

# PROCLAMATION OF SALE

IN THE MATTER OF FACILITY AGREEMENT, DEED OF ASSIGNMENT AND POWER OF ATTORNEY ALL DATED  
THE 28<sup>TH</sup> DAY OF NOVEMBER, 2017

Between

**AmBank (M) Berhad (196901000166 (8515-D))**.....ASSIGNEE/BANK

And

**ARSID BIN A PATURUSI (NRIC NO. 810530-12-6597)**.....ASSIGNOR/BORROWER

In the exercise of the rights and powers conferred upon the Assignee/Bank under the **Facility Agreement, Deed of Assignment and Power of Attorney all dated the 28<sup>th</sup> day of November, 2017** entered into between the Assignor/Borrower and the Assignee/Bank it is hereby proclaimed that the Assignee/Bank with the assistance of the undermentioned Auctioneer: -

Will Sell The Property Described Below By

## PUBLIC AUCTION

VIA ONLINE BIDDING

ON THURSDAY, THE 27<sup>TH</sup> DAY OF OCTOBER, 2022,

AT 11.00 IN THE MORNING,

AT WEBSITE **WWW.HERITAGEAUCTIONEERS.MY**

(Please register at least one (1) working days before auction day for registration & verification purposes)

NOTE: (1) Prior to the auction sale, all intending bidders are advised to:-

- i) inspect the subject property
  - ii) conduct an official title search
  - iii) enquire from the Developer/Proprietor and/or other relevant authorities
  - iv) obtain a copy of the Conditions of Sale from the Auctioneer
- (2) This material is based upon information which we consider reliable. As it has been supplied by third parties we cannot represent that it is accurate or complete. As such it is subject to errors or omissions.
- (3) As at auction date, consent (if applicable) from the Developer/Proprietor and/or the relevant authorities is yet to be obtained, however it is the responsibility and liability of successful bidder to obtain the consent/transfer (if applicable) pertaining the auction from Developer/Proprietor and /or the relevant authorities/LPHS.

### PARTICULARS OF TITLE

**Individual Title** : Has not been issued yet  
**Master Title No. & Lot No.** : CL 025347013, CL 025347022 and CL 025347031, District of Papar, Sabah  
**Developer's Parcel No.** : No. 129, Type C, Pusat Komersial Kimanis (formerly known as New Kimanis Town), Phase 1  
**Approximate Built-up Area** : 2,684 sq. ft. (249.35 sq. metres)  
**Approximate Land Area** : 1,989.48 sq. ft. (184.78 sq. metres)  
**Vendor/ Developer** : **NEW KIMANIS TOWN SDN BHD (COMPANY NO.: 979606-W)**  
**Proprietors** : **HOMELITE SDN. BHD. (COMPANY NO. 924700-M)**  
**Beneficial Owner(s)** : **ARSID BIN A PATURUSI (NRIC NO. 810530-12-6597)**  
**Encumbrance** : Assigned to **AmBank (M) Berhad** vide Facility Agreement, Deed of Assignment and Power of Attorney all dated the 28<sup>th</sup> day of November, 2017  
**Tenure** : 99 years leasehold  
**Category Of Land Use** : -  
**Express Conditions** : -  
**Restriction In-Interest** : -  
**Note** : -

### LOCATION AND DESCRIPTION:

The subject property is a **double storey corner commercial shophouse** bearing postal address **Lot No. 129, Type C, Pusat Komersial Kimanis (formerly known as New Kimanis Town Phase 1), 89600 Papar, Sabah.**

### RESERVE PRICE:

The property will be sold subject to a reserve price of **RM382,638.00 (RINGGIT MALAYSIA: THREE HUNDRED EIGHTY TWO THOUSAND SIX HUNDRED THIRTY EIGHT ONLY)** and the Conditions of Sale and subject to the consent (if applicable) being obtained by the purchaser from the Developer/Proprietor and other relevant authorities.

### TAX

The sale of the subject property is subject to any such tax implemented under any law now be or hereafter imposed by Government of Malaysia whenever applicable.

### OUTGOING:

*Any arrears of service / maintenance charges excluding late penalty interest (if any) which may be lawfully due and payable to any relevant authority and / or Developer as at the date of successful sale shall be borne by the Assignee/Lender and the portion attributable up to the date of the successful sale (subject to a maximum of 10% of the Reserve Price) shall be paid out upon receipt of full auction proceeds, provided that the Assignee/Lender is in receipt of the itemized billing for service/maintenance charges and statement of account issued by relevant authority and/or the Developer from the Purchaser within ninety (90) days from the date of the successful sale, failing which the purchaser will not be entitled for any claim and any sum due and payable after the date of the sale shall be borne by the Purchaser.*

### DEPOSIT :

All intending bidders are required to deposit with the Auctioneer, prior to the auction sale, **ten per cent (10%) of the reserve price OR a minimum of RM2,000.00 whichever is higher** by **Bank Draft** or Cashier's Order only in favour of **AmBank (M) Berhad** or remit the same through **online Local Bank Transfer** to **AmBank (M) Berhad** in favour of **HERITAGE AUCTIONEERS SDN. BHD. (BIDDER DEPOSIT) Account No: 8881036485879** at least one (1) working day before auction day. For online bidders please refer to the **Terms & Conditions** on **www.heritageauctioneers.my** on the manner of payment of the deposit.

**FOR FURTHER PARTICULARS**, please apply to **Messrs Wong & Shim**, Solicitors for the Assignee/Bank, at **12<sup>th</sup> Floor, Wisma Merdeka Phase 1, Jalan Tun Razak, 88000 Kota Kinabalu, Sabah. Tel: 088-233 171, Fax: 088-213 579 (Ref: WS/RW/C/A-12(1648))** or the Auctioneer.

**HERITAGE AUCTIONEERS SDN. BHD. (791253-V)**

**[formerly known as Heritage Auction House Enterprise (001269594-A)]**

Lot 2-14, 2<sup>nd</sup> Floor, PKNS Complex, 40505 Shah Alam, Selangor Darul Ehsan.

Tel/Fax No. : 03-5518 1442/03-5518 1443

Our Ref. : HAH/3399/AMBB/22

Website : <http://www.heritageauctioneers.my>

Email : [hauctionhouse@gmail.com](mailto:hauctionhouse@gmail.com)

Whatapps : 011-5585 1442

**DATO' MARIANI BINTI HJ. YAHYA (D.I.M.P.)**

**MOHD ZAKIRUDDIN BIN ISMAIL**

**MARIAM BINTI YAHYA**

**SURANI BINTI HAMZAH**

(Licensed Auctioneer)



# CONDITIONS OF SALE

## 1. RESERVE PRICE AND BIDDING AT AUCTION

- 1.1 This sale is made by **AmBank (M) Berhad (196901000166 (8515-D)** ("Assignee/Bank") in exercise of the rights and powers conferred upon the Assignee/Bank pursuant to the **Facility Agreement, Deed of Assignment and Power of Attorney all dated the 28<sup>th</sup> day of November, 2017** executed by **Arsid Bin A Paturusi (NRIC NO. 810530-12-6597)** ("Assignor/Borrower") in favour of the Assignee/Bank subject to all conditions and category of land use, express or implied or imposed upon or relating to or affecting the property ("Property") and shall further subject to the reserve price ("Reserve Price") and the Conditions of Sale as appearing in the Proclamation of Sale.
- 1.2 Subject to the provisions of Clause 5 below the highest bidder for the Property described in the Proclamation of Sale if so allowed by the Auctioneer shall be the Purchaser ("Purchaser") thereof and the Auctioneer shall have the right to reject any bid. If any dispute shall arise as to any bidding, the Property shall be at the option of the Auctioneer be put up again for sale at the last undisputed bid or the Auctioneer may decide on the dispute and the decision of the Auctioneer on all matters not provided for in this Conditions of Sale shall be final and binding in all respects if such decision is made during the course of conducting the auction on the auction date.
- 1.3 No bid shall be less than the previous bid and each bid shall be increased by a minimum amount to be determined by the Auctioneer at the time the Property is put up for sale and no bidding shall be withdrawn or retracted. Should there be any withdrawal or retraction from the registered bidder(s) or the highest bidder before or after the fall of the hammer, the bidding deposit ("Bidding Deposit") shall be forfeited to the Assignee/Bank and the Property shall be at the option of the Auctioneer be put up for sale again or the Auctioneer may decide to adjourn the auction sale to another date.
- 1.4 In the event the subject matter offered for auction comprises more than one (1) property, the Auctioneer shall have the right to: -
  - (a) determine or vary the order of sale;
  - (b) offer the properties for sale either individually or en bloc or in any combination/manner as determined by the Auctioneer; and/or
  - (c) withdraw any of the properties from the sale.

## 2. BIDDING DEPOSIT

Subject to Clause 5.1 below, all intending bidders shall deposit with the Auctioneer, prior to the auction sale, a **bank draft or cashier's order** drawn in favour **AmBank (M) Berhad**, a Bidding Deposit equivalent to **ten per cent (10%)** of the Reserve Price or a minimum of **RM2,000.00** whichever is higher. **For Online bidders are further subject to the Terms & Conditions on [www.heritageauctioneers.my](http://www.heritageauctioneers.my).**

## 3. AUTHORITY TO ACT/BID

- 3.1 Any agent acting on behalf of another person, body corporate or firm is required to deposit with the Auctioneer, prior to the auction sale, a letter of authority from such person, body corporate or firm stating that he is acting on behalf of the person, body corporate or firm, as the case may be.
- 3.2 If the sale is restricted to individuals and not to incorporated bodies or companies as specified by the Developer/Proprietor and/or other relevant authorities, it shall be sold to individual persons only.
- 3.3 If the sale is restricted to Bumiputra only, such bidder or agent shall be a Bumiputra and when the bidder is a company it will be a Bumiputra company. **However the Auctioneer may at his own discretion vary such restriction to allow non-Bumiputra Bidding Agent to participate in the auction on case to case basis.**
- 3.4 All intending bidders shall be required to verify their identities by showing the Auctioneer their identity cards prior to the commencement of the auction, failing which they shall not be entitled to bid.

## 4. PROHIBITED TO ACT/BID

- 4.1 No bankrupts is allowed to bid or act as agents.
- 4.2 Foreign Citizen/Foreign Company is only allowed to bid for the Property with the prior consent from the Foreign Investment Committee. **In the event if no prior consent has been obtained then the Auctioneer shall at its absolute discretion accept or reject such bidding by Foreign Citizen/Foreign Company.**
- 4.3 In the event a bankrupt bids or acts as agent in relation to the sale of the Property, the Bidding Deposit or Purchase Deposit, as the case may be, shall be forfeited to the Assignee/Bank and the Property may be put up for sale again at a date and time to be fixed by the Assignee/Bank or the Assignee/Bank may resolve the matter in any other manner that the Assignee/Bank deems fit. The Assignee/Bank's decision shall be final and conclusive.
- 4.4 In the event that the Purchaser becomes a bankrupt or dies before the completion of the sale or before the completion of the extended period of time, the Assignee/Bank shall have the absolute discretion to do the following:-
  - a) forfeit the Deposit together with the interest (if any) and this auction sale shall be deemed terminated and be of no further effect; or
  - b) the Bank shall refund the balance of deposit after deducting expenses in carrying out the auction sale to the estate of the deceased or the Official Assignee as the case may be if the Purchaser is or becomes a bankrupt; and
  - c) the Assignee/Bank may resolve the matter in any other manner that the Assignee/Bank deems fit. The Assignee/Bank's decision shall be final and conclusive.

## 5. ASSIGNEE/BANK'S RIGHTS

The Assignee/Bank reserves the following rights:-

- 5.1 Right to Bid  
to bid without having to deposit with the Auctioneer the requisite **ten per cent (10%)** of the Reserve Price or a minimum of **RM2,000.00** whichever is higher, by itself or its agent. In the event that the Assignee/Bank is the successful bidder and so declared by the Auctioneer, the Assignee/Bank shall have the liberty to set off the purchase price against the amount due and owing by the Assignor(s)/Borrower(s) under the **Facility Agreement, Deed of Assignment and Power of Attorney all dated the 28<sup>th</sup> day of November, 2017** and all costs and expenses of, in connection with and resulting from the sale;
- 5.2 Right to withdraw Sale  
to withdraw, postpone and call off the sale of the Property at any time prior to the auction date and before the fall of the hammer; and
- 5.3 Right to Resell after withdrawal  
to sell the Property withdrawn at any time or times subject to such conditions and provisions whether identical with or differing wholly or in part from the conditions and provisions applicable to the Property to be auctioned at the present auction and in such manner as the Assignee/Bank may deem fit

5.4 Right to Terminate Sale

In the event that the property as stated in the Proclamation of Sale is not the property as described under the security documents executed by the Assignor/Borrower or otherwise different from such property as assigned to the Assignee/Bank by the Assignor/Borrower, the Assignee/Bank shall be entitled to terminate the sale and the bidding deposit paid shall be refunded to the Successful Purchaser(s). The Successful Purchaser(s) shall have no claims whatsoever against the Assignee/Bank, their Solicitors or the Auctioneer or any compensation in respect thereof.

6. **TAX**

Unless specified otherwise in the Proclamation of sale, if the sale of this property is subjected to Tax, such Tax will be payable and borne by the Purchaser.

7. **PAYMENT**

7.1 Immediately after the fall of the hammer, the Purchaser shall sign the Memorandum at the foot of these conditions.

7.2 In the event that the total purchase price ("TPP") is higher than the Reserve Price, the Purchaser declared by the Auctioneer shall immediately pay to the Auctioneer a sum ("Differential Sum") equivalent to the difference between **ten per cent (10%)** of the TPP ("Purchase Deposit") and the Bidding Deposit either in cash or bank draft or cashier's order drawn in favour of **AmBank (M) Berhad**, as payment of deposit and towards part payment of TPP. **For online bidders please refer to the Terms & Conditions on [www.heritageauctioneers.my](http://www.heritageauctioneers.my) for the manner of payment of the same.**

7.3 In the event that the Purchaser fails to pay the Differential Sum or fails to sign the said Memorandum, the Bidding Deposit shall be forfeited by the Assignee/Bank and the Property may be put up for sale again at a date and time to be fixed by the Assignee/Bank. The costs and expenses of, in connection with and resulting from such resale together with any deficiency in the price obtained at the resale comparing to the price obtained in the aforesaid sale shall be recoverable from the defaulting Purchaser. A certificate by an officer of the Assignee/Bank as to the costs and expenses of, in connection with and resulting from such resale shall be accepted by the Purchaser as correct and conclusive.

7.4 In the event that the Purchaser stops payment or countermands on the bank draft for the Bidding Deposit and/or the Purchase Deposit, the Property may be put up for sale at a date and time to be fixed by the Assignee/Bank. The cost and expenses of, in connection with and resulting from such resale together with any deficiency in the price obtained at the resale comparing to the price obtained in the aforesaid sale shall be recoverable from the defaulting Purchaser. A certificate by an officer of the Assignee/Bank as to the costs and expenses of, in connection with and resulting from such resale shall be accepted by the Purchaser as correct and conclusive.

7.5 The balance of the TPP ("Balance Purchase Price") shall be paid in full by the Purchaser to the Assignee/Bank or to the Solicitors within **ninety (90) days** from the date of the auction sale by **RENTAS/BANK DRAFT/CASHIER'S ORDER** drawn in favour of **AmBank (M) Berhad** and that there shall be no extension of the period so specified. However, the period of ninety (90) days may be extended by the Assignee/Bank at its absolute discretion upon written request by the Purchaser before the expiry date provided that if an extension is granted, the Purchaser shall pay to the Assignee/Bank late payment charges/compensation at the rate/amount to be determined by the Assignee/Bank at its absolute discretion on the Balance Purchase Price calculated on a daily basis for the duration of the extended period granted and such late payment charges/compensation shall be paid by the Purchaser in the manner and time stipulated by the Assignee/Bank.

7.6 In the event that the Purchaser fails to pay the Balance Purchase Price within the time or extended time as the case may be and in the manner as stipulated in Clause 7.5 above, the Purchase Deposit together with the late payment charges/compensation (if any) paid under Clause 7.2 above shall be forfeited by the Assignee/Bank and the property may again be put up for sale at a date and time to be fixed by the Assignee/Bank. The costs and expenses of, in connection with and resulting from such resale together with any deficiency in the price obtained in the resale comparing to the price obtained in the aforesaid sale shall be recoverable from the defaulting Purchaser. A certificate by an officer of the Assignee/Bank as to the costs and expenses of, in connection with and resulting from such resale shall be accepted by the Purchaser as correct and conclusive.

7.7 Subject to Clause 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6 hereof, for property which is still under progressive constructions stage, the Purchaser shall:-

- (a) In the event that the Purchaser shall require a loan to enable him/her to complete the purchase herein, the Purchaser shall within time stipulated in Clause 7.5 hereof, cause his/her financier to issue a letter of undertaking to pay the balance progressive payment in accordance with the schedule of the principal Sale and Purchase Agreement made in favour of the Developer from his/her financier and to release the Assignee/Bank from its original undertaking;
- (b) In the event that the Purchaser shall not require a loan to enable him/her to complete the purchase herein, the Purchaser shall within time stipulated in Clause 7.5 hereof, procure a bank guarantee to pay the balance progressive payment in accordance with the schedule of the principal Sale and Purchase Agreement made in favour of the Developer from his/her financier and to release the Assignee/Bank from its original undertaking;
- (c) Any payment due and payable to the Developer after the date of sale, including the balance progressive payment in accordance with the schedule of the principal Sale and Purchase Agreement, charges, interest and penalty as a result of the delay by the Purchaser in giving any undertaking/bank guarantee stated in Clause 7.7(a) & (b) hereof, shall be borne by the Purchaser absolutely; and
- (d) In the event that the Purchaser shall fail, neglect and/or refuse to procure a letter of undertaking/bank guarantee mentioned in the manner and at the times reserved in Clause 7.7 (a) & (b) hereof, the Assignee/Bank shall be entitled to terminate the sale by a notice in writing to the Purchaser whereupon the Purchase Deposit referred in Clause 7.2 shall be forfeited by the Assignee/Bank and the Property may again be put up for sale at a date and time to be fixed by the Assignee/Bank. The costs and expenses of, in connection with and resulting from such resale together with any deficiency in the price obtained in the resale comparing to the price obtained in the aforesaid sale shall be recoverable from the defaulting Purchaser. A certificate by an officer of the Assignee/Bank as to the costs and expenses of, in connection with and resulting from such resale shall be accepted by the Purchaser as correct and conclusive.

8. **DEED OF ASSIGNMENT/TRANSFER**

Upon full payment of the TPP and subject to the consent (if applicable) being obtained by the Purchaser from the Developer/Proprietor and other relevant authorities and further subject to Clause 7.2 hereof, the Assignee/Bank and the Purchaser shall observe the following:-

8.1 The Assignee/Bank shall execute or cause to be executed as soon as possible at the Purchaser's costs and expenses including legal, stamp and registration fees in favour of the Purchaser an Assignment in the form and format duly approved by the Assignee/Bank, of all the rights, title, interest and benefits under the principal Sale and Purchase Agreement entered into between the Developer/Proprietor and the original Purchaser upon the terms and conditions stipulated by the Assignee/Bank at its absolute discretion. Thereafter and upon payment by the Purchaser of all such costs and expenses including the vetting fee of the Assignment, the Assignee/Bank shall deliver to the Purchaser the Assignment duly executed or caused to be executed by the Assignee/Bank, the original of the principal Sale and Purchase Agreement or duplicate copy or certified true copy and the original of the previous Assignment(s) or duplicate copy or certified true copy as in the Assignee/Bank's possession;

- 8.2 If the Property is a housing accommodation under the **Housing Development (Control and Licensing) (Amendment) Act 2007**, the Purchaser shall upon payment of the TPP forward to the Assignee/Bank's solicitor the following:-
- a) a letter of undertaking by the Purchaser or the Purchaser's financier in favour of the Developer to deliver to the Developer the duly stamped assignment within fourteen (14) days after the same has been stamped, and
  - b) the Purchaser's payment in favour of the Developer of the Purchaser's portion of the Developer's outgoings charges pursuant to Clause 13 hereof, or a certified true copy of the Developer's official receipt evidencing the Purchaser's payment of the same.
- 8.3 In the event that the separate document of title or strata title for the Property has been issued whether before, on or after the successful auction sale, the Purchaser shall bear all costs, expenses, levies, penalties and charges relating to stamping and/or registration of the transfer either directly from the Developer and/or Proprietor OR a double transfer where the Developer and/or Proprietor or any relevant authority requires the title to be transferred into the name of the Assignor prior to it being transferred to the Purchaser, all costs, expenses, levies, penalties and charges relating to stamping and/or registration of the transfer into the Assignor's name shall be borne by the Purchaser.

#### 9. CONDITION OF PROPERTY

All bidders shall be deemed to have carried out all investigations and examinations of the Property and the title particulars at their own costs and expenses and upon being successful, accept the Property in the state and condition in which the Property is at the date of the auction sale.

#### 10. TENANCIES AND RESTRICTIVE COVENANTS

The Property is believed to be and shall be taken to be correctly described and is sold subject to all express conditions, restrictions-in-interest, caveats, leases, tenancies, easements, liabilities, encumbrances and rights, if any, subsisting thereon or thereover without the obligation to define the same respectively and the Purchaser is deemed to have full knowledge thereof.

#### 11. IDENTITY OF THE PROPERTY

- 11.1 The Purchaser shall admit the identity of the Property with that described in the Proclamation of Sale and such other documents offered by the Assignee/Bank as the title to the Property by a comparison of the description in the Proclamation of Sale and the aforesaid documents.
- 11.2 Any error, misstatement, omission or misdescription of the Property in the Proclamation of Sale and the documents referred to in paragraph 11.1 above shall not annul the sale, nor shall any compensation be allowed therefor.

#### 12. RISK OF THE PROPERTY

As from the time of the sale, the Property shall be at the sole risk of the Purchaser as regards to loss or damage of whatsoever nature or howsoever occurring including by fire or other accidents, state of cultivation, non-occupation or otherwise.

#### 13. OUTGOING

- a) Any arrears of service / maintenance charges **excluding** late penalty interest (if any) which may be due and payable to any relevant authority and / or Developer at the date of successful sale shall be borne by the Assignee / Bank up to the date of sale (**subject to a maximum of 10% of the Reserve Price**) shall be paid out upon receipt of full auction proceeds, provided that the Assignee / Bank is in receipt of the itemized billing for service / maintenance charges and statement of account issued by relevant authority and / or Developer from the Purchaser within ninety (90) days from the date of sale and any sum due and payable after the date of sale shall be borne by the Purchaser.
- b) For avoidance of doubt, in the event that such invoices and / or itemized billing are not submitted within the stipulated ninety (90) days from the auction date, any subsequent claims pertaining to the service / maintenance charges will not be entertained by the Assignee / Bank and the same shall be borne by the Purchaser solely. All charges other than service / maintenance charges including but not limited to quit rent, assessment, fees, taxes, rates, sinking funds, adjustment of land area charges and / or any other monies whatsoever outstanding to the relevant authority and / or Developer shall be paid directly by the Purchaser.
- c) The Purchaser shall bear and pay all fees and expenses including but not limited to all legal fees, stamp duty and registration fees in connection with, incidental to or pursuant to the Assignment and all other documents necessary affecting the transferor assigning the beneficial ownership in the property to the Purchaser.

#### 14. REAL PROPERTY GAINS TAX

- a) Pursuant to the provision of the **Real Property Gains Tax Act, 1976** (hereinafter referred to as "the said Act") and for the purpose of this sale, the Purchaser shall deduct a sum of equivalent to **3% of the Purchase Price** and shall pay the said **3% of the Purchase Price** to the Director General of Inland Revenue Malaysia within **sixty (60) days** from the date of disposal of the Property.
- b) The Successful Purchaser shall forward the proof of payment in respect thereof within **fourteen (14) days** from the date of the payment to the Assignee/Bank in order to enable the Assignee/Bank to obtain exemption and certificate of clearance from the Director General of Inland Revenue Malaysia.
- c) In default of payment of the **3%** within the time and manner stipulated in the provisions of the Real Property Gains Tax Act, 1976 the Successful Purchaser shall in all circumstances whatsoever be responsible and liable to pay the requisite **3%** with its own and absolute costs and expenses and the Successful Purchaser shall not be entitled to claim or demand whatsoever against the Assignee/Bank in respect thereof.
- d) Successful Purchaser for property that has been categorised as Low Cost, Medium Cost and Affordable Home with Purchase Price/Auction Price of less than RM200,000-00 is exempted from payment of the 3% provided that the property is auctioned off after 5 years from the date of the previous Sale and Purchase Agreement and it is only applicable to individual with Malaysia Citizenship.

#### 15. CONSENT

The Purchaser agrees and undertakes to apply for consent (if applicable) from the Developer/Proprietor and other relevant authorities, in respect of the sale and all fees, charges and expenses including administrative fees in connection with or incidental to the application shall be borne by the Purchaser.

#### 16. VACANT POSSESSION

The Purchaser after the payment of the TPP shall at his own costs and expenses take possession of the Property without any obligation on the part of the Assignee/Bank to give vacant possession and the Purchaser is **PROHIBITED** from entering upon the Property or take possession of the Property prior to the settlement of the balance purchase price and/or late payment interest (if any).

#### 17. SALE BEING SET ASIDE OR CONSENT NOT BEING OBTAINED

- 17.1 In the event of the sale being set aside for any reason whatsoever by the Assignee/Bank or by an Order of Court or consent (if applicable) not being obtained from the Developer/Proprietor and/or other relevant authorities, this sale shall be of no further effect from the date thereof and the Assignee/Bank shall refund the Purchase Deposit or TPP, as the case may be, to the Purchaser free of interest and the Purchaser shall not be entitled to any claim and/or demand whatsoever against the Assignee/Bank or any other party on account thereof.

17.2 In the event of consent (if applicable) not being obtained from the Developer/Proprietor and/or other relevant authorities due to the act of default or omission by the Purchaser, the Purchase Deposit and all late payment charges/compensation (if any) paid pursuant to **Clause 7.5** above shall be forfeited to the Assignee/Bank.

17.3 In the event the sale is terminated for any reason whatsoever, the Purchaser, if vacant possession of the Property is delivered, shall redeliver vacant possession of the Property to the Assignee/Bank at the costs of the Purchaser immediately upon such termination.

**18. TIME OF THE ESSENCE**

Time wherever mentioned herein shall be of the essence of these conditions.

**19. LANGUAGE**

This Proclamation of Sale is available in English and Bahasa Malaysia versions. The parties agree that the version executed by the Customer shall prevail for the purpose of legal contract by the parties. However, all correspondence, notices or other documents required or permitted hereunder may be drawn up in English and drawings and diagrams shall unless otherwise expressly agreed by the parties in writing, be annotated in English.

**20. ASSIGNMENT OF RIGHTS, TITLE, INTEREST AND BENEFITS**

The Purchaser shall not without the written consent of the Assignee/Bank, Developer/Proprietor (if applicable) and/or the relevant authorities be entitled to assign his rights, title, interest and benefits under the contract of sale made pursuant hereto or the principal Sale and Purchase Agreement entered between the Developer/Proprietor and the original Purchaser before the Property has been duly assigned or transferred to him by the Assignee/Bank. The Assignee/Bank's decision to grant the consent or otherwise shall be in its absolute discretion and shall not be questioned.

**21. ENCROACHMENT/ACQUISITION**

The Assignee/Bank has no notice or knowledge of any encroachment or that the Government or any other authority has any immediate intention of acquiring the whole or any part of the Property for roads or any other improvement schemes and if such encroachment shall be found to exist or if the Government or any local authority has any such intention, the same shall not annul the sale or shall any abatement or compensation be allowed in respect thereof.

**22. EXCLUSION OF LIABILITY**

All statements made in the Proclamation of Sale and Conditions of Sale or otherwise relating to the Property are made without responsibility on the part of the Assignee/Bank, the Solicitors and Auctioneers or either of them. No such statement may be relied upon as a statement or representation of fact. All bidders must satisfy themselves by inspection or otherwise as to the correctness of any such statements and neither the Assignee/Bank, the Solicitors, the Auctioneer nor any person in their employment has any authority to make or give any representation or warranty whatsoever in relation to the Property.

**23. PROCLAMATION OF SALE, CONDITIONS OF SALE AND MEMORANDUM OF SALE**

All contents in the Proclamation of Sale and this Conditions of Sale are to be read together and shall be part of the Memorandum of Sale.

**24.** For online bidders, the Terms & Conditions stated in [www.heritageauctioneers.my](http://www.heritageauctioneers.my) shall also apply.

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# CONTRACT

**MEMORANDUM:-** At the sale by Public Auction this 27<sup>th</sup> day October, 2022 of the Property comprised in the foregoing particulars that is to say the rights, title, interest and benefits to the said Property pursuant to the **Sale & Purchase Agreement dated the 20<sup>th</sup> day of November, 2017** and made between **New Kimanis Town Sdn Bhd (Company No.: 979606-W)(The Vendor)**, **Homelite Sdn. Bhd. (Company No. 924700-M)(The Proprietor)** and **Arsid Bin A Paturusi (NRIC NO. 810530-12-6597)(The Purchaser)** absolutely assigned to the Assignee/Bank pursuant to and under the **Facility Agreement, Deed of Assignment and Power of Attorney all dated the 28<sup>th</sup> day of November, 2017** entered into between **AmBank (M) Berhad (8515-D)** and the Assignor/Borrower in relation to the Subject Property identified as **Developer's No. 129, Type C, Pusat Komersial Kimanis (formerly known as New Kimanis Town), Phase 1** and bearing postal address **Lot No. 129, Type C, Pusat Komersial Kimanis (formerly known as New Kimanis Town Phase 1), 89600 Papar, Sabah** developed by **New Kimanis Town Sdn Bhd (Company No.: 979606-W)** and the highest bidder for the said Property shall be declared as the Purchaser of the said Property for the sum of **RM\_\_\_\_\_** and a sum of **RM\_\_\_\_\_** has been paid to the Assignee/Bank by way of deposit and agrees to pay the balance of the Purchase Money and complete and purchase according to the conditions and the said Auctioneer hereby confirms the said purchase and the Assignee/Bank acknowledge the receipt of the said deposit.

**Purchase Money** : RM\_\_\_\_\_

**Deposit Paid** : RM\_\_\_\_\_

**Balance Due** : RM\_\_\_\_\_

**Purchaser's Name:**

**NRIC No:**

**Address:**

**Tel:**

**Occupation:**

**Employer: -**

\_\_\_\_\_  
**SIGNATURE OF PURCHASER(S)/AUTHORISED AGENT**

**Purchaser's Name: -**

**NRIC No: -**

**Address: -**

**Tel: -**

**Occupation: -**

**Employer: -**

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**SIGNATURE OF PURCHASER(S)/AUTHORISED AGENT**

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**LICENSED AUCTIONEERS**  
**For Messrs. HERITAGE AUCTIONEERS SDN. BHD.**

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**SOLICITORS FOR THE ASSIGNEE**  
**For MESSRS. WONG & SHIM**  
**NAME:**

# ONLINE TERMS AND CONDITIONS

The Terms and Conditions specified herein shall govern all members of [www.heritageauctioneers.my](http://www.heritageauctioneers.my) ("HERITAGE AUCTIONEERS SDN. BHD. website").

## 1. ELIGIBILITY OF E-BIDDERS

- 1.1. Parties who are interested to participate in public auction ("E-Bidders") may do so by logging on to **HERITAGE AUCTIONEERS SDN. BHD.** Website and register as a member.
- 1.2. E-bidders who register as a member to participate in the public auction via **HERITAGE AUCTIONEERS SDN BHD** website shall:
  - a. Be of 18 years and above, sound mind and not an undischarged bankrupt;
  - b. For a company, be incorporated under the laws of Malaysia and must not be in liquidation;
  - c. Be able to take, fulfil and perform all necessary actions, conditions and matters (including obtaining any necessary consents) in terms of law to enable E-bidders to participate in the public auction and complete the purchase in the event of successful bid.
- 1.3. E-bidders' eligibility requirements are also subject to the existing Federal and State legal provisions. Non-Malaysian E-bidders or companies are also advised to take note of restrictions applicable on foreign purchase imposed by relevant authorities.

## 2. REGISTRATION OF E-BIDDERS

- 2.1. E-Bidders shall provide true, current and accurate information to register as a member.
- 2.2. Individual E-Bidders are required to upload copies of identification documents.
- 2.3. For E-bidders who are companies, certified copies of the Form 24; Form 44; Form 49 (or its equivalent forms under the Companies Act 2016); Memorandum and Articles of Association / Constitution of the company in compliance with Companies Act 2016 and a duly signed Board of Director's Resolution shall be uploaded.
- 2.4. E-Bidders only need to register as member once and the registered E-Bidder's member name and password can be used for the subsequent auctions on the **HERITAGE AUCTIONEERS SDN. BHD.** Website.
- 2.5. E-bidders are responsible to identify the property properly and to ensure that the details and description of the Property are correct and accurate before bidding.
- 2.6. It is the sole and absolute responsibility of all intending E-Bidders at their own costs and expense, seek and obtain from the Developer and/or the relevant authorities or bodies, all confirmations and/or consents as may be required or as may be applicable in respect of the purchase of the Property and to satisfy themselves on the physical condition of the Property and all matters in connection with the Property prior to the bidding (including and not limited to verifying the identity, particulars, state and condition of the Property and the terms of the conditions and restrictions affecting the Property if any, whether or not the Property is reserved for Bumiputra or Malay only and/or is a low cost property, and matters relating to the ownership and transfer of the Property, the status of the separate document of title to the Property and its particulars, the liabilities including amounts of outstanding service or maintenance charges owing and other obligations pertaining to the Property and the E-Bidders' eligibility and qualification to purchase the Property). E-Bidders shall be deemed to have full knowledge of all of the matters aforesaid. The Auctioneer, the Assignee/Bank, the Assignee/Bank's solicitors and **HERITAGE AUCTIONEERS SDN. BHD.** website and their respective agents or servants do not in any way make any representation or warranty in respect of any of the aforesaid and shall not in any way be responsible or liable to the E-Bidders in respect of any of the aforesaid.
- 2.7. The registration of an individual or company as a member on the **HERITAGE AUCTIONEERS SDN. BHD.** website shall not be construed as approval of eligibility of the intended E-bidder to conclude the auction sale. Please refer to Part 1 above for requirements on the eligibility of E-bidders.

## 3. HOW TO BID

- 3.1. E-Bidders may browse through the **HERITAGE AUCTIONEERS SDN. BHD.** website and select the properties they wish to bid.
- 3.2. E-Bidders are required to agree and accept the **HERITAGE AUCTIONEERS SDN. BHD.** website Terms & Conditions before proceeding with the bid.
- 3.3. The Terms & Conditions shall be read together with all the Conditions of Sale attached to the Proclamation of Sale which is uploaded on the **HERITAGE AUCTIONEERS SDN. BHD.** website and shall be deemed to have been read and agreed upon by the E-Bidders prior to bidding.
- 3.4. E-Bidders must make deposit payment as required under the Conditions of Sale attached to Proclamation of Sale, i.e. **10%** of the reserve price. Payment of the deposit must be made via local bank transfer to **AMBANK (M) BERHAD** in favour of **HERITAGE AUCTIONEERS SDN. BHD. (BIDDER DEPOSIT)** Account No: **8881036485879**. Evidence of the transfer must be uploaded and submitted at the time of registration.
- 3.5. E-Bidders are required to complete the registration process by inserting the relevant details and uploading the relevant Documents including evidence of payment of the deposit onto the **HERITAGE AUCTIONEERS SDN. BHD.** website latest by 6.00 P.M, at least one (1) working day before the auction date.
- 3.6. Registration shall be subject to verification and approval of **HERITAGE AUCTIONEERS SDN. BHD.** website and subject further to deposit payment being cleared by the bank. Please take note that approval from **HERITAGE AUCTIONEERS SDN. BHD.** administrator may take at least 1 working day and any improper, incomplete registration or late registration may be rejected at the sole discretion of the **HERITAGE AUCTIONEERS SDN. BHD.** website. Neither **HERITAGE AUCTIONEERS SDN. BHD.** website nor its agents and/or representatives bears any responsibility or assumes any liability in the event that the registration of a prospective E-Bidder is rejected and / or delayed for any reason whatsoever. In the event of the registration is rejected, the deposit paid (if cleared by the bank) shall be refunded to the same bank account from which the deposit transfer was made within two (2) working days.
- 3.7. E-Bidders intending to authorize any person to execute the Memorandum/Contract of Sale upon successful bidding of the property shall do so by furnishing the following documents to the Auctioneer:
  - a. The person's NRIC copy (front and back); and
  - b. A copy of the relevant Letter of Authorization.
- 3.8. Upon approval and verification by **HERITAGE AUCTIONEERS SDN. BHD.** website and subject to the deposit payment being cleared by the bank, registered E-Bidders will receive a password, i.e. "PIN", and a secured hyperlink via **EMAIL** to the registered mobile number which allows the registered E-Bidders to bid for their intended property on the auction day.
- 3.9. Bidding may be done via a computer, smart phone or any comfortable device with internet connection.

## 4. BIDDING PROCEDURES

- 4.1. Bidding shall generally commence based on the sequence of the lot being shown on the **HERITAGE AUCTIONEERS SDN. BHD.** website. However, the Auctioneer has the right to vary this sequence without notice.
- 4.2. It shall be the responsibility of registered E-Bidders to log in through the **HERITAGE AUCTIONEERS SDN. BHD.** website to wait for their turn to bid for the property lot in which they intend to bid.
- 4.3. The Auctioneer has the right to set a new reserve price in the event there is more than 1 bidder provided that the new reserved price set by the auctioneer shall not exceed the market value and/or the reserved price stated and/or recommended in the Valuation Report relied upon for the auction. The reference to a "bidder" here includes E-Bidders as well as on-site bidders.
- 4.4. Auctioneer will announce the amount of incremental bid and the same will appear on the website prior to the commencement of the auction.
- 4.5. "Standby mode" is displayed, followed by a message stating "Bidding started". Enter your "Start bid".
- 4.6. Each bid will be called for 3 times, "First Calling", "Second Calling", "Final Call". Registered E-Bidders may submit their bid at any of these stages of biddings by entering the bid amount.
- 4.7. Any bid by the registered E-bidders shall not be withdrawn once entered.
- 4.8. In the event of any clarification, disruption or special situation, the Auctioneer may at his discretion decide to pause, postpone and/or call off the public auction. The E-bidders will be notified of this on the webpage.



- 4.9. When system displays “No More Bids”, no further bids will be accepted by the Auctioneer, whether on-site or through the **HERITAGE AUCTIONEERS SDN. BHD.** website.
  - 4.10. The bidder with the highest bid shall be declared as successful bidder upon the fall of hammer.
  - 4.11. The decision of the Auctioneer shall be final and binding on all on-site and/or E-bidders.
  - 4.12. A successful bidder will be directed to a page where further directions are given in order to conclude the sale of the auction property. Please also refer to Part 5 below.
  - 4.13. Unsuccessful E-Bidders will have the deposit paid processed to be refunded to the same bank account from which the deposit transfer was made within three (3) working days.
  - 4.14. The information shown and/or prompted on the screen handled by the **HERITAGE AUCTIONEERS SDN. BHD.** website regarding the public auction, particularly to the calling of bidding price during the bidding process and the declaration of successful bidder shall be final and conclusive.
- 5. POST PUBLIC AUCTION**
- 5.1. Any E-Bidders who successfully bids for the Property shall and undertake to sign the Memorandum of Sale and pay the difference between **10%** of the purchase price and the deposit paid under clause 3.4 above (“differential sum”) at the office of the Auctioneer within 3 working days from the date of auction, failing which the deposit paid will be forfeited to the Assignee Bank and sale will be deemed cancelled/terminated and the property may be put up for subsequent auction without further notice to the said E-Bidders. The Auctioneer shall send the Memorandum of Sale for stamping and thereafter forward the same together with the deposit paid under clause 3.4 above and the differential sum paid under this clause (If any) to the Assignee Bank.
  - 5.2. Any successful E-Bidders who is unable to attend to sign the Memorandum of Sale at the office of the Auctioneer may do so by authorising another person to sign the same on his behalf by inserting the particulars of the authorised person at **HERITAGE AUCTIONEERS SDN. BHD.** website. The authorised person shall provide the Letter of Authorisation signed by the successful E-bidder together with a copy of his/her identity card to the Auctioneer.
  - 5.3. In the event if there is inconsistency between the personal details and documents uploaded in the **HERITAGE AUCTIONEERS SDN. BHD.** website and the actual documents produced by the successful bidder, the Auctioneer shall have the right to refuse the successful bidder from signing the Memorandum of Sale and may at his discretion cancel the sale and proceed to put the property up for a new auction and the deposit paid shall be used to defray the cost of the auction.
  - 5.4. The Memorandum/Contract of Sale, upon being signed by the Auctioneer, Solicitor for the Assignee Bank and successful bidder, shall be a conclusive evidence for the sale of the Property to the successful bidder.
  - 5.5. The Memorandum of Sale may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Memorandum of Sale by signing any such counterpart and each counterpart may be signed and executed by the parties and shall be as valid and effectual as if executed as an original.
- 6. OTHER APPLICABLE TERMS & CONDITIONS**
- 6.1. All registered E-bidders at **HERITAGE AUCTIONEERS SDN. BHD.** website undertake to fully comply with this terms and conditions herein. Further, all successful E-Bidders shall also be bound by the terms and conditions of the Conditions of Sale attached to the Proclamation of Sale.
  - 6.2. The Auctioneer may from time to time add, modify, or delete any terms and conditions herein.
  - 6.3. E-Bidders are responsible to ensure that their internet access is in good condition during the whole process of public auction until conclusion thereof. Unsatisfactory internet access may disrupt any bids made by the E-Bidders.
  - 6.4. The Auctioneer or the **HERITAGE AUCTIONEERS SDN. BHD.** website shall not be liable for any disruptions, delays, failures, errors, omissions, or loss of transmitted information due to the unsatisfactory internet access or any online disruptions that may howsoever occur during the process of public auction at **HERITAGE AUCTIONEERS SDN. BHD.** website.
  - 6.5. **HERITAGE AUCTIONEERS SDN. BHD.** Website is owned and operated by **HERITAGE AUCTIONEERS SDN. BHD.** The E-Bidders agree and accept that **HERITAGE AUCTIONEERS SDN. BHD.** or the Auctioneer or the Assignee Bank in which **HERITAGE AUCTIONEERS SDN. BHD./** Auctioneer acts for or their Solicitors or any of their respective servants or agents shall not be in any way liable for any claims or loss arising out of the use of the **HERITAGE AUCTIONEERS SDN. BHD.** website.
- 7. APPLICABLE LAWS AND JURISDICTION**
- 7.1. The usage of **HERITAGE AUCTIONEERS SDN. BHD.** website together with the terms and conditions hereof shall be governed by and construed in accordance with the laws of Malaysia.
  - 7.2. The laws of Malaysia shall regulate and apply to all electronic transactions of immoveable property by public auction. Any legal actions or proceedings arising out of or in connection with the electronic transaction of immoveable property by public auction shall subject to the exclusive jurisdiction of the Courts of Malaysia.
- 8. CONFIDENTIALITY OF INFORMATION**
- 8.1. By accessing this **HERITAGE AUCTIONEERS SDN. BHD.** website, the E-Bidders acknowledge and agree that **HERITAGE AUCTIONEERS SDN. BHD.** website may collect, retain, or disclose the E-Bidder’s information or any information by the e-bidders for the effectiveness of services, and the collected, retained or disclosed information shall comply with Personal Data Protection Act 2010 and any regulations, laws or rules applicable from time to time.
  - 8.2. E-Bidders agree to accept all associated risks when using the service in the **HERITAGE AUCTIONEERS SDN. BHD.** website shall not make any claim for any unauthorized access or any consequential loss or damages suffered.
  - 8.3. E-Bidders shall be responsible for the confidentiality and use of password and not to reveal the password to anyone at any time and under any circumstances, whether intentionally or unintentionally.
  - 8.4. E-Bidders agree to comply with all the security measures related to safety of the password or generally in respect of the use of the service.
  - 8.5. E-Bidders accept the responsibility that in any event that the password is in the possession of any other person whether intentionally or unintentionally, the E-Bidders shall take precautionary steps for the disclosure, discovery, or the Bidders shall immediately notify **HERITAGE AUCTIONEERS SDN. BHD.**
- 9. INTELLECTUAL PROPERTY**
- 9.1. Any information, contents, materials, documents, details, graphics, files, data, text, images, digital pictures, or any visual being displayed in the **HERITAGE AUCTIONEERS SDN. BHD.** website shall not be used or published either by electronic, mechanical, photocopying, recording or otherwise without the permission from **HERITAGE AUCTIONEERS SDN. BHD.** website.
  - 9.2. In the event of any infringement of intellectual property rights under the Terms and Conditions herein, **HERITAGE AUCTIONEERS SDN. BHD.** website may use any available legal remedies which may include the demand for actual or statutory damages, solicitors’ fees and injunctive relief.
- 10. MISCELLANEOUS**
- 10.1 In the event there is any discrepancy, misstatement or error appearing in translations of the particulars and the Terms and Conditions to any other language (if any), the Terms and Conditions in the English Language version shall prevail.