a related party transaction as defined under Section 57 of the Islamic Financial Services Act 2013;
- (g) that no bankruptcy proceedings have been commenced against the Customer and the Owner;
- (h) that the Customer have filed all tax returns which the Customer 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 the Customer or upon any of the Customer's properties or assets, income or franchise or any of them;
- (i) that the Customer is not in default in the payment or performance of any of the Customer's obligations for financing facility, or in respect of other liabilities;
- (j) that there is no material adverse change in the financial condition operating environment or management of the Customer or other conditions which will materially affect the ability of the Customer to perform the obligations of the Customer under this Agreement;
- (k) that the financial statements of the Customer which have previously been submitted by the Customer to the Bank are complete and correct and fairly represent the financial condition of the Customer and the result of the operations of the Customer for the period stated are in accordance with generally accepted accounting principles applied on a consistent basis;
- (l) that the information furnished by the Customer in connection with the Facility do not contain any untrue statement or omit to state any fact and all expression of expectation, intention, belief and opinion and all projections contained therein were honestly made on reasonable grounds after the due and careful enquiry.

## ARTICLE VII

### COVENANTS

#### SECTION 7.01 POSITIVE COVENANTS

The Customer hereby expressly covenants with the Bank that the Customer shall at all times and shall also cause the Owner at all times during the continuance of this Agreement:-

- (a) in the case where the issue document of title/strata title to the Property has been issued, let or shall cause to let the Bank have custody or possession of the issue document of title/strata title to the Property so long as the Third Party Charge shall remain enforceable;
- (b) in the case where the issue document of title/strata title to the Property has not been issued, let or shall cause to let the Bank have the custody or possession of the original stamped copy of the Sale and Purchase Agreement and or such other agreement or document, if any, evidencing the Owner's title to the Property, for so long as the Selling Price and all other moneys remain undischarged and upon issuance of the issue document of title/strata title to the Property by the appropriate authority, deliver or cause to be delivered to the Bank the issue document of title/strata title to the Property and let or shall cause to let the Bank have the custody or possession of the issue document of title/strata title to the Property so long as the Third Party Charge shall remain enforceable. The parties hereby agree that insofar as the

law shall permit the application of Section 244 (2) of the National Land Code 1965 shall be restricted to instances where the production of any document is required for purposes of any action or matter initiated or instituted by the Government or any governmental authority department or officer and not where such document is required for any purpose or to effect any transaction conducted or initiated by the Owner AND nothing contained or expressed in the said Section 244 (2) be construed as or deemed to be consent by the Bank;

- (c) punctually pay or cause to pay all existing current and future quit rents, rates, taxes and all outgoing whatsoever which are now or any time hereafter be payable in connection with or arising out of the Property and shall produce to the Bank the receipts for all such payments as aforesaid. In the event of the Customer and/or the Owner failing to pay any moneys herein covenanted to be paid, it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof and all moneys expended by the Bank shall be recoverable from the Customer and/or the Owner and shall be paid on demand being made by the Bank;
- (d) keep or cause to keep the building now standing or that may hereafter be erected on the Property and all fittings and fixtures therein in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon the Bank at any time to enter upon the Property and to effect such repairs as may be necessary and all moneys expended by the Bank shall be paid by the Customer and/or the Owner on demand of the same being made by the Bank;
- (e) observe and comply or cause to observe and comply with any conditions covenants restrictions and category of land use express or implied, binding on the Property and will not do or omit to do or suffer to be done or omitted any act matter or thing in or in respect of the Property or any part thereof which shall contravene the provisions of any Act of Parliament, ordinance order rule regulation or law now or hereafter and shall at all times indemnify and keep indemnified the Bank against all claims, demands, actions, proceedings, costs and expenses in respect of any such act, matter or thing done or omitted to be done in contravention of such provisions;
- (f) give or cause to give to the Bank within seven (7) days of the receipt of the notice of the same full particulars of any notice or order or proposal for a notice or order or proposal for an order given or issued or made to the Customer and/or the Owner in respect of the Property or any part thereof by or on behalf of any planning, local government, public health, sanitary, housing or other authority and if so required by the Bank without delay and within the period prescribed by such notice, take or cause to take all reasonable or necessary steps to comply with the provisions of such notice or order and also at the request of the Bank and at the Customer's and/or the Owner cost make or join or cause to make or join with the Bank in making such objections or representations against or for in respect of any such proposal notice or order as the Bank may deem expedient;
- (g) on receipt of a notice in writing from the Bank that in the opinion of the Bank any user by the Customer and/or the Owner of the Property or any part thereof or any building thereon whether by reason of over-crowding or for any other reason whatsoever is calculated to affect adversely the security of the Bank discontinue such user forthwith;
- (h) value the Property annually or at such intervals as the Bank shall in its absolute discretion decide by any valuer or any officer of the Bank or any person of the Bank's choice at the Customer's and/or the Owner sole cost and expense and in the event such valuation reveals that the forced sale value of the Property is lower than that at the date hereof the Bank shall have the absolute discretion to require the Customer and/or the Owner within fourteen (14) days from the date of the notice from the Bank to charge, pledge, mortgage or deposit with the

Bank the Customer's stocks and shares, assets, movable property and/or the issue document of title, if any, of all immovable properties vested in the Customer and/or the Owner of such value as the Bank may from time to time require or for such tenure as the Bank so requires by way of further and additional security for the payment of the Selling Price owing for the time being under this Agreement;

- (i) to furnish or cause to be furnished to the Bank with any other financial information or such other information relating to the Customer or the business of the Customer or on any asset to be provided to the Bank as security as may reasonably be requested by the Bank from time to time;
- (j) to observe and perform the terms and conditions of this Agreement or to cause to be observed and performed the terms and conditions of this Agreement;
- (k) to forthwith inform the Bank of any change in the place of business or registered office or residential address of the Customer, the Owner and/or the Security Party(ies) (if applicable);
- (l) to comply or cause to comply with all conditions imposed and to maintain or cause to be maintained in full force and effect all authorisations, licenses, approvals and consents referred to in Section 6.01(d) hereof;
- (m) to forthwith notify or cause to be notified to the Bank of the occurrence of any event of default set out in Section 8.01 hereof or of any event of default in relation to any other indebtedness of the Customer or of any other occurrence of which he becomes aware which in his reasonable opinion might adversely affect his ability to fully comply with his obligations in this Agreement;
- (n) to duly observe and perform all terms and conditions covenants and stipulations to be observed and performed by the Owner under the Sale and Purchase Agreement and shall save and hold the Bank harmless against all losses, damages, claims, penalties and expenses, including legal costs, that may be made or brought at any time by the Vendor and or the Proprietor or any other party or parties against the Bank for any act of default under or for any breach of any provisions of the Sale and Purchase Agreement by the Owner and or that may be incurred sustained or suffered by the Bank as a result thereof and the Customer and/or the Customer shall promptly upon a demand being made by the Bank pay to the Bank all amounts so paid incurred suffered or sustained by the Bank.

## **SECTION 7.02            NEGATIVE COVENANTS**

The Customer hereby covenants with the Bank that during the continuance of this Agreement the Customer shall not and shall cause the Owner not to:-

- (a) sell, transfer, charge, assign or otherwise howsoever deal with the Property or any part thereof or any interest therein or make the same subject to any burden charge encumbrance liability or lien whatsoever or make any application for the surrender of the Property or any part thereof or any interest therein or make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Property or for the rescission removal or amendment of any condition or restriction affecting the Property without the written consent of the Bank first had and obtained;
- (b) lease or create a tenancy or grant any license or otherwise howsoever part with the possession or make or accept the surrender of any lease or tenancy whatsoever of or in respect of the Property or any part thereof to any person firm or company without the consent in writing of

the Bank first had and obtained which consent may be given or refused without assigning any reason thereof either absolutely or on such terms and conditions as the Bank deems fit and the decision of the Bank shall be final and conclusive, AND it is hereby expressly agreed and declared that the provisions of Section 251 of the National Land Code shall not apply to this Charge;

- (c) alter, pull down, or remove any building or fixture now or at any time hereafter erected on or affixed to the Property or any part thereof without the consent in writing of the Bank first had and obtained and shall forthwith replace or make good the same in the event of such addition, alteration, pulling down or removal made without the Bank's consent. Where it is intended that there is to be erected any building or buildings on the Property or that the Facility was utilised for the purposes thereof, the Customer and/or the Owner shall complete the erection of such building or buildings in accordance with the approved plans thereof of such competent authority or authorities necessary, for the obtaining of and shall obtain a Certificate of Completion and Compliance not later than such date as the Bank may stipulate;
- (d) create or permit to subsist any Security Interest over the Property or any part thereof or all or any part of the other properties, assets, business or undertaking (both present or future) of the Customer and/or the Owner which has been charged or is offered as security to the Bank from time to time, except: -
  - (i) liens arising by operation of law and securing obligations not more than thirty (30) days overdue;
  - (ii) liens or rights of set off arising in the normal course of trading relating to liabilities the aggregate amount of which is in the opinion of the Bank (which opinion shall be final and binding upon the Customer and/or the Owner) is not material'
  - (iii) Security Interest which may be consented to by the Bank in writing from time to time.

For the purposes of this paragraph, the expression "Security Interest" means and includes, without limitation, any mortgage, charge, lien, pledge, right of set-off and any security interests of any nature in any property whether movable or immovable of any kind whatsoever and howsoever created or arising and the expression "assets" includes but is not limited to any revenues and property movable and immovable of any kind.

- (e) incur, assume, guarantee or permit to exist any indebtedness except: -
  - (i) such loans, credit facilities or accommodation as have been disclosed in writing to and consented to in writing by the Bank; and
  - (ii) any unsecured indebtedness payable on demand or maturing by its terms within twelve (12) months after the date on which it was originally incurred in either case, incurred in the ordinary course of business of the Customer;
- (f) sell, transfer (save and except in the ordinary course of business of the Customer and/or the Owner on ordinary commercial terms and on the basis on arm's length arrangements) or lease or otherwise dispose of all or a substantial part of its assets;
- (g) breach or permit or threaten to breach any other covenants are set out in the Second Schedule hereto.

## ARTICLE VIII

### EVENTS OF DEFAULT

#### SECTION 8.01           EVENTS OF DEFAULT

The Customer is deemed to have committed a default if the Customer commits or threatens to commit a breach of any of the covenants, undertakings, stipulations, terms, conditions or provisions herein stipulated and without prejudice to the generality of the foregoing, upon the happening of any one or more of the following events: -

- (a) if the Customer fails or defaults in the payment of any one or more of the instalments on the instalment payment dates or any other sums of money whatsoever and howsoever payable on its due date by virtue of the provisions herein contained whether formally demanded or not; or
- (b) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) fails to comply with any notice given under this Agreement or any documents creating security for the Facility requiring him to remedy any breach of the terms of this Agreement or any documents creating security for the Facility within the time stipulated therein; or
- (c) if any other indebtedness of the Customer, the Owner and/or the Security Party(ies) (as the case may be) becomes, or becomes capable in accordance with the relevant terms thereof of being declared due prematurely by reason of a default by the Customer, the Owner and/or the Security Party(ies) (as the case may be) in the Customer, the Owner and/or the Security Party(ies) (as the case may be) obligations with respect to the same, or the Customer, the Owner and/or the Security Party(ies) (if applicable) fails to make any payment in respect thereof on the due date for payment or upon the security for any such indebtedness becoming enforceable; or
- (d) if any step or action is taken or a resolution is passed for the winding-up, dissolution, liquidation or bankruptcy of the Customer, the Owner and/or the Security Party(ies) (as the case may be) or a petition for winding-up or bankruptcy, as the case may be, is presented against the Customer, the Owner and/or the Security Party(ies) (as the case may be) or, if such proceedings or action has been taken by the Customer, the Owner and/or the Security Party(ies) (as the case may be), such step or petition is not discharged or stayed within twenty-one (21) days from the date of the taking of such step or petition; or
- (e) if bankruptcy proceedings or winding-up or other like or similar proceedings are filed against the Customer, the Owner and/or the Security Party(ies) (as the case may be); or
- (f) if a distress or execution or other process of a Court of competent jurisdiction is levied upon or issued against any property of the Customer, the Owner and/or the Security Party(ies) (as the case may be) and such distress execution or other process, as the case may be, is not satisfied by the Customer, the Owner and/or the Security Party(ies) (as the case may be) within seven (7) days from the date thereof; or
- (g) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) commits a default of any provision of any agreement or security documents, or both (as the case may be) relating to other accounts or financing facilities granted by the Bank to the Customer, the Owner and/or the Security Party(ies) (as the case may be) or other party in which the Customer, the Owner and/or the Security Party(ies) (as the case may be ) is a guarantor, or chargor or assignor; or

- (h) if this Agreement / the Facility shall be challenged with regards to its or their validity by any person; or
- (i) if an event has, or events have occurred, or a situation exists, which could or might, in the opinion of the Bank prejudice the ability of the Customer to perform his obligations under this Agreement; or
- (j) if the Bank shall be of the opinion that its security created pursuant to the assignment or the charge, as the case may be is in jeopardy; or
- (k) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) commits or threatens to commit a default of any term or condition of this Agreement or any documents creating security for the Facility; or
- (l) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) commits or threatens to commit a default under any of its contractual obligations with any other parties including the Bank with regards to his financing facility howsoever; or
- (m) if in the absolute opinion of the Bank, the Customer's, the Owner's and/or the Security Party(ies)' (as the case may be) account with the Bank (including any other accounts the Customer, the Owner and/or the Security Party(ies) (as the case may be) may have with the Bank) is or has not been operated satisfactorily; or
- (n) if default is made in effecting, maintaining or renewing any Takaful required to be effected, maintained or renewed by the Customer and/or the Owner; or
- (o) if before the Property is fully and completely constructed, a petition is presented for the winding-up of the developer of the Property, if applicable; or
- (p) if any representation or warranty made or implied pursuant to any provisions of this Agreement or pursuant to any notice, certificate, letter or other documents delivered pursuant to the terms of any document creating security for the Facility is incorrect or misleading in a material particular as of the date at which it was made or deemed to have been made; or
- (q) if the Owner commits or threatens to commit a breach of any term, stipulation, covenant or undertaking contained in the Sale and Purchase Agreement entitling the Vendor and or the Proprietor to repudiate the same; or
- (r) if it is or will unlawful for the Customer, the Owner and/or the Security Party(ies) (as the case may be) to perform or comply with any one or more of the obligations of the Customer, the Owner and/or the Security Party (as the case may be) under this Agreement or any document creating security for the Facility; or
- (s) if any action, condition, consent or thing at any time required to be taken , fulfilled or done for any of the purposes stated in Section 6.01 (e) hereof is not taken, fulfilled or done or ceases to be in full force and effect without modification or any licence, authorisation, approval, consent, order or exemption referred to in Section 6.01 (e) hereof is revoked or withheld or materially modified or is otherwise not granted or fails to remain in full force and effect; or
- (t) if any of the parties to the Sale and Purchase Agreement commits a breach of any term, stipulation, covenant or undertaking contained in the Sale and Purchase Agreement; or

- (u) if legal proceedings suit or action of any kind whatsoever (whether criminal or civil) be instituted against the Customer, the Owner and/or the Security Party(ies) (as the case may be); or
- (v) if any present or future security on or over the assets of the Customer, the Owner and/or the Security Party(ies) (as the case may be) becomes enforceable; or
- (w) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) or any party whose debts, obligations or liabilities are guaranteed by the Customer, the Owner and/or the Security Party(ies) (as the case may be) becomes insolvent, is unable to pay his debts as they fall due, stop, suspends or threaten to stop or suspend payment of all or a material part of this debts, begins negotiations or takes any proceedings or other steps with a view to readjustment rescheduling or deferral of all or any part of his indebtedness; or
- (x) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) enters into or proposes to enter into, or there is declaration by any competent court or authority, a moratorium on the payment of indebtedness or other suspensions of payments generally; or
- (y) if a notice or proposal for compulsory acquisition of the Property or any of the other assets of the Customer, the Owner and/or the Security Party(ies) (as the case may be) or any part thereof shall be issued or made under or by virtue of an Act of Parliament or other statutory provision; or
- (z) if the Customer, the Owner and/or the Security Party(ies) (as the case may be) who is a natural person or individual dies or becomes insane or is adjudged a bankrupt; or
- (aa) if there shall occur a material adverse change in the business, assets, financial position or condition of the Customer, the Owner and/or the Security Party(ies) (as the case may be); and
- (ab) if any other event or series of events whether related or not has or have occurred which in the opinion of the Bank (which opinion shall be final and binding upon the Customer, the Owner and/or the Security Party(ies) (as the case may be) could or might affect or prejudice the ability or willingness of the Customer, the Owner and/or the Security Party(ies) to comply with all or any of his respective obligations hereunder and under any of the other documents creating security to the Facility.

## **SECTION 8.02                    RIGHTS OF BANK ON CUSTOMER'S DEFAULT**

If the Customer, the Owner and/or the Security Party(ies) (as the case may be ) shall commit a default pursuant to Section 8.01 hereof or if any of the events stipulated in Section 8.01 hereof shall happen and which if capable of remedy is not remedied within a period of seven (7) days from the date of notice by the Bank requesting remedy of the same, or is not remedied within the time specifically stipulated therefore (if any) in respect of the event in question, the Selling Price and all other sums payable under this Agreement shall become and be deemed to be, notwithstanding anything contained herein to the contrary, forthwith due and payable and whereupon the Bank shall be entitled without further notice to the Customer or to the Owner to enforce the Third Party Assignment or the Third Party Charge, as the case may be, and the other documents creating security to the Facility and all the remedies available under the law.



**SECTION 8.03                    BANK'S RIGHT TO COMMENCE FORECLOSURE AND LEGAL PROCEEDINGS CONCURRENTLY**

Notwithstanding any provision hereof, it is hereby expressly agreed that upon default or breach by the Customer and/or the Owner of any term, covenant, stipulation and/or undertaking herein provided and on the part of the Customer and/or the Owner to be observed and performed, the Bank shall thereafter have the right to exercise all or any of the remedies available whether by this Agreement or such other documents creating security for the Facility or by statute or otherwise and shall be entitled to exercise such remedies concurrently, including pursuing all remedies of sale or possession pursuant to the Third Party Assignment or the Third Charge, as the case may be, and civil suit to recover all moneys due and owing to the Bank.

**SECTION 8.04                    PROCEEDS OF SALE**

All moneys received by the Bank from any proceeding instituted or step taken under any of documents creating security for the Facility shall subject to statutory priorities (if any), be applied by the Bank:-

**FIRSTLY**                    in payment of any rents, taxes assessments fees lawful outgoing and other fees due and payable to the relevant authorities by the Customer or the Owner in respect of the Property or any other property charged or assigned to the Bank as security for the Selling Price.

**SECONDLY**                    in payment of all costs charges and other expenses incurred and payments made by the Bank under the provisions of all or any of the other documents creating security for the Facility.

**THIRDLY**                    in or towards payment to the Bank of the Selling Price due and remaining unpaid and of all other moneys due and remaining unpaid under any documents creating security for the Facility.

**FOURTHLY**                    any surplus shall be paid to such person entitled thereto.

**PROVIDED ALWAYS THAT** the Bank may in its sole and absolute discretion alter the above order of payment or keep such moneys in a suspense account but such alteration in the order of payment or payment into a suspense account shall not prejudice the right of the Bank to receive the full amount to which it would have been entitled if the primary order had been observed or any lesser amount which the sum ultimately realized from the security may be sufficient to pay.

**SECTION 8.05                    DEFICIENCY IN PROCEEDS OF SALE**

It is expressly agreed and declared between the parties hereto that notwithstanding, any other provision herein contained in the other documents creating security for the Facility to the contrary, the Customer shall be liable to the Bank for the difference between the amount due and the actual amount ultimately received by the Bank and or upon a sale of the Property in the event that the actual amount ultimately received by the Bank under the terms of this Agreement or any of the documents creating security for the Facility and or on sale of the Property after deduction and payment from the proceeds so recovered, or realised or received of all fee (including but not limited to the Bank's solicitor fees on a solicitor and client basis) dues costs rates taxes and other outgoings on the Property is less than the amount due to the Bank hereunder and under the other documents creating security for the Facility and notwithstanding whether or not the Bank is the purchaser of the Property at such sale.

**PROVIDED THAT** nothing herein contained shall be construed as imposing any obligation (whether at law or in equity) upon the Bank to exhaust its remedy to sell the Property before commencing any separate action or before enforcing any other remedies or exercising any other rights against the Customer AND the Customer hereby irrevocably and unconditionally agrees and consents to the Bank commencing separate proceedings, enforcing other remedies and exercising any other rights which the Bank may have against the Customer prior to or simultaneously with and without having exhausted its rights to sell or to proceed against the Property or to realise its security under the documents creating security for the Facility.

## ARTICLE IX

### TAKAFUL / INSURANCE

#### SECTION 9.01 TAKAFUL / INSURANCE ON PROPERTY

The Customer and/or the Owner shall insure and cause the Property to be insured under a takaful plan against loss or damage by fire and against such other risks as the Bank may from time to time think expedient with a takaful company approved by the Bank and for an amount acceptable to the Bank and shall keep the same insured throughout the duration of this Agreement to its full insurable value to the satisfaction of the Bank in default whereof the Bank may at its discretion take out such Takaful and all contribution payable in respect thereto shall be borne and paid by the Customer and/or the Owner.

#### SECTION 9.02 MORTGAGE REDUCING TERM TAKAFUL

Whenever required by the Bank, the Customer shall take up and maintain a mortgage reducing term policy under a takaful mortgage plan as the Bank may in its absolute discretion decide or any other takaful plan guaranteeing the payment of the Selling Price by the Customer to the Bank with a takaful company approved by the Bank.

#### SECTION 9.03 RESTRICTION AGAINST ADDITIONAL TAKAFUL/INSURANCE

The Customer and/or the Owner shall not except at the request or with the consent in writing of the Bank effect or keep on foot any takaful/insurance against any risk in respect of the Property when the Bank has effected or has kept on foot such takaful/insurance.

## ARTICLE X

### ACQUISITION OF PROPERTY

#### SECTION 10.01 GOVERNMENT ACQUISITION

In the event that the Property or any part thereof shall at any time become the subject matter of or be included in any notice notification or declaration concerning or relating to acquisition by government or any governmental authority or any enquiry or proceedings in respect thereof or if any government or governmental authority shall condemn, nationalise, seize or otherwise expropriate all or any substantial part of the Property or other assets or of the business or operations of the Customer and/or the Owner or shall have taken action for the winding up of the Customer and/or the Owner or any action that would prevent the Customer and/or the Owner or the Customer's and/or the Owner's officers from carrying on the operations of the Customer and/or the Owner, the Customer and/or the

Owner shall forthwith inform the Bank of the same and shall forward to the Bank a copy or copies of any such notice notification or declaration as soon as the same shall be delivered to or served on the Customer and/or the Owner.

#### **SECTION 10.02 POWER TO ENGAGE ADVISERS**

The Bank shall be entitled to engage such advisers and agents (including solicitors and valuers) as it may think fit for the purposes of appearing or attending at or advising upon any enquiry or proceedings affecting concerning or relating to any such acquisition, expropriation or any of the matters referred to in Section 10.01 hereof at the expense of the Customer and or the Owner.

#### **SECTION 10.03 APPLICATION OF COMPENSATION MONEYS**

All moneys received as or by way of compensation in respect of any of the matters referred to in Section 10 .01 hereof shall be applied in or towards the discharge or payment of the Selling Price and any other money or liability secured by this Agreement and the documents creating security for the Facility and the Customer shall and hereby declare that the Customer will hold all such moneys if paid to and received by the Customer hereunder in trust for the Bank and the Customer agrees and confirms that the Bank may receive and give a good discharge for all such moneys. In the event of all such moneys as aforesaid being less than the amount due to the Bank hereunder the Customer shall forthwith pay to the Bank the difference between the amount due and the amount so received.

### **ARTICLE XI**

#### **MISCELLANEOUS**

#### **SECTION 11 .01 INDEMNITY**

- (a) The Customer shall at all times hereafter indemnify and keep the Bank indemnified against all damages, losses and expenses whatsoever, legal or otherwise (including but not limited to all legal costs incurred by the Bank on a solicitor and client basis) which may be brought at any time by the Vendor or any other party or parties against the Bank for any act or default under or for any breach of any provision of the Sale and Purchase Agreement by the Owner or that may be incurred, suffered or sustained by the Bank as a result thereof or otherwise howsoever and the Customer shall promptly upon a demand being made by the Bank pay to the Bank all amounts so paid incurred, suffered or sustained by the Bank.
- (b) In addition to and without derogating from the above, if the Customer shall default in the payment of any instalments on the instalment payment dates or of any other moneys on the due date for payment thereof, the Customer shall on demand made by the Bank, pay to the Bank the actual loss incurred, suffered or sustained by the Bank resulting therefrom on incidental thereto. A statement by the Bank certifying the amount of loss thereof shall save for manifest error be conclusive and binding on the Customer.

#### **SECTION 11.02 EFFECTIVE DATE**

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

**SECTION 11.03                      CERTIFICATE OF INDEBTEDNESS**

It is hereby agreed that any admission or acknowledgment in writing by the Customer or by any person authorised on behalf of the Customer or a judgment (by default or otherwise obtained against the Customer) or a statement of account in writing showing the Indebtedness of the Customer which is duly certified by an authorised officer of the Bank shall be binding and conclusive evidence against the Customer for whatever purpose including as being conclusive evidence of such indebtedness in a court of law.

**SECTION 11.04                      SUSPENSE ACCOUNT**

Any money received hereunder may be placed and kept to the credit of a non-income bearing suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards the discharge of any money or liability due or incurred by the Customer to the Bank. Notwithstanding any such payment, in the event of proceedings in or analogous to bankruptcy, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liability in the same manner as if this security had not been created.

**SECTION 11.05                      ALL PAYMENTS RECEIVED TO BE PAYMENT IN GROSS**

All moneys received by the Bank from any person or estate capable of being applied in reduction of the Indebtedness shall be regarded for all purposes as payments in gross and if a receiving order shall be made against any person liable to the Bank or any order be made or any effective resolution be passed for the winding up of any company liable to the Bank, the Bank may prove for the whole of the moneys then owing and no money received under such proof shall be considered as having been received and the full amount owing shall be payable until the Bank has received from all sources one hundred cent in the Ringgit Malaysia and if the amount ultimately received by the Bank exceeds the amount of the ultimate balance owing to the Bank the excess only over such ultimate balance shall be repaid to the person or party on whose account the same shall have been received by the Bank.

**SECTION 11.06                      TIME**

Time shall be of the essence of this Agreement.

**SECTION 11.07                      WAIVER**

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

**SECTION 11.08                      RECONSTRUCTION OF THE BANK OR THE CUSTOMER**

The security, liabilities and obligations created by this Agreement shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or

otherwise which may be made in the constitution of the Bank or of any company by which the business of the Bank may for the time being be carried on and shall be available to the company carrying on that business for the time being and notwithstanding any change in the name of the Customer and the expression "the Customer" in this Agreement includes the persons for the time being deriving title from the Customer, and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Customer, shall in any way affect the security, liabilities and obligations created hereunder in relation to any transaction whatsoever whether past present or future.

#### **SECTION 11.09 NO LIABILITY**

The Bank, not being the developer of the Property shall not be liable for any claims in respect of any defects, shrinkage or other faults affecting the Property which are due to defective workmanship or materials or any other causes whatsoever or the Property not having been constructed in accordance with the specifications and plans approved by the appropriate authority PROVIDED THAT this Section shall not affect the rights of the Customer to make any claims in respect of the Property against the Vendor and/or Proprietor under the Sale and Purchase Agreement.

#### **SECTION 11.10 STAMP DUTIES**

The Customer shall pay all stamp duties, fees or other charges payable on or incidental to the execution and registration of this Agreement and the documents creating security for the Facility and shall reimburse the Bank for any such duties, fees or other charges paid by the Bank.

#### **SECTION 11.11 MODIFICATION AND INDULGENCE**

Subject to the Shariah Principle, the Bank may at any time and without in any way affecting the security hereby created and subject to the Customer's consent:-

- (a) determine vary or increase any financing or other facility granted to the Customer and may open or continue any account or accounts (or both) with the Customer at any branch or branches of the Bank;
- (b) grant to the Customer and/or the Owner or to any other surety or guarantor any time or indulgence;
- (c) deal with, exchange, release or modify or abstain from perfecting or enforcing any security or other guarantee or right it may or at any time hereafter or from time to time have from or against the Customer and/or the Owner;
- (d) enter into any deed of composition with the Customer and/or the Owner or any other person or guarantor;
- (e) vary or amend such terms and conditions of the documents creating security for the Facility.
- (f) vary the number and or the amount of the Instalments and/or the Instalment Payment Dates.

SUBJECT ALWAYS no failure, delay or other relaxation or indulgence on the part of the Bank to exercise any power, right or remedy hereunder or at law shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any such power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

**SECTION 11.12 COSTS**

The Customer shall be liable to pay all fees and expenses in connection with or incidental to the documents creating security for the Facility including the Bank's solicitors' fees (on a solicitor and client basis) in connection with the preparation and execution of the documents creating security for the Facility and the documents related thereto, notwithstanding the Customer's failure to execute the same. If the Indebtedness or any part thereof shall be required to be recovered through any process of law, or if the Indebtedness or any part thereof shall be placed in the hands of solicitors for collection, the Customer shall pay (in addition to the moneys then due and payable hereunder) the Bank's solicitors fees (on a solicitor and client basis) and any other fees and expenses incurred in respect of such collection and the account of the Customer shall be debited accordingly.

**SECTION 11.13 CUMULATIVE REMEDIES**

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

**SECTION 11.14 EXPENDITURE INCURRED BY THE BANK FOR AND ON BEHALF OF THE CUSTOMER**

All moneys expended by the Bank hereunder from time to time for and on behalf of the Customer (relating to insurance, quit rents, assessments, rates, taxes, repairs, legal costs, stamp duties, registration fees and all other outgoings including any expenses incurred by the Bank in visiting, inspecting or reporting on the business of the Customer by the Bank's agent and or consultants) shall be recoverable and be repaid by the Customer on demand by the Bank. In default of such payment such moneys shall be deemed to form part of the Indebtedness and to be secured accordingly hereunder and the account of the Customer shall be debited accordingly.

**SECTION 11.15 SEVERABILITY**

- (a) Any provision contained herein which is illegal, prohibited or unenforceable in any jurisdiction or pursuant to any determination made or pronounced by the SAC ("Decision") shall, as to such jurisdiction and/or such Decision, be ineffective to such extent without invalidating the remaining provisions hereof; and
- (b) any such illegality, prohibition or unenforceability in any jurisdiction or by any such Decision shall not invalidate or render illegal, void or unenforceable any such provision in any other jurisdiction.

**SECTION 11.16 SUCCESSORS BOUND**

This Agreement shall be binding upon the personal representatives, heirs, assigns and successors in title, as the case may be, of the parties hereto.

**SECTION 11.17 SCHEDULES**

The First and Second Schedules hereto shall be taken read and construed as an integral part of this Agreement.

**SECTION 11.18 DISCHARGE OF INDEBTEDNESS**

Notwithstanding anything to the contrary contained herein, it is hereby agreed that on the satisfaction by payment or otherwise of the whole of the Selling Price and other moneys due under this Agreement and the other documents creating security for the Facility all the provisions herein contained shall cease to be of any effect but without prejudice to the Bank's rights and remedies against the Customer in respect of any antecedent claim or breach of covenant.

**SECTION 11.19 CROSS DEFAULT**

- (a) It is hereby expressly declared that any breach of the terms, conditions, stipulations and agreements contained in the documents creating security for the Facility or any amendments thereof shall be deemed to be a breach hereunder and shall entitle the Bank to enforce any of the remedies herein.
- (b) Notwithstanding the provisions relating to the payment of monies as hereinbefore provided the Customer and/or the Owner hereby expressly agrees that if any sums shall be due from the Customer and/or the Owner to the Bank from time to time or at any time or if the Customer and/or the Owner may be or become liable to the Bank anywhere on a banking account or any other current account or otherwise or in any manner whatsoever or if default is made in any provisions of such accounts or in any other facilities granted by the Bank or any company(ies) within the AmBank Group to the Customer or any other lender to the Owner or in any of the provisions herein, then and on such event, the Indebtedness together with all monies payable under such accounts or other facilities as aforesaid shall immediately become due and payable and the security herein become immediately enforceable.

**SECTION 11.20 CONSOLIDATION AND RIGHT TO SET-OFF**

- (1) Any provision under any law which has the effect of restricting the right of consolidation shall not apply to this Agreement.
- (2) It is expressly agreed and declared that unless the Bank otherwise agrees, the Customer shall not be entitled to redeem or require the release or discharge of any security given by the Customer, Owner or Guarantor to the Bank and whether given now or hereafter except on payment by the Customer of not only all moneys referred to herein but also all moneys whatsoever and howsoever owing or payable or due from the Customer to the Bank under any other account whether as a customer, Security Party(ies), assignor or howsoever or otherwise with the Bank, and without prejudice to the generality of the foregoing, it is hereby expressly agreed and declared that unless the Bank otherwise agrees in writing the Customer's obligation under this Agreement shall not be discharged except on payment:-
  - (i) of all the Indebtedness;
  - (ii) of all other moneys due and owing to the Bank by the Customer under any account with the Bank whether or not and however secured; and
  - (iii) of all moneys secured by any other security created by the Customer or by any person through whom the Customer claims in favour of or vested in the Bank.

## **SECTION 11.21            BANK'S RIGHT TO SET OFF**

- (a) Customer agrees that in the event the Customer defaults in payment for two (2) months consecutively of any part of Facility's indebtedness, the Bank shall be entitled to freeze the available balance in Customer's deposit account maintained with the Bank and the Bank shall provide a notice of seven (7) calendar days to the Customer to make good the defaulted payment of the Facility's indebtedness.
- (b) In the event the Customer fails to make good the defaulted payment of the Indebtedness within the notice period, the Bank shall be entitled to set off absolutely such part of the available balance in the deposit account with the defaulted payment of the Facility's indebtedness, subject to a further notice of seven (7) calendar days informing the Customer its intention to set off.
- (c) For the avoidance of doubt, the Bank's right of set-off herein can be exercised by the Bank even:
  - (i) on a joint deposit account where the Customer is only one of joint deposit accountholder;
  - (ii) on a deposit account maintained by the Customer with other entities in AmBank Group;
  - (iii) in the event of Customer's demise, bankruptcy / insolvency, composition with its creditors or any legal proceedings against the Customer.

## **SECTION 11.22            DISCLOSURE OF INFORMATION**

Customer provides consent to the Bank to disclose, at the Bank's sole discretion, all or any information and documents relating to the Facility, Customer and Customer's conduct and affairs in respect of the Account to / for:

- (a) to other Customers in a joint Facility account;
- (b) the next of kin of a deceased Customer / the solicitors acting for the next of kin intending to apply for a court order in respect of a deceased Customer;
- (c) the administrator / executor / beneficiary of a deceased Customer who had applied for a court order in respect of a deceased Customer and to the Solicitors acting for them;
- (d) solicitors acting for any party who had obtained court order in respect of the Facility;
- (e) BNM / other relevant authorities acting under powers granted under any applicable law;
- (f) the Bank's takaful companies, takaful consultants, brokers, loss adjusters pursuant to any takaful policy procured by the Bank or pursuant to any claims to be made by the Bank under such takaful policy in respect of the Facility / the Bank's business;
- (g) the purposes of any legal suit / proceedings filed against the Bank by any third party in relation to the Facility;
- (h) the purposes of any legal suit / proceedings filed by the Bank against any third party for the recovery of losses under the Facility;



- (i) the police / other investigative authorities, for the purposes of their investigation into any crime (including any money laundering and terrorism financing activities) whether by the Customer / otherwise;
- (j) the police / other investigative authorities for the purposes of lodging of relevant reports by the Bank and investigation thereof, if the Bank is of the view that a crime has been committed / the same may assist the Bank to prevent / recover any losses incurred by the Bank / for prevention of crime;
- (k) the statutory bodies, government agencies and departments for the performance of their functions and duties;
- (l) the Bank's vendors for the purposes of procurement of any product and services by the Bank (if so required);
- (m) any outsourced service providers / service providers appointed by the Bank;
- (n) any party which in the future may express intention to acquire any interest / shareholding in the Bank / pursuant to any proposed arrangement, composition, merger, acquisition / restructuring between the Bank and such parties;
- (o) the external auditors, external lawyers, external consultants and external professional advisors of the Bank and AmBank Group, as may be required for the proper performance of their functions, duties and obligations to the Bank and AmBank Group;
- (p) any external party as may be required for any corporate exercises / due diligence activities undertaken by the Bank and/or the AmBank Group;
- (q) companies which in future may be a subsidiary, related or associated companies of the Bank;
- (r) any third party, as implied or as required under any applicable law;
- (s) any third party which the Bank deems fit taking into consideration public interest, allegations of fraud / forgery / any crime allegedly committed through the Facility / by the Customer.

Customer further agrees that in the event the Customer defaults on the payments for the Facility, the Customer agrees, consents and permits the Bank to disclose the Customer's credit information to any credit reporting agency registered under the Credit Reporting Agencies Act 2009.

## **SECTION 11.23            PRIVACY CLAUSE**

- (a) The Customer confirms having read, understood and agreed to be bound by the Privacy Notice of AmBank Group (which is available at [www.ambankgroup.com](http://www.ambankgroup.com)) and the clauses herein, as may relate to the processing of the Customer's personal information. For the avoidance of doubt, the Customer agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Property Sale Agreement.
- (b) In the event Customer provide personal and/or financial information relating to third parties, including but not limited to information relating to the Customer's next-of-kin, dependants, authorised signatories, directors, shareholders, officers, and Security Parties for the purpose of the Facility, the Customer:

- i) confirm that the Customer has obtained their consent or are otherwise entitled to provide the information to the Bank and for the Bank to use it in accordance with this Letter of Offer and to provide information on the Bank's products, services and/or offers (inclusive of the products, services and offers of the other entities within AmBank Group) which the Bank and/or entity within AmBank Group believe may be of interest and/or beneficial to them;
  - ii) agree to ensure that the personal and financial information of the said third parties is accurate;
  - iii) agree to update the Bank in writing in the event of any material change to the said personal and financial information; and
  - iv) agree to the Bank's right to terminate the Facility should such consent be withdrawn by any of the said third parties
  
- (c) Where Customer instruct 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 information relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by the Bank's agents abroad, overseas regulators and/or authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or our agents to enter into any cross-border transaction on the Customer's behalf, Customer agree to the above said disclosures on behalf of the Customer and others involved in the said cross-border transaction.
  
- (d) Additionally, but always subject to any laws, (including regulations, guidelines and/or obligations) applicable to the Bank (whether in or outside Malaysia), Customer agree that other companies in AmBank Group, their merchants and strategic partners may contact the Customer about products, services and offers, which the Bank and AmBank Group believe may be of interest or beneficial to the Customer.
  
- (e) The Bank and AmBank Group may communicate with Customer through various channels, including telephone, e-mail, electronic / mobile messaging, facsimile or post, using the contact information Customer has provided.
  
- (f) Customer may inform the Bank at any time if Customer do not wish to receive marketing communications from the Bank, AmBank Group and/or their merchants and business partners, by contacting the Bank at the various channels given below:
  - i) Customer Service Officer
  - ii) Phone : 1300 80 8888 (Domestic) or (603) 2178 8888 (Overseas) [24 hours]
  - iii) E-mail : [customercare@ambankgroup.com](mailto:customercare@ambankgroup.com)
  - iv) Post : Privacy, AmBank Contact Centre, P.O. Box No. 12617, 50784 Kuala Lumpur
  
- (g) Customer's latest written instructions to the Bank will prevail. Customer acknowledges that certain communications such as the statements of Facility to the Customer and AmBank Group's websites may contain standard information regarding other products and services of the Bank and AmBank Group that cannot be removed without affecting the delivery / operation provision of the Facility and/or without additional costs to Customer.
  
- (h) The Bank may use a credit reporting agency to help make decisions, for example when the Bank needs to:
  - i) check details on applications for the Facility, financing and financing-related or other facilities granted to the Customer;
  - ii) managing and reviewing the Facility; and/or

- iii) recover debts owed by the Customer.
- (i) Customer will be linked by credit reporting agencies to any other names Customer use or may had used, and any joint and several applicants. The Bank may also share information about Customer and how Customer manage the Facility with relevant credit reporting agencies.
- (j) Even after Customer have provided the Bank with any information, Customer will have the option to withdraw the consent given earlier. In such instances, the Bank will have the right to not provide or discontinue the provision of the Facility that is/are linked with such information.
- (k) The Bank reserves the right to amend this Clause from time to time at the Bank's sole discretion by providing notice to the Customer.

#### **SECTION 11.24 DEBIT**

The Bank is hereby authorised at any time without notice to the Customer to debit any of the Customer's accounts with the Bank in respect of the Bank's charges and all other moneys due and payable hereunder and under the other documents creating security for the Facility.

#### **SECTION 11.25 LAW**

The parties hereto agrees that this Agreement shall be governed by the laws of Malaysia and the Shariah Principle and agree to submit to the jurisdiction of the Courts of Malaysia and further agree that service of any Legal Process may be effected in the manner set out in Section 11.26 hereof.

#### **SECTION 11.26 GOODS AND SERVICES TAX**

Unless expressly stated otherwise, the Customer agrees that all monies payable to the Bank for the provision of any supply made under or in connection with this Agreement is exclusive of GST. Any GST on such supplies shall be borne and paid by the Customer in addition to the amounts due to the Bank.

#### **SECTION 11.27 SERVICE OF NOTICE / LEGAL PROCESS**

##### **(1) NOTICE**

- (a) Unless otherwise provided herein any demand or notice to the Customer under this Agreement shall be in writing and signed by the General Manager, Manager, Accountant or other authorised officer of the Bank or any solicitor or firm of solicitors purporting to act for the Bank and may be made by letter addressed to the Customer and sent by ordinary post or dispatched by personal delivery to the address of the Customer stated in Section 3 of the First Schedule hereto or the usual or last known place of business, employment or residence of the Customer and any such notice if sent by post shall be deemed to have been received by the Customer in the ordinary course of post notwithstanding the fact that such letter may be returned undelivered or unclaimed. Any notice required under this Agreement to be given to the Bank shall be in writing and signed by the Customer and may be made by a letter addressed to the Bank and sent by registered post or dispatched by personal delivery to the address abovestated of the Bank or such other address as may be notified by the Bank and

shall only be deemed to have been served on the Bank at the date of actual receipt thereof by the Bank.

- (b) Notwithstanding anything to the contrary herein provided, any letter demand notice statement reminder or certificate (hereinafter generally referred to as the "said document(s)") required to be given by the Bank hereunder shall not require to be under the hand of or signed by any officer of the Bank where it is stated on such said document(s) that the said document(s) is computer generated and no signature is required.

## **(2) LEGAL PROCESS**

- (a) The service of any such Legal Process shall be deemed to have been sufficiently given or served to the Customer :-
  - (i) If sent by hand, at the time a copy of the legal process is left at the address of the Customer herein stated or at such other address as the Customer may notify the Bank; or
  - (ii) If sent by prepaid registered post (not being AR Registered Post), on the seventh (7<sup>th</sup>) day (including the day of posting) from the date the legal process is put into post addressed to the Customer at the address of the Customer herein stated or such other address as the Customer may notify to the Bank.
- (b) Notwithstanding anything to the contrary herein provided, any letter of demand, notice, statement, reminder or certificate (collectively, the "Said Documents") required to be given by the Bank hereunder shall not require to be under the hand of or signed by any officer or such other representative of the Bank where it is stated on such Said Documents that the Said Documents is computer generated and no signature is required.
- (c) No change in the address for service of either party howsoever brought about shall be effective or binding on either party unless that party has given to the other party actual notice of its change of address for service and nothing done in reliance on this Section shall be affected or prejudiced by any subsequent change in the address of service over which the other party has no actual knowledge of at the time the act or thing was done or carried out.

## **SECTION 11.28 CHANGES IN CIRCUMSTANCES**

If, as a result of any change in any applicable law regulation or regulatory requirement on the interpretation or application thereof or if compliance by the Bank with any applicable directive request or requirement (whether or not having the force of law) will impose on the Bank any condition burden or obligation, the Bank's commitment to make or maintain the Facility will therefore end upon notice to the Customer of the happening of such event once the Bank is aware of any such event thereof.

## **SECTION 11.29 VARIATION OF TERMS**

It is hereby agreed and declared by the parties hereto that notwithstanding any of the provisions and terms of this Agreement to the contrary, the provisions and terms of this Agreement may at any time and from time to time, to the extent permitted by the Shariah, be varied and amended by mutual consents of the parties hereto by means as the parties may agree upon from time to time thereupon such amendments and variations shall be deemed to become effective and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall be read and

construed as if such amendments and variations had been incorporated into and had formed part of this Agreement at any time of execution hereof.

**SECTION 11.30                    CONDITIONS OF APPROVAL AND SPECIAL CONDITIONS (IF ANY)**

Notwithstanding the terms conditions and provisions herein this Agreement contained the Customer hereby expressly agrees and declares that the special conditions upon which the Bank has granted the Facility as contained in the Second Schedule hereto (if any) shall form an integral part of this Agreement and the Customer hereby agrees to the due performance and observance of such terms and conditions.

**SECTION 11.31                    INCORPORATION OF THE LETTER OF OFFER**

All terms and conditions of the Bank's Letter of Offer shall be deemed to form a part of this Agreement (whether such provision is repeated herein or not) subject to such alteration variation where necessary to make the provisions of the Letter of Offer consistent with the provisions of this Agreement, and in the event of any conflict or discrepancy between the provisions of the Letter of Offer and provisions of this Agreement, the provisions of this Agreement shall prevail for the purposes of interpretation and enforcement of this Agreement.

**SECTION 11.32                    PRINCIPAL AND SECONDARY INSTRUMENT**

**IT IS HEREBY AGREED AND DECLARED** that this Agreement is among the instruments employed in one transaction to secure the **SELLING PRICE** as stated in Section 11 of the First Schedule hereto within the meaning of Section 4(3) of Stamp Act, 1949 (Consolidated and Revised, 1989) and for the purpose of the said Section this Agreement is deemed to be the primary or principal instrument.

**IMPORTANT NOTICE**

Signatories to this document are advised to seek independent legal advice before signing this document.

**IN WITNESS WHEREOF** the parties hereto have hereunto set/affix their respective hands/Common Seal the day and year first above written.

SIGNED by )  
 )  
as Attorney for and on behalf of )  
**AmIslamic Bank Berhad (Company No.: 295576-U)** )  
in the presence of:- )

.....  
Name:  
Designation:  
Date:  
Time:

.....  
Name:  
Designation:  
Date:  
Time:

*\*(Where the Customer is an individual)*

**SIGNED** by the Customer )  
 )  
in the presence of:- )

*\* to delete the whole page if not applicable*

.....  
Name:  
Designation:  
Date:  
Time:

.....  
Name:  
Designation:  
Date:  
Time:

IN WITNESS WHEREOF the parties hereto have hereunto set/affix their Common Seal the day and year first above written.

SIGNED by )  
 )  
as Attorney for and on behalf of )  
**AmIslamic Bank Berhad (Company No.: 295576-U)** )  
in the presence of:- )

.....  
Name:  
Designation:  
Date:  
Time:

.....  
Name:  
Designation:  
Date:  
Time:

*\*(Where the Customer is a company)*  
The Common Seal of the Customer )  
was hereunto affixed in accordance )  
with its rules and regulations )  
in the presence of: - )

.....  
Director\*  
Name:  
Date:  
Time:

.....  
Director/Secretary\*\*  
Name:  
Date:  
Time:

*\* to delete the whole page if not applicable*  
*\*\* to insert the name and NRIC No. of the signatories*

**THE FIRST SCHEDULE**

(Which is to be taken read and construed as an essential part of this Agreement)

<b>Section No.</b>	<b>Item</b>	<b>Particulars</b>
1.	The day and year of this Agreement	
2.	Place of Business of the Bank	
3.	Name and description of the Customer Address/Registered Address	
4.	Descriptions of the Property	
5.	The day and year of the Sale and Purchase Agreement	



6.	Selling Price	
7.	The date of the Letter of Offer	
8.	Name of Security Party(ies)	

**THE SECOND SCHEDULE**

(Which is to be taken read and construed as an integral part of this Agreement)

**Other Conditions and Special Condition of Approval**