



**LEGAL PROBLEMS INVOLVING LEASEHOLD
CONDOMINIUM IN TERMS OF THE EFFECTIVENESS
OF THE LAW ENFORCEMENT**

BY

MISS NARINTIP SONGCHITSOMBOON

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS
IN BUSINESS LAWS (ENGLISH PROGRAM)**

FACULTY OF LAW

THAMMASAT UNIVERSITY

ACADEMIC YEAR 2015

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THESIS

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MISS NARINTIP SONGCHITSOMBOON

ENTITLED

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IN TERMS OF THE EFFECTIVENESS OF THE LAW ENFORCEMENT

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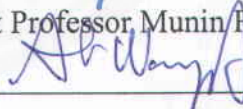
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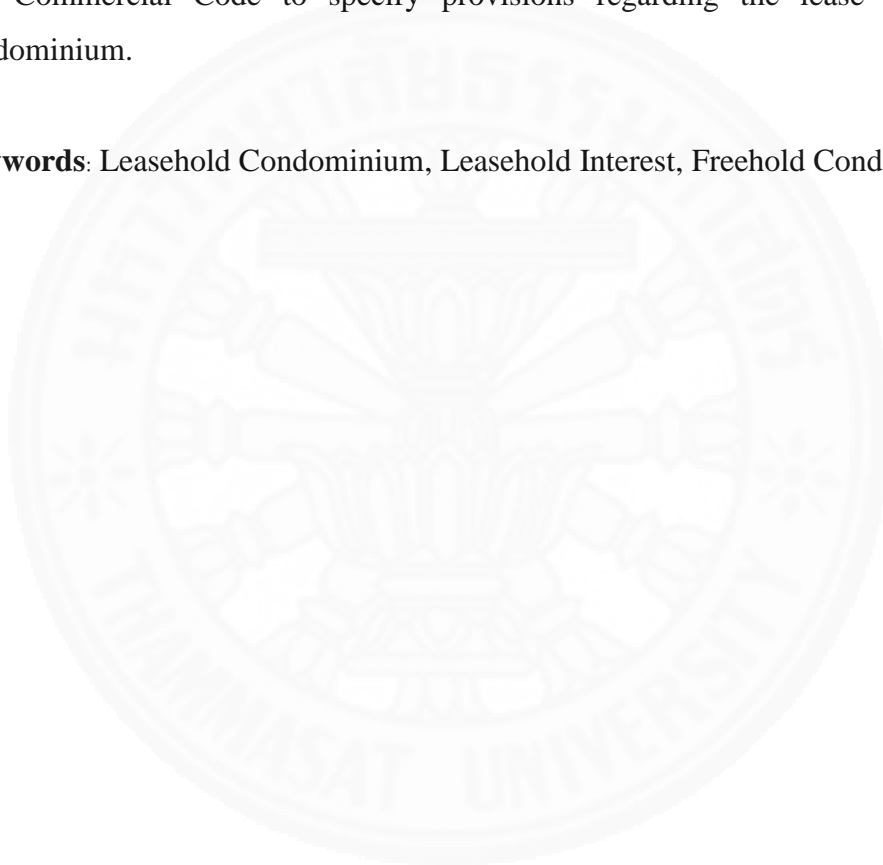
ABSTRACT

Because of the implementation of AEC and Government's policy to urge and boost industrial and commercial long term investment, it results to the free flow of labour and capital come to Thailand. Owing to the restriction of law on the foreigners holding the ownership of land and the limitation of the foreign ratio to hold the ownership of freehold condominium, leasehold condominium becomes an excellent alternative for the foreigners who desire a long term living in Thailand.

Since the leasehold condominium is developed on the land which is subject to leasehold, it is not governed by Thai Condominium Act B.E. 2522 (1999). Instead, it is governed by the hire of immovable property law, section 537-574 of Thai Civil and Commercial Code. As the unique business concept of leasehold condominium, which the buyer (lessee) requires to make fully payment of the rental in advance on the date of lease registration, some provisions under Thai Civil and Commercial Code are not proper in compliance with lease of leasehold condominium. In practice, most parties negotiate some clauses differentiate from the law in order to correspond to such unique business concept; however, it does not guarantee or ensure the buyer of leasehold condominium to have properly protection by law as well as it leads to many unsolved problems.

In order to urge the economy of our country, particularly in real estate sector, and to guarantee or ensure the buyer of leasehold condominium to be properly protected by law, this thesis, therefore, studies on the foreign laws relevant to leasehold interest; the United States of America and Ontario, Canada are the countries where their legal systems have been influenced from common law system whereas the legal system of Germany and France are the root countries of civil law system. Furthermore, this thesis will suggest the legislative solutions by amending Thai Civil and Commercial Code to specify provisions regarding the lease of leasehold condominium.

Keywords: Leasehold Condominium, Leasehold Interest, Freehold Condominium



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Narintip Songchitsomboon

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CHAPTER 1

INTRODUCTION

1.1 Background and Problems

Due to the Government has launched the policy to urge and boost industrial and commercial investment, the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) was enacted, on 19th May B.E. 2542 (1999), to respond such policy. The objectives of this Act are to ease any rules and conditions in respect of the hire of immovable property for commercial and industrial purposes and to increase the investor's confidence and attractiveness of long term investments particularly foreigners. In addition, the Act allows that the lease term can be up to 50 years, which is longer than what is allowed in Thai Civil and Commercial Code so that the foreigners can make their long term investment. Besides considering the factor on the law supporting the long term lease, dwelling becomes the one of the significant factors which the foreigners shall consider which country they determine to make the long term investment since they have to migrate from their country to another country.

By the end of the year 2015, the ASEAN Economic Community (AEC) is implemented. The goal of the AEC is to become a single production base where goods can be manufactured anywhere and distributed efficiently to anywhere within the region. These effects in the ASEAN countries to be aware of the free flow of labor and capital which come to their country. Because of the geographical nature, situated in the central of South East Asia with easy access to the region's dynamic markets as well as the availability of infrastructure and foreigner friendly habit¹, these all make Thailand to be the attractive country for the foreign investors.

¹ Thailand Board of Investment, **Why Thailand/Thailand's Advantages**, available at http://www.boi.go.th/index.php?page=thailand_advantages (accessed June 1, 2016)

In addition, Thailand has become one of the preferred destinations for foreigner retirees or people preparing for retirement owing to its friendly people, great environment and reasonable cost of living which is a match made in heaven for foreigners to spend their retirement pensions in Thailand. It is to say that this market worth billions USD will surely benefit Thailand's economy.

Unfortunately, Thai law restricts the foreigners having the ownership of land; however, they can register the lease of land for 30 years and have the ownership of the house or they can own the freehold condominium in case the ownership in the condominium units collectively not exceeding 49% of the spaces of the whole units in such particular condominium at the time of making the registration of such condominium² according to section 19 bis of the Thai Condominium Act B.E. 2522 (1979)³. As there are many restrictions in having the ownership of a dwelling, leasehold condominium is another excellent alternative for the foreigners who desire to live long term in Thailand.

Nowadays, leasehold condominiums are becoming popular and the amounts of them are increasing continuously observed from many real estate developers who are interested in developing the condominium on leasehold land. Leasehold property using the strength of management will be effective in prime locations where freehold land is rarely available. In Bangkok today, we can see luxury leasehold properties with strong sales performance in both occupancy and investment demand on, for example:

² สำนักส่งเสริมธุรกิจอสังหาริมทรัพย์, กรมที่ดิน, “คำอธิบายกฎหมายอาคารชุดตามพรบ. อาคารชุด พ.ศ. 2542 แก้ไขเพิ่มเติมโดยพรบ. อาคารชุด (ฉบับที่ 4) พ.ศ. 2551”, (The Office of Real Estate Business Promotion, Department of Land, “*the Explanation of Condominium Act B.E. 2542, amended by Condominium Act (No. 4) B.E. 2551*”), available at <http://www.dol.go.th/estate/images/medias/estate/condo.pdf>. (accessed June 1, 2016)

³ พระราชบัญญัติอาคารชุด พ.ศ. 2522 มาตรา 19 ทวิ (Condominium Act B.E. 2522 (1979), sec. 19 bis)

Lang Suan Village Project developed by Siam Sindhorn Company Limited, which is the affiliated companies of the Crown Property Bureau. This project is the most expansive and luxurious mixed-use development where situated at Soi Langsuan, central of Bangkok city.⁴

Magnolias Ratchadamri Boulevard developed by Magnolia Finest Corporation Limited. This project has been developed to be mixed-use project where situated in the CBD (Central Business District) directly on Ratchadamri Road. It consists of residential, hotel, office and commercial retail.⁵

Four Seasons Private Residences Bangkok developed by Country Group Development Public Company Limited. This project is the luxurious mixed-use project along side of Chao Praya River, which consists of one resident and two hotels (Four Seasons and Capella).⁶

Leasehold condominium is the unique business concept which the buyers (lessees) require to make full payment of the purchase price of the unit (rental) in advance of the date of registration of the lease. Then, they will enjoy their right to tenure and occupy such condominium unit for the certain period of time (normally 30 years with renew 30 years).⁷

⁴ Siam Sindhorn Company Limited, **Sindhorn Residence**, available at http://www.sindhornresidence.com/eng/master_plan.php (accessed June 1, 2016)

⁵ Magnolia Finest Corporation Ltd., **Magnolias Ratchadamri Boulevard**, available at <http://www.magnolias-ratchadamri.com/facilities.php?id=1> (accessed June 1, 2016)

⁶ Country Group Development PCL, **Four Seasons Private Residences Bangkok**, available at <https://chaophrayaestate.com/#FOUR SEASONS> (accessed June 1, 2016)

⁷ กุลชา จรุงกิจอนันต์, “ทำอาคารชุดบนสิทธิการเช่าได้ด้วยหรือ?”, กรุงเทพธุรกิจ, 19 มิถุนายน 2556” ภายใต้ “กฎหมายเศรษฐกิจ”, (Koonlacha Charungkit-Anant, “*Can the condominium be developed on the leased land?*”, Krungthepturakij, June 19, 2013, under “Economic Law”) available at <http://www.bangkokbiznews.com/blog/detail/512009> (accessed June 1, 2016)

Because of its unique business concept, it differentiates the lease of leasehold condominium from the other lease of residential space, for example, rented house, dormitory, etc. For the lease of residential space, the lessee, usually makes the payment of rental in monthly or yearly basis during the lease term, whereas, in the lease of leasehold condominium, the lessee requires to make full payment of rental in advance upon the date of registration of the lease. Furthermore, in the lease of residential space, the lessor is more concerning to the characteristic of lessee than the lease of leasehold condominium.

Normally, leasehold condominium is divided into two parts which are individual unit and common property; common parts and facilities of condominium such as lobby, swimming pool, fitness room, etc. Either the lessor or the management team appointed by the lessor shall administrate, control and maintain the common property, whereas each leasehold condominium buyer (lessee) is responsible to share the common property's expenses. All these are familiar with the concept of freehold condominium except that leasehold condominium is unable to constitute to be the condominium as the definition of the Thai Condominium Act B.E. 2522 (1979) as well as constitute the condominium juristic person.

Under Thai Condominium Act B.E. 2522 (1979), leasehold condominium is not regarded as to be condominium since it has developed on leased land which the developer has no ownership of land according to the section 6 of the Thai Condominium Act B.E. 2522 (1979).⁸ Therefore, leasehold condominium in Thailand is not governed by the Thai Condominium Act B.E. 2522 (1979), but it is regulated under the hire of immovable property law, section 537-574 of the Thai Civil and Commercial Code. This Code complies with all lease of immovable property and the provisions under this Code are suitable for the general lease which the rental payment shall be made in monthly or yearly basis. As a result, such provisions are not proper and suitable for the unique business concept of leasehold condominium as mentioned

⁸ พระราชบัญญัติอาคารชุด พ.ศ. 2522 มาตรา 6 ทวิ (Condominium Act B.E. 2522 (1979), sec. 6)

earlier. In practice, most parties enter into the agreement having some clauses differentiating from the law provided in order to correspond to the unique business concept of leasehold condominium. However, it does not guarantee or ensure the leasehold condominium buyer to be properly protected by law. Furthermore, Phuket Civil Court has recently ruled that the secured / collective leases are void since it is actually fictitious agreements⁹ according to section 155 of Thai Civil and Commercial Code.¹⁰ Secured leases is the way of leasehold condominium buyers' security which the buyers not only enter into the lease agreement with the legal entity (company) which owns the condominium, but also enter into the share sale and purchase agreement for shares that can control the company which owns such condominium.

In order to urge the economy of our country particularly in real estate sector to be more increasing to compete with other ASEAN country and to guarantee or ensure the leasehold condominium buyer to have properly protection by law, it is, therefore, essential to provide the proper provisions to govern the lease of the leasehold condominium by stipulating the rights and obligations of both the lessor and the lessee of leasehold condominium so that it shall assure the foreigners to have proper guarantee and protection in purchasing the leasehold condominium.

1.2 Hypothesis

A major drawback of principles of lease law in Thailand is that the characteristic of lessee is the essence of a lease agreement. From this, it leads to many unsolved problems relating to the lease of leasehold condominium which is the unique business concept. In addition, the Thai Government has launched the policy to urge the economy of the country, particularly in real estate sector, which the leasehold condominium market become more significant and affect the overall economy of the

⁹ Phuket Gazette, "*Phuket Property Legal: Collective Leasehold Structures – Overview*", available at <http://www.phuketgazette.net/property-legal/Phuket-Property-Legal-Collective-Leasehold-Structures-150/19982#sthash.UZchfiH6.dpuf> (accessed June 1, 2016)

¹⁰ ประมวลกฎหมายแพ่งและพาณิชย์ มาตรา 155 (Civil and Commercial Code, sec. 155)

country. However, at present, there is no specific provision to apply properly with the lease of leasehold condominium and some possible provisions are silent on some issues and improper to solve the arising problems. It is, therefore, essential to lay down the laws relating to lease of leasehold condominium in the specific provisions.

1.3 Objectives of Study

1 To study the possible principles of law and other relevant regulations on the lease of leasehold condominium unit which are applied in Thailand;

2 To study and analyze the problems and difficulties of lease of leasehold condominium unit in relation to the enforcement of the Thai Law;

3 To study foreign laws and /or regulations on the lease of leasehold condominium unit; and

4 To propose new legislative solutions in order to resolve the problems or difficulties of the lease of leasehold condominium unit arising from the incompleteness of the Thai Law and enhance the effectiveness of Thai Law.

1.4 Scope of Study

This thesis shall focus on the existing principle of laws and other relevant regulations with compliance to the lease of leasehold condominium unit, including studies on the problems and difficulties arising from the drawback of the principles of lease law, the loophole of the Thai Civil and Commercial Code as well as analyze the foreign laws relating to lease of leasehold condominium unit in terms of the enforcement of existing laws in order to propose the new legislative solutions.

1.5 Methodology

The sources used in this thesis are based on documentary research by searching and analyzing both Thai and foreign in form of textbooks and electronic data including articles, theses, statutory laws, government publications, newspapers, scholar's opinions, Court's decision.

1.6 Expected Results

1 To thoroughly understand the principles of law and other relevant regulations on the lease of leasehold condominium unit which comply in Thailand;

2 To thoroughly understand the problems and difficulties of lease of leasehold condominium unit in relation to the enforcement of the Thai Law;

3 To thoroughly understand how the principles of various foreign laws or other legal measures to deal with the lease of leasehold condominium unit; and

4 To provide the appropriate and effective legal solution to resolve problems arising from the loophole of the Thai laws.

CHAPTER 2

OVERVIEW OF LEASEHOLD AND LEASEHOLD CONDOMINIUM

This chapter will provide topic regarding the history, definition, classification of both leasehold and leasehold condominium, including the distinction of freehold condominium and leasehold condominium as well as the leasehold condominium in Thailand.

2.1 History of Leasehold

The concept of leasehold was first introduced in the English property system, a few decades later in the Middle Ages. At those times, most of lands belong to the nobility, whereas the working class is impossible to retain the ownership of lands. Since the landlord want to keep the ownership of their lands whilst generating income from their lands, the leasehold concept was presented. The tenant was permitted to occupy the land (farming or providing other trade services) for a fixed period of time and the landlord got paid the rent through foods and services supplied by the tenant.¹¹

In 1920, the various legislations were enacted to keep down the rent and restrict the right of the landlord to evict the tenant. Since the objectives of this law was to control the rent, the landlord began to sell long leasehold of the land which lease term was ranging between 99 and 125 years in order to get more income. This concept has been continuing to present.¹²

¹¹ Steve Smith, “*The History of Leasehold Property [INFOGRAPHIC]*”, available at <http://www.ashburnham-insurance.co.uk/blog/2015/06/the-history-of-leasehold-property-infographic/> (accessed June 1, 2016)

¹² Chris Wiles, “*The History of Leasehold*”, (28 October 2013), available at <http://www.premierestateslimited.com/blog/the-history-of-leasehold/> (accessed June 1, 2016)

2.2 Definitions of the Leasehold

The term “leasehold” or “leasehold interest” is originated from the common law system which is referred to interest in the land. From the writer studies on this matter, in that respect are many sources to define the term leasehold as follows:

In Black’s Law Dictionary, it referred as *“a tenant's possessory estate in land or premises, the four types being the tenancy for years, the periodic tenancy, the tenancy at will, and the tenancy at sufferance.”*¹³

With reference to the Uniform Commercial Code of the United States of America, it has defined the term leasehold as *“the interest of the lessor or the lessee under a lease contract.”*¹⁴

Based on Marianne Rabalais’s view, it defines as *“a leasehold contemplates all the rights and obligations that arise under the lease-including the payment of the rent.”*¹⁵

2.3 Classification of Leasehold

The most common methods to classify the leasehold shall be (1) by the duration of the term, (2) by type of use, and (3) by method of rental payment.

2.3.1 Classify by Duration of Term

This section is classified by the term of the lease agreement which can be divided as follows:

¹³ Black Law’s Dictionary, 9th ed., 2009

¹⁴ Uniform Commercial Code, § 2A-103

¹⁵ Marianne Rabalais, *“A Common Law Intrusion into the Civil Law: Carriere V. Bank of Louisiana”*, **Louisiana Law Review**, Vol. 61, Rev. (2000)

2.3.1.1 The Estate for Years¹⁶

The estate for years is the common type of leasehold which has a fixed term of the lease agreement. The duration of the lease agreement is ranging from one year to ninety years. The parties may agree the lease term as long as the law does not prohibit. Unless otherwise specified in the lease agreement, the estate for years shall terminate automatically upon the expiry date as specified in the lease agreement. The lessor is not required to send a notice to leave to the lessee unless required to provide notice under the law.

2.3.1.2 The Periodic Tenancy¹⁷

Sometimes, it is called an estate from year to year since it is automatically renewed upon the expiry date unless the lessor or lessee gives notice to terminate the lease agreement. It may be regarded as an arrangement which is open-ended, though with protection against termination without adequate notice.

The periodic tenancy may be created expressly by the agreement between the parties, or it may be in oral. Lease agreement exceeding three years must be created by deed, but the periodic tenancy taking effect immediately is valid without writing. The lessor and lessee can terminate the lease agreement at any time; however, the prior notice shall be served accordingly.

2.3.1.3 The Tenancy at Will¹⁸

It is the type of leasehold which has an indefinite duration of the lease agreement. It may be terminated at any time after either the lessor or the lessee gives proper notice to another party. The tenancy at will may be created expressly by the agreement between the parties, or it may be in oral.

¹⁶ George J. Siedel and Robert J. Aalberts, “*Real Estate Law*”, 6th ed., (Mason, Ohio, U.S.A: Thomson West, 2006), 389-393

¹⁷ *Id.*

¹⁸ *Id.*

2.3.1.4 The Tenancy at Sufferance¹⁹

The tenancy at sufferance is the type of leasehold which the lease term shall end when the lessor gives the notice to terminate. It also has the specific lease term similar to other type of leasehold. It may be occurring when the lessee remains in possession of real estate after the expiration of lease term therefore, the lessee shall continue to occupy the real estate and pay the rent to the lessor until the lessor gives the notice to terminate. In other words, the tenancy at sufferance is reserved for a lessee who holds over on the termination of the lease. It has the effect that the lessee does not become a trespasser, although the tenancy can be terminated at any time.

In case, the lessor assents to the holding over, then the relationship will become that of tenancy at will, or periodic tenancy on the payment of rent. On the other hand, a lessee who retains possession in the face of positive objection by the lessor will become a trespasser.

2.3.2 Classify by Type of Use

This section is classified by objective of the lease agreement which can be divided as follows:

2.3.2.1 Commercial Lease²⁰

The commercial lease involves lessee use of the leasehold property for income-producing activities, for example, retail shop, supermarket, office etc.

2.3.2.2 Residential Lease²¹

The residential lease does not involve income-producing activities similar to the commercial lease; however, it provides the lessee and their family with a place to dwell.

¹⁹ *Id.*

²⁰ Benjamin N. Henszey and Ronald M. Friedman, “*Real Estate Law*”, 2nd ed., (U.S.A: John Wiley & Sons, Inc., 1984), 259

²¹ *Id.*

2.3.2.3 Ground Lease²²

The ground lease is the lease of land without the improvement, therefore, the ownership of land and the ownership of the improvement are separate.

2.3.3 Classify by Method of Rental Payment

This section is classified by type of rental payment to be made by the lessee who can be divided as follows:

2.3.3.1 Gross Lease²³

A fixed rental payment shall be made by the lessee and the lessor shall be responsible for the overhead costs such as taxes, utilities and insurance. It is often applied in the short term lease or the residential lease.

2.3.3.2 Net Lease²⁴

The lessee not only pays a fixed rental, but also pays the taxes, utilities, maintenance and repairs and insurance. The lessor's responsibility is to collect the rent. It usually used in the long term lease or the commercial lease.

2.3.3.3 Percentage Lease²⁵

Rental payment is based on some percentage of sales made on the leased property. The base to which the percentage is applied can be gross sales, net sales, gross sales above a predetermined amount, or some other agreed-on sales figure. Thus, it is applicable exclusively to income-producing leaseholds such as restaurants, stores, and theaters.

²² *Id.*

²³ *Id.* at 260.

²⁴ *Id.* at 260.

²⁵ *Id.* at 260.

2.3.3.4 Fixed Rental plus Escalation Lease²⁶

The fixed rental base is determined at the beginning of the term and adjusted upward periodically to reflect increases in the cost of living.

2.4 History of Leasehold Condominium

Since the number of demands of dwelling is increasing whereas the number of supply of freehold land becomes decreasing. In addition, in some countries, the lands are held the ownership by the governmental agency which there is the restriction by law to transfer the ownership of lands, for example, Hong Kong, Singapore, etc. Thus, the concept of leasehold condominium was introduced by the real estate developer to maximize the use of land in order to resolve such issue.

Leasehold condominiums are appropriate in the circumstances where a freehold transfer of land is either unacceptable or undesirable or where the owner of the land does not wish to undertake the long term management responsibilities entailed in a standard residential development.²⁷

Because the management of condominium through a juristic body relies on a concept of majority votes and democracy which is the drawback of freehold condominium, it shall make leasehold condominium become more attracted. Such management is an ideal in principle, nonetheless, in practice it can create disputes over services and budgets which demonstrate lack of strong and clear leadership, consistency and efficiency in management decisions. Moreover, a juristic body where the juristic committee changes annually cannot effectively enter into long-term service contracts. With the increasing problems of property management in freehold

²⁶ *Id.* at 260.

²⁷ Brian Bucknall, "Leasehold Condominiums: The Further Flight of the Fee" **Osgoode Hall Law Journal**, Volume 14, Number 1 (June 1976)

condominiums being experienced by buyers, they are beginning to consider buying a leasehold condominium located in a prime location.²⁸

2.5 Definitions of Leasehold Condominium

Some scholars have defined of the term “leasehold condominium” on their research papers which are described as follows:

According to Brian Bucknall’s view, a law professor at Osgoode Hall Law School located in Toronto, Ontario, it denotes the term leasehold condominium that “*the possibility of creating condominium projects on land that is held under a long term lease.*”²⁹

Based on Hiroshi and Melvin A. Reskin’s view, it defines that “*the purchaser of a unit in the freehold acquires an undivided fee simple interest in land, whereas the purchaser of a unit in the leasehold acquires an undivided interest in leasehold on a fee which has been submitted to a horizontal property regime.*”³⁰

In the eye of Leo J. Joliet, the term leasehold condominium refers to “*the principal use for the leasehold condominium is in those areas where transfers in fee have become so restricted that the public has become accustomed to paying a ground rent for residential property or in those instances where land cannot be conveyed in fee.*”³¹

²⁸ CBRE Thailand, “*Taking a Look at the Merits of Owning a Leasehold, Condominium*”, (25 Apr 2014), available at <http://www.cbre.co.th/en/News/Article/Merits-of-Owning-Leasehold-Condo> (accessed June 1, 2016)

²⁹ *Supra* Note 27

³⁰ Hiroshi and Melvin A. Reskin, “*Leasehold Condominiums*”, **Connecticut Law Review**, Vol. 2, No. 1, June 1969

³¹ “*Committee on New Developments in Real Estate Practice*”, **Real Property, Probate and Trust Journal**, Vol. 2, No. 3 (Fall 1967), 347-361

From aforementioned scholars' view, it can be implied that leasehold condominium is a condominium where is developed on the land is subject to the leasehold. The purchasers of the leasehold condominium unit do not obtain the ownership of the unit, on the other hand, they shall be granted the right of use the condominium unit for a specific period.

2.6 Distinction of Freehold Condominium and Leasehold Condominium

In the condominium business field, the interest of real estate can be categorized into two characters which are (1) freehold condominium, and (2) leasehold condominium.

(1) Freehold condominium is characterized by the indefinite duration, and the owner of the freehold condominium unit owns the right of the ownership perpetually which the owner can sell, distribute, transfer, or give the ownership right of the condominium to any other person without any restriction.

(2) Leasehold condominium has the duration for specific periods as agreed by the parties, and lessee (the owner of the leasehold condominium unit) has only the right of possession and occupancy. When the term of the lease ends, the right of possession and occupancy shall revert to the lessor, thus the lessor's interest during the lessee's possession and occupancy is known as a reversionary interest.³²

The advantages of leasehold condominium are described as follows:

First, the development costs of leasehold condominiums are lower than those of freehold condominium. In the development of any condominium project, there are basically two costs which are

- 1) The purchase price of land and
- 2) The costs of development (including construction cost).

³²*Supra* Note 16, at 389.

The combination of these costs shall pro-rated over the condominium units in order to determine the price at which the condominium units must be marketed. A feasibility study indicating that under prevailing conditions, the projected condominium units which will not be marketable at those prices will force the developer to abandon the project, unless the developer can seek the method to reduce the prices at which the condominium units must be marketed to a level at which they will be saleable. Hence, leasehold condominium concept may result in a viable project.³³

Second, the landowner continues to hold the ownership of land. If a particular parcel of land is obviously suitable for development but the owner of the land is not willing to sell because he may be interested in the appreciation that will be his longer he holds the land, the leasehold condominium concept can be out the beneficial use.³⁴

Third, there is the restriction of transfer of the ownership of the land. When a particular parcel of land is suitable for condominium development, but the owner of land is unable to sell or transfer the right of ownership of land to the third person since there are the rules restricting not to sell or transfer. Therefore, condominium can be created by the use of leasehold interest without violating the rules.³⁵

Fourth, the purchaser of the leasehold condominium unit may be able to purchase the unit at a lower price. Since the cost of the land is not included, the purchaser of a leasehold unit acquires only a leasehold interest in his unit and an undivided interest in the lease of the appurtenant real property at the lower price than the freehold unit.³⁶

³³ *Supra* Note 27

³⁴ *Supra* Note 27

³⁵ *Supra* Note 27

³⁶ Brian Bucknall, Colin Connor, Leonard Fine and Marilyn Ginsburg, "Book Review, *The Leasehold Condominium: Problems and Prospects, The Report of the Ontario*

2.7 Leasehold Condominiums in Thailand

In Thailand, we can see a lot of selling advertisement of various condominiums on the property broker websites which some condominiums are sold in freehold interest, but others are sold in leasehold interest. The buyer of the freehold condominium shall acquire the right of ownership from the seller whereas the buyer of leasehold condominium, which is legally called a lessee, shall only have the right to possess and occupy the condominium unit for the certain period of time as agreed in the lease agreement.

For freehold condominium, it shall be governed by the Thai Condominium Act B.E. 2522 and Sale of Immovable Property under the Thai Civil and Commercial Code. Whereas, the leasehold condominium is not regulated under the Thai Condominium Act B.E. 2522, it shall be solely governed by Hire of Property under Thai Civil and Commercial Code.

Since the restriction of law, foreigners cannot take ownership over the lands as freehold, freehold condominium is the another option for the foreigners who desire to have the ownership of the real estate in Thailand. However, according to the Thai Condominium Act B.E. 2522 has limited the foreigners to own the freehold condominium units not exceed to 49% of the spaces of the whole units in such condominium and the remaining 51% must own by Thai nationals.³⁷

Since the scarcity of the freehold interest of land around the central of the city and the demand of people who desire to be near their office building and take in the urban life are continued increasing, it is resulting to their high-price of the freehold condominium. Therefore, people, especially who is the middle class, are quite difficult to own such freehold condominium. On the other hand, leasehold condominium may appear to be an excellent alternative to foreigners who desire to

Task Force on Leasehold Condominium (with appendix volume)", by Arthur S. Levine, Toronto, Ontario. 1975 Pp. 113, App 52 (Vol. 50)

³⁷ *Supra* Note 3

have the dwelling in Thailand and the Thai people who desire to survive in urban areas.

Nevertheless, owing to the fact that under Thai property law, it is not considered the lease as a real property right, but it shall be only regarded the lease as a right over the individual which it causes a number of problems with the purchaser of the leasehold condominium. A major drawback of lease law in Thailand is that the lessee's interest associated with leasehold interest is limited. For instance, the heirs of the lessee are not automatically entitled to the succession of leasehold interest when the lessee dies because the principle of lease law regards that leasehold interest is the exclusive right of the lessee, thus the lease agreement shall be terminated upon the death of the lessee. This principle was affirmed by the Supreme Court Decision as follows:

The Supreme Court Decision No. 119/2509 stated that *“lease agreement is the exclusive right of the lessee, when the lessee died, the lease agreement shall be terminated. Although the defendant who is the child of the lessee has lived in the disputed building after the lessee died, it shall be deemed that the defendant is the dependent of the lessee. Therefore, the defendant paid the rent on behalf of the lessee. Also the lease agreement between the plaintiff and the defendant shall not be executed.”*³⁸

The Supreme Court Decision No. 383/2540 stipulated that *“in general of the lease agreement, the lessor shall consider the attribution of the lessee, whether he can rely on occupancy and maintenance the leased property or not. Thus, the lease agreement is the exclusive right of the lessee. When the lessee died, the lease agreement shall be terminated and not inherited to the heir of the lessee.”*³⁹

³⁸ ศาสตราจารย์ ดร. ไพฑูริย์ เอกจรรย์กร, “คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ เช่าทรัพย์ – เช่าซื้อ”, พิมพ์ครั้งที่ 18. (กรุงเทพฯ: วิญญูชน, 2557), 209-210 (Professor Dr. Phathaichit Ekkachariyakon, “**Hire of Property, Hire-Purchase**”, Vol. 18 (Bangkok: Winyuchon, 2014)), 209-210

³⁹ *Id.* at 210-211.

The Supreme Court Decision No. 9201/2551 specified that *“leasehold interest is the one of the legal claim arising from the agreement. The lessor shall agree the lessee to occupy or benefit from the leased property which is the personal obligation, not the property right. Furthermore, normally, the lessor shall consider the attribution of the lessee whether he can rely on occupancy and maintenance the leased property or not. Thus, the lease agreement is the exclusive right of the lessee. When the lessee died, the lease agreement shall be terminated and not inherited to the heir of the lessee without whether having the terms and conditions regarding the assignment in the lease agreement or not.”*⁴⁰

⁴⁰ *Id.* at 211.

In Thailand, the example of leasehold condominium is Cu Terrace, which is developed by Chula Property.



Figure 2.1 Model Picture of Cu Terrace and Cu iHouse Project.⁴¹

Since the limitation by law in relation to the transfer of the ownership of land, Cu Terrace is developed as the leasehold condominium for the residential purpose. From the picture above, this project comprises of the connected two-high rise residential buildings which are (1) CU Terrace – a residential leasehold condominium which is available for all of staffs and general person and (2) Cu iHouse – a dormitory for the international students.

⁴¹ กองบรรณาธิการ เช็คราคา.คอม, “เผยโฉม... อนาคต “สามย่าน-จุฬา-สยาม” จะเปลี่ยนแปลงไปแค่ไหน?”, (19 มิถุนายน 2558), (Admin, Checkraka.com, “Expose... how can the future of Samyan-Chula-Siam be changed?”, (19 June 2015)), available at <http://www.checkraka.com/condo/advertorial/10017/> (accessed June 1, 2016)

Cu Terrace consists of 510 units with 22-stories. Its location is on Chula Road, Soi 16 - 20 and its total area is approximately 6-2-69 rai. There are two types of condominium units which are one bedroom - type and two bedrooms – type. The units' area is ranging from 28 – 55 square meters.⁴²

In conclusion, the concept of leasehold was first introduced in the Middle Ages and it has been continuing to present. The term leasehold is defined by many sources as well as its classification is divided into 3 types which are (1) the duration of the term, (2) type of use and (3) method of the rental payment. On the other hand, the concept of leasehold condominium was presented, by the real estate developer, since the scarcity of freehold land to construct the condominium and the demand of maximizing the use of land. In the condominium business, the interest of real estate is divided into two characters which are (1) freehold condominium and, (2) leasehold condominium. The advantages of leasehold condominium are attracting both real estate developers and buyers (lessee), for example, the lower development cost, the landowner continues to hold the ownership of land, and the buyers may purchase the condominium unit at a lower price. In Thailand, there are a lot of leasehold condominiums, which are developed around the urban district and Cu Terrace, situated on Chula road, is one of leasehold condominium developed by Chula Property. However, the problems regarding lease of leasehold condominium have remained arising since the provisions of the Thai Civil and Commercial Code are improper to apply with the unique business concept of lease of leasehold condominium. Therefore, in following chapter, the writer will study on various foreign laws relating to the leasehold interest and the legal measures to deal with such problems.

⁴² สำนักงานจัดการทรัพย์สิน จุฬาลงกรณ์มหาวิทยาลัย, หน่วยงานธุรกิจของสำนักงาน, “อาคารพิเศษ (เรือนวิรัชมิตรและระเบียงจามจรี)”, (Chula Property, Business Unit, “*Particular Building (Wiratchmit Building and CU Terrace)*”), available at <http://www.property.chula.ac.th/web/node/1377> (accessed June 1, 2016)

CHAPTER 3

FOREIGN LAWS RELATING TO LEASEHOLD INTEREST

This chapter, the writer will provide the foreign laws in relation to the leasehold interest. Since the legal systems of most ASEAN countries have been influenced by the colonial period, which are common law and civil law system, therefore, the writer will study on the laws of the United States of America and Ontario, Canada whose legal systems are influenced by England, the root of the common law system, whereas, Germany and France are the original countries of the civil law system.

3.1 Common Law Countries

3.1.1 The United States of America

In the United States of America, there are five sources of Law, namely constitutional law, statutory law, treaties, administrative regulations, and the common law which includes case law. However, the United States of America have integrated in 50 states to be the country and each state enacts its own laws and statues to regulate the people within its jurisdiction. Since such laws and statues have their own characteristics in each state, there is an attempt to standardize state laws by introducing Model Law or Sample Law as a guideline for states to follow.

The concept of leasehold condominium, in the United States of America, is recognized in the Uniform Condominium Act. This Act provides the definition leasehold condominium⁴³, which refers to the condominium situated on the leased land and the leasehold interest of the condominium will be terminated upon the expiration of the lease as well as the definition the unit owner⁴⁴ which refers including the owner of a freehold condominium unit and the lessee of a leasehold condominium unit.

⁴³ Uniform Condominium Act, § 1-103 (15)

⁴⁴ Uniform Condominium Act, § 1-103 (26)

This Act also provides the specific provision to support the creation of the leasehold condominium whereby the lessor must prepare and sign the declaration⁴⁵, which serves as notice of the creation, in order to guarantee that the lessor has given the consent for his land to be used as a leasehold condominium. Furthermore, this is the significant clause which provides for the protection of the unit owner, regardless of whether the lessee, sublessee or even further down in a chain of transfer of a leasehold interest, by assuring that after the declaration for leasehold condominium is recorded, the lessor or his successor in leasehold interest shall not terminate the lease agreement as long as the unit owner has made payment of the rent.⁴⁶

3.1.1.1 Provisions in relation to Leasehold Interest in the United States of America

In the United States of America, the legislation with respect to the lease of leasehold condominium shall be the Uniform Commercial Code and the Restatement (Second) of Property: Landlord and Tenant, Part V. Transfer by Landlord or Tenant of Interest in Leased Property. These legislations have provided the provisions to deal with the various issues with the lease of leasehold condominium. Such provisions which are considered to study and analyze with the various legal problems of the lease agreement of leasehold condominium in Thailand shall be described as follows:

(1) The Uniform Commercial Code⁴⁷

“§ 2A-103. Definitions and Index of Definitions.”

*“(w) **Sublease** means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.”*

⁴⁵ Uniform Condominium Act, § 1-103 (10)

⁴⁶ Uniform Condominium Act, § 2-106

⁴⁷ Uniform Commercial Code,

available at <https://www.law.cornell.edu/ucc/2A> (accessed June 1, 2016)

“§ 2A-305. Sale or Sublease of Goods by Lessee.”

“(1) Subject to the provisions of Section 2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and Section 2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (a) the lessor was deceived as to the identity of the lessee;*
- (b) the delivery was in exchange for a check which is later dishonored; or*
- (c) the delivery was procured through fraud punishable as larcenous under the criminal law.*

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.”

Based on section 2A-103 (w) and section 2A-305 of the Uniform Commercial Code, it shall be implied that the lessee is entitled to sublease the leasehold interest to the third person unless otherwise specified in the lease agreement. The sublessee shall be responsible to the lessor directly to the extent of the lease agreement as well as obtaining protection by law.

Although, the explicit definition of assignment does not appear in the Uniform Commercial Code; however the word assignment exists in the lease agreement. The lessee is also entitled to assign the leasehold interest to the third person as long as it is not prohibited by the lease agreement. When the assignment has been made, the assignee steps into the shoes of the assignor and takes over the rights and obligations of the assignor. In stepping into the assignor's shoes, the assignee acquires no greater rights than the assignors possessed. However, the parties who have assigned the leasehold interest to the third person shall continue to perform his obligations as specified in the lease agreement in the case of third person's defaults.

(2) Restatement (Second) of Property: Landlord and Tenant, Part V. Transfer by Landlord or Tenant of Interest in Leased Property⁴⁸

“Chapter 15. Transferability of Landlord's or Tenant's Interest in Leased Property”

“§ 15.1 Freedom of Transfer”

“The interests of the landlord and of the tenant in the leased property are freely transferable unless”

“(1) a tenancy at will is involved;”

“(2) the lease requires significant personal services from either party and a transfer of the party's interest would substantially impair the other party's chances of obtaining those services, or”

“(3) the parties to the lease validly agree otherwise”

⁴⁸ American Law Institute, “*Restatement (Second) of Property, Land. & Ten. V Intro. Note (1977)*”, Thomson Reuters.

“§ 15.2 Restraints on Alienation”

“(1) A restraint on alienation without the consent of the tenant of the landlord’s interest in the leased property is valid, but the tenant’s consent to an alienation by the landlord cannot be withheld unreasonably, unless a freely negotiated provision in the lease gives the tenant an absolute right to withhold consent.”

“(2) A restraint on alienation without the consent of the landlord of the tenant’s interest in the leased property is valid, but the landlord’s consent to an alienation by the tenant cannot be withheld unreasonably, unless a freely negotiated provision in the lease gives the landlord an absolute right to withhold consent.”

“Chapter 16. Effect of Transfer of Landlord’s or Tenant’s Interest on Burden and Benefit of their Respective Obligations: Herein Promises Running with the Land.”

“§ 16.1 Obligation Created by an Express Promise – Burden of Performance After Transfer”

“(1) A transferor of an interest in leased property, who immediately before the transfer is obligated to perform an express promise contained in the lease that touches and concerns the transferred interest, continues to be obligated after the transfer if:

(a) The obligation rests on privity of contract, and he is not relieved of the obligation by the person entitled to enforce it; or

(b) The obligation rests solely on privity of estate and the transfer does not terminate his privity of estate with the person entitled to enforce the obligation, and that person does not relieve him of the obligation.

(2) A Transferee of an interest in leased property is obligated to perform an express promise contained in the lease if:

(a) The promise creates a burden that touches and concerns the transferred interest;

(b) The promisor and promisee intend that the burden is to run with the transferred interest;

(c) The transferee is not relieved of the obligation by the person entitled to enforce it; and

(d) The transfer brings the transferee into privity of estate with the person entitled to enforce the promise.

(3) The transferee will not be liable for any breach of the promise which occurred before the transfer to him.

(4) If the transferee promised to perform an express promise contained in the lease, the transferee's liability rests on privity of contract and his liability after a subsequent transfer is governed by subsection (1) (a)."

According to chapter 15 and 16 of the Restatement (Second) of Property: Landlord and Tenant, they are referring to the transfer of interest of the leased property. The lessor or the lessee has the right to transfer the interest of the leased property to the third person unless the conditions provided according to section 15.1 shall occur. Even though, the interest of leased property shall be transferred to the third person (transferee), the transferor shall remain binding to perform the obligations which specified explicitly in the lease agreement.

3.1.2 Ontario, Canada

In Ontario, Canada, the condominium can be categorized into two basic characters which are freehold condominium and leasehold condominium. For freehold condominium, they can be sub-categorized into four characters⁴⁹ which are as follows:

⁴⁹ Audrey M. Loeb, "*A Resident's Guide Condominium Ownership – What You Need to Know*", available at http://www.millerthomson.com/assets/files/article_attachments3/MT_A-Residents-Guide-Living-and-Buying-a-Condominium_A-Loeb.pdf (accessed June 1, 2016)

(1) Standard Condominium – it is the traditional style of condominium with units and common elements

(2) Phased Condominium – it is the single condominium complex, which has been built and registered in stages

(3) Common Elements Condominium - it has no units but it consists solely of common elements. The owner of this type of condominium shall pay the common expenses and own the common interest.

(4) Vacant Land Condominium – the unit is no need to construct when the registration of a condominium but it will be registered as empty lots and then built the unit thereafter.

On the other hand, the concept of leasehold condominium has emerged as the one of type of condominium in Ontario, Canada. Leasehold condominium is created on lands where the declarant (the person who processes the registration of leasehold condominium) possessed only a leasehold interest and has the consent of the owner of land to develop the condominium on the lands. The declarant has also possessed the leasehold interest in lands which covers the whole condominium property and the term of the lease should be not less than 40 years less a day nor more than 99 years as to ensure the lease is neither unattractively shorter nor longer than the reasonable lifespan of the property.⁵⁰

However, the two types of the condominium, freehold condominium and leasehold condominium are governed by the same law which is Condominium Act, 1998. The provisions relating to the leasehold condominium shall be described in the following part.

⁵⁰ Mark Freedman, “*Condominium Development Update*”, Canadian Institute Condominium Conference, March 2007

3.1.2.1 Provisions in relation to Leasehold Interest in Ontario, Canada

Leasehold condominium in Ontario is governed by the Condominium Act, 1998. Section 164 – 175 in part XIII of the Condominium Act, 1998 refer to the ownership of both residential and non-residential condominiums in Ontario as well as the leasehold condominium. The Condominium Act, 1998 has also introduced a condominium corporation whose members are the owner of the unit. The duty of condominium corporation is to entirely manage the affairs of the condominium which are subject to the Condominium Act, 1998 and the Declaration. The condominium corporation is categorized into two types depending on the types of condominium, which one is freehold condominium corporation and another is leasehold condominium corporation.

Apart from the Condominium Act, 1998, there is the legislation dealing with the lease of leasehold condominium shall be the Residential Tenancies Act, 2006. These two legislations also provide the provisions which are considered to study and analyze with the various legal problems of the lease agreement of leasehold condominium in Thailand. It shall be described as follows:

(1) The Condominium Act, 1998⁵¹

“Section 165”

“(4) The owner of a unit in a leasehold condominium corporation may, without the consent of the lessor, transfer, mortgage, lease or otherwise deal with the leasehold interest in the unit.”

“(5) The owner of a unit in a leasehold condominium corporation may not transfer less than the whole leasehold interest in the unit and its appurtenant common interest.”

⁵¹ The Condominium Act, 1998, available at <https://www.ontario.ca/laws/statute/98c19> (accessed June 1, 2016)

Section 165 (4) – (5) of the Condominium Act, 1998 recognizes the right of the owner of the unit (lessee) to transfer or lease of the leasehold interest of the unit to the third person without having to obtain prior consent of the lessor. Nonetheless, in case of the transfer of the leasehold interest of the unit, the lessee cannot transfer the leasehold interest of the unit and its appurtenant common interest in part. Therefore, in conclusion, under the law of Ontario, Canada, leasehold interest is not an exclusive right of the lessee since the lessee has the right of transfer or lease freely to any other person.

In addition, section 165 (4) of the Condominium Act, 1998 provides that the lessee has also the right of mortgage the leasehold interest of the unit without obtaining the prior consent of the lessor. In this regard, it can be implied that under the law of Ontario, Canada, it recognizes the leasehold interest to be used as the collateral.

“Section 174”

“(1) At least five years before the end of the term of the leasehold interests in the units in a leasehold condominium corporation, the lessor shall give the corporation,

(a) a written notice of intention to renew all the leasehold interests that sets out the provisions applicable to the renewal; or

(b) a written notice of intention not to renew all the leasehold interests.

(2) A renewal of the leasehold interests shall be for at least 10 years or the greater term specified in the notice.

(3) Upon receiving the notice, the corporation shall send a copy of it to the owners.

(4) If the lessor does not give the required notice, the lessor shall be deemed to have given the notice required to renew the leasehold interests for 10 years subject to the same provisions that govern the leasehold interests before the renewal and the corporation shall send a notice of that fact to the owners.

(5) The leasehold interests shall be renewed for the term and subject to the provisions specified in the notice or the deemed notice, as the case may be, unless the owners who own at least 80 per cent of the units cast a vote against the renewal no later than one year after the notice or the deemed notice, as the case may be, was given to the corporation.

(6) The corporation shall give notice to the lessor if, under subsection (5), the owners vote against the renewal.

(7) The lessor shall prepare a notice in the form prescribed by the Minister stating whether the leasehold interests have been renewed or not and register the notice in,

(a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or

(b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division.

(8) If the leasehold interests are renewed subject to provisions that are different from those that applied before the renewal, the declaration shall be deemed to be amended to contain the provisions that apply upon the renewal and the corporation shall register a copy of the provisions as an amendment to the declaration.

(9) Section 107 does not apply to an amendment to the declaration if the amendment complies with subsection (8).”

Under section 174 of the Condominium Act, 1998, it provides the provision regarding the renewal of the lease of leasehold condominium which the lessor bears the responsibility to give the written notice to the leasehold condominium corporation, whether the lessor intends to renew or not at least five years before the end of lease term. Then, such copy of notice shall be sent to the lessee. In case of the renewal of the lease of leasehold condominium, the lease term shall be at least 10 years or the greater term as specified in the notice.

On the other side, if the lessor defaults to give the written notice, it shall be deemed that the lessor has given the notice to renewal of the lease of leasehold condominium for 10 years with the same terms and conditions according to the lease agreement before the renewal.

Besides, the lessee has also the right to decline such renewal by casting vote of the 80% of all the lessees against the renewal no later than one year after receipt of such notice from the leasehold condominium corporation.

(2) The Residential Tenancies Act, 2006⁵²

“Death of tenant”

“Section 91 (1) If a tenant of a rental unit dies and there are no other tenants of the rental unit, the tenancy shall be deemed to be terminated 30 days after the death of the tenant.”

Since the provision under the Condominium Act, 1998 does not mention the issue regarding the death of the lessee before the expiration of the lease, such provision appears under section 91 (1) of the Residential Tenancies Act, 2006. It provided that when a lessee dies and there is no other lessee in the leased property, the lease agreement shall be deemed to be terminated in thirty days after the death of the lessee.

3.2 Civil Law Countries

3.2.1 Germany

Under Germany, leasehold interest can be categorized into two types according to the German Civil Code (BGB), which are Ordinary Lease and Usufructuary Lease. The details of which are shown as follows:

⁵² The Residential Tenancies Act, 2006, available at <https://www.ontario.ca/laws/statute/06r17> (accessed June 1, 2016)

1. *Ordinary Lease* is related to lease agreement in which the lessor has an obligation to grant the lessee, the use of the leased property for the leased period and the lessee is obliged to pay the agreed rent to the lessor.⁵³

2. *Usufructuary Lease* is related to the lease agreement in which the lessor has an obligation to grant the lessee, the right to possess, use and enjoy the property as well as the right to receive benefits from its fruits of the leased property during the leased period. Additionally, under the rule of proper management, the lessee has the right to manage the property whereby the lessee is obliged to the agreed rent to the lessor.⁵⁴

3.2.1.1 Provisions in relation to Leasehold Interest in Germany

In German law, the rules on lease of residential are recognized as the particular kinds of obligations which are contained in Third Title, Seventh Section, Book Two of the BGB (Law of Obligations). In 2001, the German Civil Code (BGB) was amended and then the several jurisdictions of the German Federal Court have been passed to clarify some crucial points for residential lease which all crucial sections in the German Civil Code (BGB) end with the word “*A deviating agreement to the disadvantage of the lessee is ineffective*” in order to protect the lessee of the residential lease.⁵⁵

According to the German Civil Code (BGB), there are some provisions relating to the lease of leasehold condominium which are considered to study and analyze with the various legal problems of the lease agreement of leasehold condominium in Thailand shall be described as follows:

⁵³ อาชิวสิวี สหิบุญ, “การเช่าช่วงและการโอนสิทธิการเช่า”, (วิทยานิพนธ์นิติศาสตร์มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2554), 95 (Artchavid Sahiboon, “*Sublease and Assignment*”, (Master’s Thesis, Faculty of Law, Thammasat University, 2011)), 95

⁵⁴ *Id.*

⁵⁵ Kontakt und Terminvereinbarung, “*Leases in Germany*”, available at <http://www.kanzlei-wenderoth.de/services-in-english/leases-in-germany/> (accessed June 1, 2016)

(1) The German Civil Code (BGB)⁵⁶

“Section 540”

“Permitting use by third parties”

“(1) Without the permission of the lessor, the lessee is not entitled to permit a third party to use the leased property, in particular not to sublet it. If the lessor refuses permission, then the lessee may terminate the lease for cause with the statutory notice period unless the person of the third party constitutes cause.”

“(2) If the lessee permits a third party to use the property, then he is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for this.”

“Section 553”

“Permitting use by third parties”

“(1) If the lessee, after entering into the lease agreement, acquires a justified interest in permitting a third party to use part of the residential space, then he may demand permission to do so from the lessor. This does not apply if there is a compelling reason in the person of the third party, if the residential space would be overcrowded or if the lessor cannot for other reasons reasonably be expected to permit third-party use.”

“(2) If the lessor can only be expected to permit third-party use on a reasonable increase of the rent, then he may make permission dependent upon the lessee agreeing to such an increase in rent.”

“(3) A deviating agreement to the disadvantage of the lessee is ineffective.”

⁵⁶ The Federal Ministry of Justice and Consumer Protection, *German Civil Code BGB*, available at https://www.gesetze-im-internet.de/englisch_bgb/german_civil_code.pdf (accessed June 1, 2016)

Under section 540 of the German Civil Code (BGB), it refers to the assignment or sublease of leasehold interest, whereas section 553 applies particularly to the lease of residential space.

These provisions provided that the lessee must obtain the permission of the lessor before permitting a third person to use or occupy the leased property, particularly subletting. However, if the lessor declines to give the permission, the lessee is entitled to terminate the lease for cause, with the statutory notice period unless such third person constitutes cause.

Furthermore, in case of residential leases, the lessee may require the lessor to give permission if the lessee acquires the justified interest. However, this section further provided that the lessor may be entitled to refuse such permission in the following circumstances;

- a) There is a compelling reason in the person of the third person;
- b) The residential space would be overcrowded or;
- c) The lessor cannot, for other reasons reasonably, be expected to permit third person use.

Notwithstanding the foregoing, if the lessor grants the permission to assign or sublease to the third person, the lessee shall, however, remain fully responsible for any liability and/or damages arising from the third person.

“Section 563”

“Right of succession upon death of the lessee”

“(1) A spouse who maintains a joint household with the lessee succeeds to the lease upon the death of the lessee. The same applies to a civil partner.”

“(2) If children of the lessee live in the joint household of the lessee, then these children succeed to the lease on the death of the lessee if the spouse does not succeed. The succession of the civil partner is not affected by the succession of the children of the lessee. Other family members who maintain a joint household with the lessee succeed to the lease on the death of the lessee if the spouse or the civil partner does not succeed. The same applies to persons who maintain a joint household of a permanent nature with the lessee.”

“(3) If persons who have succeeded to the lease within the meaning of subsection (1) or (2) declare to the lessor within one month of obtaining knowledge of the death of the lessee that they do not wish to continue the lease, the succession is deemed not to have occurred. For persons without capacity to contract or having limited capacity to contract, section 210 applies with the necessary modifications. If more than one person succeeds to the lease, then each may make the declaration on his own behalf.”

“(4) The lessor may terminate the lease for cause with the statutory notice period within one month after obtaining knowledge of the definitive succession to the lease if there is a compelling reason in the person of the successor.”

“(5) A deviating agreement to the disadvantage of the lessee or of such persons as are entitled to succeed under subsection (1) or (2) is ineffective.”

“Section 564”

“Continuation of the lease with the heir; termination for cause”

“If, on the death of the lessee, no persons within the meaning of section 563 succeed to the lease or the lease is not continued with them under section 563a, then it is continued with the heir. In this case, both the heir and the lessor are entitled to terminate the lease for cause within one month with the statutory notice period after they obtain knowledge of the death of the lessee and of the fact that there has been no succession to the lease and no continuation thereof.”

Under section 563 and 564 of German Civil Code (BGB), they dealt with the subject of the right of succession upon death of the lessee which stipulated that the lease agreement shall not be automatically terminated upon the death of the lessee. In the light of the sections, the lease agreement shall succeed to the following persons:

- a) Spouse holding a joint household with the lessee, including the civil partner
- b) Children of the lessee living in the joint household of the lessee if the spouse does not succeed. However, the succession of the civil partner is not affected by the succession of the children of the lessee.
- c) Other family members holding a joint household with the lessee if the spouse or the civil partner does not succeed.
- d) The persons maintaining a joint household of a permanent nature with the lessee.

In the event that such persons who have succeeded the lease do not wish to continue with the lease agreement, they shall notify the lessor within one month upon the receiving knowledge of the death of the lessee and the succession shall be deemed not to have taken place.

If nobody has succeeded to the lease agreement, the heir of the lessee shall be the person who continues with the lease agreement. However, both the lessor and such heir of the lessee are entitled to terminate the lease agreement for cause within one month with the statutory notice period upon the receiving knowledge of the death of the lessee or the date that there is no succession to the lease.

“Section 566”

“Purchase is subject to existing leases”

“(1) If, after the lessee is given use of the leased residential space, it is disposed of by the lessor to a third party, then the acquirer, in place of the lessor, takes over the rights and duties that arise under the lease agreement during the period of his ownership.”

“(2) If the acquirer does not perform his duties, then the lessor is liable in the same way as a surety who has waived the defence of unexhausted remedies for the damage to be compensated for by the acquirer. If the lessee obtains knowledge of the passing of ownership by notification from the lessor, then the lessor is released from liability unless the lessee terminates the lease to the earliest date at which termination is allowed.”

Based on aforementioned section, it shall be concluded that under the German Law, the lessor has the right to transfer the ownership of the leased property to any other person. The transferee, who is the person to purchase the leased property, shall be bound by the rights and obligations of the transferor (lessor) towards the lease agreement. However, the lessor shall remain to be liable as the surety of the transferee to the lessee in case of the transferee’s default of performance obligation under the lease agreement.

3.2.2 France

The French Civil Code is recognized as a source of law which governs the leasehold interest. According to article 1708, contract of hiring can be categorized into two types which are (1) Hire of Thing and (2) Hire of Work.⁵⁷ In terms of hire of thing, they can be subdivided into two types as follows:

1. *Rente Fonciere* is referring to the agreement which the lessee shall pay the annuity in order to acquire the immovable property and the original owner shall receive perpetual income.⁵⁸

⁵⁷ French Civil Code, article 1708

⁵⁸ รสรินทร์ ปลอดขำ, “การโอนกรรมสิทธิ์ในอสังหาริมทรัพย์ที่ให้เช่า”, (วิทยานิพนธ์นิติศาสตร์ มหาวิทยาลัยศิลปากร, 2554), 71-73 (Rossarin Plordkhome, “*The Transfer of Ownership of Immovable Property Hired*”, (Master’s Thesis, Faculty of Law, Thammasat University, 2011)), 141-143

2. *Lease* is referring to the agreement which the lessor allows his property to be under the administration of the lessee for the limit of time, and the lessee shall pay the rent for the consideration.⁵⁹

3.2.2.1 Provisions in relation to Leasehold Interest in France

According to the French Civil Code, there are some provisions relating to the lease of leasehold condominium which are considered to study and analyze with the various legal problems of the lease agreement of leasehold condominium in Thailand shall be described as follows:

(1) The French Civil Code⁶⁰

“Article 1717

A lessee has the right to sublet or even to assign his lease to another person, if such right has not been taken away from him.

It can be taken away wholly or in part.

This clause is always peremptory.”

With respect to article 1717 of the French Civil Code, it is obviously that the leasehold interest under lease agreement is not regarded as the exclusive right of the lessee. The law has allowed the lessee to sublet or assign the leasehold interest to any other person unless there is forbidden as agreed by the parties. However, it may be forbidden wholly or in part and such forbidden clause is always strict.

“Article 1742

A contract for letting does not expire owing to the death of the lessor or the lessee.”

⁵⁹ *Id.*

⁶⁰ Henry Cachard, B.A., *“The French Civil Code”*, revised edition, Stevens and Sons, 1930

Based on article 1742 of the French Civil Code, it states that whether the death of the lessor or the lessee occurs, the leasehold interest under the lease agreement shall be transferred to the heir of the lessor or of the lessee, as the case may be. Then, the said heir shall be bound by the rights and obligations of the lease agreement.

“Article 1743

If the lessor sells the property leased, the purchaser cannot eject the farmer or tenant, who has a lease in authentic form or a lease with a positive date, unless such right has been reserved in the contract of letting.”

According to the article 1743, it can be implied that the purchaser of the leased property shall be bound by the rights and obligations of the lease agreement. Moreover, the said purchaser shall not evict the lessee who has the authentic lease, from the leased property, or the lease agreement has a certain expiry date unless such right reserved by the lease agreement.

In conclusion, from the study on the principles of foreign lease laws, both common law and civil law countries, which are regarding the specific issues of lease of leasehold condominium, it is apparently that some foreign countries accept the similar principles of lease laws with Thailand. For example, the issue of the leasehold interest shall be ceased in case of the death of the lessee, Ontario, Canada has the similar principles of lease law with Thailand, whereas United States of America, Germany and France have the different aspect of this issue. After studying on the principles of foreign lease laws regarding the various specific issues of lease of leasehold condominium, the writer will study the existing Thai laws which apply to the lease of the leasehold condominium as well as the problems arising from the improper application by law in the following chapter.

CHAPTER 4

LEASE AGREEMENT OF LEASEHOLD CONDOMINIUM UNDER THAI LAW

This chapter will study on the existing laws relating to the lease agreement of leasehold condominium and the problems concerning the lease agreement of leasehold condominium under Thai Civil and Commercial Code by clarifying and analyzing with the Foreign Laws as mentioned in chapter 3. In addition, this chapter will also study on the sample of the lease agreement of leasehold condominium of Chula Property by focusing on the issues in the lease agreement as the case study, which some provision has caused inappropriate burden or more responsibility to the lessee or some issue is not mentioned how to deal properly with the unique concept of the leasehold condominium.

4.1 Existing Laws relevant to Leasehold Interest in Thailand

4.1.1 Thai Civil and Commercial Code

Thai Law has no concept of leasehold condominium. In addition, the term “Leasehold Condominium” does not appear anywhere in the Condominium Act B.E. 2522 (1979) and it is not subject to the Condominium Act B.E. 2522 (1999). On the other hand, it is governed by hire of property law, stipulated in section 535-570 of Thai Civil and Commercial Code. Despite the foregoing observation, Leasehold condominium exists and gradually grows an important integration in Thailand’s real estate market. In practice, Leasehold condominium refers to a long-term lease condominium with the fully rent being paid upfront. The purchaser of the leasehold condominium shall enjoy the right to possess or occupy for 30 years lease term. Since the unique business concept of leasehold condominium, some provisions under Thai Civil and Commercial Code are not suitable in compliance with. Thus, the writer will study and focus on material problems on applying such provisions with the leasehold condominium in order to provide the proper legislative measure.

According to section 537 of Thai Civil and Commercial Code, the lease agreement is the agreement which one party, as the lessor, agrees to grant another person, as the lessee, to occupy or enjoy any interest in the property for a certain period of time and the lessor is entitled to get paid the rent in return. The lease agreement shall not exceed 30 years and must be in writing as well as being registered with the competent officer so that it is recognized by law. The lessor is responsible to deliver the leased property in the good state of repair to the lessee and the lessee shall use the leased property as provided in the agreement. To assign or sublease the leased property to a third person, the lessee must first receive consent of lessor. As the characteristic of the lessee is considered as the subject matter of the lease agreement, the lease agreement, therefore, ceased upon the death of the lessee. In addition, leasehold interest shall not be transferred to the heir or successor of the lessee. However, the lease agreement does not cease upon the death of the lessor. Thus, the heir or successor of the lessor, as the case may be, shall obtain the rights and obligations of the lessor towards lease agreement.⁶¹

Nonetheless, the lease agreement is also governed by the law of contract as evident in “*the principles of the “autonomy of will” and “freedom of contract”*” reads: *an individual has the right to make a legally binding mutual agreement with one or more other persons without governmental interference as to what type of obligations he or she can take upon himself or herself. The will of the contracting parties shall be legally recognized and enforced as it has made from the free will of the contracting parties.*⁶² In practice, the parties will agree upon the terms and conditions of the lease agreement in particular details to meet their particular needs due to the fact that provisions of hire of property law in Thai Civil and Commercial Code are not in compliance with the unique characteristic of leasehold

⁶¹ ศาสตราจารย์ ดร. ศันน์ทกรณ โสทธิพันธุ์, “คำอธิบายกฎหมาย เช่าทรัพย์ – เช่าซื้อ”, พิมพ์ครั้งที่ 6. (กรุงเทพฯ: วิญญูชน, 2558), 27 (Professor Dr. Sanunkorn Sotthibandhu, “**Hire of Property, Hire-Purchase**”, Vol. 6 (Bangkok: Winyuchon, 2015)), 27

⁶² Dr. Daraporn Thirawat, “*Consumer Protection Law in Thailand with regard to Contracts*”, Bot Bundit, No. 56 (3 September 2000): 169-190 available at <http://www.thailawonline.com/images/documents/consumer.pdf>. (accessed June, 1 2016)

condominium. For example, the lease agreement may have specific terms and conditions such as the assignment or sublease issue which reads: *“The lessee shall have right to assign or sublease the interest of the leasehold condominium unit to other person. In this regard, the lessee must pay the fee charged each time of assignment or sublease at the rate determined by the lessor”*.

- Section 544 - 545 of Thai Civil and Commercial Code provides condition of assignment or sublease of leasehold interest by lessee.

“Section 544 Unless otherwise provided by the contract of hire, a hirer cannot sublet or transfer his rights in the whole or part of the property hired to a third person.”

“Section 545 If the hirer rightfully sublets the property hired, the sub-hirer is directly liable to the lessor. In such case a payment of rent made in advance by the sub-hirer to the hirer who sublets cannot be set up against the letter.

The provisions do not prevent the lessor from exercising his rights against the hirer.”

Based on section 544 – 545 of Thai Civil and Commercial Code and according to the Supreme Court Decision No. 383/2540⁶³, it may be implied that the leasehold interest is the exclusive right of the lessee and the characteristic of the lessee is regarded as the subject matter of the lease agreement due to fact that the lessor shall consider the person having qualification to be suitable for occupying and maintaining his property.

⁶³ The Supreme Court Decision No. 383/2540 stated that *“in general, the lessor shall consider the attribution of the lessee whether he can rely on occupancy and maintenance the leased property or not. Thus, the lease agreement is the exclusive right of the lessee. When the lessee died, the lease agreement shall be terminated and not inherited to the heir of the lessee.”*

However, for lease of leasehold condominium unit, the characteristic of the lessee has not been taken into account as the subject matter of the lease agreement. In general, such lease agreement usually contains clauses on assignment or sublease with the condition that the lessor shall be entitled to receive remuneration or fee for each time of assignment or sublease occurs. In this regards, the lessee may assign or sublease his/her interest of the leasehold condominium unit to the third person without prior consent of the lessor.

- Section 569 of Thai Civil and Commercial Code provides transferee of leased property bound by rights and obligations under lease agreement.

“Section 569 A contract of hire of immovable property is not extinguished by the transfer of ownership of the property hired.

The transferee is entitled to the rights and is subjected to the duties of the transferor towards the hirer.”

According to section 569 of Thai Civil and Commercial Code, the transferee of the leased property shall be bound only by the rights and obligations under the lease agreement. In this regard, the Supreme Court’s Decision defines that other clauses under lease agreement which are not regarded as the substantial clauses of lease agreement, or ordinary clause of agreement, shall not be bound with the transferee to comply with. For example, refund of the construction cost (The Supreme Court Decision No. 309/2504),⁶⁴ reimbursement of the deposit money (The Court Decision No. 4098/2532 and No. 6190/2538),⁶⁵ promise to renew the lease agreement (The Court Decision No. 1324/2496).⁶⁶ In order for the transferee to be bound by other rights and obligations except rights and obligations under the lease agreement,

⁶⁴ รองศาสตราจารย์ สำเรียง เมฆเกรียงไกร, “คำอธิบายกฎหมาย เช่าทรัพย์ เช่าซื้อ ลีสซิ่ง”, พิมพ์ครั้งที่ 1. (กรุงเทพฯ: นิติธรรม, 2555), 314 (Professor Samrieng Mekkiengkrai, “**Hire of Property, Hire-Purchase and Leasing**”, Vol. 1 (Bangkok: Nititham, 2012)), 314

⁶⁵ *Id.* at 317.

⁶⁶ *Supra* Note 38 at 205.

the lease agreement between the lessee and the transferee must be provided accordingly.

Normally, the lease agreement of leasehold condominium unit shall contain the promise to renewal clause upon the expiry date (usually for 30 years) in order to attract the buyers who would like to find some place to be his dwelling or who wish to invest in the real estate property. In case the lessor transfers the leased property to the third person (transferee), such transferee shall not be bound by the promise to renew the lease agreement since such promise is not regarded as the substantial of lease agreement.

4.1.2 Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999)⁶⁷

Apart from Civil and Commercial Code, the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) is the law concerning the long term leasehold interest of immovable property for commerce and industry in Thailand. This Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) was enacted and subsequently enforce on 19th May B.E. 2542 (1999). The objective of the enactment is prescribed in the remark of the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) which shall be specified that *“Due to the provisions of the Hire of Property under the Civil and Commercial Code have not been conformed to the economic situation and some of the commercial and industrial investment having the long term investment as well as the need for the assurance of the right according to the lease agreement. Thus, this Act shall be enacted for the long term hire of immovable property for the commerce and industry by granting the leasehold interest to be more assured, which the leasehold interest can be assigned, inherited, sublease as well as to be used as collateral by mortgage in order for promoting the long term hire of immovable property for the commerce and*

⁶⁷ พรบ. การเช่าอสังหาริมทรัพย์เพื่อพาณิชยกรรมและอุตสาหกรรม พ.ศ. 2542, (Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999))

industry. This Act shall be one of the measures to recover the overall economy of the country, as a result, it shall need to enact.”

This Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) shall be applied as the pioneer law for the long term lease agreement of immovable property for commerce and industry since some provisions specify the rights and obligations of the lessor and the lessee differentiate from the general principles of lease law under the Thai Civil and Commercial Code in order to reduce many difficulties in the long term hire of immovable property for commerce and industry as well as increase the assurance and attraction for the long term investment in Thailand.

The substantial provisions of this Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) which could be studied and applied to lease of the leasehold condominium are described as follows:

“Section 7 the rights and obligations in relation to a lease shall devolve upon the heir and, unless otherwise specified in the agreement, the lessee may sublease or transfer the rights of lease of an immovable property, whether in whole or in part, to the third person.”

Based on aforementioned provision, it can be implied that the leasehold interest under the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) is not regarded as the exclusive right of the lessee since it specifies clearly that the rights and obligations of the lease agreement shall be inherited to the heir whether upon the death of the lessor or of the lessee. Thus, the heir of the lessor or of the lessee shall be bound by the rights and obligations under the lease agreement.

“Section 6 the rights of lease under this Act may be used as a security against performance of an obligation by means of a mortgage and the provisions related to the mortgage of immovable property shall apply mutatis mutandis”

Section 6 of the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999) has also provided that leasehold interest shall be used as security against performance of the obligations by means of a mortgage so that the lessee shall bring the leasehold interest to make funding from any sources of capital.

4.2 Problems regarding Lease Agreement of Leasehold Condominium under Thai Civil and Commercial Code

The provisions of Thai Civil and Commercial Code are incompatible for the current real estate property market, which the form of real estate development business has been evolving. Leasehold condominium, which is a consequence of the evolving real estate development business, becomes more attractive to many buyers who are looking for the living space for their long term stay. There are, however, obstacles or problems arising therefrom which are as follows:

4.2.1 Leasehold Interest being Ceased upon the Death of Lessee

Since the leasehold interest is an exclusive right of the lessee, when the lessee dies, the leasehold interest shall not be transferred or devolved to the heir of the lessee unlike the ownership right. Therefore, the leasehold interest shall be ceased and the leased property shall be returned to the lessor.⁶⁸ This principle of lease law certainly leads to the unsolved problem, which the leasehold interest shall be ceased upon the death of the lessee and the heir of the lessee has to move out and return the leasehold condominium unit to the lessor, whereas the lessee had already made full payment of rental in advance upon the date of registration of the lease in order to live until the expiration of the lease term (30 years).

⁶⁸ *Supra* Note 38 at 209.

In order to solve such arising problem, the lessor and the lessee shall mutually agree on such matter by stipulating the clause in the lease agreement that, the leasehold interest shall not be ceased upon the death of the lessee, in other words, such leasehold interest shall be devolved to the heir of the lessee, thus, the heir of the lessee shall have the right to claim directly from the lessor to perform the obligations under the lease agreement. This clause is generally called as “succession clause” nevertheless, if this succession clause is not defined in the lease agreement, the heir of the lessee cannot claim from the lessor to perform the obligations under the lease agreement. Therefore, it would be better to have the legislative measure to assure the lessee and the heir of the lessee the proper protection of their rights.

4.2.2 Purchaser of Leased Property Bound by only Rights and Obligations under Lease Agreement

In general, the lease of leasehold condominium agreement shall be agreed the lease term for 30 years with the promise to renew the lease agreement for another 30 years by the lessor in order to attract the lessee (the purchaser of the leasehold condominium) by increasing the option to the lessee to make a decision to renew the lease agreement.⁶⁹ When the lessor transfers the ownership of the leased property to the third person, such third person (transferee) shall be obtain the rights and obligations of the lessor towards the leasehold agreement according to the section 569 of Thai Civil and Commercial Code. However, under section 569, the Court has interpreted that the rights and obligations of the transferor which are bound with the transferee of the ownership of leased property shall be only the rights and obligations under the lease agreement. In other words, any other rights and obligations which are not the essence of the lease agreement shall not be bound with the transferee to perform such obligations.

⁶⁹ *Supra* Note 38 at 51.

In terms of the promise to renew the lease agreement, even though there is the provision regarding the promise to renew specified in the lease agreement, if the lessor has transferred the ownership of the leased property to the third person prior the expiration lease term, the transferee shall not bind to perform such obligation, which is to agree the lessee to renew the lease agreement, since it is only the promise to renew, not the contract, which can be enforceable the parties to perform.⁷⁰

There is also the Supreme Court's Decision to confirm the aforementioned which considered that the promise to renew the lease agreement is merely a contractual promise and not regarded as the rights and obligations which are the essence of the lease agreement. Hence, the transferee shall not bind with the lessee to renew the lease agreement upon the expiration of lease term. The rights and obligations which are not the essence of lease agreement include the reimbursement of the deposit money for damage, the refund of the construction cost etc.⁷¹

4.2.3 No Specific Law on Devolution of Rights and Obligations upon the Death of Lessor

According to the principle of law provided, leasehold interest shall be ceased upon the death of the lessee as the leasehold interest is an exclusive right of the lessee. On the other hand, the death of the lessor shall not affect the survival of the leasehold interest, the rights and obligations under the lease agreement shall be transferred to the heir of the lessor. However, this issue is still controversial whether the rights and obligations of the lessor shall be transferred to his heir under section 569 of Thai Civil and Commercial Code or the principles of inheritance law. Such controversy has been referred to the Supreme Court's Decisions which are divided into two opinions as follows:

⁷⁰ อำนวย คลัยสังข์, “คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วย เช่าทรัพย์ เช่าซื้อ”. พิมพ์ครั้งที่ 8 (กรุงเทพฯ: สำนักพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2533), 31 (Amnak Klaisang, “The Explanation of Civil and Commercial Code, Hire of Property, Hire-Purchase”, Vol. 8 (Bangkok: Thammasat University, 1990)), 31

⁷¹ *Supra* Note 38 at 200-201.

(1) The heir of the lessor shall obtain the rights and obligations of the lease agreement, according to the principles of inheritance law. It is resulting that the heir of the lessor shall be bound by the rights and obligations as well as any liabilities under the lease agreement.⁷²

(2) The heir of the lessor shall obtain the rights and obligations of the lease agreement under section 659. It means that the heir of the lessor shall be bound by only the rights and obligations under the lease agreement.⁷³

Even though, most scholars have the same opinions that the heir of the lessor shall obtain the rights and obligations according to the principles of inheritance law,⁷⁴ there is no explicit law to govern on this issue yet. In addition, the current Supreme Court's Decision tends to admit that such rights and obligations shall be transferred under section 569.⁷⁵

Therefore, the heir of the lessor would only be bound by the rights and obligations under the lease agreement. The other rights and obligations which are not the essence of the lease agreement, for example promise to renew the lease agreement clause and the succession clause, are not bound by the heir of the lessor.

4.2.4 Leasehold Interest not Regarded as Property Liable to Execution

According to section 285 of Thai Civil Procedure Code,⁷⁶ it defines that the properties which are not liable to the execution shall be the properties not transferable by law. In general, the leasehold interest is a valued property; however; the law has specified the condition of transfer of the leasehold interest by the lessee according section 544 of Thai Civil and Commercial Code. In other words, the lessee

⁷² *Supra* Note 64 at 61.

⁷³ *Supra* Note 64 at 61.

⁷⁴ *Supra* Note 38 at 194.

⁷⁵ *Supra* Note 38 at 194.

⁷⁶ ประมวลกฎหมายวิธีพิจารณาความแพ่ง มาตรา 285 (Civil Procedure Code, sec. 285)

is prohibited to sublease, or assign the leasehold interest to the third person without prior consent of the lessor as a result, it is not freely transferable by law.

Nonetheless, such leasehold interest is not strictly prohibited to transfer since such provision provides that the parties can agree otherwise under the lease agreement. Thus, if the lease agreement stipulates that the lessee is entitled to sublease or assign to the other person, it shall be deemed that the leasehold interest is not the exclusive right of the lessee and can be transferable. As a result, the leasehold interest is the property which is liable to the execution.⁷⁷ On the other hand, if the lease agreement does not specify otherwise, the leasehold interest is not the property which is liable to the execution.

4.3 Problems regarding Application of Law study on Lease Agreement of Leasehold Condominium

4.3.1 General Concept of Lease Agreement of Leasehold Condominium of CU Terrace developed by Chula Property

In practice, the lease agreement of leasehold condominium shall be drafted or prepared as the standard form of agreement by the lessor which terms and conditions of such lease agreement are not quite justified to the lessee. Furthermore, some terms and conditions are quite beneficial to the lessor.

Under the lease agreement of the leasehold condominium agreement of CU Terrace, the lessee requires to enter into the agreements which are (1) Lease agreement of leasehold condominium unit and (2) Service agreement of leasehold condominium unit. If the lease agreement shall be terminated, it shall be deemed that the service agreement shall also be terminated, and vice versa.

⁷⁷ ศาสตราจารย์ ดร. มานะ พิทยาภรณ์, “คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ลักษณะเช่าทรัพย์”, พิมพ์ ครั้งที่ 15. (กรุงเทพฯ: จีรรัชการพิมพ์, 2546) 17 (Professor Dr. Mana Pitayaporn, “**The Explanation of Civil and Commercial Code, Title: Hire of Property**”, Vol. 15 (Bangkok: Jitrarat Printing, 2003)), 17

Since the unique concept of the leasehold condominium which requires the lessee to pay fully the rent before or on the date of registration of the lease at the land department, some lessor may require the lessee to pay the rent by installments until the date of registration of the lease. However, the lessee must pay the full rent to the lessor before the registration of the lease. The lease agreement of the leasehold condominium of CU Terrace has also the provision which requires the lessee to pay the rent by installments. Each installment shall be separated as follows:

- 1st installment shall be paid as the deposit payment.
- 2nd installment shall be paid at the date to execute the lease agreement.
- 3rd – 14th installment shall be paid in equal monthly basis during the construction of the leasehold condominium.
- Last installment shall be paid all the remaining of the rent at the date of the registration of the lease.

In addition, the term of lease under this agreement is 30 years with the provision regarding the promise to renew the lease agreement in another 30 years. The governmental fee of registration of lease including stamp duty and any other expenses relating to the registration of the lease shall be solely responsible by the lessee.

Apart from the rent which the lessee requires to pay to the lessor, the lessee also makes the payment of the service fee in one-year advance for the maintenance of common area, according to the service agreement including the rental guarantee money and the sinking fund for repair and renovate the condominium building.

4.3.2 Problems regarding Application of Law with Lease Agreement of Leasehold Condominium of CU Terrace developed by Chula Property

Since the lease agreement is the matter of contractual agreement between the parties. Any terms and conditions can be agreed as long as they do not violate the law or the public policy. And besides, the lease agreement of leasehold condominium of CU Terrace has been tailor-made by the agreement of the parties which some provisions are designed to appropriate the unique concept of the leasehold condominium whereas some issues are silent and unclear due to Thai Civil and Commercial Code, the principle lease law, complies with such issues. The provisions which will be lead to the problems shall be described as follows:

4.3.2.1 Provision regarding Leasehold Interest Devolved to the Heir of Lessee

Under the lease agreement of leasehold condominium of CU Terrace, there is the provision which is regarding the leasehold interest of the lessee when the lessee died before the expiration of the lease term. It provided that *“in case where the lessee died before the expiry date of the lease agreement or having the Court’s order to be the missing person, the heir or the legal representative shall have the written notice to the lessor within one (1) year since the date of the death of the lessee or having such Court’s order as the case may be. The heir or the legal representative shall obtain the leasehold interest as the lessee having it while his death. In this case, the heir or the legal representative shall be responsible for any due debts to the lessor according to this agreement as well as service agreement, including any tax and fee relating to the registration of amendment of lease agreement.”*

From the aforementioned, the parties have agreed the lease agreement different from the principle of lease law, which is the leasehold interest is the exclusive right of the lessee. If the lessee dies, the lease agreement shall be terminated. Since the unique concept of the leasehold condominium, which the lessee has already fully paid the rent to the lessor upon the date of registration of lease, it shall be deemed that the lessee has already performed his obligations under the lease

agreement. If it is without this provision, the lease agreement shall be terminated according to the principle of lease law and the heir of the lessee cannot succeed to the leasehold interest which it is not justified to the lessee or the heir of the lessee.

The principle of lease law under Thai Civil and Commercial Code is suitable for the lease agreement which the rent is agreed to periodically pay in monthly or yearly basis. If the lessee dies, the lease agreement shall be terminated. So the rights and obligations of the parties under the lease agreement shall also be ceased.

Even though, the lease agreement is the matter of contractual agreement between the parties. Any terms and conditions can be agreed as long as they do not violate the law or the public policy. However, it could be better to have the legislative measure explicit to assure the lessee (the purchaser of the leasehold condominium) to obtain the proper protection of his right.

4.3.2.2 Provision regarding Assignment or Sublease of Leasehold Interest

Under the lease agreement of leasehold condominium of CU Terrace, there is the provision regarding the right of the lessee to assign or sublease the leasehold interest of the leasehold condominium. It provided that *“The lessee may not assign the leasehold interest, according to this agreement or sublease to the third person within four (4) years since the date of registration of the lease. After four (4) years later, if the lessee has intention to assign or sublease the leasehold interest, according to this agreement, the written consent of the lessor shall be given prior to the assignment or the sublease of leasehold interest as well as the lessee shall apply the form of assignment or sublease of the leasehold interest which the lessor has specified. In this case, the lessor is entitled to claim the fee of the assignment or sublease from the lessee at the amount as the lessor considered. In addition, the lessee is responsible for real property tax, duty stamp or any other taxes relating to assign or sublease of leasehold condominium which shall be additional claimed.”*

Based on this provision, the lessor has reserved the right of the lessee to assign or sublease the leasehold interest of the leasehold condominium before four years since the date of registration of the lease. And after that, if the lessee would like to assign or sublease the leasehold interest, the written consent of the lessor need to be given. Moreover, the lessor is entitled to claim the fee of the assignment or sublease from the lessee at the amount as the lessor considered. This provision is obviously not justified to the lessee to additional pay the fee of assignment or sublease at the amount which the lessor has solely considered. In fact, the lessor does not have any cost or expenses incurring from the assignment or sublease which can be an excuse for claim the additional fee from the lessee.

Furthermore, in case of the freehold condominium, there is the form of agreement to sell and to purchase condominium unit (Aor. Chor. 22) which has strictly applied to all agreement to sell and purchase of the freehold condominium. This form is aimed to protect the right of the purchaser of the freehold condominium due to the un-bargaining position of the seller against the purchaser. Some clause in this form provided that *“During this agreement is valid, the purchaser is entitled to assign the right under this agreement to the third person by having the written notice to the seller. The seller shall not claim any additional expenses from the assignment.”*⁷⁸

We can see that the freehold condominium has the legislative measure to protect the right of the purchaser by specified in the Aor. Chor. 22, whereas the purchaser of the leasehold condominium (the lessee) has no any legislation to protect his right.

⁷⁸กรมที่ดิน, “แบบสัญญาจะซื้อจะขายห้องชุด (อ.ช. 22)”, (Department of Lands, “*Form of To Sell and To Purchase Condominium Unit Agreement (Aor. Chor. 22)*”), available at <http://www.dol.go.th/dol/images/medias/dol/dol/pdf/mt17301.pdf> (accessed June, 1 2016)

4.3.2.3 Provision regarding Renewal of Lease Agreement of Leasehold Condominium

There is the provision regarding the renewal of the lease agreement contained in the lease agreement of leasehold condominium of CU Terrace. It provided that *“In case of the lessee does not breach any terms and conditions of this agreement, the lessor agree that the lessee shall have the right to renew the lease agreement, for another 30 years upon the expiration of the lease term, prior the other person. If the lessee intends to renew the lease agreement, the written notice shall be served to the lessor within six months prior the last year of the lease term. However, the lessor shall consider the attribution of the lessee, the rate of rental according to the market price while the renewal of the lease agreement as well as any other terms and conditions, then inform the lessee. If the lessee agrees with such rate of rental as well as terms and conditions as the lessor specifies, both parties shall enter into the lease agreement for another 30 years. In case where the parties cannot conclude such terms and conditions, it shall be deemed that the right of renewal lease agreement is ceased immediately.”*

In order to make the leasehold condominium to be attractive to the purchaser of the leasehold condominium (lessee), it usually has the provision regarding the promise to renew the lease agreement specified in the lease agreement to assure that the lessee has the option to decide to renew the lease agreement whether or not when the lease term end up.

Based on the lease agreement of leasehold condominium of CU Terrace, such provision is not regarded as the promise to renew the lease agreement since the promise to renew the lease agreement shall have the statement explicitly and suffice to enforceable the lessor to enter into the lease agreement. There are many Court's Decisions to consider which statements are deemed to be promise to renew the lease agreement. One of Supreme Court's Decision provided that *“if the lease agreement specified the lessor grant the right to the lessee to renew the lease*

*agreement and the parties shall negotiate the rate of rental or the lease term later.*⁷⁹ Thus, it is not deemed the promise to renew the lease agreement because it lacks of the substantial issue of the lease agreement such as the rate of rental or the lease term.⁸⁰ When such provision is not deemed to be the promise to renew the lease agreement, the lessee is not entitled to enforce the lessor to perform according to such provision.

4.3.2.4 Provision regarding Transfer of Ownership of Leasehold Condominium by Lessor

Provision regarding the transfer of the ownership of the leasehold condominium by the lessor does not appear in the lease agreement, therefore, the general principle of lease law shall be applied to this issue, under section 569 of Thai Civil and Commercial Code, which the lease agreement is not terminated because of the transfer of the ownership of the leased property and the rights and obligations of the lease agreement shall be bind the transferee to perform.

However, according to the writer's study of this issue, the rights and obligations binding by the transferee to perform are merely the rights and obligations of the lease agreement, thus the provision regarding the transfer of the rights and obligations of the lessee to the heir of the lessee when the lessee dies before the expiration lease term shall not bind by the transferee to perform.

4.4 Legal Measure regarding Lease of Leasehold Condominium analyzed with Foreign Laws

According to the aforementioned problems and the study of the Foreign Laws relating to such problems in chapter 3, the writer would like to analyze the Foreign Laws and the existing Thai Law and suggest the appropriate legislative solutions as follows:

⁷⁹ *Supra* Note 38 at 53.

⁸⁰ *Supra* Note 77 at 63-65.

4.4.1 Problem of Leasehold Interest being Ceased upon the Death of Lessee

In this regards, the United States of America, Uniform Condominium Act and Uniform Commercial Code do not specify the provision regarding the leasehold interest of the lessee upon the death of the lessee. Nonetheless, in case of an estate for years, which the expiration of the lease term shall be specified in the lease agreement, when the lessee dies, the leasehold interest shall be transferred to the heir of the lessee for the remaining periods until the expiration of the lease term.

In Ontario, Canada, the law relating to this issue shall be seen in section 91 (1) of the Residential Tenancies Act. This law provides that when a lessee dies, and there is no other lessee, the lease agreement shall be deemed to be terminated within 30 days after the death of the lessee.

For the Germany has the specific provision concerning the leasehold interest of the lessee upon the death of the lessee which stipulate in section 563 of German Civil Code (BGB). This section provides that for the residential lease, the lease agreement shall not be terminated upon the death of the lessee. In other words, the heir of lessee is entitled to succeed the lease agreement in place of the lessee during the remaining lease term.

Additionally, article 1742 of French Civil Code is dealing with the leasehold interest of the lessee upon the death of the lessee. This provision provides that whether the death of the lessor or of the lessee occurs, the leasehold interest under the lease agreement shall be transferred to the heir of the lessor or of the lessee, as the case may be. Therefore, the said heir of the lessor or of the lessee shall be bound the rights and obligations of the lease agreement to another party.

As the aforementioned, apart from Ontario, Canada, the other countries accept the similar concept of law on this matter, which is the leasehold interest under the lease agreement, shall be transferred to the heir of the lessee upon the death of the lessee. Such concepts differ from the principles of Thai Law, which the characteristic of lessee is the subject matter of the lease agreement, if the lessee dies, the lease agreement shall be terminated.

In order to solve the problem, the application of the principles of lease law of Germany and France is appropriated in compliance with the lease of leasehold condominium unit in Thailand. In addition, Thai law has initiated to apply such principles appearing under section 7 of the Hire of immovable property for commerce and industry Act B.E. 2542 (1999) which has imposed that the rights and obligations in relation to a long term lease agreement for commerce and industry shall devolve upon the heir, unless otherwise specified in the lease agreement. Therefore, in order to conform to the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), Thai Civil and Commercial Code should be amended by stipulating that the right of the long term lease of immovable property for residential purpose can be transferred to the heir.

4.4.2 Problem of Purchaser of Leased Property Bound by only Rights and Obligations under Lease Agreement

For the United States of America, chapter 15 – 16 of the Restatement (Second) of Property: Landlord and Tenant provided that the lessor or the lessee has the right to transfer the interest of the leased property to the other person (transferee) unless otherwise provided according to section 15.1. Even though, the interest of leased property shall be transferred to the transferee, the transferor shall remain binding to perform the obligations which specified explicitly in the lease agreement.

In Ontario, Canada, either the Condominium Act, 1998 and the Residential Tenancies Act, 2006 does not stipulate the provision regarding the leasehold interest upon the purchase of the leased property.

In Germany, section 566 of German Civil Code (BGB) is the provision relating to this problem. This section specifies that the purchaser of the leased property (transferee) shall obtain the rights and obligations of the lessor towards the lease agreement. In addition, it also provided that the lessor shall remain being liable as the surety of the transferee in case of the transferee's defaults of performance obligation under the lease agreement.

In France, article 1743 of French Civil Code mentions that the purchaser of the leased property shall be bound by the rights and obligations of the lease agreement. Moreover, the said purchaser shall not evict the lessee who has the authentic lease, from the leased property, or the lease agreement has a certain expiry date unless such right reserved by the lease agreement.

Besides, Ontario, Canada, Both United States of America, Germany and France have quite the same point of view on this issue and have the explicit law to lay down the similar principle of laws that the transferee shall obtain and be bound by the rights and obligations of the lessor towards the lease agreement. Furthermore, the lessor remains having the liability to the lessee in case where the transferee defaults to perform the obligations under the lease agreement. Whereas, the principles of lease under Thai Law does not stipulate explicitly similar to such foreign laws, whether the lessor shall remain being liable to the lessee or not. Also, it is resulting in the improper protection of the leasehold right of the lessee.

Owing to the principles of foreign lease laws as aforesaid and in Thailand, the long term lease of immovable property agreement must be in writing and being registered with the competent officer, the transferee could acknowledge the terms and conditions under the lease agreement before obtaining the ownership of the leased property from the lessor. Therefore, the writer verily believes that, in order to solve this issue, Thai Civil and Commercial Code should be amended by specifying that the transferee of the ownership of immovable property agreement for residential purpose is bound by the rights and obligations under the lease agreement including any other rights and obligations as stated in the lease agreement.

4.4.3 Problem of No Specific Law on Devolution of Rights and Obligations upon the Death of Lessor

According to the writer's study, French law is the only foreign law which indicated that the lease agreement is not terminated due to the death of the lessor according to article 1742 of the French Civil Code; however, such provision does not stipulate the extent of the rights and obligations under the lease agreement which the heir of the lessor shall be bound by.

Although, Thai Civil and Commercial Code does not have the explicit provision to govern this issue, Thai Law has initiated to apply the lease law concept similar to the French law which appears under section 7 of the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999). It provides that the rights and obligations in relation to a long term lease of immovable property agreement for commerce and industry shall devolve upon the heir, unless otherwise specified in the lease agreement. The term "heir" could imply both the heir of the lessor and of the lessee.

Thus, the writer opines that Thai Civil and Commercial Code should be amended, in order to conform to the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), by specifying that the right of the long term lease of immovable property for residential purpose can be transferred to the heir either of the lessor or of the lessee.

4.4.4 Problem of Leasehold Interest not Regarded as Property Liable to Execution

For the United States of America, there is no the provision stipulating explicit on this regard. However, if the lessee has the right to freely transfer, assign or sublease the leasehold interest to any other person, it can be implied that such leasehold interest is not the exclusive right of the lessee, thus it can be regarded as the properties to be liable to execution, according to section 2A-305 of the Uniform Commercial Code which provided that the lessee is entitled to sublease the leasehold interest to the third person under the provisions of Uniform Commercial Code unless otherwise agreed in the lease agreement.

As mentioned in the previous paragraph, in Ontario, Canada, there is no the provision stipulating explicit on this regard. However, the law relating to this issue shall be seen in section 165 (4) – (5) of the Condominium Act 1998. These sections stipulate that the lessee is entitled to transfer, mortgage, lease, or otherwise deal with the leasehold interest in the unit without having to obtain consent of the lessor.

In Germany, section 553 of German Civil Code (BGB) is the provision relating to this problem. This section has specified that the lessee is not entitled to permit the third person to use the leased property without the permission of the lessor. However, the lessor is entitled to not permit if there are the reasons as specified in section 553.

In France, there is the provision relating to this issue which stipulated in article 1717 of the French Civil Code. The law provided that the lessee has the right to sublease, or assign the leasehold interest to the third person unless otherwise specified in the lease agreement. Thus, it can be implied that as long as the lessee has the right to freely sublease, or assign the leasehold interest to any other person, such lease agreement shall not be regarded as the exclusive right of the lessee.

According to the aforementioned, in principle, besides Germany law, it lays down the provision that the lessee shall have the right to assign or sublease the leasehold interest to any other person as long as having no such restriction by the agreement. Such principle is different from the Thai law which the lessee is not entitled to assign or sublease without the prior lessor's consent unless otherwise agreed by the parties.

However, Thai law has initiated to apply such principles of foreign law which appearing under section 7 of the Hire of immovable property for commerce and industry Act B.E. 2542 (1999). It provides that unless otherwise specified in the lease agreement, the lessee may sublease, or transfer the rights of lease of an immovable property to the third person. Thus, it can be seen that long term lease of immovable property agreement for commerce and industry can be freely transferable to the third person unless otherwise specified in the lease agreement. In order to turn the leasehold interest to be the liquid asset and the property which is liable to execution, the writer opines that Thai Civil and Commercial Code should be amended, in order to conform to the Hire of immovable property for commerce and industry Act B.E. 2542 (1999), by stipulating that the lessee has the right to assign or sublease the right of long term lease of immovable property agreement for residential purpose unless otherwise specified in the lease agreement.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Since AEC is implemented by the end of 2015, it results to the free flow of labour and capital which come to Thailand. Moreover, Thailand has become one of the preferred destinations for foreign retirees or people who are preparing for retirement. Therefore, the place of living becomes the significant matter which they consider to. Because of the restriction of law on the foreigners to hold the ownership of land and limitation of the foreigner ratio to hold the ownership of freehold condominium, leasehold condominium becomes another excellent alternative for the foreigners who wish to reside and establish the long investment in Thailand.

Due to the fact that the Supreme Court's Decision has laid down the principle of lease law that the characteristic of the lessee is regarded as the essence of a lease agreement and the leasehold interest of the lease agreement is the exclusive right of the lessee. As a result, the lease agreement shall be terminated upon the death of the lessee.

In addition, the lease of leasehold condominium is the unique business concept which differentiates from other lease of residential space. The lessee of leasehold condominium requires making full rental payment upon the date of registration of the lease. Therefore, some provisions under Thai Civil and Commercial Code are not suitable and proper to apply to the lease of leasehold condominium. Instead, they lead to many unsolved problems which shall be identified as follows:

1. Leasehold interest shall be ceased upon the death of the lessee;
2. Purchaser of leased property is bound by only rights and obligations under the lease Agreement;

3. There is no specific law on the devolution of rights and obligations upon the death of the lessor, and
4. Leasehold interest shall not be regarded as property liable to execution.

In this regard, Thailand should consider adopting and applying the principles of foreign lease laws, both common law and civil law countries, which have the provisions suitable and proper to apply to the lease of leasehold condominium. For instance, the provision that allows the lessee to freely assign or sublease the leasehold interest to the other person unless otherwise agreed under the lease agreement, the leasehold interest shall be inherited to the heir upon the death either of the lessor or the lessee, the transferee of the leased property shall be bound by the rights and obligations of the lease agreement including the rights and obligations of general agreement and the lessor remains having the liability to the lessee in case the transferee defaults to perform such obligations.

5.2 Recommendations

Since the provisions of Thai Civil and Commercial Code are incompatible for the current real estate property market situation which the form of real estate development business has been evolving. The leasehold condominium, which is a result of the evolving real estate development business, becomes more attractive to many buyers who are looking for the living space for their long term stay. However, there are many problems relating to the lease of leasehold condominium as specified and analyzed in chapter 4, and fortunately, Thailand has enacted law on the Hire of Immovable Property for Commerce and Industry Act in B.E. 2542 (1999). This Act, has adopted some principles of foreign lease laws with the long term lease, and provided some provisions different from Thai Civil and Commercial Code. In the writer's opinion, some provisions of this Hire of Immovable Property for Commerce and Industry Act in B.E. 2542 (1999) could be the model law which solves many arising problems. Therefore, the recommendation is to amend Thai Civil and Commercial Code by adding the specific chapter regarding the lease of leasehold condominium the details of which are described as follows:

5.2.1 To Specify Leasehold Interest of the Leasehold Condominium Devolved automatically to the Heir of Lessor or of Lessee

In this regard, the principles of lease law under the United States of America, Germany and France should be adopted to apply to the lease of leasehold condominium in Thailand, which should stipulate that the lease agreement is not terminated upon the death of the lessor or of the lessee, and, the leasehold interest shall be automatically inherited to the heir of the lessor or of the lessee. In fact, this similar legal concept has appeared under section 7 of the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999). It has imposed that the rights and obligations in relation to a lease shall devolve upon the heir, unless otherwise specified in the lease agreement.

Based on the aforementioned, the writer opines that, in order to conform to the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), The Thai Civil and Commercial Code should be amended by adding the provision regarding leasehold interest of leasehold condominium upon the death of the lessor or of the lessee as follows:

“Chapter 4/1

Lease of Leasehold Condominium

Section 571/1 The rights and obligations in relation to a lease agreement of leasehold condominium including other rights and obligation as specified in such lease agreement shall devolve upon the heir unless otherwise specified in the lease agreement.”

5.2.2 To Specify all Rights and Obligations under Lease Agreement Bound by the Transferee of the Leasehold Condominium

Based on the study of the foreign laws in chapter 3, most foreign laws have similar principles of law on this issue, which provides that the transferee shall obtain and be bound by the rights and obligations of the lessor towards the lease agreement. Furthermore, the lessor remains having the liability to the lessee in case

the transferee breaches the lease agreement. In this regard, such principles should be adopted by the Thai law. Furthermore, the long term lease of immovable property agreement must be in writing and being registered with the competent officer, and therefore the transferee could acknowledge the terms and conditions under the lease agreement before obtaining the ownership of the leased property from the lessor.

From the aforesaid, the writer verily believes that the Thai Civil and Commercial Code should be amended by adding the provision regarding the rights and obligations of the lease agreement binding upon the transferee of the leasehold condominium as follows:

“Section 571/2 The lease agreement of leasehold condominium is not extinguished by the transfer of ownership of the leasehold condominium.

The transferee is entitled to the rights and subject to the obligations of the transferor towards the lessee, including other rights and obligation as specified in the lease agreement.”

5.2.3 To Specify Leasehold Interest to be Assigned or Subleased Freely

Apart from Germany law, most principles of foreign laws allow the lessee to freely assign or sublease the leasehold interest to any other person as long as having no such restriction by the agreement. The Thai law also adopts the same principle as appears under section 7 of the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999).

From the aforementioned, it should apply the same principle to turn the leasehold interest to be the liquid asset and the property which is liable to execution. Therefore, the writer opines that Thai Civil and Commercial Code should be amended, in order to conform to the Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), by adding the provision regarding leasehold interest to be assigned or subleased freely as follows:

“Section 571/3 Unless otherwise specified in the lease agreement, the lessee may freely assign or sublease the leasehold interest of leasehold condominium, whether in whole or in part, to the third person”



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APPENDICES

APPENDIX A
LEASE AGREEMENT OF LEASEHOLD CONDOMINIUM UNIT
OF CU TERRACE

สัญญาเลขที่ _____

สัญญาเช่าห้องพักอาศัย

ระเบียงจามจูรี (CU Terrace)

สัญญาฉบับนี้ทำขึ้น ณ สำนักงานจัดการทรัพย์สิน จุฬาลงกรณ์มหาวิทยาลัย ถนนพญาไท แขวงวังใหม่ เขตปทุมวัน กรุงเทพมหานคร เมื่อวันที่ _____ ระหว่าง จุฬาลงกรณ์มหาวิทยาลัย (โดย _____ ผู้รับมอบอำนาจจากอธิการบดี) ซึ่งต่อไปในสัญญานี้เรียกว่า “ผู้ให้เช่า” ฝ่ายหนึ่ง กับ

นาย _____ อยู่บ้านเลขที่ _____ ประกฏ ตามสำเนาบัตรประจำตัวประชาชน เลขที่ _____ และสำเนาทะเบียนบ้านแนบท้ายสัญญานี้ ซึ่งต่อไปในสัญญานี้เรียกว่า “ผู้เช่า” อีกฝ่ายหนึ่ง

โดยที่ การทำสัญญาเช่าห้องพักอาศัยระเบียงจามจูรี (CU Terrace) ผู้เช่าจะต้องทำสัญญากับผู้ให้เช่า จำนวน สองสัญญา ประกอบด้วย (1) สัญญาเช่าห้องพัก อาครพักอาศัยระเบียงจามจูรี (CU Terrace) และ (2) สัญญาบริการ ห้องพักอาศัย อาคารระเบียงจามจูรี (CU Terrace) ทั้งสองฝ่ายจึง ได้ตกลงทำสัญญากันมีข้อความดังต่อไปนี้

ข้อ 1. สถานที่ตั้งอาคารพักอาศัย

อาคารพักอาศัยระเบียงจามจูรี (CU Terrace) ตั้งอยู่เลขที่ 268 ถนนจรัสเมือง แขวงวังใหม่ เขตปทุมวัน กรุงเทพมหานคร 10330 ซึ่งต่อไปในสัญญานี้เรียกว่า “อาคารพักอาศัย”

ข้อ 2. วัตถุประสงค์การเช่า

ผู้เช่าจะใช้ทรัพย์สินที่เช่า เพื่อการพักอาศัยเท่านั้น โดยสงบ ปกติสุข และไม่รบกวนบุคคลอื่น และจะรักษาไว้ซึ่งสภาพลักษณะและสถาปัตยกรรมภายนอก ตลอดจนทัศนียภาพที่ดีของอาคารพักอาศัย

ข้อ 3. ทรัพย์สินที่เช่า

ผู้ให้เช่าตกลงให้เช่า และผู้เช่าตกลงเช่าห้องพักอาศัยจำนวน 1 (หนึ่ง) ห้อง ห้อง (type) D2 เลขที่ _____ เนื้อที่รวม 55.00 ตารางเมตร ซึ่งตั้งอยู่ในอาคารพักอาศัย ชั้นที่ _____ รายละเอียดปรากฏตามแบบแปลนห้องพักอาศัย และผังแสดงอุปกรณ์งานระบบภายใน เอกสารแนบท้ายหมายเลข 1 ข้อมูลงานพื้นฐานงานสถาปัตยกรรม งานวิศวกรรมระบบและระบบสื่อสารที่เตรียมไว้ให้กับลูกค้าภายในห้องพัก, เอกสารแนบท้ายหมายเลข 2 และรายการเฟอร์นิเจอร์ เอกสารแนบท้ายหมายเลข 3 (ซึ่งต่อไปในสัญญานี้รวมเรียกว่า “ทรัพย์สินที่เช่า”)

ข้อ 4. ระยะเวลาการเช่าและค่าตอบแทนการเช่า

สัญญานี้มีกำหนดเวลาเริ่มนับตั้งแต่วันที่ 1 มกราคม 2557 และสิ้นสุดลงในวันที่ 31 ธันวาคม 2586 รวมเป็นระยะเวลา 30 (สามสิบ) ปี โดยมีค่าตอบแทนการเช่ารวมตลอดระยะเวลาการเช่าตามสัญญานี้ เป็นจำนวนเงินทั้งสิ้น _____ บาท (_____)

ข้อ 5. การชำระเงินค่าตอบแทนการเช่า

ผู้เช่าตกลงชำระค่าตอบแทนการเช่า ตามข้อ 4. ให้แก่ผู้ให้เช่า โดยแบ่งชำระ ดังนี้

5.1 ชำระเป็นเงินส่วนแรกในวันทำสัญญา (เงินจองสิทธิการเช่า)

งวดที่ 1 เงินจอง จำนวนเงิน บาท (.....)

5.2 ชำระส่วนที่เหลือทั้งหมด แบ่งเป็นงวดดังนี้

งวดที่ 2 เงินทำสัญญา จำนวนเงิน บาท (.....) ชำระภายใน

วันที่ 29 กันยายน 2555

งวดที่ 3-14 เงินผ่อนคาวน จำนวน 12 (สิบสอง) งวด งวดละ บาท (.....)

) ชำระในวันที่ 15 ของทุกเดือน รวมเป็นจำนวนเงิน บาท (.....)

ร้อยแปดสิบบาทถ้วน) โดยเริ่มชำระในวันที่ 15 ตุลาคม 2555 จนครบถ้วน

งวดสุดท้าย เป็นจำนวนเงิน บาท (.....)

) ชำระในวันจดทะเบียนการเช่า หรือ ภายใน 90 วัน (เก้าสิบ) วันนับแต่วันทำสัญญานี้แล้วแต่กรณีโดยจะถึง

กำหนดชำระก่อน

โดยจะนำไปชำระ ณ สำนักงานจัดการทรัพย์สินจุฬาลงกรณ์มหาวิทยาลัย อาคารระเบียบงามจรี ชั้น 1 หรือ สถานที่อื่นที่ผู้ให้เช่ากำหนด

5.3 ในกรณีที่ผู้เช่าคิดนึกไม่ชำระเงินค่าตอบแทนการเช่าตามข้อ 5. ไม่ว่าจะด้วยเหตุใด ๆ ให้สัญญานี้เป็นอันสิ้นสุดลงทันทีโดยไม่จำเป็นต้องบอกกล่าว และผู้ให้เช่ามีสิทธิริบเงินค่าตอบแทนการเช่าทั้งหมดที่ผู้เช่าได้ ชำระไว้แล้ว โดยผู้เช่าไม่มีสิทธิเรียกร้องเงินคืนหรือค่าเสียหายใด ๆ จากผู้ให้เช่าทั้งสิ้น

ผู้ให้เช่าตกลงส่งมอบทรัพย์สินที่เช่า ให้แก่ผู้เช่า ในวันที่ผู้เช่าชำระค่าเช่าครบถ้วนแล้วปรากฏตามภาพถ่ายทรัพย์สินที่เช่า (เอกสารภาคผนวกเพิ่มเติม 1)

ข้อ 6. การจดทะเบียนการเช่า

ผู้ให้เช่าและผู้เช่าตกลงไปทำการจดทะเบียนการเช่าต่อพนักงานเจ้าหน้าที่ โดยผู้ให้เช่าจะแจ้งเป็นหนังสือให้ผู้เช่าทราบถึงวันจดทะเบียนการเช่าล่วงหน้าอย่างน้อย 15 (สิบห้า) วัน

ค่าธรรมเนียมในการจดทะเบียนการเช่า ค่าอากรแสตมป์และค่าใช้จ่ายต่าง ๆ อันเกี่ยวเนื่องกับการจดทะเบียนการเช่า ผู้เช่าตกลงเป็นผู้ชำระเองทั้งสิ้นตามที่ทางราชการเรียกเก็บจริง

ข้อ 7. หน้าที่และคำรับรองของผู้เช่า

7.1 ผู้เช่าจะใช้ทรัพย์สินที่เช่า ภายในขอบเขตวัตถุประสงค์การเช่าดังกล่าวใน ข้อ 2. โดยเคร่งครัดและจะไม่ใช้ทรัพย์สินที่เช่าเพื่อใช้ในการกระทำผิดกฎหมายโดยเด็ดขาด

7.2 ผู้เช่าจะให้ความร่วมมือในการปฏิบัติตามเกณฑ์ระเบียบ ที่ผู้ให้เช่าหรือตัวแทนของผู้ให้เช่าประกาศใช้นับตั้งแต่ผู้เช่า ไม่ว่าได้ประกาศแล้วหรือจะประกาศในภายหลัง โดยเคร่งครัด ทั้งนี้ เพื่อความสงบเรียบร้อยและความปลอดภัยของผู้เช่าห้องพักอาศัยในอาคารพักอาศัยทุกคน และให้ถือว่าเกณฑ์ระเบียบนั้นเป็นส่วนหนึ่งของสัญญานี้ด้วย

7.3 ผู้เช่าจะไม่ใช่ อนุญาต หรือปล่อยให้ทรัพย์สินที่เช่าหรือส่วนหนึ่งส่วนใดของอาคารพักอาศัยเป็นที่กระทำผิดกฎหมายหรือผิดศีลธรรมอย่างใดทั้งสิ้น หรือ โดยเป็นหรืออาจจะเป็นเหตุให้เป็นอันตรายต่อสุขภาพอนามัย เป็นที่น่ารังเกียจ หรือก่อให้เกิดความเดือดร้อนรำคาญ หรือความเสียหาย ตลอดจนเป็นการรบกวนแก่ผู้เช่ารายอื่น ผู้ให้เช่าหรือบุคคลอื่นใด

7.4 ผู้เช่าจะไม่เก็บหรือนำวัสดุติด ไฟ ถังบรรจุก๊าซ วัตถุระเบิด สารเคมี วัตถุทางฟิสิกส์ หรือสิ่งซึ่งอาจถูกเป็น ไฟ ได้ง่าย หรือเป็นอันตรายหรืออาจทำให้เกิดอันตราย หรือผิดกฎหมายเข้ามาภายในอาคารพักอาศัยและทรัพย์สินที่เช่า และจะไม่กระทำหรือยินยอมให้มีการกระทำใด ๆ อันเป็นผลให้การประกันภัยของอาคารพักอาศัยเป็น โมฆะหรือ โมฆียะ หรือต้องชำระเบี้ยประกันภัยเพิ่ม นอกจากนี้ผู้เช่าจะต้องปฏิบัติตามคำแนะนำของผู้รับประกันภัยและเจ้าพนักงานดับเพลิงในเรื่องการระมัดระวังป้องกันอัคคีภัยเกี่ยวกับอาคารพักอาศัยและทรัพย์สินที่เช่า

7.5 ผู้เช่าจะไม่ตั้งวางสิ่งของใด ๆ ที่มีน้ำหนักเกินกว่า 200 (สองร้อย) กิโลกรัมต่อหนึ่งตารางเมตร ไว้ในส่วนหนึ่งส่วนใดของทรัพย์สินที่เช่า ทั้งนี้ เพื่อความปลอดภัยเกี่ยวกับโครงสร้างอาคารพักอาศัย

7.6 ผู้เช่าจะดูแลรักษาทรัพย์สินที่เช่าทั้งภายในและภายนอก รวมทั้งส่วนประกอบและอุปกรณ์ส่วนควบของทรัพย์สินที่เช่าให้สะอาดเรียบร้อยตลอดระยะเวลาการเช่าตามสัญญา

7.7 ผู้เช่าตกลงยินยอม และอนุญาตให้ผู้ให้เช่าหรือตัวแทนของผู้ให้เช่าเข้าไปในทรัพย์สินที่เช่าเพื่อตรวจสอบลักษณะและสภาพของทรัพย์สินที่เช่าในเวลาอันเหมาะสมตลอดระยะเวลาการเช่าตามสัญญา

7.8 ผู้เช่าจะไม่กระทำการใด ๆ อันกระทบ หรือทำให้เกิดความเสียหายต่อภาพลักษณ์หรือสถาปัตยกรรมภายนอก หรือทัศนียภาพที่ดีของอาคารพักอาศัยรวมถึงผนังด้านนอก หรือคาน ในอาคารพักอาศัย และจะไม่ก่อสร้าง ติด แสดง ปิด แฉวน ห้อย วาง ไข้ว สลุติ หรือกระทำด้วยประการใด ๆ ให้มีสิ่ง ใบปลิว แผ่น โปสเตอร์ โฆษณา หรือสื่อประชาสัมพันธ์ใด ๆ ติดที่บริเวณส่วนหนึ่งส่วนใด ไม่ว่าภายในหรือภายนอกของทรัพย์สินที่เช่า (รวมถึงบริเวณระเบียงของทรัพย์สินที่เช่า) เว้นแต่จะได้รับความยินยอมเป็นหนังสือจากผู้ให้เช่าก่อน

7.9 ผู้เช่าจะไม่ใช่ทางเดิน ทางเท้า ทางผ่าน บันได ลิฟต์ โดยสารหรือทรัพย์สินที่ใช้ร่วมกันของอาคารพักอาศัยเพื่อการอื่นใด นอกจากเพื่อการเข้าหรือออกจากทรัพย์สินที่เช่าหรืออาคารพักอาศัย

7.10 ผู้เช่าจะไม่ตั้งหรือแสดงสินค้า ผลิตภัณฑ์ใด ๆ หรือสิ่งอื่นใด หรือจอดยานพาหนะ ซึ่งเป็นการกีดขวางบริเวณทางเดิน ทางผ่าน บันได หรือบนส่วนหนึ่งส่วนใดของอาคารพักอาศัยรวมทั้งพื้นที่ส่วนกลาง เว้นแต่จะได้รับความยินยอมเป็นหนังสือจากผู้ให้เช่าก่อน

7.11 ผู้เช่าจะใช้ลิฟต์ให้ตรงตามประเภทของการใช้งานอย่างเหมาะสม โดยจะใช้ลิฟต์บริการเพื่อการขนของ อุปกรณ์การตกแต่ง เฟอร์นิเจอร์ และสิ่งอำนวยความสะดวกสำหรับการอยู่อาศัย โดยเฉพาะเท่านั้น และจะใช้ลิฟต์โดยสารเพื่อการโดยสาร โดยเฉพาะเท่านั้น

7.12 ผู้เช่าจะไม่นำสัตว์เลี้ยงหรือสัตว์ใด ๆ มาเก็บหรือเลี้ยงไว้ในทรัพย์สินที่เช่าหรือในบริเวณอาคารพักอาศัย เว้นแต่จะได้รับความยินยอมเป็นหนังสือจากผู้ให้เช่าก่อน

7.13 ในกรณีที่เกิดอัคคีภัยหรือภัยอื่นใดในทรัพย์สินที่เช่า ผู้เช่าจะต้องรับผิดชอบค่าใช้จ่ายทั้งหมดในการซ่อมแซมหรือทำให้กลับสู่สภาพเดิม รวมทั้งค่าใช้จ่ายเสียหายทั้งปวงที่เกิดขึ้นให้แก่ผู้ให้เช่าและผู้เช่ารายอื่นด้วย

7.14 ผู้เช่าไม่อาจโอนสิทธิการเช่าตามสัญญานี้ หรือให้เช่าช่วงแก่บุคคลอื่นภายใน 4 (สี่) ปีนับแต่วันจดทะเบียนการเช่า และเมื่อพ้นกำหนดระยะเวลา 4 (สี่) ปีแล้ว หากผู้เช่ามีความประสงค์โอนสิทธิการเช่าตามสัญญานี้ ผู้เช่าจะต้องได้รับความยินยอมเป็นหนังสือจากผู้ให้เช่าก่อน และในกรณีที่โอนสิทธิการเช่าจะต้องทำข้อตกลงตามแบบการโอนสิทธิการเช่าที่ผู้ให้เช่ากำหนดขึ้นให้ถูกต้องด้วย ในกรณีที่ผู้เช่ามีสิทธิเรียกเก็บค่าธรรมเนียมการโอนสิทธิการเช่าหรือการให้เช่าช่วงนั้นจากผู้เช่าได้ตามจำนวนหรืออัตราที่ผู้ให้เช่ากำหนดขึ้น อนึ่ง ผู้เช่าจะต้องรับผิดชอบในค่าภาษีโรงเรือนและที่ดิน อาคารเสตมป์ หรือภาษีอื่นใดที่เกี่ยวข้องกับทรัพย์สินที่เช่าที่ถูกเรียกเก็บเพิ่มเติม อันเนื่องมาจากการโอนสิทธิการเช่าหรือให้เช่าช่วงดังกล่าวนี้

7.15 ผู้เช่าจะต้องไม่กระทำการเปลี่ยนแปลงระบบไฟฟ้า ระบบแสงสว่าง ระบบประปา ระบบระบายอากาศ ระบบกำจัดขยะมูลฝอย ระบบรักษาความปลอดภัย หรือระบบอื่นใดที่ผู้ให้เช่าติดตั้งหรือจัดให้มีอยู่แล้วในวันส่งมอบทรัพย์สินที่เช่าหรือในระหว่างระยะเวลาการเช่าตามสัญญา

7.16 ผู้เช่าจะต้องบำรุงรักษาซ่อมแซมทรัพย์สินที่เช่าให้อยู่ในสภาพที่ดีตลอดเวลาไม่ว่าจะเป็นการซ่อมแซมความเสียหายเพียงเล็กน้อย หรือในส่วนสำคัญก็ตาม และต้องจัดการหาของแทนที่มีคุณภาพเท่าเทียมกัน ในกรณีที่ส่วนประกอบหรืออุปกรณ์ส่วนควบของทรัพย์สินที่เช่านั้นสูญหาย แดกสลาย เสื่อมสภาพหรือหมดอายุการใช้งานไปแล้ว ในการบำรุงรักษาซ่อมแซมทรัพย์สินที่เช่า หรือจัดการหาของแทนดังกล่าวจะต้องดำเนินการด้วยความระมัดระวังไม่ให้เกิดความเดือดร้อนรำคาญแก่ผู้เช่ารายอื่น ผู้ให้เช่า หรือบุคคลอื่นใด ในกรณีที่ผู้ให้เช่าหรือตัวแทนของผู้ให้เช่าแจ้งเป็นหนังสือให้ผู้เช่าซ่อมแซมทรัพย์สินที่เช่า หรือจัดการหาของแทนดังกล่าว ผู้เช่าจะต้องดำเนินการโดยพลัน และหากผู้เช่าไม่ดำเนินการภายในเวลาอันควร ผู้ให้เช่าหรือตัวแทนของผู้ให้เช่าอาจเข้าไปในทรัพย์สินที่เช่าเพื่อดำเนินการดังกล่าวเองได้ ทั้งนี้ ค่าใช้จ่ายในการบำรุงรักษาซ่อมแซมทรัพย์สินที่เช่า หรือการจัดการหาของแทนดังกล่าวไม่ว่ากรณีใดๆ เป็นภาระความรับผิดชอบของผู้เช่าเองทั้งสิ้น

7.17 ผู้เช่าจะต้องรับผิดชอบต่อภาระค่าเช่าของผู้เช่าเอง ผู้อาศัย ลูกจ้าง ผู้มาเยือน หรือบริวารของ ผู้เช่า หรือบุคคลใด ๆ ที่ผู้เช่าอนุญาตให้เข้ามาในอาคารพักอาศัย ที่เป็นเหตุให้เกิดความเสียหายแก่ส่วนหนึ่งส่วนใดหรือทั้งหมดของทรัพย์สินที่เช่า หรืออาคารพักอาศัย หรือทรัพย์สินของผู้เช่ารายอื่น หรือของบุคคลภายนอก ไม่ว่าการกระทำนั้นจะเป็นไปโดยจงใจหรือประมาทเลินเล่อหรือไม่ก็ตาม ทั้งนี้ผู้เช่าจะต้องรับผิดชอบชำระค่าสินไหมทดแทนสำหรับค่าใช้จ่ายทั้งหมด และความรับผิดชอบที่เกี่ยวข้องแก่ผู้ให้เช่า หรือบุคคลที่ได้รับการเสียหาย

7.18 ในกรณีที่ผู้เช่าไม่ปฏิบัติตามข้อหนึ่งข้อใดของสัญญาและผู้ให้เช่าได้แจ้งให้ผู้เช่าดำเนินการแก้ไขภายในระยะเวลาที่กำหนดแล้ว แต่ผู้เช่าละเลยหรือเพิกเฉยไม่ดำเนินการแก้ไขให้ผู้เช่าต้องและครบถ้วนภายในระยะเวลาดังกล่าว ให้ผู้เช่ามีสิทธิเรียกค่าปรับจากผู้เช่าได้ ในอัตราวันละ 5,000.-บาท (ห้าพันบาทถ้วน) นับถัดจากวันครบกำหนด ไปจนกว่าผู้เช่าจะดำเนินการแก้ไขให้ผู้เช่าต้องและครบถ้วน ทั้งนี้ ไม่ตัดสิทธิผู้ให้เช่าที่จะระงับการให้บริการงานสาธารณูปโภคแก่ผู้เช่า หรือบอกเลิกสัญญาบริการอาคารพักอาศัย ระเบียบจามจู้รี่ ไปยังผู้เช่า

7.19 ผู้เช่าเป็นผู้รับผิดชอบบรรดาเงินกองทุนซ่อมแซมบูรณะพัฒนาอาคาร ภายในโรงเรือนและที่ดิน หรือภายในประเภทอื่น ตลอดจนค่าเบี้ยประกันภัย ค่าใช้จ่าย ค่าธรรมเนียม อาคารต่าง ๆ ที่เกิดขึ้นในทรัพย์สินที่เช่าจนถึงวันส่งมอบทรัพย์สินที่เช่าคืนให้แก่ผู้ให้เช่าเรียบร้อยแล้ว รายละเอียดปรากฏตามรายการชำระเงิน เอกสารแนบท้าย
หมายเลข 4

ข้อ 8. การสืบทอดทางมรดกของสิทธิและหน้าที่ตามสัญญา

ในกรณีที่ผู้เช่าเสียชีวิตก่อนครบกำหนดระยะเวลาการเช่าหรือมีคำสั่งศาลให้เป็นคนสาบสูญ ให้ทายาทหรือผู้มีสิทธิตามกฎหมายแจ้งเป็นหนังสือต่อผู้ให้เช่า ภายในระยะเวลา 1 (หนึ่ง) ปี นับแต่วันที่ผู้เช่าเสียชีวิตหรือมีคำสั่งศาลให้เป็นผู้สาบสูญ โดยทายาทหรือผู้มีสิทธิตามกฎหมายของผู้เช่าจะได้รับสิทธิของผู้เช่าตามสัญญานี้เท่าที่มีอยู่ในขณะเสียชีวิต ทั้งนี้ ทายาทหรือผู้มีสิทธิตามกฎหมายของผู้เช่าดังกล่าวจะต้องเป็นผู้รับผิดชอบชำระหนี้ทั้งปวงที่ผู้เช่าค้างชำระตามสัญญานี้และสัญญาบริการอาคารพักอาศัยระเบียบจามจู้ร์แก่ผู้ให้เช่า พร้อมทั้ง รับผิดชอบในค่าภาษีอากร และค่าธรรมเนียมต่าง ๆ ในการเปลี่ยนแปลงการจดทะเบียนการเช่า

ข้อ 9. หน้าที่ของผู้ให้เช่า

9.1 ผู้ให้เช่าจะเป็นผู้จัดเตรียมระบบไฟฟ้า ระบบแสงสว่าง ระบบประปา ระบบโทรศัพท์ และระบบสัญญาณโทรทัศน์ สำหรับใช้ภายในทรัพย์สินที่เช่า ตลอดจนระบบรักษาความปลอดภัยและระบบทำความสะอาดสำหรับพื้นที่ส่วนกลางของอาคารพักอาศัย ซึ่งผู้เช่าจะต้องรับผิดชอบในการชำระค่าใช้จ่ายต่าง ๆ ตามที่ระบุไว้ในใบแจ้งหนี้ ซึ่งจะออกให้แก่ผู้เช่าเป็นรายเดือนภายใต้ข้อกำหนดการให้บริการตามสัญญาบริการอาคารพักอาศัยระเบียบจามจู้ร์

9.2 ผู้ให้เช่าจะให้ความร่วมมือในการแก้ไขข้อบกพร่องหรือการซ่อมแซมทรัพย์สินที่เช่าตามที่ผู้ให้เช่าเห็นสมควร ซึ่งเป็นความเสียหายตามการใช้งานปกติ หรือข้อบกพร่องทางโครงสร้างซึ่งตรวจพบในระหว่างระยะเวลาการเช่า และไม่ได้เกิดจากความผิดหรือการละเลยของผู้เช่า

9.3 ผู้ให้เช่ามีสิทธิจะมอบหมายบุคคลหรือนิติบุคคลอื่น ใด ให้เป็นผู้มีหน้าที่และรับผิดชอบในการบริหารจัดการทรัพย์สินส่วนกลางของอาคารพักอาศัยทั้งหมดหรือบางส่วนตามความจำเป็น หรือเหมาะสมเพื่อการให้บริการ รวมทั้งพิจารณากำหนดเกณฑ์ระเบียบ เพื่อที่จะให้มีการปฏิบัติตามหรือเป็นไปตามข้อกำหนดภายใต้สัญญานี้

9.4 ผู้ให้เช่าจะให้ความสะดวกตามที่ผู้เช่าร้องขออย่างสมควรปฏิบัติ ตามประเพณีเกี่ยวกับทรัพย์สินที่เช่า

ข้อ 10. การเพิ่มเติม ต่อเติม แก้ไข หรือดัดแปลงทรัพย์สินที่เช่า

10.1 การเพิ่มเติม ต่อเติม แก้ไข หรือดัดแปลง ทรัพย์สินที่เช่า ในกรณีดังต่อไปนี้ ผู้เช่าจะกระทำได้ เว้นแต่จะได้รับอนุญาตเป็นหนังสือจากผู้ให้เช่าก่อน

(1) ทำการต่อเติม แก้ไข แบ่งกันห้อง หรือเปลี่ยนแปลง โครงสร้างส่วนหนึ่งส่วนใดของทรัพย์สินที่เช่าหรืออาคารพักอาศัย

(2) ทำการเพิ่มเติม แก้ไข หรือดัดแปลง อุปกรณ์ส่วนควบของทรัพย์สินที่เช่าอันได้แก่ ประตู หน้าต่าง หรือ ระบบสาธารณูปโภค (ระบบไฟฟ้า ระบบประปา หรือระบบท่อน้ำทิ้ง) ให้แตกต่างไปจากระบบมาตรฐานที่เตรียมไว้ให้กับผู้เช่าในวันส่งมอบทรัพย์สินที่เช่า

10.2 การขออนุญาตเพิ่มเติม ต่อเติม แก้ไข หรือตัดแปลง ตามข้อ 10.1 ผู้เช่าจะต้องเสนอแบบแปลนแผนผัง โดยมีวิศวกรหรือสถาปนิกรับรองความปลอดภัย โดยถูกต้องตามกฎหมายเพื่อประกอบการขออนุญาตจากผู้ให้เช่าก่อนการดำเนินการทุกครั้ง

10.3 บรรดาทรัพย์สินต่าง ๆ ที่ติดตั้งตราถาวรกับทรัพย์สินที่เช่าหรืออาคารพักอาศัยอันเนื่องมาจากการเพิ่มเติม ต่อเติม แก้ไข หรือตัดแปลง ให้ถือเป็นทรัพย์สินที่เช่าตามสัญญาและตกเป็นกรรมสิทธิ์ของผู้ให้เช่าทันที ทั้งนี้ในส่วนอุปกรณ์ส่วนควบของทรัพย์สินที่เช่าอันได้แก่ ประตูทางเข้า หน้าต่างและผนังด้านนอกจะต้องเป็นไปตามมาตรฐานชนิด ประเภท และสีที่ผู้ให้เช่ากำหนด

10.4 ผู้เช่าจะต้องเป็นผู้รับผิดชอบค่าใช้จ่ายทั้งปวงในการดำเนินการตามข้อ 10. และจะต้องดำเนินการด้วยความระมัดระวัง ไม่ให้รบกวนหรือก่อให้เกิดความเดือดร้อนรำคาญแก่ผู้เช่ารายอื่น ผู้ให้เช่าหรือบุคคลอื่นใด รวมทั้งจะต้องกระทำในเวลากลางวันเท่านั้น โดยจะต้องปฏิบัติตามกฎ ระเบียบ ข้อบังคับและคำสั่งของผู้ให้เช่าหรือตัวแทนของผู้ให้เช่าเกี่ยวกับความปลอดภัยและการอยู่อาศัยอย่างสงบสุข โดยเคร่งครัด ผู้เช่าจะต้องดำเนินการเพื่อสร้างความมั่นใจว่า การเพิ่มเติม ต่อเติม แก้ไข หรือตัดแปลงที่กระทำอยู่นั้นจะไม่มีผลกระทบในทางที่อาจก่ออันตราย หรือความเสียหายต่อโครงสร้างของอาคารพักอาศัย และทรัพย์สินใดๆ ของอาคารพักอาศัย รวมถึงจะต้องจัดทำประกันภัยในระหว่างการดำเนินการเพิ่มเติม ต่อเติม แก้ไข หรือตัดแปลงนั้น ตามที่ผู้ให้เช่าจะกำหนด และแม้จะได้รับอนุญาตจากผู้ให้เช่าในการดำเนินการแล้วแต่หากมีความเสียหายใดๆ เกิดขึ้นต่อบุคคลหรือทรัพย์สินใด ๆ อันเนื่องมาจากการเพิ่มเติม ต่อเติม แก้ไข หรือตัดแปลงดังกล่าวแล้วผู้เช่าจะต้องรับผิดชอบเองทั้งสิ้น

ข้อ 11. สาธารณูปโภค

11.1 ผู้ให้เช่าจะจัดให้มีสาธารณูปโภค ได้แก่ กระแสไฟฟ้า น้ำประปา (จากการไฟฟ้านครหลวงและการประปานครหลวง) ภายในทรัพย์สินที่เช่า โดยผู้ให้เช่าจะจัดให้มีมาตรวัดการใช้ไฟฟ้า และน้ำประปา ภายในทรัพย์สินที่เช่า ตามเงื่อนไขที่ระบุไว้ในสัญญาให้บริการอาคารพักอาศัย ระเบียบจามจรี และผู้เช่าจะต้องชำระเงิน ค่าไฟฟ้า และค่าน้ำประปาที่ได้ใช้ไปตามจำนวนในใบแจ้งหนี้ รวมทั้ง ค่าบริการตามปกติซึ่งเกี่ยวข้องกับบริการนั้น(ถ้ามี) ตามที่ผู้ให้เช่าจะแจ้งให้ผู้เช่าทราบทุกเดือน

11.2 ในกรณีที่ผู้เช่าไม่ชำระเงินตามใบแจ้งหนี้ ตามข้อ 11.1 ผู้เช่าจะต้องจ่ายค่าปรับให้แก่ผู้ให้เช่าในอัตราร้อยละ 15 (สิบห้า) ต่อปีของจำนวนเงินตามใบแจ้งหนี้ที่ยังค้างชำระคำนวณนับจากวันที่ค้างชำระจนถึงวันที่ได้ชำระหนี้เสร็จสิ้น นอกจากนี้หากผู้เช่าไม่ปฏิบัติตามข้อกำหนดข้อหนึ่งข้อใดแห่งสัญญานี้ ผู้ให้เช่ามีสิทธิจัดการให้บริการกระแสไฟฟ้า น้ำประปา หรือบริการอื่นใดที่ผู้ให้เช่าเป็นผู้จัดให้สำหรับทรัพย์สินที่เช่านั้น ได้ตามที่ผู้ให้เช่าเห็นว่าเหมาะสมจนกว่าผู้เช่าจะปฏิบัติตามข้อกำหนดแห่งสัญญานี้ โดยถูกต้องครบถ้วนหรือได้แก่ไขการปฏิบัติผิดข้อกำหนดแห่งสัญญานี้เรียบร้อยแล้ว ทั้งนี้ ไม่กระทบต่อสิทธิต่าง ๆ ของผู้ให้เช่าตามที่กำหนดไว้ในสัญญานี้หรือสัญญาบริการห้องพักอาศัยระเบียบจามจรี

ข้อ 12. การสิ้นสุดแห่งสัญญา

สัญญานี้จะสิ้นสุดลงทันทีเมื่อเกิดเหตุการณ์อย่างใดอย่างหนึ่งดังต่อไปนี้

12.1 กรณีมีการใช้สิทธิบอกเลิกสัญญา

(1) สัญญาทุกข้อถือเป็นสาระสำคัญ ถ้าผู้เช่าไม่ปฏิบัติตามสัญญาข้อหนึ่งข้อใด หรือแม้แต่ส่วนหนึ่งส่วนใด เมื่อผู้ให้เช่าได้บอกกล่าวเป็นหนังสือต่อผู้เช่าแล้ว และผู้เช่าไม่แก้ไขความผิดดังกล่าวให้แล้วเสร็จภายในระยะเวลาที่ผู้ให้เช่ากำหนด ผู้เช่ามีสิทธิบอกเลิกสัญญาเช่าได้ทันที และบรรดาเงินค่าเช่าหรือเงินอื่นใดที่ผู้เช่าได้ชำระไปแล้ว ให้ตกเป็นของผู้ให้เช่าทั้งหมด โดยผู้เช่าไม่มีสิทธิเรียกคืน

(2) ในกรณีที่ผู้เช่าหรือบริวารของผู้เช่าใช้ทรัพย์สินที่เช่ากระทำความผิดกฎหมายหรือใช้ทรัพย์สินที่เช่าในทางที่อาจก่อให้เกิดอันตรายต่ออารยธรรมโดยปกติสุขของผู้เช่ารายอื่น ๆ

12.2 กรณีดังต่อไปนี้ ให้ถือว่าสัญญาสิ้นสุดลงทันที โดยไม่ต้องมีการบอกกล่าวแต่อย่างใด

- (1) เมื่อครบกำหนดสิ้นสุดตามอายุการเช่าของสัญญาฉบับนี้ โดยมีได้มีการต่ออายุสัญญาเช่า
- (2) เมื่อผู้เช่าถูกศาลสั่งพิทักษ์ทรัพย์หรือมีคำพิพากษาให้ล้มละลาย
- (3) ในกรณีเกิดอัคคีภัย หรือภัยพิบัตินอกจากนี้ซึ่งทำความเสียหายแก่อาคารพักอาศัยทั้งหมดหรือแต่ส่วนหนึ่งส่วนใดจนไม่เหมาะสมที่จะใช้พื้นที่เช่าอีกต่อไป
- (4) ในกรณีที่ทางราชการเวนคืนที่ดินที่ปลูกสร้างอาคารพักอาศัยของผู้ให้เช่าทั้งหมด หรือแต่ส่วนใดจนไม่เหมาะสมที่จะใช้พื้นที่เช่าต่อไป
- (5) ในกรณีที่สัญญาบริการอาคารพักอาศัยซึ่งได้ทำโดยคู่สัญญาเดียวกันนี้สิ้นสุดลง โดยไม่ใช่ความผิดของผู้ให้เช่า ไม่ว่าจะกรณีใด ๆ ก็ตาม ให้ถือว่าสัญญาเช่าฉบับนี้สิ้นสุดลงโดยปริยายด้วย ผู้เช่าไม่มีสิทธิที่จะเรียกร้องค่าเสียหายใด ๆ จากผู้ให้เช่า

ข้อ 13. ผลภายหลังการสิ้นสุดแห่งสัญญา

เมื่อสัญญาสิ้นสุดลงไม่ว่ากรณีใด ให้มีผลดังต่อไปนี้

- 13.1 ให้ถือว่าสัญญาบริการอาคารพักอาศัย ระเบียบจามจิริสิ้นสุดลงด้วย
- 13.2 ผู้เช่าจะต้องขนย้ายทรัพย์สินที่มีได้คิดตรงกับทรัพย์สินที่เช่า พร้อมทั้งบริวารออกจากทรัพย์สินที่เช่า ภายในกำหนดระยะเวลา 30 (สามสิบ) วันนับแต่วันที่สัญญาสิ้นสุดลง โดยผู้เช่าสัญญาว่าจะไม่เรียกร้องค่าชดเชย ค่าเสียหาย หรือค่าใช้จ่ายใดๆทั้งสิ้นจากผู้ให้เช่าในการขนย้ายดังกล่าว
- 13.3 ถ้าผู้เช่าไม่ดำเนินการขนย้ายทรัพย์สินพร้อมทั้งบริวารออกจากทรัพย์สินที่เช่าภายในกำหนดตามข้อ 13.2 ผู้เช่ายินยอมให้สิทธิครอบครองทรัพย์สินที่เช่ากลับคืนสู่ผู้ให้เช่าในทันที และให้ผู้เช่ามีสิทธิดังต่อไปนี้ โดยผู้เช่าไม่มีสิทธิคัดค้าน หรือเรียกค่าเสียหายจากผู้ให้เช่า และไม่ถือว่าการใช้สิทธิดังกล่าวของผู้ให้เช่าเป็นการบุกรุกหรือล่วงละเมิดสิทธิของผู้เช่าแต่อย่างใดทั้งสิ้น

- (1) กลับเข้าครอบครองทรัพย์สินที่เช่า หรือกระทำการใดๆตามที่เห็นสมควรกับทรัพย์สินที่เช่า และทรัพย์สินที่อยู่ในทรัพย์สินที่เช่านั้นได้ในทันที
- (2) ทำลายสิ่งกีดขวางประตู หรือกุญแจ และขนย้ายทรัพย์สินต่าง ๆ ออกจากทรัพย์สินที่เช่า โดยผู้เช่าจะต้องเป็นผู้รับผิดชอบค่าเสียหายและค่าใช้จ่ายในการขนย้าย และ/หรือ การเก็บรักษาทรัพย์สินนั้น
- (3) ล็อกประตู ปิดกั้นหรือกระทำการใดๆเพื่อห้ามมิให้ผู้เช่า หรือบริวารของผู้เช่าเข้าไปในทรัพย์สินที่เช่า
- (4) จัดให้ผู้เช่ารายใหม่เข้าครอบครองทรัพย์สินที่เช่าได้ในทันที

(5) เรียกค่าปรับจากผู้เช่าเป็นเงินวันละ 10,000.- บาท (หนึ่งหมื่นบาทถ้วน) หรือไม่น้อยกว่าจำนวนสองเท่าของราคาค่าตอบแทนการเช่าตามราคาตลาด (Market Price) ณ ขณะนั้น นับแต่วันถัดจากวันที่ครบกำหนดระยะเวลาข้าย ตามข้อ 13.2 จนถึงวันที่ผู้เช่าส่งมอบทรัพย์สินที่เช่าคืนเสร็จเรียบร้อยแล้ว หรือจนถึงวันที่ผู้เช่าได้กลับเข้าครอบครองทรัพย์สินที่เช่า แล้วแต่กรณี ทั้งนี้ โดยไม่ตัดสิทธิของผู้ให้เช่าในการเรียกค่าเสียหายหรือค่าใช้จ่ายดังกล่าวตาม (2) รวมทั้งค่าเสียหายอื่น ๆ (หากมี)

ข้อ 14. สิทธิในการต่อสัญญา

เว้นแต่กรณีที่มีการใช้สิทธิบอกเลิกสัญญาตามข้อ 12.1 ผู้ให้เช่าตกลงให้ผู้เช่าเป็นผู้มีสิทธิในการทำสัญญาเช่าก่อนบุคคลอื่น โดยมีสิทธิในการต่อสัญญาเป็นระยะเวลา 30 (สามสิบ) ปี นับแต่วันที่ครบกำหนดระยะเวลาการเช่าตามข้อ 4. หากผู้เช่าประสงค์จะต่อสัญญานี้จะต้องแจ้งเป็นหนังสือให้ผู้ให้เช่าทราบภายใน 6 (หก) เดือนแรกก่อนปีการเช่าสุดท้าย (วันที่ 1 กรกฎาคม 2585 ถึงวันที่ 31 ธันวาคม 2585) และผู้ให้เช่าจะพิจารณากำหนดคุณสมบัติผู้เช่า อัตราค่าตอบแทนการเช่าตามราคาตลาด (Market Price) ณ ขณะที่มีการต่ออายุสัญญา และเงื่อนไขอื่น ๆ และแจ้งให้ผู้เช่าทราบ ซึ่งหากผู้เช่าตกลงตามอัตราค่าตอบแทนการเช่าและเงื่อนไขที่ผู้ให้เช่ากำหนด ทั้งสองฝ่ายตกลงที่จะทำสัญญาเช่าตามอัตราค่าตอบแทนการเช่าและเงื่อนไขดังกล่าวต่อไป ทั้งนี้ หากตกลงกันไม่ได้ ให้สิทธิในการต่อสัญญานี้สิ้นสุดลงทันที

ข้อ 15. การบอกกล่าว

เว้นแต่จะกำหนดเป็นอย่างอื่นไว้ในสัญญานี้ บรรดาคำบอกกล่าวหรือการให้ความยินยอมหรือการอนุญาตใด ๆ ตามสัญญานี้ ต้องทำเป็นหนังสือและจะต้องว่าคู่สัญญาอีกฝ่ายหนึ่งได้รับไว้โดยชอบแล้ว หากได้จัดส่งโดยทางหนึ่งทางใดดังต่อไปนี้

- ส่งมอบแก่ผู้แทนที่ได้รับมอบหมายของแต่ละฝ่าย
- ส่งทางไปรษณีย์ลงทะเบียน ตามข้อและที่อยู่ ดังต่อไปนี้

ผู้ให้เช่า

ผู้อำนวยการสำนักงาน
สำนักงานจัดการทรัพย์สิน จุฬาลงกรณ์มหาวิทยาลัย
ถนนพญาไท แขวงวังใหม่ เขตปทุมวัน กรุงเทพมหานคร 10330

ผู้เช่า

อาคารระเมียงจามจู้ร็องพักอาศัย ชั้นที่ ห้อง
เลขที่ 268 ถนนจรัลเมือง
แขวงวังใหม่ เขตปทุมวัน กรุงเทพมหานคร 10330

อนึ่ง ในกรณีที่ผู้ให้เช่าให้เจ้าหน้าที่นำหนังสือดังกล่าวไปส่งแก่ผู้เช่าที่ทรัพย์สินที่เช่านั้น หากมีผู้รับก็ให้ถือว่าได้รับหนังสือดังกล่าวโดยชอบแล้ว ถ้าไม่มีผู้รับให้ปิดหนังสือดังกล่าวไว้ที่บริเวณคานหน้าของทรัพย์สินที่เช่า และเมื่อพ้นกำหนดเวลา 15 (สิบห้า) วัน นับแต่วันที่ปิดแล้วให้ถือว่าผู้เช่าได้รับทราบหนังสือดังกล่าวโดยชอบแล้ว หากฝ่ายใดมีการเปลี่ยนแปลงที่อยู่ให้แจ้งล่วงหน้าไม่น้อยกว่า 7 (เจ็ด) วัน

ข้อ 16. เอกสารแนบท้ายสัญญา

เอกสารแนบท้ายสัญญาดังต่อไปนี้ ให้ถือเป็นส่วนหนึ่งของสัญญานี้

16.1 เอกสารแนบท้ายหมายเลข 1 แบบแปลนห้องพักอาศัยและผังแสดงอุปกรณ์งานระบบภายใน

จำนวน 2 หน้า

16.2 เอกสารแนบท้ายหมายเลข 2 ข้อมูลพื้นฐานงานสถาปัตยกรรม งานวิศวกรรมระบบ และระบบสื่อสารที่เตรียมไว้ให้กับผู้เช่า

จำนวน 1 หน้า

16.3 เอกสารแนบท้ายหมายเลข 3 รายการเฟอร์นิเจอร์

จำนวน 1 หน้า

16.4 เอกสารแนบท้ายหมายเลข 4 รายการชำระเงิน

จำนวน 1 หน้า

ความใดในเอกสารแนบท้ายสัญญาที่ขัดหรือแย้งกับข้อความในสัญญานี้ให้ใช้ข้อความในสัญญานี้บังคับ และในกรณีที่เอกสารแนบท้ายสัญญาขัดหรือแย้งกันเอง ผู้เช่าตกลงให้ผู้ให้เช่าเป็นผู้วินิจฉัยชี้ขาด

ในระหว่างระยะเวลาการเช่าตามสัญญานี้ ผู้ให้เช่าอาจแก้ไขเพิ่มเติมรายละเอียดข้อมูลงานพื้นฐาน สถาปัตยกรรม งานวิศวกรรมระบบ และระบบสื่อสารที่เตรียมไว้ให้กับผู้เช่า ตามเอกสารแนบท้ายหมายเลข 2 ได้ ในกรณีที่ผู้ให้เช่าเห็นว่ามีความจำเป็นและเหตุผลอันสมควร เพื่อประโยชน์ในการปรับปรุงงานสถาปัตยกรรม งานระบบวิศวกรรม และระบบสื่อสารที่เตรียมไว้ให้กับผู้เช่าให้มีความทันสมัย หรือเหมาะสมมากยิ่งขึ้น ทั้งนี้ ผู้ให้เช่าจะแจ้งเป็นหนังสือให้ผู้เช่าทราบล่วงหน้า ไม่น้อยกว่า 1 (หนึ่ง) เดือน และถือว่าผู้เช่าตกลงยินยอมด้วยการแก้ไขเพิ่มเติมดังกล่าว

สัญญานี้ทำขึ้นไว้ 3 (สาม) ฉบับมีข้อความถูกต้องตรงกัน คู่สัญญาได้อ่านและเข้าใจข้อความโดยละเอียดตลอดแล้ว จึงได้ลงลายมือชื่อและประทับตรา (ถ้ามี) ไว้เป็นสำคัญต่อหน้าพยาน คู่สัญญาต่างยึดถือไว้ฝ่ายละฉบับ และใช้จดทะเบียนการเช่ากับสำนักงานที่ดินอีกหนึ่งฉบับ

ลงชื่อ ผู้ให้เช่า

จุฬาลงกรณ์มหาวิทยาลัย

โดย

รองอธิการบดี

ลงชื่อ ผู้เช่า

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ลงชื่อ..... พยาน

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ผู้อำนวยการสำนักงานจัดการทรัพย์สิน

ลงชื่อ..... พยาน

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ผู้อำนวยการฝ่ายกฎหมาย

BIOGRAPHY

| | |
|------------------------|--|
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