

IN THE MATTER OF A FACILITIES AGREEMENT AND DEED OF ASSIGNMENT

BOTH DATED 11TH SEPTEMBER 2013

BETWEEN

PUBLIC BANK BERHAD (CO. NO. 6463-H) ... ASSIGNEE

AND

BOO KIM HUA ... ASSIGNOR
(NRIC NO. 680211-01-5133)

AND

BOO KIM HUA ...BORROWERS
(NRIC NO. 680211-01-5133 / A0934385)
WONG AH SAI
(NRIC NO. 571121-12-5213 / H0063269)

The Property : Lot 130C, Taman Kemayan, Phase 2, Jalan Bundusan, Penampang,
88300 Kota Kinabalu, Sabah

Date of Auction : **20th December 2022**

CONDITIONS OF SALE

1. a) Unless otherwise stated, the sale is subject to a reserve price and the Assignee reserves the right to bid itself or through its agents at the auction without having to pay any deposit whatsoever and in the event of its becoming the successful purchaser shall set off the purchase price [excluding any taxes imposed thereon] against the amount due on the Facilities Agreement (“the Facilities Agreement”) as mentioned above on the date of sale including costs and expenses of the sale.
- b) In the event that the actual **Purchase Price** is higher than the **Reserve Price**, the Successful Bidder (“**Purchaser**”) shall immediately after the fall of the hammer remit to the Assignee a sum equivalent to the difference between 10% of the actual **Purchase Price** (“the **Deposit**”) and the 10% of the Reserve Price (“the **Bidding Deposit**”) either in cash or by way of a valid draft or cashier’s order drawn in favour of **PUBLIC BANK BERHAD**. Such differential sum shall hereinafter be referred to as “the **Deposit Shortfall**”.
- c) The Assignee shall be and is hereby at liberty to bid for the property at the sale without having to prepare the pre-requisite **Bidding Deposit** and if the Assignee is the Successful Bidder, the Assignee need not pay the Deposit Shortfall. The auctioneer shall have the right to withdraw the property for sale at any time before is has been actually knocked down and

either after or without declaring the reserve price. In the event the Assignee becoming the Purchaser, the Assignee is at liberty to set off the Purchaser Price (**excluding any taxes**) against the amount due and owing under the said Facilities Agreement, Deed of Assignment and Power of Attorney on the date of sale, including the costs and expenses of the sale and all other costs and expenses whatsoever in connection with this matter.

2. All interested bidders (with the exception of the Assignee) must prior to the commencement of the auction sale register with and deliver to the appointed auctioneer, the Bidding Deposit in the form of either a Bank Draft or Cashier's Order made payable to Public Bank Berhad, and anyone who fails to do so shall not be entitled to bid for the said property (with the exception of the Assignee).
3. Subject to the reserve price, the highest bidder being so allowed by the Auctioneer shall be the successful purchaser and the Auctioneer having the right to refuse any bid. If any dispute shall arise as to the highest bidder, the property shall, at the option of the Auctioneer, be put up again and resold or the Auctioneer may decide the dispute. The Auctioneer's decision in this matter shall be final and binding on the bidders.
4. No bid shall be less in amount than the previous bid, by a sum to be fixed by the appointed auctioneer at the time of the sale and no bidding shall be retracted.
5.
 - (a) Immediately after the fall of the hammer, the successful purchaser ("the Purchaser") shall through the Auctioneer hand over to the Assignee's representative attending the auction the Purchaser's Bank Draft or Cashier's Order for the Bidding Deposit (which includes the SST) payable or drawn in favour of **Public Bank Berhad** as part payment thereof and shall sign the Memorandum of Contract and these Conditions of Sale. In default of payment of the Bidding Deposit the property shall forthwith be put up for sale again. The deficiency in price (if any) which may result on such resale or the balance of the purchase price if there is no bid, as the case may be, shall be recoverable from the defaulting purchaser.
 - (b) The Purchaser shall also immediately after the fall of the hammer remit to the Assignee a further sum equivalent to the difference between the Bidding Deposit and 10% of the actual Purchase Price either in cash or by way of a valid draft or cashier's order drawn in favor of PUBLIC BANK BERHAD which together with the Bidding Deposit will form the Deposit. In default of payment of the Deposit the Assignee shall be entitled to terminate the sale and the property shall forthwith be put up for sale again. The deficiency in price if there is no bid, as the case may be, shall be recoverable from the defaulting purchaser. The bidder with the highest bid shall be declared as successful bidder upon the fall of hammer by auctioneer.
6.
 - (a) The balance of the purchase price [*together with Inward RENTAS Service Charges (if any)*] shall be paid in full by the Purchaser to the Assignee or to the Solicitors within ninety (90) days from the date of auction sale by **remitting the payment directly to the Assignee**

via RENTAS. The RENTAS payment must be made accompanied with the following details:-

i) Beneficiary

- **Name : PTT IBT Settlement account**
- **Account No. : IBS Settlement a/c no. 3-9975282-30**

ii) Payment Details

- **Reference : 2-0983294-00 (00010)**
- **Description : PBB/KKCCC/PTT/SNS/JEB/FAW/2098329400 (00010)**
Under account of Boo Kim Hua & Wong Ah Sai

(b) **Neither the Assignee nor the Solicitors for the Assignee shall be responsible for any delay/costs arising from incorrect/incomplete/omission of RENTAS remittance payment details. Upon payment via RENTAS, the Purchaser shall immediately forward the RENTAS Credit Payment Advice with the details above to the Assignee or to the Solicitors for the Assignee.**

(c) The Assignee at the request of the Purchaser and at its absolute discretion may grant to the purchaser an extension time immediately following the expiry of the aforesaid ninety (90) days to pay the balance of the Purchase Price subject to the terms and conditions to be determined by the Assignee.

7. Time wherever mentioned in these conditions shall be of the essence. The number of days above shall include the day of the auction sale. If the last day falls on the weekend or public holiday the the last day of payment shall be extended to the net working day. Payments must be made during Government working hours

8. (a) In default of payment of the balance of the purchase price within the agreed period provided herein, the property shall be again put up for sale free from any rights or claims by the Purchaser. The deposit after defraying expenses of the sale shall be forfeited.

(b) The legal fees, auctioneer fees and any other costs and expenses of, in connection with and/or resulting from such resale together with any deficiency in the price obtained in the resale compared to the price obtained in the aforesaid sale shall be recoverable from the Purchaser. A certificate signed by an officer of PUBLIC BANK BERHAD as to the legal fees, auctioneer fees and any other costs and expenses of, in connection with and/or resulting from such resale shall be accepted by the Purchaser as correct and conclusive.

9. The Assignee's rights title and interest in the property are by virtue of a Deed of Assignment dated **11th September 2013** (“Deed of Assignment”) where the Assignor assigned absolutely his rights title and interest under the following documents:
- (a) Sale and Purchase Agreement dated the 19th December 2000 (“Principal Sale and Purchase Agreement”) entered between Kemayan Trading Sdn Bhd (Company No. 208639-T) (“the Developer”) and Chong Soon Seng (NRIC No. 640830-10-6759 / 7416510) (“the Original Purchaser”).
 - (b) Sale and Purchase Agreement dated 17th May 2004 entered between Chong Soon Seng (NRIC No. 640830-10-6759 / 7416510) and Lok Yok Tai (NRIC No. 690808-01-5610/A1383956);
 - (c) Deed of Assignment dated 29th September 2004 between the Original Purchaser and Lok Yok Tai (NRIC No. 690808-01-5610/A1383956);
 - (d) Sale and Purchase Agreement dated 16th November 2012 entered between Lo Yok Tai (NRIC No. 690808-01-5610 / A1383956) (“the Vendor”) and Boo Kim Hua (NRIC No. 680211-01-5133 / A0934385) (“the Assignor”).
 - (e) Deed of Assignment dated 29th July 2013 between Lok Yok Tai (NRIC No. 690808-01-5610/A1383956) and the Assignor
10. Photocopies of the aforesaid Sale and Purchase Agreements and the Deeds of Assignment are available for inspection at the office of Messrs C. K. Nar & Co., Advocates and Solicitors (“the Legal Firm”) before the date of the auction. All bidders shall be deemed to have notice of the terms of the Sale & Purchase Agreement and all covenants, conditions, prohibitions or restrictions expressly stated therein or implied by law and is further deemed to accept that the title deed to the Property shall be issued upon such terms as shall be permitted in the relevant provisions of the Sabah Land Ordinance Cap 68 and the Land (Subsidiary Title) Enactment 1972. Neither the Assignee, the Auctioneer nor the Legal Firm is obliged to enquire as to whether the Purchaser can eventually take a registered legal interest in the Property auctioned or whether any covenant or condition in the present title deed upon which the Property is constructed has been performed or has expired or otherwise.
11. The **subdivided title** for the property has yet to be issued and it is not the duty of the Assignee or the Legal Firm to procure the issuance thereof or to ensure that it will be transferred or be transferrable to the Purchaser. The Purchaser agrees that it shall be the Purchaser’s responsibility to seek further confirmation from Developer that they shall agree to direct transfer of the Property to the Purchaser upon the issuance of the subdivided title by the Land Office.

12. The Assignee undertakes to the Purchaser upon full payment of the purchase price in accordance with the conditions of sale herein that the Assignee shall:-
 - (a) not to make any claims of any interest over the property;
 - (b) execute any document within its power or authority as Assignee to effect the assignment of its right title and interest in the property to the purchaser.

13. The Assignee reserves the right to alter or add to these Particulars and Conditions of Sale at any time prior to the sale.

14. With effect from the fall of the hammer at the auction, the property above described shall be at the sole risk of the Purchaser as regards loss or damage by fire, or other accident or through non-occupation or otherwise.

15.
 - (i) The Purchaser shall admit the identity of the property purchased by him with that comprised in Principal Sale and Purchase Agreement. The Agreement together with house rules and mutual covenants (if any) are deemed to be inspected read and accepted by the Purchaser before the auction sale.
 - (ii) The Purchaser is deemed to have knowledge of contribution and other payments required to be complied with and such are available for inspection from the auctioneer/solicitors handling the sale.

16. The property above described is believed and shall be taken to be correctly described and is sold subject to all liabilities and rights (if any) subsisting thereon and is further subject to the terms of the Principal Sale & Purchase Agreement. The Assignee is under no obligation to define or describe the Property and all liabilities or interest therein and any error, mis-description shall not annul the Auction nor entitle the Purchaser to claim for any damages, compensation or otherwise.

17. (a) Notwithstanding any contrary terms and conditions which may be imposed by the Developer on the Assignee in granting the consent to the sale herein (if applicable), it is hereby agreed that any arrears of quit rent and assessment rate (excluding penalty, attachment warrant and late charges/interest), **taxes including Sales and Services Tax (if applicable)**, service and maintenance charges (excluding penalty interest, late charges and **utilities bills**), (hereinafter collectively referred to as “outstanding charges”) which may be lawfully due (the Assignee reserves the right to refuse to pay any sums not lawfully due and/or those sums that are time barred) to any relevant authority or the Developer up to the date of auction sale of the subject property shall be paid by the Assignee out of the balance purchase money and in any event upon the Assignee’s receipt of the balance purchase money in **cleared funds** SUBJECT TO the following maximum sums based on the Property Reserve Price.

The “Outstanding Charges” referred above which are to be borne by the Assignee will be capped as follows :-

Property with Reserve Price (RM) of	Maximum Outstanding Charges to be borne by the Assignee
Less than RM250,000.00	RM10,000.00
RM250,001.00 to Less than RM500,000.00	RM15,000.00
RM500,001.00 to Less than RM1,000,000.00	RM20,000.00
RM1,000,001.00 to Less than RM2,000,000.00	RM25,000.00
RM2,000,001.00 to Less than RM3,000,000.00	RM30,000.00
RM3,000,001.00 onwards	RM50,000.00

The arrears in quit rent and assessment bills excluding penalty attachment warrant and late charges/interest shall only be paid provided that the Assignee is in receipt of the balance purchase money and the relevant receipts for quit rent and assessment issued by the relevant authorities from the Purchaser within ninety (90) days from the date of the auction sale. All outstanding charges incurred, **together with any Sales and Services Tax (if applicable)** after the date of successful auction shall be borne by the Purchaser without any obligation arising on the part of the Assignee or the Legal Firm to define the same respectively.

(b) All other outstanding outgoings not mentioned in Clause 17(a) hereof before or after the auction as well as the administrative costs and charges for the consent from the Landowner / Developer for the Assignment / transfer of the Property to the Purchaser (including Sales and Services Tax, if any) shall be borne by Purchaser without any obligation arising on the part of the Assignee or the Legal Firm to define the same respectively.

18. (a) The property is sold subject to all outgoings and other liabilities affecting the same at the date of the auction without any obligation on the part of the Assignee to show the creation of or the title of the present claimant in any outgoing or to apportion any outgoing or issuing exclusively out of the property sold and subject also to any existing tenancies and all rights of tenants thereunder (if any) and rights of occupiers thereunder (if any) and to all encroachment easements and quasi-easements and right of adjoining owners and others over the Property.

(b) Bank will not be liable for any caveats filed (by 3rd Party/ies) and it is the duty of the Purchaser to remove the caveat at their own cost (if any).

19. The Purchaser is deemed to be aware of the state, condition and occupancy of the Property and **shall be solely responsible to assert his rights as owner upon full payment of the Purchase Price.** However, the Purchaser is prohibited from entering the Property prior to the full payment of the Purchase Price. **It is not the responsibility or obligation of the Assignee, the Auctioneer nor the Legal Firm to deliver or cause to be delivered vacant possession of the said Property to the Purchaser.**

20. All purchasers are deemed to have inspected the said Property and are deemed to be aware of its state and condition and the same is sold on an “as and where it is” basis.
21. The Assignee has no notice or knowledge of any encroachments or that the Government or any local authority has any immediate intention to acquire the whole or any part of the property for roads, backlanes or any improvements schemes but if such encroachments shall be found to exist or if the Government or any local authority has any such intention the same shall not annul any sale nor shall any abatement or compensation be allowed in respect thereof.
22. All costs of and incidental to the transfer and assignment of the property including the **Sales and Services Tax (if applicable)** shall be borne by the Purchaser in particular the stamp duty, registration and legal and other fees for the Deed of Assignment (if any) and the eventual transfer of the subdivided/subsidiary title to the Property to the Purchaser (if any). The Purchaser shall be further responsible to solely pay all the legal cost of the assignment of the rights title and interest in the Property consequent to the auction sale as well as every other sum referred to in the Sale & Purchase Agreement and for whatever purpose.
23. **It is NOT the Assignee nor the Legal Firm’s duty to obtain the transfer/assignment of the property to the Purchaser neither are they obliged to ensure that the Purchaser can eventually take a registered legal interest in the Property sold.** It is the responsibility of the Purchaser to obtain the Developer’s consent to the assignment of the said property to the Purchaser. The Assignee and the Legal Firm is not obliged to ensure or responsible as to whether the Developer and/or Landowner will consent to the Assignment of the said Property to the successful purchaser. The Assignee and the Legal Firm do not provide any warranty whatsoever and the Purchaser agrees to be solely responsible for a proportionate amount of the overall cost. The Purchaser shall immediately upon becoming the successful bidder apply for and obtain the consent to transfer from the Developer and the Proprietor (if any) at the Purchaser’s own cost and expense.
24. All purchasers shall be deemed to have notice of the nature of the title deed and all covenants, conditions, prohibitions or restrictions expressly stated therein or implied by Law and the relevant provisions of the Sabah Land Ordinance under which the title deed to the property is to be issued. The Assignee and the Legal Firm is not obliged to ensure or responsible as to whether the Purchaser can eventually take a registered legal interest in the property auctioned.
25. The Purchaser may caveat the parent title to the Property concerned if allowed under the Sale & Purchase Agreement but such caveat shall not restrict the issue of subsidiary or sub-divided titles nor the transfer of the parent or other title to the management corporation. Further the caveat will, upon issuance of the subsidiary title for the Property, be carried forward to the particular title concerned to the exclusion of the remaining titles and the parent or other title.

26. Pursuant to Section 18 and 33 of the Stamp Duty Act 1949 (Act 378) any stamp duty payable shall be borne by the Purchaser alone and shall not be paid out of the proceeds of the sale. The Purchaser shall also pay the legal fees, registration fee and adjudication fee **together with all Sales and Services Tax payable thereon (if applicable)** for the eventual transfer of the property.
27. **For the purpose of these proceedings the said Legal Firm are acting solely for the Assignee and are therefore not obliged to advise the purchaser** (including the filing of returns under the provisions of the Real Property Gains Tax Act 1976).
28. The valuation report prepared for the Assignee leading to this auction sale is solely and exclusively for ascertaining the Reserved Price and as such is confidential to the Assignee and Auctioneer. Neither the Assignee, the Auctioneer nor the Legal Firm shall in any way be responsible or liable for any mis-description, mis-representation, error or omission in such report. Any reliance on the report by the Purchaser shall be at his/her own risk.
29. The Assignee is not responsible for the contents of the valuation report prepared to ascertain the market value of the Property.
30. The auction is subject to postponement/cancellation by the Assignee at any time prior to the fall of hammer for whatever reason the Assignee shall think fit and no compensation shall become payable to any intending bidders/Purchaser arising from such postponement/cancellation.
31. In event of any discrepancy, mis-statement or error, appearing in the various translations of the particulars, the English version shall prevail.
32. The decision of the Assignee shall be final and binding in respect of all matters provided for and not provided for under these conditions.
33. This Conditions of Sale, Memorandum of Contract, Deed of Assignment and the Memorandum of Transfer are documents evidencing a single transaction and for the purpose of Section 4(3) of Stamp Duty Act 1949 (Act 378), Deed of Assignment shall be deemed the principal instrument.
34. The Purchaser hereby agrees and shall indemnify the Assignee and keep the Assignee indemnified against all tax, liabilities, penalties including without limitation to the all action, proceeding, demands, claims, cost and penalty whatsoever made against the Assignee as a result of and/or incidental to the Purchaser's non-compliance with any of the Purchaser's obligation herein.

In acknowledgement of the above I/We _____
(NRIC No. _____) the Purchaser hereby set my / our hand(s) on
_____ day of _____ 2022.

Signed by the _____)
said _____) _____
in the presence of : _____)
_____)
_____)

BY PUBLIC AUCTION

IN THE MATTER OF A FACILITIES AGREEMENT AND DEED OF ASSIGNMENT

BOTH DATED 11TH SEPTEMBER 2013

BETWEEN

PUBLIC BANK BERHAD (CO. NO. 6463-H)

... ASSIGNEE

AND

BOO KIM HUA
(NRIC NO. 680211-01-5133)

... ASSIGNOR

AND

BOO KIM HUA
(NRIC NO. 680211-01-5133 / A0934385)
WONG AH SAI
(NRIC NO. 571121-12-5213 / H0063269)

...BORROWERS

MEMORANDUM OF CONTRACT

(Subject to the Conditions of Sale Annexed)

At the sale by PUBLIC AUCTION on the **20th December 2022** (“the Auction”) of the property described as Lot 130C, Taman Kemayan, Phase 2, Jalan Bundusan, Penampang, 88300 Kota Kinabalu, Sabah. (“the Property”).

Mr/Mrs/Miss.....

Mr/Mrs/Miss

(“the Purchaser(s)”) (Nric No.)

(Nric No.)

was the highest bidder and was declared the Purchaser of the property as described subject strictly to the Conditions of Sale attached, at the purchase price of Ringgit Malaysia

(RM.....) (“the Purchase Price”) and the said Purchaser(s) has paid to the Assignee the sum of Ringgit Malaysia

..... (RM.....) only as a Deposit (“the Deposit”) and agrees to pay the balance of the purchase price and complete the purchase in accordance with and subject to the annexed Conditions of Sale. The Assignee hereby acknowledges receipt of the Deposit.

The breakdown of payment of the Purchase Price is as follows

Purchase Money	RM.....
Deposit paid	RM.....
Balance due	RM.....

I/We.....

(Company No./Nric No.....

Hereby acknowledge receipt of the Deposit (Cash/Cashier's Order/Bank Draft No.....) on behalf of the Assignee.

Legal Firm

Signature :

Chop :

Purchaser

Name :

NRIC/Company No

Address :

Tel :

Fax :

Signature :

Chop (if applicable)

Auctioneer

Signature :

Chop :

Dated this :day of

(This Memorandum of Contract is subject to the terms and conditions stipulated in the annexed Conditions of Sale).