

MUDHARABAH FUNDING AGREEMENT

DATE: _____ 2017

THIS AGREEMENT* is made between the following parties:

(1) Muhamad Arqam Abbas (Indonesian tax ref number 14.252.778.7-412.000) of Kampung Sasak Panjang RT2/RW3, Kelurahan Sasak Panjang, Kecamatan Tajur Halang, Kabupaten Bogor (hereinafter referred to as “the Company”)

AND

(2) INVESTOR'S NAME of Nationality NRIC/Passport No. _____ (hereinafter referred to as “the Investor”)
(collectively referred to as “Parties” and individually referred to as “Party”).

*Please carefully read the “DEFINITIONS” in Section 13 of this document to clearly understand the terminologies of this Agreement.

WHEREAS the Company is in need of funding for one of its current project, specifically the **Exzellenz Residence** (“the Project”). The Investor, together with certain other investors (together, the “Investor Group”) have agreed to invest in the project on the basis of the Shariah principle of *Mudharabah Muqayyadah*, i.e. a restricted investment profit-and-loss sharing basis. The Investor has agreed to finance his share of the required funding based on the terms and subject to the conditions set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. METHOD OF FUNDING AND PAYMENT

- 1.1** The Company requires financing in an aggregate sum equivalent to **IDR 1,209,600,000** (the “**Total Project Funding Amount**”), for the exclusive purpose of undertaking the Project. All sums of money received by the Company as part of such financing will be segregated from and will not be intermingled with any of the Company’s other assets including any monies raised, revenues generated or profits derived, from the Company’s other projects, businesses, interests and ventures. Details relating to the Project can be found in the Project Description tab for this Project on the EthisCrowd.com website.
- 1.2** The Company projects that it may receive an indicative Mudharabah Profit of approximately **IDR 979,210,000** from the Project in **10 - 14 Months** (the “**Investment Tenure**”), and hereby agrees to share the Mudharabah Profit with the Investor Group on a tiered basis, depending

on the actual amount of Mudharabah Profit received by the Company, as follows:

Total Indicative Mudharabah Profit in IDR at the end of the Investment Tenure	Investor's Share of Mudharabah Profit (PSR)	Company's Share of Mudharabah Profit (PSR)
IDR 979,210,000	17.65%	82.35%

- 1.3** The Investor acknowledges and agrees that the investment in the Project through the Company is accompanied by all business risks associated with a venture or project of such nature. Accordingly:
- 1.3.1** there is no assurance or guarantee given by the Company, any director of the Company, its affiliates (the “Ethis Group”) or any other person that the Company will obtain the Mudharabah Profit in the amount projected or anticipated, or any amount of revenue or profit whatsoever from the Project;
- 1.3.2** investment in the Project comes with a risk of substantial or total loss, and there is no assurance or guarantee given by the Ethis Group or any other person that the Investor will be able to receive or recover any amount invested under this Agreement or any profit projected by the Company;
- 1.3.3** the rights of the Investor to receive, and to claim or demand the return or distribution of any part of the Total Project Funding Amount

or Mudharabah Profit will be limited to the Investor's share of earnings or Mudharabah Profit (as the case may be) actually received by the Company, such share being equivalent to the proportion of the Investor's Capital (defined herein) that is actually contributed by the Investor out of the Total Project Funding Amount actually contributed by the Investor Group, subject to the terms of this Agreement.

- 1.4 Clause 1.3 shall not in any way diminish the rights of the Investor to receive the return or distribution of his share of the earnings or Mudharabah Profit (as the case may be) received by the Company from the Project.
- 1.5 In accordance with the Shariah principle of Mudharabah, all actual financial losses incurred or accrued by the Company in connection with the Project shall be borne solely by the Investor Group and shall lead to a depletion of the value of the Total Project Funding Amount, while the Company would only fail to realize its expected profit (at no expense to the Investor Group) as well as forgo the energy and time it has invested in the Project. However, if the loss is due to the Company's gross negligence or there has been any breach of representation or warranty given by the Company or the Company has acted in contrary with the terms of the venture which causes loss to the venture, the Company shall be liable for the amount of the Total Project Funding Amount. If there is a profit available, the same shall be distributed according to the pre-agreed *Mudharabah* profit sharing ratio.

- 1.6** No member of the Ethis Group will be liable for any losses incurred or suffered by the Investor, whether by way of loss of capital or profit in connection with the Project, except to the extent caused by the negligence, misconduct or breach by the Company of the terms of this Agreement.
- 1.7** The Investor hereby agrees to finance SGD 10,000. The investment will be deemed as “Investor’s Capital” out of the Total Project Funding Amount. The Investor’s Capital must be transferred by no later than 2 Weeks after Date of Agreement (the “Project Funding Contribution Deadline”).

**Please note the investment above will be converted to IDR based on PT Ethis Exchange Rates. Please refer to Wa’ad agreement for details.*

The Investor’s percentage contribution to the Total Project Funding Amount, and proportional percentage share of profits payable to the Investor Group will be 7.5231%. This contract will only be effective after the Investor’s Contribution has been received in full by the company.

Amount Invested by the Investor	Investor Proportional Percentage Share of Total Project Funding Amount
<u>SGD 10,000</u>	<u>7.5231%</u>

- 1.8** Mudharabah Profit shall be determined by the Company based on separate accounts drawn up by the Company for the Project. For the avoidance of doubt, the separate accounts prepared in connection with the Project shall not take into consideration the financial or other condition or performance of the Company as a whole and shall exclude all other assets and liabilities, and revenues, profits, costs and losses relating to the Company's other projects, businesses, interests and ventures.
- 1.9** The separate accounts for the Project shall be prepared and furnished by the Company to the Investor not later than 1 month following the end of the Investment Tenure. In the event that the Investment Tenure is longer than a year, the Company shall additionally prepare and furnish to the Investor interim yearly separate accounts for the Project. Such interim separate accounts are provided only for the purposes of updating the Investor on the progress of the Project, and shall have no bearing on the final determination of Mudharabah Profit.
- 1.10** Each set of separate accounts prepared by the Company in connection with the Project shall be certified by not less than 2 directors (or equivalent) of the Company, and the final set of separate accounts in connection with the Project shall specify the Mudharabah Profit (if any).
- 1.11** The determination of the Mudharabah Profit pursuant to the separate accounts relating to the Project shall, in the absence of any manifest error, be conclusive evidence of the matters to which it relates. In addition, no later adjustments or inconsistencies arising from any other

accounts prepared for the Company as a whole shall affect any previous determination of Mudharabah Profit.

1.12 The Investor agrees and acknowledges that, subject to statutory requirements, the Company shall retain complete discretion as to whether the separate accounts will be audited, and there is currently no intention to audit the accounts of the Company.

1.13 The Company acknowledges and undertakes that in the event of mismanagement, negligence, fraud or misconduct or violation of conditions of this Agreement and final judgement of the same has been obtained from the court, the Company shall return the outstanding Total Project Funding Amount and the outstanding *Mudharabah* Profit (if any) to the Investor Group no later than six (6) months following the delivery of the final judgement.

2. RETURN OF TOTAL PROJECT FUNDING AMOUNT AND DISTRIBUTION OF MUDHARABAH PROFITS

2.1 The Company expects and shall use its best endeavours to return the Total Project Funding Amount and distribute the Mudharabah Profit (if any) to the Investor Group by no later than one month following the end of the Investment Tenure or the Early Project Termination Date.

2.2 In the event that the Project is completed ahead of schedule, the

Company shall use its best endeavours to (i) complete the preparation of separate accounts relating to the Project; and (ii) return and distribute to the Investor his share of the Total Project Funding Amount and Mudharabah Profit, no later than one month following the early completion of the Project.

2.3 Notwithstanding the above, the Investor acknowledges and agrees that the return and distribution of Total Project Funding Amount and Mudharabah Profit is dependent on actual receipt by the Company, and distributions to the Investor may accordingly be delayed. The Company will notify the Investor in the event that there is any delay in the distribution of any amounts.

2.4 The Company and the Investor Group may, at any time, agree to reschedule the Investment Tenure, so that it ends on a specifically agreed later date, to take into account any delays or developments in the Project schedule, so as to allow for potential profits to be realized.

3. UTILIZATION OF TOTAL PROJECT FUNDING AMOUNT AND SEGREGATION OF FUNDS

3.1 The Company shall only utilize the Total Project Funding Amount for the purposes of funding the costs associated with the Project, and may not use any part of such monies for any other purposes, including any general operating or business costs of the Company which are not exclusively related, or fairly attributable, to the Project. Other than as specified in

this Clause 3.1 or in the Project Description tab for this Project on the EthisCrowd.com website, the Company shall not be restricted or limited in the manner or timing of utilization of the Total Project Funding Amount. Correspondingly, the Company is not required to place any of the unutilized Total Project Funding Amount in any investments or fixed deposits, and is not required to provide any kind of return on the unutilized Total Project Funding Amount.

- 3.2 The Company shall maintain separate books of accounts and, to the extent possible and commercially sensible, separate bank accounts, to receive and hold the Total Project Funding Amount and all earnings and Mudharabah Profit, and segregate such funds from other funds of the Company.

4. PAYMENT TERMS

- 4.1 All payments hereunder by the Investor and the Company shall be made in full in the currency of the Total Project Funding Amount stated in this Agreement, without any deduction whatsoever for, and free from, where relevant, any present or future taxes, levies, duties, charges, fees, deductions or conditions of any nature imposed or assessed by any taxing authority. The contribution by the Investor may not be made in any other currency or in-kind.
- 4.2 The return and distribution by the Company of the Total Project Funding

Amount and Mudharabah Profit shall be made to each investor within the Investor Group, based on that investor's share of contribution to the Total Project Funding Amount as described above. The Parties agree that in the event any such payment is not made in the correct proportions, the Parties shall make the necessary payments as between the Investor Group to rectify any over/under payment. In addition, the Investor acknowledges and agrees that the distributions will be made by the Company in Indonesian Rupiah ("IDR"), out of the earnings or Mudharabah Profit (as the case may be) received by the Company.

- 4.3 In accordance with the principles of Mudharabah, either party is entitled to waive his rights to any profits under this Agreement, on the basis of waiver (*tanazul*) on or after the realization of profit.
- 4.4 Both parties acknowledge that the ability of the Company to realise Mudharabah Profit for distribution to the Investor Group depends on the final operations and performance of the Project. No profit can be recognized or claimed unless the Company generates earnings that exceeds the Total Project Funding Amount.

5. WAIVER OF INTEREST

- 5.1 The Parties recognize and agree that the principles of the payment of interest/usury is repugnant to Shariah and accordingly, to the extent that any law or legal system would, but for the provisions of this clause, impose, whether by contract, by statute or otherwise, an obligation to

pay interest/usury or a sum in the nature of interest/usury, each Party hereby expressly, irrevocably and unconditionally waives and rejects any entitlement to receive from the other Party interest/usury or sum in the nature of interest/usury.

6. MANAGEMENT OF THE PROJECT

6.1 The Investor acknowledges and agrees that as an investor in the Project pursuant to this Agreement, he will not have any decision-making or other rights, powers or privileges with respect to the management of the Project. The Investor shall not interfere with the management or any other aspect of the Project.

6.2 The Company shall as soon as reasonably practicable, furnish the Investor with:

6.2.1 any relevant information on the Project that may have a material impact on the completion or performance of the Project;

6.2.2 any other relevant information on the Project specifically and reasonably requested by the Investor, provided that the Investor shall keep all such information strictly confidential, may not disseminate or distribute such information except with the prior written consent of the Company, and may not utilize such information for any purposes which are not directly connected to its investment in the Project, or

which may compete with or prejudice the Project.

- 6.3** The Company shall furnish to each member of the Investor Group periodically and not less than once every [3] months, an update on the progress of the Project, including details of:
- (a) the amount of the Total Project Funding Amount received from the Investor Group, and the amount thereof expended for the purposes of the Project;
 - (b) the completion of any milestones relating to the Project, as specified in the Project Description tab for this Project on the EthisCrowd.com website; and
 - (c) the current value of the assets underlying the Project (if any).
- 6.4** An “Early Project Termination Event” shall be deemed to occur when
- (a) a Force Majeure event has occurred which materially delays the completion of the Project or the profitability of the Project; or
 - (b) the Company has acted negligently or breached the terms of this Agreement in a manner that has caused or will cause a material delay in the completion of the Project or diminution of the profitability of the Project, or in any other manner that prejudices the rights of any member of the Investor Group or subjects any member of the Investor Group to personal or individual liability, risk or harm beyond that expressly agreed under the terms of this Agreement, and following discussions between the parties, the Investor Group has unanimously determined and informed the Company in writing that it is not willing to continue with the Project.

- 6.5** Upon the occurrence of an Early Project Termination Event, the Company shall (i) immediately cease any further expenditure relating to the Project out of funds contributed by the Investor Group, (ii) promptly furnish to each member of the Investor Group a statement of the unutilized Total Project Funding Amount and the current value of the assets underlying the Project (if any); and (iii) as soon as practicable return and distribute to the Investor Group the unutilized Total Project Funding Amount and Mudharabah Profit.

7. TERMINATION OF MUDHARABAH AGREEMENT

This agreement may be terminated in any of the following manners:

- a. The Company may unilaterally terminate this Agreement in the event that the Investor does not contribute his share of the Total Project Funding Amount by the Project Funding Contribution Deadline;
- b. With the written agreement of both Parties, where a separate settlement agreement has been agreed between the Parties to fairly determine how to recover any investments made, without prejudicing any other members of the Investor Group; or
- c. Following full and complete return and distribution by the Company to each member of the Investor Group of its share of the Total Project Funding Amount and Mudharabah Profit, in accordance with the terms of

this Agreement, provided that any termination under this paragraph (c) will not prejudice or diminish any claims or rights of any party which may have accrued prior to the date of termination, and the Company shall remain liable to distribute to the Investor Group in accordance with the terms of this agreement any amounts of Mudharabah Profit recovered or received by the Company following the date of termination; or

- d. Following the occurrence of an Early Project Termination Event and the full and complete return and distribution by the Company to each member of the Investor Group of its share of (i) the Total Project Funding Amount and (ii) all Mudharabah Profit (if any).
- e. Before expiry of the Investment Tenure with mutual agreement by both parties. The Parties agree that:
 - (i) the Investor may have an option to sell its shares in the Project venture to another Investor within the existing Investor Group at a mutually agreed price; or
 - (ii) with agreement by the Parties, the Company shall immediately take all the necessary steps to return the Total Project Funding Amount to the Investor Group no later than six (6) months following the termination of this Agreement.
- f. The Company has been found liable by the court of mismanagement, negligence, fraud or misconduct in undertaking the Project. Upon the delivery of the final judgement, the Company shall return the

outstanding Total Project Funding Amount and the outstanding *Mudharabah* Profit (if any) to the Investor Group no later than six (6) months following the delivery of the final judgement. For the purpose of returning the outstanding Total Project Funding Amount and the outstanding *Mudharabah* Profit (if any), the Company shall take all the necessary steps to liquidate the assets involved in the Project (if applicable) or such other assets belonging to the Company in order to realize the proceeds to be returned to the Investor Group based on their investment proportion.

8. REPRESENTATIONS

8.1 The Company represents to the Investor on the date of this Agreement that:

8.1.1 It is duly incorporated and validly existing under the laws of Indonesia.

8.1.2 It has the power to execute this Agreement, and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution and performance.

8.1.3 The execution and performance of this Agreement does not violate or conflict with any applicable law or regulation, any provision of its constitutional documents, and order or judgment of any court or other

agency of government applicable to it, or any contractual restriction binding on it.

- 8.1.4** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.
- 8.1.5** No Event of Default has occurred or would reasonably be expected to result from the entry into, or performance of, this Agreement.
- 8.1.6** The Company has the requisite knowledge, experience and expertise to carry out and complete the Project, and shall execute the Project in accordance with the specifications in the Project Description tab for this Project on the EthisCrowd.com website and in accordance with typical industry standards and norms.
- 8.1.7** The Company is, as of the date of this Agreement, not aware of any circumstances which are reasonably likely to delay or disrupt the completion of the Project, or reduce the projected Mudharabah Profit for the Project.
- 8.1.8** All aspects of the Project, including construction, operation and administration thereof, will be carried out in a Shariah compliant manner.

8.2 The representations and warranties in this Clause 8 are repeated by the Company on the date the Investor makes his contribution of his share of the Total Project Funding Amount, and on the 1st day of each month thereafter until the complete distribution of the Mudharabah Profit under this Agreement.

9. GOVERNING LAW

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and interpreted and construed in all respects in accordance with the laws of Singapore without prejudice to or limitation of any other rights or remedies available to both Parties in this Agreement under the laws of any jurisdiction where the Company or its assets may be located.

10. DISPUTE RESOLUTION

The Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the Courts of Singapore to resolve any disputes or make any claims with respect to this Agreement.

11. FORCE MAJEURE

Neither Party shall be held liable for any costs, losses or expenses which may be incurred or suffered by the other Party as a result of any event of Force Majeure,

being any event beyond the reasonable control of the obligated party, including but not limited to, acts of God, extreme weather or acts of third parties. Notwithstanding the foregoing, the party claiming Force Majeure must take commercially reasonable steps to prevent or mitigate the event, and the Parties shall negotiate in good faith in order to resolve the consequences of any such event of Force Majeure.

12. MISCELLANEOUS

- 12.1** If at any time any of the provisions hereof is or becomes illegal, invalid or unenforceable in any respect under the applicable Singapore law, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.
- 12.2** If any provision of this Agreement (or part of it) or the application thereof to any person or circumstance shall be illegal, invalid or unenforceable to any extent, it must be interpreted as narrowly as necessary to allow it to be enforceable or valid and the remainder of this Agreement and the legality, validity or enforceability of such provisions to other persons or circumstances shall not be affected or impaired and shall be enforced to the greatest extent permitted by law.
- 12.3** All rights and obligations in this Agreement are personal to the Parties

and each Party in this Agreement may not assign and/or transfer any such rights and obligations to any third party without the prior written consent of the other.

- 12.4** The Contracts (Rights of Third Parties) Act 2001 shall not apply to this Agreement and no person who is not a party of this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.
- 12.5** This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement and shall supersede any prior expressions of intent or understandings with respect to the said transaction. All prior or contemporaneous agreements, understandings, representations and statements, oral and written, are merged in this Agreement and shall be of no further force or effect.
- 12.6** Any communication to be made under or in connection with this Agreement shall be made in writing and, may be made by letter or electronic mail, at the address specified at the end of this Agreement, as may be amended by notification in writing from time to time. Any such communication shall be effective when received.
- 12.7** No failure to exercise, nor any delay in exercising, on the part of the Investor, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies under this Agreement are cumulative

and not exclusive of any rights or remedies provided by law.

- 12.8** No provision of this Agreement may be amended, waived, discharged or terminated orally nor may any breach of or default under any of the provisions of this Agreement be waived or discharged orally but (in each case) only by an instrument in writing signed by or on behalf of the Parties. Any amendments or variations to this Agreement shall be Shariah-compliant.
- 12.9** This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 12.10** Each Party agrees to keep all information relating to this Agreement confidential, and not to disclose it to anyone, save with the prior written consent of the other Party or as required by any applicable laws or regulations.
- 12.11** This Agreement is intended to be Shariah-compliant. The parties hereby agree and acknowledge that their respective rights and obligations under this Agreement are intended to, and shall, be in conformity with Shariah principles.
- 12.12** Notwithstanding the above, each party represents to the other that it shall not raise any objections or claims against the other on the basis of Shariah compliance or any breach of Shariah principles in respect of or otherwise in relation to any part of any provisions of this Agreement.

13. DEFINITIONS

Unless a contrary indication appears, any reference in this Agreement to:

- 13.1 any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 13.2 a provision of law is a reference to that provision as amended or re-enacted;
- 13.3 a person or Party in a particular gender shall include that person or Party regardless of his or her gender, and shall apply equally where that person or Party is a body corporate, firm, trust, joint venture or partnership;
- 13.4 “**Mudharabah Profit**” means the Gross Revenue less the costs (i.e. direct expenses) incurred by the Company in the execution of the Project based on the following formula;
(Gross Revenue - (expenses + Total Project Funding Amount) = *Mudharabah Profit*).
- 13.5 “**Gross Revenue**” means the income received by the Company through the sale of goods or services in connection with the Project.
- 13.6 the “**Investor Group**” shall be construed to mean just the Investor where the Investor is financing the entirety of the Total Project Funding Amount.

For and on behalf of MUHAMAD ARQAM ABBAS	By, or for and on behalf of: <i>INVESTOR'S NAME</i>
Name: Muhamad Arqam Abbas Designation: Managing Director	

Sample