



**Pekeliling Ketua Pengarah Tanah Dan Galian Persekutuan
Bilangan 1/1999**

**Garis Panduan Bagi Pembangunan Tanah Perkuburan Bukan Islam
Secara Komersil Oleh Sektor Swasta**



**JABATAN KETUA PENGARAH TANAH DAN GALIAN PERSEKUTUAN
KEMENTERIAN SUMBER ASLI DAN ALAM SEKITAR
PUTRAJAYA**

Pekeliling Ketua Pengarah Tanah Dan Galian Persekutuan Bilangan 1/1999

Garis Panduan Bagi Pembangunan Tanah Perkuburan Bukan Islam Secara Komersil Oleh Sektor Swasta

1. Pekeliling ini bertujuan menarik perhatian Pengarah-pengarah Tanah dan Galian serta Pentadbir-pentadbir Tanah berhubung dengan persetujuan Majlis Tanah Negara Ke 51 yang bersidang pada 16 November 1995 supaya pembangunan tanah untuk perkuburan orang bukan Islam secara komersil diberi pertimbangan yang sewajarnya oleh Pihak Berkuasa Negeri dan menyeragamkan syarat-syarat kelulusan.
2. Pembangunan tanah untuk tujuan perkuburan bukan Islam oleh sektor swasta telah bermula di negara ini pada akhir tahun-tahun 1980an. Sehingga kini terdapat 5 buah projek yang telah diluluskan oleh Pihak-pihak Berkuasa Negeri iaitu di Pulau Pinang (2 projek), Selangor (2 projek) dan Negeri Sembilan (1 projek). Pembangunan cara ini tidak digalakkan. Untuk kepentingan orang awam, tanah perkuburan dan tempat pembakaran mayat dan penyimpanan abu sewajarnya diuruskan oleh Kerajaan melalui Pihak Berkuasa Tempatan atau oleh badan keagamaan kebudayaan atau kebajikan yang berdaftar dan yang tidak berasaskan keuntungan. Walau bagaimanapun langkah-langkah tertentu perlu diambil, kiranya pertimbangan diberi ke atas permohonan pembangunan tanah perkuburan secara komersil ini. Langkah-langkah yang dinyatakan di bawah ini perlulah dipatuhi.
3. Pembangunan tanah secara ini mendatangkan faedah kepada Kerajaan Negeri kerana ianya memberi hasil dalam bentuk cukai tanah dan premium serta meringankan beban Kerajaan Negeri/Pihak Berkuasa Tempatan dari segi penyediaan kemudahan sosial serta pengurusannya. Walaupun begitu pengawalan perlu dilakukan supaya keharmonian masyarakat berbilang kaum dapat dikekalkan dan ciri-ciri kebudayaan kebangsaan dapat dipertahankan.
4. Konsep pembangunan dan pengurusan tanah perkuburan secara komersil oleh pihak swasta ini secara ringkas adalah seperti berikut:-
 - (a) Pembangunan Tanah Untuk Dijadikan Perkuburan

Tanah yang telah mendapat kelulusan daripada Pihak Berkuasa Negeri sama ada melalui pemberimilikan atau tukar syarat akan dibangunkan dengan:-

 - (i) penyediaan infrastruktur asas seperti jalan raya, kemudahan air dan elektrik;
 - (ii) penyediaan petak-petak (plot) tanah kubur, keluasan yang dibenarkan bagi tiap-tiap plot pembinaan bangunan untuk menyimpan abu-abu mayat, bangunan pejabat, rumah tokong dan lain-lain lagi;
 - (iii) Pembangunan tanah perkuburan komersil ini perlulah mengambilkira ciri-ciri kebudayaan masyarakat Malaysia di dalam kawasan itu dan kedudukan masyarakat sekitar. Kelulusan Pihak Berkuasa Tempatan hendaklah diperolehi sebelum apa-apa struktur bangunan dan layout didirikan oleh pemaju; dan

(iv) Kadar 30% daripada kawasan pengebumian sebenar perlu ditetapkan bagi kawasan perkuburan awam untuk masyarakat umum dan orang-orang miskin.

(b) Pengurusan Tanah-tanah Perkuburan

Pengurusan tanah-tanah perkuburan ini terbahagi kepada dua peringkat, iaitu pengurusan oleh syarikat asal yang memajukan tanah perkuburan tersebut, dan kemudiannya oleh Syarikat Amanah.

(i) Pengurusan Oleh Pemaju

Pengurusan perkuburan ini dalam peringkat awal termasuk penyelenggaraannya akan dikendalikan oleh pemaju asal yang berkenaan. Pemaju perlu memajukan tanah perkuburan mengikut syarat-syarat yang telah ditentukan oleh Pihak Berkuasa Negeri.

(ii) Pengurusan Oleh Syarikat Amanah Yang Didaftarkan Di Bawah Akta Syarikat Amanah 1949 [Akta 100]

(1) Selepas penjualan semua petak perkuburan, pengurusan selanjutnya akan diambil alih oleh sebuah syarikat amanah (*trust company*) yang akan dilantik oleh pemaju. Syarikat amanah tersebut hendaklah sebuah syarikat yang didaftarkan di bawah Akta Syarikat Amanah 1949.

Pengurusan melalui syarikat amanah ini diwujudkan bagi meyakinkan bakal-bakal pembeli bahawa tanah perkuburan ini akan terus diselenggara dan diuruskan dengan baik. Tarikh sebenarnya syarikat amanah ini akan mula menyelenggarakan tanah perkuburan ini tertakluk kepada perjanjian yang dibuat di antara pemaju dengan syarikat amanah tersebut.

(2) Bagi menjamin syarikat amanah ini mempunyai sumber kewangan yang mencukupi untuk menguruskan atau menyelenggarakan tanah kubur ini di masa hadapan, setiap bakal pembeli petak perkuburan ini dikehendaki membayar wang penyelenggaraan dan perkhidmatan dengan kadar yang telah ditetapkan semasa pembelian itu dibuat. Wang penyelenggaraan ini akan terus dimasukkan ke dalam tabung amanah yang telah ditubuhkan. Wang di dalam tabung amanah (*trust fund*) akan disimpan di dalam Akaun Tetap (*Fixed Deposit*) bank dan ianya tidak akan dikeluarkan. Hanya keuntungan dan akaun tersebut sahaja yang akan digunakan oleh syarikat amanah ini untuk kerja-kerja penyelenggaraan kubur di masa hadapan.

(3) Carta aliran kerja yang ringkas bagi memproses pembangunan dan penggunaan tanah kubur komersil oleh sektor swasta adalah seperti **LAMPIRAN "A"**. Contoh perkara-perkara yang harus dipersetujui dalam perjanjian antara pemaju dan syarikat amanah adalah seperti dalam **LAMPIRAN "B"**.

(c) Penjualan Petak-petak Perkuburan

Segala urusan jual-beli petak-petak perkuburan di antara pembeli dan pemaju dibuat dengan menggunakan "Perjanjian Jual-beli" (*Sales And Purchase Agreement*) dan mungkin suatu sijil akan dikeluarkan kepada pembeli yang berkenaan sebagai pengenalan/bukti kepada pembeliannya itu. Contoh sijil penjualan tersebut adalah seperti dalam **LAMPIRAN "C"**.

Petak-petak yang telah dijual tetapi masih belum digunakan tidak boleh dipindahmilik melalui Perjanjian Jual-beli tanpa kebenaran Pihak Berkuasa Negeri.

5. Seperti yang disebutkan di perenggan 4 (a) di atas, pembangunan tanah untuk perkuburan bukan Islam memerlukan kelulusan Pihak Berkuasa Negeri melalui pemberimilikan atau tukar syarat. Justeru itu, bagi penyeragaman dalam pelaksanaan konsep perkuburan orang bukan Islam secara komersil oleh sektor swasta, Pihak-pihak Berkuasa Negeri, semasa meluluskan pemberimilikan atau tukar syarat perlu mengambil kira perkara-perkara seperti berikut:-

(i) Premium/Premium Tambahan

Kadar yang dikenakan adalah seperti kadar di dalam Kaedah Tanah Negeri di antara kadar bangunan perniagaan dengan kadar bangunan kediaman.

(ii) Cukai

Kadarnya dikenakan adalah seperti dalam Kaedah Tanah Negeri di antara kadar bangunan perniagaan dengan kadar bangunan kediaman.

(iii) Kategori Kegunaan/Syarat Nyata

(a) Kategori – Tiada (*Nil*)

(b) Syarat Nyata – Tanah ini hendaklah digunakan semata-mata untuk kubur dan kegunaan lain yang berkaitan iaitu tempat bakar mayat, bangunan untuk menyimpan abu mayat, dewan letak mayat ruang rehat dan taman dan tidak boleh digunakan selain daripada itu.

(iv) Sekatan Kepentingan

Tanah ini tidak boleh diurusniagakan melainkan dengan kebenaran Pihak Berkuasa Negeri.

(v) Orang bukan warganegara tidak dibenarkan membeli petak kubur atau tempat menyimpan abu tanpa kebenaran Pihak Berkuasa Negeri terlebih dahulu.

(vi) Mayat dan abu orang bukan warganegara tidak dibenarkan sama sekali dibawa masuk ke kawasan tersebut bagi tujuan pengebumian atau penyimpanan.

(vii) Keluasan petak kubur serta pembinaan ke atasnya hendaklah munasabah mengikut dasar yang ditetapkan oleh Pihak Berkuasa Negeri.

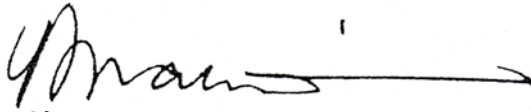
(viii) Syarat Tambahan

Syarat-syarat lain adalah sebagai dicadangkan oleh Jabatan-jabatan Teknikal dan Pihak Berkuasa Tempatan yang dipersetujui oleh Pihak Berkuasa Negeri.

6. Jika pada masa kelulusan, tanah yang berkenaan terletak di luar kawasan Pihak Berkuasa Tempatan, Pihak Berkuasa Negeri, hendaklah memutuskan supaya tanah tersebut diwartakan sebagai sebahagian dari kawasan Pihak Berkuasa Tempatan untuk memudahkan kawalan ke atas tanah kubur tersebut oleh Pihak Berkuasa Tempatan. Pihak Berkuasa Negeri juga hendaklah mengenakan syarat mengenai pelantikan syarikat amanah untuk menjamin pengurusan yang berterusan seperti diterangkan di atas.

7. Pengarah-pengarah Tanah dan Galian Negeri dan Pentadbir-pentadbir Tanah dinasihatkan supaya mengambil tindakan untuk memastikan konsep pembangunan dan pengurusan seperti para 4 dipatuhi dan syarat-syarat yang seragam seperti dinyatakan di para 5 dan 6 di atas dikenakan semasa mendapatkan pertimbangan dan kelulusan Pihak Berkuasa Negeri.

8. Pekeliling ini dikeluarkan dengan persetujuan semua Pengarah Tanah dan Galian Negeri dan Jabatan Peguam Negara.

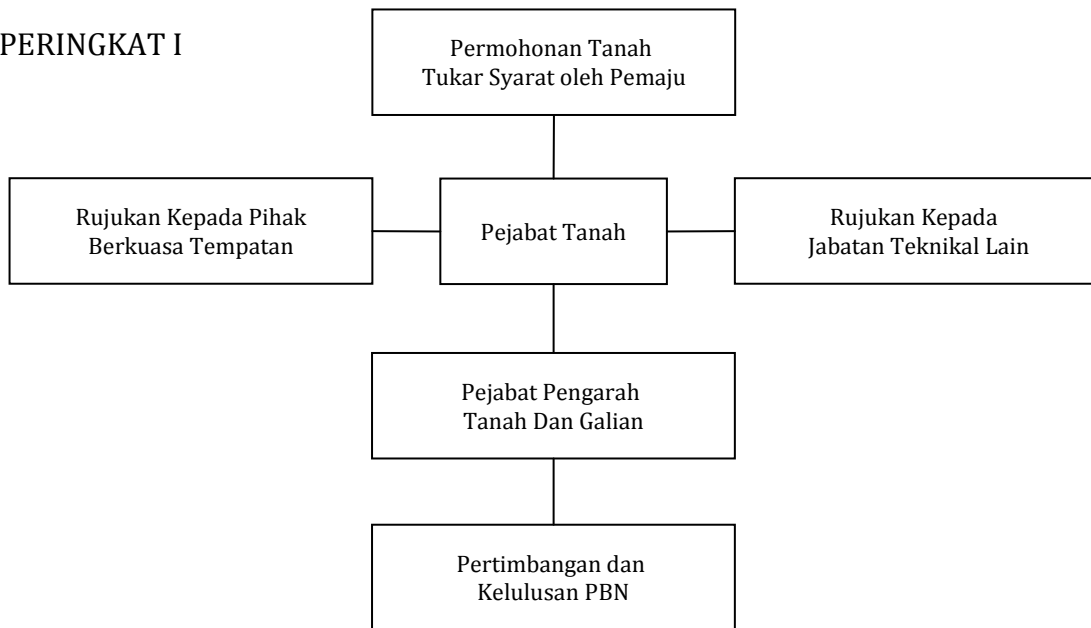


(DATO' WAN ABDUL WAHID BIN HAJI WAN HASSAN)
Ketua Pengarah Tanah dan Galian Persekutuan

No. Fail: KTPK/I01/KPU/799 Jld. 3 &
KTPK/101/KPU/1032-37 Jld. 2
Tarikh: 23 Februari 1999.

Ringkasan Proses Pembangunan Dan Pengurusan Tanah Perkuburan Komersil Oleh Sektor Swasta

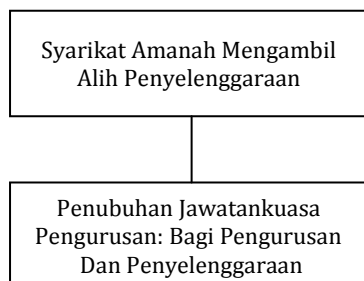
PERINGKAT I



PERINGKAT II



PERINGKAT III



CONTOH PERJANJIAN ANTARA PEMAJU KUBUR DENGAN SYARIKAT AMANAH

WHEREAS the said land is developed as a non-Muslim burial ground known as (hereinafter referred to as "the Cemetery").

AND WHEREAS the Developer desires that the Cemetery including all buildings and structures and the monuments and graves therein be maintained at all times and in perpetuity.

AND WHEREAS the Developer has agreed to create a trust and to pay to account of such trust all monies received by the Developer as maintenance fee consequent upon the sale of the burial lots comprised in the Cemetery to the intent that such maintenance fee shall be held by the Trustee upon trust for the purpose of maintaining the Cemetery and to keep in good repair and order all the buildings and structure monuments and graves therein upon the terms and subject to the conditions hereinafter expressed.

NOW THIS DEED WITNESSETH as follows:-

1. Definition

1.1. In this deed unless the contrary intention is apparent the following words shall have the respective meanings assigned to them:-

The Cemetery:	the burial ground developed over the said land and includes all buildings structures, monuments and graves therein.
Developer:	(Name of developer)
Landscape:	those buildings structures or statues erected in the Cemetery as well as any man-made features or the growing of trees and plants designed for the purpose of beautifying the Cemetery.
Maintenance:	the upkeep, repair and maintenance of the buildings, structures, monuments and graves in the Cemetery but excluding fair wear and tear.
Maintenance Fee:	such sum or sums of money collected by the Developer from purchasers of burial lots for the maintenance of the Cemetery.
Management Committee:	A committee consisting of four members to be established in accordance with clause 12 herein.
Trust Fund:	the monies from time to time paid by the Developer to the Trustee pursuant to this Deed, being monies received by the Developer as maintenance fee from purchasers of the burial lots comprised in the Cemetery.
Trustee:	(Name of Trustee Company)

2. Trust Fund

2.1. In pursuance of the aforesaid premises and in consideration of the Trustee agreeing to carry out, observe and perform all those obligations herein on the part of the Trustee to be carried out, observed and performed, the Developer shall pay over to and unto the Trustee all monies received by the Developer as maintenance fee to be held by the Trustee upon trust and the Trustee hereby

agrees to hold the same (hereinafter referred to as, "the trust fund") and all income and accumulations thereof upon trust in the manner and subject to the terms and conditions hereinafter contained.

- 2.2. The developer shall from time to time after the sale of each burial lot comprised in the Cemetery pay unto the Trustee the maintenance fee levied upon such sale, each of such payment shall be in addition to the trust fund and shall from part thereof under this trust hereby created.

3. Developer to Maintain Prior to Maintenance Commencement Date

- 3.1. The Trustee shall not be liable nor will the Trustee be under any obligation whatsoever to maintain or see to the maintenance of the Cemetery or any part thereof or any monument or grave therein unless all the burial lots comprised in the Cemetery have been sold or until the day of 199..... , whichever shall first occur (hereinafter referred to as "the Maintenance Commencement Date").
- 3.2. Until the Maintenance Commencement Date maintenance of the Cemetery and all monuments and graves therein shall be the responsibility of the Developer at the Developer's sole costs and expense.
- 3.3. The Development of the Cemetery and all constructions therein of a capital nature inclusive of infrastructure works shall be completed prior to the Management Commencement Date.

4. Management of Capital

- 4.1. Until Maintenance Commencement Date the Trustee shall hold the trust fund under this Trust and shall invest and manage the same in such manner as the Trustee may in its absolute discretion think fit. All income and profits arising from the trust fund shall be accumulated to and form part of the trust fund.
- 4.2. After the Maintenance Commencement Date the income from the capital of the trust fund shall be utilised solely for the purpose of maintenance of the Cemetery.
- 4.3. Subject to clause 4.5. hereof nothing herein contained shall be deemed to authorise the Trustee to utilise the capital in the trust fund or any part thereof for the purpose of maintenance of the Cemetery.
- 4.4. Should the income from the trust fund be inadequate to meet the expenditure for maintenance the Developer shall upon notice from the Trustee either subsidise the maintenance expenditure until such time when the trust fund may attract adequate income or pay to the Trustee such sum as may be requisite as additional capital of the trust fund so as to attract adequate income thereto to give effect to the trust herein.
- 4.5. Notwithstanding clause 4.3. above in the event that the Trustee is unable to raise any money for the purpose of maintenance of the Cemetery the Trustee shall be authorised to use the capital in the trust fund for such purpose.

5. Trustee to Maintain Cemetery

- 5.1. Effective from the Maintenance. Commencement Date the Trustee shall maintain or cause to be maintained the Cemetery, all building and structures, monuments and graves therein in a reasonable standard of cleanliness and repair, fair wear and tear expected, so that the Cemetery shall at all times emanate an ambience of scenic beauty and serenity worthy of its name.

- 5.2. In addition to maintenance the Trustee shall provide security to the Cemetery and to avoid waste and vandalism.
- 5.3. The Trustee shall appoint contractors to provide maintenance and cleaning services for the maintenance of the Cemetery and to appoint contractors to provide security services and the services of the said contractors shall be paid out of the trust fund.
6. Transfer of The Said Land
 - 6.1. Upon the sale of all the burial lots comprised in the Cemetery the Developer shall execute a Memorandum of Transfer of the said land in favour of the Trustee to enable the said land to be registered in the name of the Trustee as trustee.
7. Outgoings
 - 7.1. After the Maintenance Commencement Date all quit rent, assessment and other outgoings payable in respect of the said land shall be borne and paid by the Trustee from the income of the trust fund.
8. Public Donation
 - 8.1. All donations from the public shall be credited to and form part of the trust fund.
 - 8.2. The Trustee is hereby authorised to accept and receive donations from members of the public and to give a good and valid receipt thereof.
9. Excess Income
 - 9.1. The income from the capital of the trust fund which is in excess of the maintenance expenses shall at the sole discretion of the Trustee be accumulated to and form part of the capital in the trust fund or be utilised for the advancement of religion and culture consonant with the burial of the dead.
10. Capital Expenditure for Landscaping Permitted
 - 10.1. Notwithstanding any provision In this Deed to the contrary the Trustee is hereby authorised to utilise such part of the trust fund for the purpose of providing landscaping for the Cemetery in so far as such landscaping is beneficial and advantageous to the scenic beauty of the Cemetery. Provided that before the trust. fund may be utilised in the manner as aforesaid the Developer shall give advance notice to the Trustee in writing of such its intention and provided further that such part of the trust fund requested for landscaping is then not required by the Trustee for investment.
 - 10.2. In the event that the trust fund or any. part thereof shall have been utilised in the manner specified in the preceding clause the. Developer shall on or before the Maintenance Commencement Date reimburse to the Trustee such sum or sums utilised by the Trustee on landscaping expenditure.
11. Prohibition of Capital Expenditure On Infrastructure
 - 11.1. Nothing in this Deed hereof shall be deemed to permit or construed so as to permit the Trustee to utilise the trust fund or any part thereof on any capital expenditure in the construction of infrastructure.

12. Management Committee

- 12.1. Immediately prior to the Maintenance Commencement Date the Trustee shall establish a committee whose function is to oversee, manage and supervise maintenance and to advise the Trustee on all matters relating to maintenance and such committee when formed shall be known as the Management Committee.
- 12.2. The Management Committee shall consist of four (4) persons, two members shall be nominated by each of the parties hereto. In default of nomination by the Developer for any reason whatsoever the Trustee may appoint not less than three prominent members of the public as members of the Management Committee. The member nominated by the Trustee shall be the Chairman of the Management Committee.
- 12.3. The Management Committee shall meet as frequently as circumstances may require. All decisions of the Management committee shall be resolved by majority votes, each member shall have one vote but the Chairman of the Management Committee shall have a casting vote.
- 12.4. Any member of the Management Committee may from time to time be removed by the party appointing him and in his place another may be appointed.
- 12.5. Any member of the Management Committee who is adjudged a bankrupt or who makes a composition or arrangement with his creditors or who is incapacitated from acting or who communicates in writing to the Committee a wish to resign shall thereupon cease to be member.
- 12.6. The Management Committee shall provide and keep a minute book in which shall be entered the proceedings of the Management Committee and which shall be signed by the chairman of the meeting.
- 12.7. No payment shall be made by the Trustee for any purpose in relation to maintenance of the Cemetery unless such payment is first approved by the Management Committee.
- 12.8. Each member of the Management Committee shall be entitled to a remuneration to be determined by the Trustee and such remuneration may be paid out of the income or the capital of the trust fund.

13. Remuneration

- 13.1 In consideration of the services rendered by the Trustee the Trustee shall out of the income or the capital in the trust fund be paid a fee (hereinafter referred to as "the Trustee's fee").
- 13.2. The Trustee's fee shall be a sum equivalent to % of the trust fund but in any event shall not be less than RM per annum and not exceeding RM per annum.
- 13.3. The Trustee's fee shall be paid quarterly in arrears on the last day of each quarter commencing from the date of this Deed.

14. Accounts

- 14.1. The Trustee shall cause proper books of account to be kept and entries to be made therein of all receipts and payments and such accounts shall be audited annually by a qualified chartered accountant to be approved by the Management

Committee. The report and books of accounts shall be presented to the Management Committee at each meeting.

14.2. The Trustee shall from time to time inform the Management Committee of all investment made pursuant to this trust.

15. Investments

15.1. The Trustee may invest the capital in the trust fund or any part thereof on any investments for the being authorised bylaw in or upon the debentures (as defined by the Companies Act) or preferred or preference or ordinary or deferred shares or stock of any company provided, that such debentures shares or stock are or will be on issue or allotment be quoted on the Kuala Lumpur Stock Exchange.

15.2. Notwithstanding clause 15.1. above the Trustee may if so approved by the Management Committee purchase immovable property for investment.

16. Liability for improper Investment

16.1. In the execution of the trust and the powers hereof the Trustee shall not be liable for any loss to the trust fund arising by reason of any improper investment made by the Trustee in good faith or the negligence of any agent employed by the Trustee except for the fraud or wrongdoing on the part of the Trustee.

17. Liability of Trustee

17.1. The Trustee shall not be liable for any loss, claim or proceedings whatsoever arising under any statute or common law in respect of any damage to any property or personal injury to or the death of any person howsoever arising out of or in the course of or caused by the carrying out of the maintenance works in the Cemetery unless due to any negligence, omission or default of the Trustee its servants and/or agents PROVIDED ALWAYS that the Trustee shall not be liable for any damage howsoever arising to any of the tombs or the graves in the Cemetery.

18. Power of Appointment

18.1. The power of appointing new or additional trustees shall be vested in the Developer and may be exercised after giving to the Trustee three (3) month's notice.

18.2. In the event of the liquidation of the Developer the power of appointing new or additional trustees shall be vested in the Trustee.

19. Additional Powers

19.1. If in the course of the management or administration of the trust hereof the Trustee shall consider that any transaction is expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the Trustee by this trust the Trustee may confer upon itself either generally or in any particular instance the necessary power for that purpose subject always to the approval of the Management Committee.

CONTOH SIJIL PEMBELIAN TANAH KUBUR

No. Sijil:

Adalah disahkan bahawa

.....

No. Kad Pengenalan beralamat di

.....

adalah pemunya benefisial *petak/petak-petak seperti dinyatakan di bawah dan berhak ke atas semua kemudahan, hak dan kepentingan yang ditetapkan oleh kami untuk menikmatinya selama-lamanya bebas daripada apa-apa sekatan tertakluk kepada sekatan-sekatan dan syarat-syarat yang kami akan kenakan dari masa ke semasa, balasan mengenainya telah diterima, sebagaimana kami mengakui di sini.

No. Rujukan:

No. Petak:

Keluasan:

Tarikh:

.....
Pengurus
Syarikat Pemaju