

# Land Lease Agreement

BETWEEN

Y COMPLEX CO., LTD.

AND

YANGON TECHNICAL AND TRADING CO., LTD.

DATED THE [•] DAY OF [DECEMBER] 2017

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## Land Lease Agreement

THIS AGREEMENT is made on the [..] day of [September] 2017,

### BETWEEN:

- (1) **Yangon Technical and Trading Co., Ltd.** (Company Registration No. 1547 of 2009-2010), a company incorporated under the laws of the Republic of the Union of Myanmar and having its principle office at #1104/1105/1106 Ye Ta Khon Tower, 531 Lower Kyee Myin Daing Road, Kyee Myin Daing Township, Yangon, Myanmar (the "**Lessor**"); and
- (2) **[Y Complex Company Limited]** (Company Registration No. [..]), a company incorporated under the laws of Republic of the Union of Myanmar and having its principle office at [La Pyayt Wun Plaza, No.37, Alanpya Pagoda Road, Room No.612 (6th Floor), Dagon Township, Yangon, Myanmar] (the "**Lessee**")

(collectively the "**Parties**", and each individually a "**Party**").

### WHEREAS:

- (A) Lessor is a company established under the Myanmar Companies Act 1914 for the purpose of carrying out agricultural trading, investment, and real estate. Lessor entered into a Build-Operate-Transfer (BOT) Lease Agreement with the Office of Commander-in-Chief (Army), Office of Quartermaster General, regarding the Land (as defined below) on 15 October 2013 ("**Head Lease**"). The BOT Lease Agreement was approved by the Myanmar Investment Commission ("**MIC**") pursuant to the Myanmar Citizens Investment Law and the Lessor obtained a MIC permit ("**MCIL Permit**").
- (B) Lessee is a joint venture company established by Yangon Museum Development Pte. Ltd ("**YMD**"), a Singapore company and Lessor pursuant to the joint venture agreement entered between YMD and Lessor ("**Joint Venture Agreement**") for the purpose of developing the Premises (as defined below) into a mixed-used development comprising of, among others, office block, serviced apartment, a five star hotel, and retail space ("**Development**") as well as to undertake the management of the Development ("**Business**").
- (C) YMD and the Lessor submitted an application to the MIC in 2017 to obtain the MIC permit issued under the MIL, which among others, approved the long term lease by Lessor to the Lessee. On [..] 2017, MIC issued the MIC Permit, whereby MIC granted the Lessee with the right to obtain the right to lease, subject to the duration of lease under the Head Lease, for up to 50 years with the possibility of two extensions of 10 years each in accordance with the terms of this Agreement, which was also submitted as agreed form to the MIC. Contemporaneously, the Lessor returned the MCIL Permit to the MIC.
- (D) Lessor is desirous of leasing the Premises to Lessee and Lessee has agreed to lease the Premise from the Lessor for the purpose of developing the Premises into the Development.
- (E) The Parties have agreed to enter into this Agreement to give effect to their intentions and to record and regulate each of the Parties' respective rights.

**NOW IT IS HEREBY AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**"Affiliate"** means an entity that, directly or indirectly, controls, is controlled by or is under common control with a Party.

**"Agreement"** means this Land Lease Agreement entered into between Lessor and Lessee on the [..] day of [..] 2016.

**"AH"** means Ayeyar Hinthar Holding Co., Ltd, the parent company of the Lessor.

**"Annual Rent"** has the meaning given to it in Clause 4.2(b)(i).

**"Applicable Law"** means with respect to a Party, any law, rule, regulation, statutory provision, directive, treaty, judgement, decree of any Governmental Authority (including stock exchange), or notification of any Governmental Authority, including any promulgation, announcement, order, direction or written policy of the Government Authority having the force of law applicable to such Party.

**"Business"** has the meaning given to it in Recital (B).

**"Business Days"** means a day, other than a Saturday, Sunday or a public holiday, on which commercial banks are open for ordinary banking business in Myanmar, Japan and Singapore.

**"Business Schedule"** means the business schedule attached as Appendix 6 in the Joint Venture Agreement.

**"Change of Law"** means the coming into effect of (i) a change or new Applicable Law, or (ii) any applicable judgment of a relevant court of law which changes the interpretation of the Applicable Law, which will directly or indirectly affect the lease, transfer, ownership and/or disposal of the Premises.

**"Construction Period"** has the meaning given to it in the Clause 4.2(a)(i).

**"Development"** has the meaning given to it in Recital (B).

**"Effective Date"** has the meaning given to it in Clause 2.

**"Encumbrance"** means any form of legal, equitable or security interests, including but not limited to any mortgage, charge (whether fixed or floating), pledge, lien, assignment of rights or receivables, debenture, restriction, hypothecation, title retention or any other encumbrance or security interest, or other right of any person (including any right to acquire, option, right of refusal or right of pre-emption), and **"Encumbered"** shall be construed accordingly.

**"Extended Term"** has the meaning given to it in the Clause 3.2(b).

**"Extension Notice"** has the meaning given to it in the Clause 3.2(c).

**"Force Majeure Event"** has the meaning given to it in the Clause 13.8(a).

**"Good Standing"** means, with regard to a Party, that such Party has paid all tax and other statutory dues it is obliged to and has submitted, updated, filed and reported any and all

documents, forms, declarations and reports that it may be required to under Applicable Law.

**"Further Extended Term"** has the meaning given to it in the Clause 3.2(d).

**"Governmental Authority"** means any foreign, domestic, federal, supra-national, national, provincial, territorial, regional, municipal, state or local governmental authority, quasi-governmental authority, court, governmental or self-regulatory organization, commission, tribunal, organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, as the context or the terms of this Agreement may require, and any successor to or any assignee of any of the foregoing.

**"Head Lease"** has the meaning given to it in Recital (A), which is attached hereto as APPENDIX 1.

**"Initial Closing Date"** has the meaning given to it in Clause 6.1(a) of the Joint Venture Agreement.

**"Initial Conditions Precedent"** has the meaning given to it in Clause 4.1 of the Joint Venture Agreement.

**"Initial Rent"** has the meaning given to it in the Clause 4.2(a)(i).

**"Initial Term"** has the meaning given to it in the Clause 3.2(a).

**"Joint Venture Agreement"** has the meaning given to it in Recital (B).

**"Land"** means the land located at Plot No. 11A/15-16-17, Land Survey Block No. 68/45D, Dagon Township, corner of Shwedagon Pagoda Road and Pantra Street, the map of which is attached hereto as APPENDIX 2.

**"Land Premium"** has the meaning given to it in the Clause 4.1(a).

**"Lease"** has the meaning given to it in the Clause 3.1.

**"Lessee"** means Y Complex Co., Ltd.

**"Lessor"** means Yangon Technical and Trading Co., Ltd.

**"Losses"** means all liabilities of every kind and nature, including all fines, fees, losses, costs, claims, judgments, awards, damages, penalties, or expenses (including reasonable legal fees and expenses and costs of investigation and litigation), and all expenditures or expenses incurred to cover, remedy or rectify any such loss but excluding all consequential loss or consequential damages (including by way of illustration, loss of profits and loss of revenue) incurred whether directly or indirectly by a Party for whatever reason or ground;

**"Letter of Undertaking"** means a letter issued by AH to Lessee, whereby AH agrees to observe, perform and be bound by its obligations and undertaking set out in this Agreement, in particular the Indemnity clause referred to in Clause 4.3(h), substantially in the form attached hereto as APPENDIX 4.

**"MIC"** has meaning given to it in Recital (A).

**"MIC Permit"** means the permit issued by the MIC under section 25 (c) of the MIL.

**"MIL"** means the Myanmar Investment Law 2016 (Pyidaungsu Hluttaw Law No. 40/2016).

"**MOD**" has the meaning given to it in the Clause 3.2(d).

"**Myanmar**" means the Republic of the Union of Myanmar.

"**Operation Period**" has the meaning given to it in the Clause 4.2(b)(i)

"**Premises**" means the 16,007.89 m<sup>2</sup> (approximately 3.955 acres) of land out of the Land which will be leased from Lessor to Lessee for the Development, particulars of which are specified in APPENDIX 3.

"**Rent**" means the Initial Rent and the Annual Rent.

"**Rent Reserve Account**" has the meaning given to it in the Clause 4.3(a).

"**Reserved Amount**" has the meaning given to it in the Clause 4.3(d).

"**Second Closing Date**" has the meaning given to it in Clause 6.1(b) of the Joint Venture Agreement.

"**Second Conditions Precedent**" has the meaning given to it in Clause 4.2 of the Joint Venture Agreement.

"**Shares**" means the ordinary shares in the capital of the Lessee from time-to-time.

"**SIAC**" has the meaning given to it in Clause 12.2.

"**Subsidiary**" means an entity in which (i) a Party directly or indirectly owns or controls more than 50 percent of the shares, (ii) a Party controls the board of directors or (iii) a Party has control over.

"**Surplus**" has the meaning given to it in Clause 4.1(b).

"**Term**" has the meaning given to it in the Clause 3.2(d).

"**YMD**" has meaning given to it in the Recital (B).

## 1.2 Interpretation

- (a) References to "**Recitals**", "**Clauses**" and "**Appendixes**" are to recitals and clauses of, and appendixes to this Agreement and references to this "**Agreement**" shall mean this Agreement and the Appendixes hereto.
- (b) The headings in this Agreement are for convenience only and shall not affect the interpretation hereof.
- (c) Unless the context otherwise requires, references to the singular number shall include references to the plural number and vice versa, references to natural persons shall include bodies corporate, and the use of any gender shall include all genders.
- (d) References to any agreement or document including this Agreement shall include such agreement or document as amended, modified, varied or supplemented from time to time.

- (e) Any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted whether before or after the date of this Agreement so far as such modification or re-enactment applies or is capable of applying to any transactions entered into prior to the date of this Agreement and (so far as liability thereunder may exist or can arise) shall include also any past statutory provisions or regulations (as from time to time modified or re-enacted) which such provisions or regulations have directly or indirectly replaced.
- (f) References to a "**person**" shall be construed so as to include any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality).
- (g) References to times of the day are to local time in the relevant jurisdiction unless otherwise stated.
- (h) The words "**written**" and "**in writing**" include any means of visible reproduction.
- (i) Whenever the word "**including**" is used, it shall be deemed to be followed by the words "**but not limited to**" and where an expression is qualified by one or more examples preceded by the word "**including**", it shall not limit the general scope of that expression.

## 2. THE EFFECTIVE DATE

This Agreement shall come into force and become effective on the date of the signing of this Agreement by both of the Parties, which shall occur after the requisite approvals for Lessee to enter into this Agreement have been obtained from the Governmental Authorities, including the issuance of the MIC Permit ("**Effective Date**").

## 3. THE LEASE

### 3.1 Form of the Lease

In consideration of the payments referred to in Clause 4 and subject to the terms and conditions contained herein, the Lessor hereby leases the Premises to Lessee and Lessee hereby agrees to lease the Premises from Lessor ("**Lease**").

### 3.2 Term of the Lease and Extensions

- (a) The Lease shall commence on the Effective Date and shall continue for term of fifty (50) years, but shall not exceed the term of lease, including renewal(s), of the Head Lease ("**Initial Term**").
- (b) Subject to any restriction under any Applicable Law, the Parties mutually agree that Lessee, at its sole and absolute discretion, is entitled to extend the term of this agreement twice each for a period up to ten (10) years, but shall not exceed the term of lease, including renewal(s), of the Head Lease ("**Extended Term**").
- (c) In the event that Lessee chooses to extend the term of this Agreement pursuant to Clause 3.2(b) above, Lessee shall give a notice to Lessor indicating its intention to extend the term and also proposing the period to be extended, at least one (1) year prior to the

expiration of the Term ("**Extension Notice**"). Upon the Lessor receiving the Extension Notice, the Term of this Agreement shall be extended for the period so proposed by the Lessee in the Extension Notice under the same terms and conditions as this Agreement.

- (d) The Parties acknowledges that, as at the date of this Agreement, the maximum aggregate duration a foreigner may lease a property is restricted under the Applicable Laws. In the event that: (A) the Applicable Laws allow for a longer duration; or (B) remove such restriction as a result of a Change of Law, and a renewal or extension of the current term of the Head Lease is agreed to between Lessor and the Ministry of Defence ("**MOD**"), the Lessor undertakes to, without prejudice to the Lessee's other rights under this Agreement, lease the Premises to the Lessee to the fullest extent allowed under the Applicable Law and the Head Lease, and on the same terms and conditions as set out under this Lease Agreement ("**Further Extended Term**", and together with the Initial Term and the Extended Term, the "**Term**").

#### 4. **LAND PREMIUM AND RENTAL PAYMENT**

##### 4.1 **Land Premium**

- (a) The Lessor and the Lessee agree that the Lessee shall make payments at the total amount of US\$ 60,000,000 as land premium for entering into this Agreement ("**Land Premium**"). The land premium shall be paid partly in cash and partly by issuance of shares to Lessor, pursuant to Clauses 4.1(b) and 4.1(c) below
- (b) Lessee shall pay Lessor US\$ 24,800,000 of the Land Premium ("**Surplus**"), in cash, pursuant to the following:
  - (i) Within 21 Business Days after the execution of this Agreement and subject to fulfilment of the Initial Conditions Precedent (unless otherwise waived by the Lessee in writing) and Lessor providing Lessee with the Letter of Undertaking, Lessee shall pay Lessor US\$ 12,400,000; and
  - (ii) Upon obtaining the High-Rise Inspection Committee approval for the Development and subject to the fulfilment of the Second Conditions Precedent (unless otherwise waived by the Lessee in writing), Lessee shall pay Lessor US\$ 12,400,000.
- (c) Lessee shall pay Lessor US\$ 35,200,000 of the Land Premium, by way of issuing Shares to Lessor, pursuant to the following:
  - (i) On the Initial Closing Date, Lessee shall issue 7,500,000 Shares to Lessor in lieu of the payment of US\$ 7,500,000;
  - (ii) On the Second Closing Date, Lessee shall issue 19,000,000 Shares to Lessor in lieu of the payment of US\$ 19,000,000;
  - (iii) Upon completion of the construction up to the first basement floor of the hotel tower of the Development, the estimated schedule of which is described in the Business Schedule, and the board resolution in Clause 3.5 (a) of the Joint Venture Agreement being passed, Lessee shall issue 8,700,000 Shares to Lessor in lieu of the payment of US\$ 8,700,000.

- (d) The Parties agree and acknowledge that the Land Premium is intended to cover the Term of this Agreement, excluding the Further Extended Term.
- (e) The payment of Land Premium under Clause 4.1(b) shall be made to a bank account in Myanmar separately designated by Lessor. Any expenses related to the payment of the Land Premium pursuant to Clause 4.1(b) shall be borne by Lessee.
- (f) In the event of the termination of this Agreement, due to:
  - (i) the fault of Lessor, the Land Premium shall be refunded to Lessee;
  - (ii) no fault of either Party, there shall be no refund of the Land Premium or the Surplus.

## 4.2 Rental Payment

In consideration of the Lease, subject to the terms and conditions of the MIC permit, the Lessee shall make the following payments as rent to Lessor:

- (a) Rental Payment during the Construction Period
  - (i) During the period from the Effective Date until 14 October 2019 ("**Construction Period**", Lessee shall pay Lessor US\$ 500,000 per full calendar year as rent ("**Initial Rent**").
  - (ii) If the period between the Effective Date to the following 14 October falls short of a full calendar year, the Initial Rent for the period between the Effective Date and the following 14 October shall not be prorated and Lessee shall pay the total US\$ 500,000 for this period.
  - (iii) Subject to Initial Conditions Precedent and after the Rent Reserve Account is opened pursuant to Clause 4.3(a), the Initial Rent for the whole Construction Period shall be paid within 45 Business Days from the execution of this Agreement into the Rent Reserve Account opened pursuant to Clause 4.3.
- (b) Rental Payment during the Operation Period
  - (i) During the period after 15 October 2019 until the end of the Term ("**Operation Period**", Lessee shall pay Lessor, as rent, US\$ 1,822,561 per year ("**Annual Rent**").
  - (ii) The Lessee shall pay the Lessor the Annual Rent on or before 14 October of each year. The Annual Rent shall be paid into the Rent Reserve Account.
  - (iii) The Annual Rent shall be reviewed every five (5) years. The Annual Rent may be increased or decreased at such time of change in the fair market price of a comparable development in the same geographical area. In the event of increase in the Annual Rent, the increase shall not exceed five percent (5%) of the amount stated in Clause 4.2(b)(i).

## 4.3 Rent Reserve Account

- (a) Lessor and Lessee shall open a joint account ("**Rent Reserve Account**") in Myanmar, which shall be used for the purpose of establishing a reserve fund for debiting the rental payments related to the Land. The Rent Reserved Account shall be opened

with a bank mutually agreed by the Lessor and Lessee, provided that (i) the bank shall not be a Subsidiary or Affiliate of a Party and (ii) the account shall be an account that can be used to remit monies to MOD pursuant to Clause 4.3(b). The Rent Reserve Account shall be subject to the condition that any withdrawal from the Rent Reserve Account shall require the signatures from the Managing Directors of both the Lessor and Lessee. The currency of the Rent Reserve Account shall be USD.

- (b) The rental payment from Lessor to the MOD that Lessor is responsible for under the Head Lease, which is US\$ 573,160 per year until 14 October 2019 and US\$ 2,163,136 per year for the remaining period of the Head Lease thereafter, shall be debited from the Rent Reserve Account each year after authorization by the Managing Directors of both the Lessor and Lessee.
- (c) During the Construction Period, provided that the Initial Conditions Precedents are fulfilled, the Rent Reserve Account shall have a reserve of US\$2,292,640 ("**Initial Reserve Amount**") within 45 Business Day from the execution of this Agreement. Lessee shall be responsible for US\$ 2,000,000 and Lessor shall be responsible for US\$ 292,640 of the Initial Reserve Amount. The Initial Reserve Amount shall be funded in the following manner:
  - (i) Lessor shall deposit US\$292,640 into the Rent Reserve Account;
  - (ii) Lessee shall deposit the total amount of the Initial Rent for the Construction Period for the amount of US\$ 1,500,000 into the Rent Reserve Account pursuant to Clause 4.2(a)(iii); and
  - (iii) Lessee will deposit an amount of US\$ 500,000 into the Rent Reserve Account.
- (d) For the period of six (6) years from the commencement of the Operation Period ("**Term of the Initial Operation Reserve**"), the Rent Reserve Account shall always have a reserve of no less than US\$ 4,326,272 ("**Initial Operational Reserved Amount**"). In the event where the rental payment under the Head Lease is revised, the parties shall procure that the Rent Reserve Account always has a reserve of no less than 2 years' worth of the annual rent under the Head Lease. Lessee shall be responsible for US\$ 3,645,122 and Lessor shall be responsible for US\$ 681,150 of the Initial Operational Reserved Amount. The Reserved Amount shall initially comprise of the following:
  - (i) the remaining amount of the Initial Reserve Amount after paying US\$ 1,719,480, which will be US\$ 573,160;
  - (ii) Lessee shall fund the Rent Reserve Account in the amount of US\$ 3,145,122, by 14 October 2019; and
  - (iii) Lessor shall fund the Rent Reserve Account in the amount of US\$ 607,990, by 14 October 2019.
- (e) From the seventh (7<sup>th</sup>) year from the commencement of the Operation Period and after, the Rent Reserve Account shall always have a reserve of no less than US\$ 2,163,136 ("**Operational Reserved Amount**"). In the event where the rental payment under the Head Lease is revised, the parties shall procure that the Rent Reserve Account always has a reserve of no less than 1 year worth of the annual rent under the Head Lease.

- (f) The Rent Reserve Account shall be maintained at no less than the Initial Operational Reserved Amount or the Operational Reserved Amount, as the case may be, by:
- (i) the Lessee funding the Rent Reserve Account at an amount of US\$ 1,822,561 each year pursuant to Clause 4.2(b)(ii) or, in the event that the Annual Rent is revised pursuant to Clause 4.2(a)(iii), an amount corresponding with the revised Annual Rent; and
  - (ii) the Lessor funding the Rent Reserve Account at an amount of US\$ 340,575 or, in the event that the annual rent under the Head Lease is revised, an amount corresponding with the revised annual rent under the Head Lease, by 14 October of each year.
  - (iii) Notwithstanding Clauses 4.2(b)(ii), 4.3(f)(i) and 4.3(f)(ii), the Lessee and Lessor shall not be obliged to fund the Rent Reserved Account on 14 October 2025, unless such Party has failed to comply with its obligation to fund or maintain the Initial Operational Reserve Amount. Lessee's rent shall be credited by the reduced amount of reserve from the Initial Operational Reserve Amount to the Operational Reserved Amount.
- (g) In the event that Lessor fails to fund the Rent Reserve Account pursuant to Clause 4.3(c)(i), 4.3(d)(iii) or 4.3(f)(ii), as the case may be, Lessor agrees that Lessee shall be entitled to fund the Rent Reserve Account on behalf of the Lessor and to set off any amount that Lessee has owed by Lessor to Lessee against any payment of dividends owed to Lessor by Lessee given the Lessor's capacity as a shareholder of Lessee.
- (h) AH agrees to provide to Lessee an unconditional, irrevocable, joint and several liability guarantee, without limitation of time, for any and all payment due to Lessee, including the principle amount, interest, penalty, compound interest, damages for breach of the agreement, indemnification and any and all costs and expenses (including legal fees), arising out of, in connection or under this Agreement. For the avoidance of doubt, AH assumes, by virtue of this Clause, the obligation to fund on behalf of Lessor, the amount Lessor is responsible to fund into the Rent Reserved Account pursuant to Clause 4.3(c)(i), 4.3(d)(iii) or 4.3(f)(ii), as the case may be, if Lessor fails to fund the Rent Reserved Account without delay.
- (i) In the event of the termination of this Agreement, the existing Reserved Amount at the time of termination shall be returned to the Parties in proportion to their responsible amounts set out in Clause 4.3(c) or 4.3(d), as the case may be, or other such amount that the Parties have respectively deposited.

## **5. LESSOR'S OBLIGATIONS**

The Lessor hereby covenants to the Lessee that the Lessor will:

- (a) allow peaceful and quiet holding of the Premises during the Term of this Agreement without any interruption or disturbance of whatsoever nature by the Lessor, its officers, employees, agents or any person lawfully claiming to represent the Lessor. For the avoidance of doubt, Lessor shall undertake discussions and negotiations with the MOD if necessary for Lessee to fully enjoy and use the Premises;
- (b) allow the Lessee to use the Premises free of any restrictions for the purpose of undertaking the Development and engaging in the Business;

- (c) diligently, properly and in a timely manner perform and comply with all the expressed and implied terms and conditions of the Head Lease, including promptly paying and discharging all land premiums, rents, taxes, assessment, duties, fees, charges and other outgoings which are or may be imposed upon the Lessor and/or the Land by any third party including the MOD and other relevant authorities. Lessor shall immediately notify the Lessee of any breach of such terms or of any circumstance that may result in a breach of the terms and conditions of the Head Lease;
- (d) not (i) change, terminate or waive any of its rights to the Premises under the Head Lease, (ii) lease, license, grant an easement over or allow the use of part or all of the Premises to any third party other than the Lessee, or (iii) mortgage, assign, transfer or sell part or all of the Premises to any third party or create any Encumbrance over its rights to the Premises in whole or in part, without the prior written consent of the Lessee;
- (e) as soon as possible and after receiving the Lessee's written instructions to extend the Initial Term as contemplated in Clause 3.2(b), do all things including making all required applications and executing all relevant documents to extend the term of the Head Lease to the maximum possible period of time, which shall be for a term no less than the aggregate of the Initial Term and the Extended Term. Any fees, costs and/or expenses related to extending the Head Lease shall be borne by Lessor;
- (f) comply at all times with any Applicable Law;
- (g) comply at all times with the terms and conditions of the Head Lease and shall not do or omit to do anything which might render the Lessor to be in breach of the terms and conditions of the Head Lease;
- (h) not do or omit to do anything which may result in the (i) termination, cancellation or withdrawal of the Head Lease, or (ii) variation of the terms and conditions of the Head Lease, unless with the written instruction of the Lessee;
- (i) permit the Lessee at the expiration or earlier termination of this Lease to remove all the Lessee's movable items, not including fixtures already installed to the buildings constructed by Lessee for the Development on the Premises;
- (j) pay all land-revenue, duties, fees, charges and any other taxes or payments (if any) as required by a Governmental Authority, including but not limited to the land office or any other authorities;
- (k) co-ordinate with relevant Governmental Authorities and assist in obtaining any approvals, permits and registration of the same (if any) necessary to undertake the Development and engage in the Business, including the High-Rise Inspection Committee's approval for the Development and registration of this Agreement;
- (l) assist the Lessee in getting sufficient power supply, water supply, required IDD telephones, e-mail access, Internet, facsimile lines and other facilities and services required for the Development and Business, and arranging sewage protection, water drilling and protection from floods which may be required, necessary or desirable, for the Lessee's current and future operations of the Business;
- (m) appoint the Lessee as its agent (with full power of substitution), to act on his behalf and in his name or otherwise, at such time and in such manner as the agent thinks fit

to do anything which the Lessor is obliged to do (but has not done) under this Agreement or under the terms and conditions of the Head Lease relating to, and including, (i) any obligations of the Lessor owed to the MOD and/or, other Government Authorities related to the Head Lease and/or the Premises, (ii) the extension of the term of the Head Lease including execution of any documents instruments, notices, orders and directions and (iii) any arrangement to remedy or avoid any breach of the terms and conditions of the Head Lease;

- (n) diligently, properly and in a timely manner perform any acts and comply with all Applicable Law to ensure that it is duly qualified to do business and is in Good Standing in each jurisdiction in which the conduct of its business or the ownership or leasing of its properties requires such qualification, including maintaining the validity of its certificate of incorporation;
- (o) procure that AH takes over the Head Lease with MOD and steps in and replaces Lessor for this Agreement before Lessor ceases to be the lessee of the Head Lease or makes or considers to make any petition for bankruptcy, insolvency, reorganization or liquidation;
- (p) deliver the Premises to the Lessee free of all obstacles, including those both above and below ground, defects and encumbrances, and shall be responsible for removing impediments to the Development, such as conducting soil contamination investigations and taking necessary steps to remove any soil contaminations (if any), address any environmental concerns and conducting investigations to detect objects buried underground and removing such objects (if any); and
- (q) not create or caused to create any obstacles are present on the Premises, including those both above and below ground.

## **6. LESSEE'S RIGHTS AND OBLIGATIONS**

### **6.1 Lessee's Rights**

The Parties hereby agree that the Lessee shall be entitled to:

- (a) fully enjoy and use the Premises, without any interruption or disturbance of whatsoever nature, for the purpose of undertaking the Development and engaging in the Business, which includes erecting, displaying, affixing or exhibiting signs, names, advertisements and/or notices within the Premises;
- (b) sub-lease the Premises or any part thereof to its Subsidiary and Affiliate without the prior consent of the Lessor, provided that the sub-lessee agrees that it shall transfer back the Premises, including its buildings upon termination of this Agreement;
- (c) lease the Development or any part thereof to any third party at the sole and absolute discretion of Lessee. In this regard, Lessor hereby gives prior consent to such lease of the Development or any part thereof to any third party, provided that the third party agrees that it shall transfer back the Premises, including its buildings upon termination of this Agreement;
- (d) at the expiration or earlier termination of this Lease, remove all the Lessee's movable items, not including fixtures already installed to the buildings constructed by Lessee for the Development on the Premises. For avoidance of doubt, no compensation is payable to the Lessee for returning the Premises together with all buildings and

fixtures erected on it, to the Lessor. The cost and expenses to remove the Lessee's movable items shall be borne by Lessor if the lease is terminated due to fault of Lessor, however, the Lessee shall bear the cost in all other instances ; and

- (e) notwithstanding Clause 13.5, subject to the approval of the Government Authority, if applicable, assign or transfer any interest in the Premises or any part thereof, without the consent of the Lessor, provided that the transferee and the assignee of such interest shall transfer back its interest in the Premises including buildings upon termination of this Agreement.

## **6.2 Lessee's Obligations**

The Parties agree that the Lessee shall:

- (a) utilise the Premises for the purpose of carrying out the Development and engaging in the Business;
- (b) comply at all times with any Applicable Law and shall not do or omit to do anything which might render the Lessor in breach of its obligations under the Head Lease or which may result in the termination, cancellation or withdrawal of the Head Lease;
- (c) pay the Land Premium and Rental Payments as specified in Clause 4 above, subject to withholding and applicable taxes, if any;
- (d) ensure that all activities and operations on the Premises, or any part thereof including the buildings and related facilities, are not incompatible with Applicable Law in all material aspects;
- (e) apply for and obtain any approvals, permits and registration of the same (if any) necessary to undertake the Development and engage in the Business, including the High-Rise Inspection Committee's approval for the Development, with the assistance of the Lessor;
- (f) commence the construction of the Development within six (6) months from the date of obtaining all necessary approvals, permits and registration in Clause 6.2(e) and the execution of a construction agreement with a Fujita Corporation or its Affiliate;
- (g) ensure that any solid wastes be disposed properly, and waste water are drained away systematically, and that the buildings are well equipped with a proper plumbing and sanitation system;
- (h) ensure that the Premises and its surrounding environment are, maintained and taken care of without causing any environmental pollution, in accord with the existing environmental Applicable Law; and
- (i) account for and keep systematic records of any income in relation to the operation of the Development.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties of the Parties**

Each Party hereby represents and warrants to the other Party that it is a legal person duly authorised under the relevant laws and has the right power, sound financial standing and authority to enter into this Agreement.

## **7.2 Lessor's Representations and Warranties**

Lessor hereby represents and warrants to Lessee that, as of the Effective Date and as of the date of each of the payments under Clause 4, until the date of termination of this Agreement:

- (a) The specifications of the Premises identified in Appendix 3 are true and accurate;
- (b) Lessor has the sole legal and beneficial rights to use the Premises, and has the absolute right to lease the Premises to the Lessee for the purpose and duration contemplated in this Agreement, but not exceeding the duration of the Head Lease;
- (c) that the Lessor is legally competent and has full power, ability and authority to perform all the terms and conditions under this Agreement;
- (d) that there are no pending or potential suits, legal proceedings or claims against the Lessor which may affect in any way the rights of the Lessee has in relation to the Premises;
- (e) that there are no third party rights or Encumbrances attached to the Premises whatsoever;
- (f) as of the Effective Date and until the commencement of construction of the Development, there are no obstacles present on the Premises, including those both above and below ground;
- (g) that Lessor is not in breach and is not likely to become in breach of any express or implied condition of the Head Lease;
- (h) that Lessor has not received any notices from any authority which may adversely affect the Lessee's use of the Premises;
- (i) that all rents, rates, taxes, assessment, sewerage and other outgoings which are or may be charged or imposed against the Land (including the Premises) by any third party whatsoever have been duly paid and will be duly paid throughout the Term of the Lease;
- (j) that Lessor has successfully demolished any and all buildings, structures, fixtures and other property attached to or existing on the Premises without any issues;
- (k) that the Land, including the Premises, is in compliance with all Applicable Laws and that the Land is not restricted under law from constructing the Development and engaging in the Business;
- (l) that Lessor has obtained all required approvals, which shall include the Lessor or MIC, as the case may be, obtaining a written consent or no objection letter from the MOD regarding the Lease of the Premises to Lessee which authorises the use of the Land Plot by Lessee for the purpose of undertaking the Development and provides for the same land use rights over the Premises as Lessor's land use right under the Head Lease, which shall include, at the least, the right to (i) use and occupy the land, (ii) develop and build on the land and (iii) manage the building on the land and operate a hotel, office block and retail area, all changes and alterations form the plan in the

Head Lease to the Development and consent to lease the floor space of the Development to third parties;

- (m) that the matters set out in the terms and conditions of this Agreement are true and correct;
- (n) that to the best of the knowledge of Lessor and as at the date of this Agreement the Lessor has neither received any notice nor is aware of any intended acquisition of the Premises and/or any part thereof for any purposes whatsoever; and
- (o) that the rental payment payable from Lessor to the MOD under the Head Lease is US\$ 573,160 per year during the period between 15 October 2016 until 14 October 2019 and thereafter US\$ 2,163,136 per year for the period between 15 October 2019 and 14 October 2024 and the remaining period of the Head Lease, up until 14 October 2063, will be an amount derived by reviewing US\$ 2,163,136 pursuant to Section 5 (i) of the Head Lease.

### **7.3 Nature of the Representations and Warranties**

Each representation and warranty set out in Clause 7.2 is separate and independent of the others and, save as expressly provided shall not be limited by reference to any other representation or warranty or any other provision contained in this Agreement.

### **7.4 Remedies and continuing obligations regarding Representations and Warranties**

- (a) The Lessor shall promptly disclose in writing to the Lessee of any event or circumstances which arises or becomes known to him during the Term of the Lease which is inconsistent with any of the representations and warranties.
- (b) The rights and remedies of Lessee in respect of any breach of any representations and warranties shall not be affected by:
  - (i) the termination or determination by effluxion of time of the Lease created by this Agreement;
  - (ii) any failure to exercise or delay in exercising any right or remedy or by any other event or matter whatsoever, except a specific and duly authorised written waiver or release; or
  - (iii) any incomplete, misleading, misrepresentative, contradictory information the Parties may have received or been given or have actual implied or constructive notice of prior to the date of this Agreement.
- (c) The provisions of this Clause 7 shall be without prejudice to any right which the Lessee may have to rescind this Agreement if the Lessee discovers any breach on the part of the Lessor during the Term of the Lease and it shall not be a defence to any claim that the Lessee ought to have known that any matters warranted or represented were not as warranted or represented.

## **8. INDEMNIFICATION**

- (a) The Lessor shall indemnify and hold the Lessee harmless from and against any loss, damage, cost, liability or expense, which shall include the construction cost of the Development, any penalty charges that Lessee might have to pay to the tenants and

other administrative, marketing or operating expenses, sustained or incurred by the Lessee arising out of

- (i) any breach of any representation or warranty made by the Lessor under this Agreement, including the Lessor not having the right, authority or requisite approvals to lease the Premises to Lessee as contemplated under this Agreement;
  - (ii) the failure by the Lessor to fulfil any of his obligations contained in this Agreement or any related documents in a timely and proper manner; and
  - (iii) any fraud, wilful misconduct or negligence of the Lessor.
- (b) The Lessee shall indemnify the Lessor against any Losses arising from the Lessee's failure to fulfil its obligations in Clause 6.

## **9. TERMINATION**

### **9.1 Termination of this Agreement**

- (a) This Agreement shall terminate upon and on the occurrence of any of the following:
- (i) expiry of the Term of this Agreement;
  - (ii) termination of the Joint Venture Agreement;
  - (iii) termination of the Head Lease; and
  - (iv) written agreement of the Parties to terminate the Agreement.
- (b) Without prejudice to the generality of the forgoing, in the event that Lessor is able to terminate this Agreement for any reason whatsoever, Lessor shall only be entitled to such termination upon giving notice to the Lessee, which shall provide for a reasonable period for Lessee to cure or remove any the cause for such termination to the reasonable satisfaction of Lessor.

### **9.2 Termination due to Default of Lessor**

- (a) In addition to Clause 9.1, the Lessee shall be entitled to terminate this Agreement by serving a notice to Lessor indicating its intention to terminate this Agreement, at any time after the occurrence of any of the following:
- (i) Lessor fails to deliver possession of the Premises to the Lessee on the Effective Date in accordance with the terms of this Agreement;
  - (ii) Lessor and Lessee fail to obtain, when and if necessary, approvals for the construction of the Development and operation of the Business within one (1) year from the date of this Agreement or by other such date agreed to between the Parties;
  - (iii) Lessor defaults in the observance or performance of any of the terms and conditions on the part of the Lessor contained herein, including any breach by the Lessor or any failure to comply with the Lessor's obligations stated in Clause 5;

- (iv) Lessor breaches or has misrepresented any of the representations and warranties stated in Clause 7; or
- (v) A Force Majeure Event occurs and such event is not remedied within sixty (60) days from the occurrence of such event.

### **9.3 Effect of Termination**

- (a) In the event of a termination of this Agreement,
  - (i) the Lessee shall not be liable to the Lessor for the rental for the remaining period of the Term;
  - (ii) the Rental Payment for the Term which has already been paid for shall be refunded proportionately by the Lessor to the Lessee within fifteen (15) days from the date of termination of this Agreement. The refund amount shall be a pro-rated amount of the Rental Payment attributable to the remaining days of the remaining period of the Term based on a 365 day year. For the avoidance of doubt, if the Term only corresponds to the period of the Initial Term, any pro-rating shall be by reference to the remaining period of the Initial Term. If the Term only corresponds to the period of the Extended Term, any pro-rating shall be by reference to the remaining period of the Extended Term;
  - (iii) The Lessee shall remove all the Lessee's movable items, not including fixtures already installed to the buildings constructed by Lessee for the Development on the Premises within three (3) months from the date of termination, on an as-is basis; and
  - (iv) The Lessee undertakes that it shall return the Premises, including its buildings.
- (b) The termination of this Agreement shall be without prejudice to the Parties' rights in respect of any antecedent breach of this Agreement, including any rights of Lessee to claim any and all Losses incurred or suffered by the Lessee.

## **10. MINERAL RESOURCES AND TREASURES**

Mineral resources, treasures, gems, antique treasures and other natural resources discovered unexpectedly from, in or under the Premises during the Term of this Agreement shall be the property of the Government of Myanmar, and the Lessor shall (a) obtain the relevant Governmental Authority's instructions on how to handle such natural resources and treasures and the Lessor shall thereafter promptly inform the Lessee of such instructions, and (b) turn any of these natural resources or treasures over to the relevant Governmental Authority as soon as possible. If there is any excavation or moratorium imposed on the use of the Premises, the Lessor shall use its best endeavours to ensure completion of the excavation or lifting of the moratorium so as to allow the Lessee to the use of the Premises as contemplated by this Agreement.

## **11. GOVERNING LAW**

The provisions of this Agreement, including the existence and validity of this Agreement, shall be governed by and construed in accordance with the laws of Singapore.

## **12. DISPUTE RESOLUTION**

**12.1** Any disputes or claims arising from this Agreement shall be notified by the claimant to the other Party indicating the nature of the dispute or claim and the relief requested. The Parties (each with the authority necessary to settle such dispute or claim) shall meet within 30 days of delivery of such notice at a place agreed by the Parties to attempt, in good faith, to settle the dispute or claim. Any settlement reached shall be recorded in writing and signed by the Parties.

**12.2** Any disputes or claims arising out of or in connection with this Agreement not resolved in the manner set out above in Clause 12.1 within 30 days from the meeting held by the Parties (or the first meeting in a case where more than one meeting is held), shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC**") for the time being in force which rules are deemed to be incorporated by reference to this Clause 12.2. The language of arbitration shall be English and the sole arbitrator shall be appointed by the President of the court of arbitration of SIAC. Such arbitration shall be final and binding on the Parties.

## **13. GENERAL PROVISIONS**

### **13.1 Interest on Late Payment**

All amounts which a Party is liable to pay to the other Party shall be paid in full in accordance with this Agreement. Where any amount payable by a Party, including Lessor's obligation to fund the Rent Reserve Account, is not paid when due, the defaulting Party shall pay interest on such amount commencing from the day the amount is due until payment in full. A rate of 4% above the 3 month Singapore InterBank Offer Rate for Singapore Dollars shall be applied.

### **13.2 Entire Agreement**

This Agreement embodies all the terms and conditions agreed upon between the Parties as to the subject matter of this Agreement and supersedes and cancels in all respects all previous agreements and undertakings, if any, between the Parties with respect to the same, whether such be written or oral.

### **13.3 Release**

Any liability to any Party under this Agreement may in whole or in part be released, compounded or compromised, or time or indulgence given, by it in its absolute discretion as regards any other Party under such liability without in any way prejudicing or affecting its rights against such other Party.

### **13.4 No Waiver**

(a) No failure or delay by any Party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

- (b) The rights and remedies of any Party under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

### **13.5 Successors and Assigns**

This Agreement shall be binding on and shall enure for the benefit of each of the Parties' successors and assigns. No Party may assign or transfer any of its rights, benefits or obligations under this Agreement without the prior consent in writing of the other Party. Any reference in this Agreement to any of the Parties shall be construed accordingly.

### **13.6 Further Assurance**

At any time after the date of this Agreement, each of the Parties shall, and shall use its best endeavours to procure that any necessary third party shall, execute such documents and do such acts and things as the other Party may reasonably require for the purpose of giving to such other Party the full benefit of all the provisions of this Agreement.

### **13.7 Remedies**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any Party shall not constitute a waiver by such Party of the right to pursue any other available remedies.

### **13.8 Force Majeure**

- (a) No Party shall be responsible for any failure to fulfil any provisions of this Agreement if and to the extent that fulfilment has been delayed, hindered, interfered with or prevented by force majeure occurrences including, but not limited to, acts of god, wars (declared or undeclared), rebellion, insurrection, acts of terrorists, acts of governments or governmental bodies (including, but not limited to, military, legislative bodies, courts and executive bodies), fire, earthquakes, cyclones, action of the elements or any other matters, whether similar or dissimilar in character to those heretofore enumerated, beyond the reasonable control of the Party affected by the same ("**Force Majeure Event**").
- (b) In the event of a Force Majeure Event, a Party claiming to be affected thereby shall promptly notify the other Party, giving full particulars thereof, and shall use its best efforts to remedy such failure of fulfilment with all reasonable dispatch. Such affected Party shall continue to keep the other Party fully advised of the progress being made with respect to such efforts.
- (c) In the event that Lessor is unable to comply with its duties and obligations in this Agreement, Lessee's obligation to make Rental Payments shall likewise be suspended during the continuance of the Force Majeure Event.
- (d) Nothing contained in this Clause 13.8 shall prevent a Party from initiating arbitration proceedings pursuant to Clause 12.

### **13.9 Fees and Expenses**

- (a) Each Party shall be responsible for its own costs and expenses, including, without limitation, those of consultants, legal counsel and auditors, arising from or related to the negotiation and preparation of this Agreement.
- (b) Each Party shall bear its own costs and expenses that is incurs in relation to the execution of this Agreement and extension of the Term of this Agreement.
- (c) Notwithstanding Clause 13.9(b), any applicable stamp duty for this Agreement and the extension of this Agreement shall be borne by the Lessee.
- (d) Notwithstanding Clause 13.9(b), the legal fees and application fees for the registration of this Agreement shall be borne by the Lessee.

#### 13.10 Severability of Provisions

If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or in part in any jurisdiction, this Agreement shall, as to such jurisdiction, continue to be valid as to its other provisions and the remainder of the affected provision; and the legality, validity and enforceability of such provision in any other jurisdiction shall be unaffected.

#### 13.11 Communications

- (a) All notices, demands or other communications required or permitted to be given or made under this Agreement shall be in writing and delivered personally or sent by prepaid registered post with recorded delivery, courier service or by facsimile transmission addressed to the intended recipient thereof at its address or at its facsimile number, and marked for the attention of such person (if any), designated by it to the other Party for the purposes of this Agreement or to such other address or facsimile number, and marked for the attention of such person, as a Party may from time to time duly notify the other Party in writing.
- (b) The addresses, facsimile numbers, telephone numbers and persons (if any) so designated by the Parties are set out below:

**Lessor**                      Address: #1104/1105/1106 Ye Ta Khon Tower, 531 Lower Kyee Myin Daing Road, Kyee Myin Daing Township, Yangon, Myanmar  
    Attention: U Zaw Win Shein  
    Tel No.: +95-1-508070  
    Facsimile No.: +95-1-508071

**Lessee**                        Address: La Pyayt Wun Plaza, No.37, Alanpya Pagoda Road, Room No.612( 6th Floor), Dagon Township, Yangon, Myanmar  
    Attention: Mr. Shoichi Inoue  
    Tel No.: +95-1-373634  
    Facsimile No.: [..]

- (c) Any such notice, demand or communication shall be deemed to have been duly served (if delivered personally or given or made by facsimile, if applicable) immediately or (if given or made by letter or courier services) two (2) Business Days after posting and in proving the same it shall be sufficient to show that personal delivery was made or that the envelope containing such notice was properly addressed, and duly stamped and posted or that the facsimile transmission (if applicable) was properly dispatched and with receipt of proper confirmation.

#### 13.12 Counterparts

This Agreement may be signed in any number of counterparts, each of which shall be an

original and all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) facsimile or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each Party shall provide the other Party with the original of such counterpart as soon as reasonably possible thereafter.

### **13.13 Variation**

No variation of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression *variation* shall include any amendment, supplement, deletion or replacement however effected. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied. No course of dealing among the Parties shall be deemed to modify, amend or discharge any provision or term of this Agreement. No delay by any Party in the exercise of any of its rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any Party of any such right or remedy shall preclude the other Parties from further exercise thereof. Waiver of any right or remedy on any one occasion shall not be construed as a bar to, or waiver of, any such right or remedy on any other occasion.

### **13.14 No Partnership**

Nothing in this Agreement is deemed to neither constitute a partnership between the Parties nor constitute any Party the agent of the other or any other Party for any purpose.

### **13.15 Time of the Essence**

Time shall be of the essence of this Agreement, both as regards any time, date or period originally fixed or any time, date or period which may be extended by agreement between the Parties.

*[Signature page follows.]*

**IN WITNESS WHEREOF** this document has been executed as a deed on the date stated at the beginning.

**SIGNED BY**

**[•]**

for and on behalf of

**Yangon Technical and  
Trading Co., Ltd**

in the presence of:

.....  
Signature of the witness

.....  
Name of the witness (block letters)

.....  
Signature of

**SIGNED BY**

**[•]**

for and on behalf of

**[Y Complex] Co., Ltd.**

in the presence of:

.....  
Signature of the witness

.....  
Name of the witness (block letters)

.....  
Signature of