

PERISYTIHARAN JUALAN

DALAM PERKARA MENGENAI PERJANJIAN KEMUDAHAN KOMPOSIT DAN PENYERAHANHAK
BERTARIKH 01 HARIBULAN DISEMBER, 2003

ANTARA

AmBank (M) Berhad (196901000166[8515-D])

PIHAK PEMEGANG SERAHHAK/BANK

DAN

GOBALA KRISHNAN A/L SOLAI (NO. K/P: 701207-10-6315/A2078090)

PIHAK PENYERAHHAK/PEMINJAM

Dalam menjalankan hak dan kuasa yang telah diberikan kepada Pihak Pemegang Serahhak/Bank dibawah Perjanjian Kemudahan Komposit Dan Penyerahanhak Bertarikh 01 Haribulan Disember, 2003 diantara Pihak Pemegang Serahhak/Bank dan Pihak Penyerahhak/Peminjam yang diperbuat dalam perkara diatas, adalah dengan ini diisytiharkan bahawa Pihak Pemegang Serahhak/Bank tersebut dengan bantuan Pelelong yang tersebut dibawah

AKAN MENJUAL HARTANAH YANG DIHURAIKAN DI BAWAH SECARA

LELONGAN AWAM

PADA HARI SELASA, 12 HARIBULAN NOVEMBER, 2024 PADA PUKUL 11.00 PAGI
LELONGAN SECARA ATAS TALIAN DI LAMAN WEB ESZAM AUCTIONEER SDN BHD (eZ2Bid)

Penawar yang berminat boleh mengemukakan bidaan untuk Hartanah atas talian ("online") melalui laman web www.eszamauctioneer.com
(Untuk bidaan atas talian, sila daftar sekurang-kurangnya satu (1) hari bekerja sebelum hari lelongan untuk tujuan pendaftaran & pengesahan)
PENAWAR ATAS TALIAN ADALAH SELANJUTNYA TERTAKLUK KEPADA TERMA-TERMA DAN SYARAT-SYARAT DI www.eszamauctioneer.com

- NOTA: (1) Sebelum jualan lelong, bakal-bakal pembeli adalah dinasihatkan:-
i) memeriksa harta tersebut, ii) membuat carian hakmilik induk secara rasmi, iii) membuat pertanyaan dengan Pihak Pemaju/Tuan Punya dan/atau pihak-pihak lain yang berkenaan
iv) memperolehi salinan Syarat-syarat Jualan daripada pelelong.
(2) Material ini adalah berdasarkan maklumat yang kami anggap boleh dipercayai. Oleh kerana ini diperolehi daripada pihak ketiga, kami tidak boleh memastikan bahawa ianya adalah tepat atau lengkap. Oleh itu ia adalah tertakluk kepada kesilapan atau apa-apa maklumat yang tertinggal.
(3) Setakat tarikh lelongan, kebenaran (jika perlu) dari Pihak Pemaju/Tuan Punya dan/atau pihak-pihak lain yang berkenaan masih belum diperolehi, walaubagaimanapun, ia adalah tanggungjawab dan liabiliti bakal-bakal pembeli atas perbelanjaan kosnya sendiri untuk mendapatkan kebenaran/pindahmilik (jika perlu) daripada Pihak Pemaju/Tuan Punya dan/atau pihak-pihak lain yang berkenaan.

BUTIR-BUTIR HAKMILIK

Hakmilik Strata bagi harta tersebut sudah dikeluarkan.

No. Hakmilik Strata & No. Lot	: Geran 76620/M4/5/259, Lot 23271, Mukim Rasah, Daerah Seremban, Negeri Sembilan. (No. Bangunan M4, No. Tingkat 5, No. Petak 259)
No. Hakmilik Induk & No. Lot	: Geran 76620, Lot 23271 (dahulu dikenali sebagai HSD 141808, PT 15096), Mukim Rasah, Daerah Seremban, Negeri Sembilan.
No. Petak Pemaju	: No. Petak 16-3A-2, Garden Avenue Low Cost Apartments (Fasa 3), Seremban 2, Negeri Sembilan
Anggaran Keluasan Lantai	: 59.64 meter persegi (642 kaki persegi)
Penjual/Pemaju	: RB Land Sdn Bhd (No. Syarikat: 282137-P) (dahulu dikenali sebagai Seremban Two Sdn Bhd)
Tuanpunya	: Perbadanan Kemajuan Negeri, Negeri Sembilan
Pemilik Benefisial	: Gobala Krishnan A/L Solai (No. K/P: 701207-10-6315/A2078090)
Bebanan	: Hartanah ini diserahkan kepada AmBank (M) Berhad
Pegangan	: Selama-lamanya
Kategori Kegunaan Tanah	: Bangunan
Syarat Nyata	: Tanah ini hendaklah digunakan untuk bangunan kediaman sahaja.
Sekatan Kepentingan	: Tanah yang diberimilik ini tidak boleh dipindahmilik, dipajak, digadai melainkan dengan kebenaran bertulis daripada Pihak Berkuasa Negeri.

LOKASI DAN PERIHAL HARTANAH:

Hartanah tersebut adalah satu unit pangsapuri kos rendah tiga bilik tidur yang beralamat di Unit No. Dahlia A, 16-3A-02, Garden Avenue, Jalan S2 G5, Seremban 2, 70300 Seremban, Negeri Sembilan Darul Khusus.

HARGA RIZAB:

Hartanah tersebut akan dijual dalam keadaan "sepertimana sedia ada" dan tertakluk kepada satu harga rizab sebanyak **RM80,000.00 (RINGGIT MALAYSIA LAPAN PULUH RIBU SAHAJA)** dan tertakluk kepada Syarat-Syarat Jualan dan kebenaran (jika perlu) daripada Pihak Pemaju/Tuan Punya dan/atau pihak-pihak lain yang berkenaan. Pembeli melalui online juga tertakluk kepada terma-terma dan syarat-syarat terkandung dalam www.eszamauctioneer.com

CUKAI

Jualan hartanah tersebut akan dikenakan cukai berdasarkan mana-mana Akta terkini atau selepasnya yang dikuatkuasa oleh Kerajaan Malaysia yang mana berkenaan.

CAJ-CAJ:

Sebarang tunggakan caj perkhidmatan atau penyelenggaraan tanpa faedah penalti lewat (jika ada) yang tertunggak dan perlu dibayar kepada mana-mana pihak berkuasa yang berkenaan dan/atau pihak Pemaju akan ditanggung oleh pihak Pemegang Serah Hak/Bank setakat tarikh jualan lelongan hartanah tersebut (tertakluk kepada maksimum 10% daripada harga rizab) yang akan dibayar daripada harga pembelian dengan syarat bahawa Pemegang Serah Hak/Bank menerima bil yang terperinci untuk caj perkhidmatan penyelenggaraan dan penyata akaun yang dikeluarkan oleh pihak berkuasa dan/atau pemaju yang berkaitan daripada Pembeli dalam tempoh sembilan puluh (90) hari dari tarikh jualan dan jika gagal pembeli tidak akan layak untuk apa-apa pembayaran, dan sebarang jumlah tertunggak yang perlu dibayar selepas tarikh jualan lelongan hartanah tersebut hendaklah ditanggung oleh pembeli.

DEPOSIT:

Bagi penawar-penawar yang berminat adalah dikehendaki mendeposit **sepuluh peratus (10%)** daripada harga rizab atau minimum **RM2,000.00** yang mana paling tinggi dalam bentuk **Bank Draf atau Kasvier Order** di atas nama **AmBank (M) Berhad** untuk akaun (**Gobala Krishnan A/L Solai**) atau melalui **Pemindahan segera Perbankan atas talian** sekurang-kurangnya sebelum jam 5.00pm satu (1) hari sebelum tarikh lelongan. Untuk pembida dalam talian, sila rujuk Terma & Syarat di www.eszamauctioneer.com untuk cara-cara pembayaran deposit.

UNTUK MENDAPATKAN BUTIR-BUTIR SELANJUTNYA, sila berhubung dengan **Tetuan Heiley Hassan, Tan & Partners**, Peguamcara bagi Pihak Pemegang Serahhak/Bank yang beralamat di Unit No. A-3A-4, Megan Avenue 1, No. 189, Jalan Tun Razak 50400 Kuala Lumpur. [No. Ruj: TTK/ABB(RCRM)/136/2024, No. Tel: 03-27704948, No Faks: 03-27703955, E-mel: gen@hhtpartners.com] atau Pelelong.

TETUAN ESZAM AUCTIONEER SDN. BHD. (No. Syarikat: 200701002904/760902-H)

ALAMAT : No. 14, Tingkat 1, Jalan Dato' Lee Fong Yee,
70000 Seremban, Negeri Sembilan Darul Khusus
NO TEL : 06-7629786, NO. H/P: 018-6639786/016-6639786
NO. FAX : 06-7616986
EMAIL : eszamauctioneer@yahoo.com
LAMARAN WEB : www.eszamauctioneer.com
RUJUKAN KAMI : EZ/LACA/AMBB/890/2024/MNS/Fatin

MOHD NIZAM BIN MOHD SHARIF (PJK)

(Pelelong Berlesen)

PROCLAMATION OF SALE

IN THE MATTER OF THE COMPOSITE LOAN AGREEMENT AND ASSIGNMENT DATED 01ST DAY OF DECEMBER, 2003

BETWEEN

AmBank (M) Berhad (196901000166[8515-D])

ASSIGNEE/BANK

AND

GOBALA KRISHNAN A/L SOLAI (NRIC NO.: 701207-10-6315/A2078090)

ASSIGNOR/BORROWER

In exercise of the rights and powers conferred upon the Assignee/Bank under the Composite Loan Agreement And Assignment Dated 01st Day Of December, 2003 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

ON TUESDAY, THE 12TH DAY OF NOVEMBER, 2024 AT 11.00 A.M. IN THE MORNING
AUCTION VIA ONLINE BIDDING AT WEBSITE ESZAM AUCTIONEER SDN BHD (e22Bid)

The prospective bidders may submit bids for the property online via www.eszamauctioneer.com

(For online bidding, please register at least one (1) working days before the auction day for registration & verification purposes)

ONLINE BIDDERS ARE FURTHER SUBJECT TO THE TERMS AND CONDITIONS ON www.eszamauctioneer.com

- NOTE:
- Prior to the auction sale, all intending bidders are advised to:-
 - inspect the subject property
 - conduct an official title search
 - enquire from the Developer/Proprietor and/or other relevant authorities
 - obtain a copy of the Conditions of Sale from the Auctioneer
 - 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.
 - 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 at his/her/their own costs expenses to obtain the consent/transfer (if applicable) pertaining the auction from Developer/Proprietor and /or the relevant authorities.

PARTICULARS OF TITLE

The Strata Title for the subject property has been issued.

Strata Title No. & Lot No. : Geran 76620/M4/5/259, Lot 23271, Mukim of Rasah, District of Seremban, State of Negeri Sembilan.
(Building No. M4, Storey No. 5, Parcel No. 259)

Master Title No. & Lot No. : Geran 76620, Lot 23271 (formerly known as HSD 141808, PT 15096), Mukim of Rasah, District of Seremban, State of Negeri Sembilan.

Developer's Parcel No. : Parcel No. 16-3A-2, Garden Avenue Low Cost Apartments (Phase 3), Seremban 2, Negeri Sembilan

Approximate Floor Area : 59.64 square metres (642 square feet)

Vendor/Developer : RB Land Sdn Bhd (Company No. 282137-P) (formerly known as Seremban Two Sdn Bhd)

Proprietor : Perbadanan Kemajuan Negeri, Negeri Sembilan

Beneficial Owner(s) : Gobala Krishnan A/L Solai (Nric No.: 701207-10-6315/A2078090)

Encumbrance : The subject property is currently assigned to AmBank (M) Berhad

Tenure : Freehold

Category Of Land Use : "Bangunan"

Express Conditions : "Tanah ini hendaklah digunakan untuk bangunan kediaman sahaja."

Restriction In-Interest : "Tanah yang dimiliki ini tidak boleh dipindahmilik, dipajak, digadai melainkan dengan kebenaran bertulis daripada Pihak Berkuasa Negeri."

LOCATION AND DESCRIPTION OF THE PROPERTY:

The subject property is a **three bedroom low cost apartment unit** bearing postal address of **Unit No. Dahlia A, 16-3A-02, Garden Avenue, Jalan S2 G5, Seremban 2, 70300 Seremban, Negeri Sembilan Darul Khusus.**

RESERVE PRICE:

The subject property will be sold on "as is where is" basis subject to a reserve price of **RM80,000.00 (RINGGIT MALAYSIA EIGHTY THOUSAND 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. **Online bidders are further subject to the Terms & Conditions on www.eszamauctioneer.com.**

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/Bank 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/ Bank 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** for the account (**Gobala Krishnan A/L Solai**) or remit the same through **online banking instant transfer by 5 pm** at least one (1) day before auction day. For online bidders please refer to the Terms & Conditions on www.eszamauctioneer.com on the manner of payment of the deposit.

FOR FURTHER PARTICULARS, please apply to **Messrs Heiley Hassan, Tan & Partners**, Solicitors for the Assignee/Bank, at Unit No. A-3A-4, Megan Avenue 1, No. 189, Jalan Tun Razak 50400 Kuala Lumpur. [Ref No: TTK/ABB(RCRM)/136/2024, Tel No: 03-27704948, Fax No: 03-27703955, Email: gen@hhtpartners.com] or the undermentioned Auctioneer.

MESSRS ESZAM AUCTIONEER SDN BHD (Co. No. 200701002904/760902-H)

ADDRESS : No. 14, Tingkat 1, Jalan Dato' Lee Fong Yee,
70000 Seremban, Negeri Sembilan Darul Khusus.

TEL NO : 06-7629786, H/P NO: 018-6639786/016-6639786

FAX NO : 06-7616986

EMAIL : eszamauctioneer@yahoo.com

WEBSITE : www.eszamauctioneer.com

OUR REF : EZ/LACA/AMBB/890/2024/MNS/Fatin

MOHD NIZAM BIN MOHD SHARIF (PJK)

(Peletong Berlesen)

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 **Composite Loan Agreement And Assignment Dated 01st Day Of December, 2003** executed by **Gobala Krishnan A/L Solai (Nric No.: 701207-10-6315/A2078090)** ("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 of **AmBank (M) Berhad for the a/c of (Gobala Krishnan A/L Solai)**, 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.eszamauctioneer.com**

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 **Composite Loan Agreement And Assignment Dated 01st Day Of December, 2003** 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;
- 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; and
- 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 for the a/c of (Gobala Krishnan A/L Solai)**, as payment of deposit and towards part payment of TPP. **For online bidders please refer to the Terms & Conditions www.eszamauctioneer.com 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 and the Late Payment Interest("LPI") 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 for the a/c of (Gobala Krishnan A/L Solai)** 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 LPI/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 LPI/compensation shall be paid by the Purchaser in the manner and time stipulated by the Assignee/Bank. In the event that the Purchaser settles the Balance Purchase Price within the stipulated or extended time, any LPI/compensation paid shall remain non-refundable.
- 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 LPI/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. 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.

15. 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).

16. SALE BEING SET ASIDE OR CONSENT NOT BEING OBTAINED

16.1 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.

16.2 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 LPI/compensation (if any) paid pursuant to Clause 7.5 above shall be forfeited to the Assignee/Bank.

16.3 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.

17. TIME OF THE ESSENCE

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. For online bidders, the Terms & Conditions stated in www.eszamauctioneer.com may shall also apply.

TERMS AND CONDITIONS eZ2Bid

The Terms and Conditions specified to all user of www.eszamauctioneer.com
(**ESZAM AUCTIONEER SDN BHD website**)

1. RECITALS

- 1.1 The online Term and Conditions shall apply to every electronic public auction sales made via **ESZAM AUCTIONEER SDN BHD** website.
- 1.2 The online Term and Conditions specified herein shall be read together with the Conditions of Sale as attached to the Proclamation of Sale.

2. ELIGIBILITY TO BID

- 2.1 The bidder must be 18 years old and above, sound mind and not declared as bankrupt.
- 2.2 **For Company bidder(s):** The bidder must be incorporated under the laws of Malaysia and must not be in liquidation.
- 2.3 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-bidder to participate in the public auction and complete the purchase in the event of successful bid.
- 2.4 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.
- 2.5 **Any person who has not reached the age of 18 (minor) or a bankrupt shall not be permitted to participate in the auction proceedings either On-site bidder or E-bidding.**

3. REGISTRATION OF EZ2BID

- 3.1 E-bidders will log in into **ESZAM AUCTIONEER SDN BHD** secured website. E-bidders shall provide true, current and accurate information to register as a user.
- 3.2 **For individual bidder(s):** The E-bidder's need to key in their personal information (correspondence address & telephone contact number) accurately for online registration and upload the bidder's NRIC (both sides) to **ESZAM AUCTIONEER SDN BHD** website.
- 3.3 **For Company bidder(s):** The E-bidder's need to key in their company details for online registration and upload a certified true copy of The Company's Memorandum And Articles Of Association (M&A), Forms 44, 24 and 49, Board Of Director Resolution (or its equivalent forms under the Companies Act 2016) and authorize bidding letter than upload to **ESZAM AUCTIONEER SDN BHD** website.
- 3.4 For agent acting for individual bidders: The documents shall be uploaded into the **ESZAM AUCTIONEER SDN BHD** website are a copy of the E-bidder Identity Card, copy of the Agent's Identity Card, a copy of Letter of Authorization and evidence of Deposit payment.
- 3.5 E-bidders must make deposit payment **10%** of the reserve price or depend on Bank requirement as required under the **Conditions of Sale (COS)** attached to **Proclamation of Sale (POS)**. Payment of deposit must be made via local bank transfer with the following details:-

- (a) **Account's Name** : **ESZAM AUCTIONEER SDN BHD**
(b) **Name of Bank** : **CIMB BANK BERHAD**
(c) **Bank's Account No** : **800-444-3684**

Note: The evidence of the transfer must be upload and submitted.

- 3.6 The auctioneer will be holding any deposit received in the auctioneers' bank account as "stakeholder" and the deposit will be paid out depending on the events as stipulated.
- 3.7 E-bidder 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 **ESZAM AUCTIONEER SDN BHD** website latest by 5.00 p.m. at least one (1) working day before the auction date.
- 3.8 After registration is successful, the E-bidder will receive the **Verification Code** via email and SMS to verify the phone number and email address.
- 3.9 E-bidders should keep the E-bidders' account details strictly confidential and must not permit any third party to use or access the E-bidders' account on behalf or otherwise. The E-bidders shall be liable for any bids made via the E-bidders' account.
- 3.10 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.
- 3.11 It is the sole and absolute responsibility of all intending E-bidders and at the E-bidders' own costs and expense, to 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 Reserved 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.
- 3.12 The Auctioneer, the Assignee/Bank, the Assignee/Bank's solicitors and **ESZAM AUCTIONEER 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.
- 3.13 Registration shall be subject to verification and approval of **ESZAM AUCTIONEER SDN BHD** website and subject further to deposit payment being cleared by the bank. Please take note that approval from **ESZAM AUCTIONEER 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 **ESZAM AUCTIONEER SDN BHD** website. Neither **ESZAM AUCTIONEER 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 3 working days.

4. BEFORE AUCTION

- 4.1 All intended bidder can access to the **ESZAM AUCTIONEER SDN BHD** website to download the Proclamation of Sale (POS) & Conditions of Sale (COS). By proceeding with E-bidding with **ESZAM AUCTIONEER SDN BHD**, the E-bidders' have agreed and accepted the **ESZAM AUCTIONEER SDN BHD** terms and conditions. Any bid by registered E-bidder shall not be withdrawn once entered.
- 4.2 All intended bidders can choose either to attend the auction physically (On-site bidder) or by E-bidding. For E-bidding, they can bid online from any places as long as the E-bidder has the device and good internet connection to log in to our **ESZAM AUCTIONEER SDN BHD** website and click on eZ2Bid button.
- 4.3 The E-bidder will receive the Bidding Code one (1) day before auction date and link to bid online via email and SMS once **ESZAM AUCTIONEER SDN BHD** receiving of the deposit.

5. ON THE AUCTION DAY

- 5.1 **E-bidders MUST use browser either Google Chrome, Mozilla Fire Fox, Safari, Internet Explore or Microsoft Edge. E-bidders are responsible for ensuring that internet access and connectivity is running smoothly throughout the whole bidding process. The Bank and Auctioneer will not be held responsible or liable for any interruptions, delays, failures, errors, omissions or loss of information etc.**

- 5.2 During the auction day, the E-bidder need to click on link given and enter the Bidding Code before the auction start.
- 5.3 The amount of incremental bid will appear on the website prior to the commencement of the auction. The Auctioneer has the right to set a new reserve price in the event there is more than 1 bidder.
- 5.4 "Standby" is displayed, followed by a message stating "Bidding started". Enter your "Start bid".
- 5.5 Registered E-bidders may submit their bid at any of these stages of biddings by entering the bid amount. On-site bidders can bid by rise up the bidding card and E-bidder can start bidding by click on "Place Bid".
- 5.6 Auctioneer will declare the successful bidder (highest bidder) after counting down 3 calls, eg: First Calling, Second Calling and Final Calling.
- 5.7 When system mentions "No more bid" and display "sold" appear, no further bids will be accepted by the Auctioneer, whether on-site or through the **ESZAM AUCTIONEER SDN BHD** website.
- 5.8 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.
- 5.9 Please refer to terms and conditions Proclamation of Sales and Contract of Sale for more information.
- 5.10 The screen will show the successful bidder and the E-bidders will receive an email either they success or not from **ESZAM AUCTIONEER SDN BHD**.
- 5.11 Any bid once entered by the registered online E-bidders shall be binding and the bid shall not be withdrawn or retracted in any manner whatsoever after the fall of the hammer.
- 5.12 The information shown and/or prompted on the screen handled by the **ESZAM AUCTIONEER 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.
- 5.13 Unsuccessful E-bidders deposit will be refunded to the same account from which the deposit transfers within 3 working days from the auction date.

6. AFTER AUCTION

- 6.1 Any successful E-bidders shall and undertake to sign the contract of sale and pay the additional 10% for the difference of the purchase price within two (2) working days to **ESZAM AUCTIONEER SDN BHD** bank account or prepare a bank draft. In the event that the successful E-bidder fail to pay additional deposit, the Bank will forfeit the deposit and the sale will be deemed cancelled/terminated and the property may be put up for subsequent auction without further notice to the said E-bidders.
- 6.2 The Auctioneer shall send the Memorandum of Sale for stamping and thereafter forward the same together with the deposit paid and the differential sum paid to the Assignee/Bank.
- 6.3 For stamping of 5 contracts, the successful E-bidders shall transfer RM150.00 to the **ESZAM AUCTIONEER SDN BHD** bank account or pay by cash when signing the Contract of Sale within two (2) working days from the Auction day.
- 6.4 For E-bidding: The auctioneer and the Bank's solicitor shall sign all 5 copies of contract first, right after the auction. The successful E-bidder must to come to the **ESZAM AUCTIONEER SDN BHD** main office in Seremban to sign the Contract of Sale within two (2) working days after the auction date.
- 6.5 Any successful E-bidder who is unable to attend the signing of the Contract of Sale within the stipulated time, may authorize any person or an agent to sign the Contract of Sale on his behalf by inserting the particulars of the authorized person at **ESZAM AUCTIONEER SDN BHD** website. The authorized person shall provide the Letter of Authorization signed by the successful E-bidder together with a copy of his/her Identity Card to the Auctioneer.
- 6.6 If the successful bidder fail to sign the Contract Of Sale within three (3) working days, the Bank has the right to forfeit the deposit and the sale will be deemed terminated and the property may be put up for the next auction. The balance of selling price must be settled within 90 days from the auction date.

7. PERSONAL DATA PROTECTION

- 7.1 By accessing **ESZAM AUCTIONEER SDN BHD** website, the E-Bidders acknowledge and agree that **ESZAM AUCTIONEER 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.
- 7.2 **ESZAM AUCTIONEER SDN BHD** will process E-bidder personal data such as name, address, NRIC and contact number for registration and E-bidding purposes. E-bidders shall be responsible for the username and password of eZ2Bid and not to reveal the password to anyone.
- 7.3 E-bidders agree to accept all associated risks when using the service in the **ESZAM AUCTIONEER SDN BHD** website and shall not make any claim for any unauthorized access or any consequential loss or damages suffered.
- 7.4 E-bidders shall be responsible for the confidentiality and the use of password and not to reveal the password to anyone at any time and under any circumstances, whether intentionally or unintentionally.
- 7.5 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.
- 7.6 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 **ESZAM AUCTIONEER SDN BHD**.

8. APPLICABLE LAWS AND JURISDICTION

- 8.1 The usage of **ESZAM AUCTIONEER SDN BHD** website together with the terms and conditions hereof shall be governed by and construed in accordance with the laws of Malaysia.
- 8.2 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.

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 **ESZAM AUCTIONEER SDN BHD** website shall not be used or published either by electronic, mechanical, photocopying, recording or otherwise without the permission from **ESZAM AUCTIONEER SDN BHD** website.
- 9.2 In the event of any infringement of intellectual property rights under the Terms and Conditions herein, **ESZAM AUCTIONEER 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.