



**BETWEEN**

(Company No. )  
**(as the Borrower)**

**AND**

**UNITED OVERSEAS BANK (MALAYSIA) BHD**  
(Company No. 271809 K)  
**(as the Bank)**

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**DEED OF DEBENTURE**  
(over the Fixed Assets & Other Assets  
in connection with the Project)

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**THIS DEED OF DEBENTURE** is made the day and year stated in Section 1 of the First Schedule

**BETWEEN**

The party named and described in Section 2 of the First Schedule (“Borrower”)

**AND**

**UNITED OVERSEAS BANK (MALAYSIA) BHD** (Company No. 271809 K), a company incorporated in Malaysia and having a place of business in Malaysia at the address stated in Section 3 of the First Schedule (“Bank”)

**WHEREAS:-**

**I. THE FACILITIES AGREEMENT**

At the request of the Borrower, the Bank has, by the Letter of Offer and the Facilities Agreement, agreed subject to the terms and conditions therein the Facilities Agreement to grant and continue to grant to the Borrower the Banking Facilities.

**II. TERMS OF THE FACILITIES AGREEMENT**

It is a term of the Facilities Agreement that simultaneously with the execution of the Facilities Agreement, the Borrower is inter alia to execute and deliver in favour of the Bank a first fixed charge over its Fixed Assets and a first floating charge over its Other Assets under a Deed of Debenture upon terms and conditions acceptable to the Bank as security for the due payment and satisfaction by the Borrower of the Indebtedness and the due performance by the Borrower of its obligations and undertakings under the Facilities Agreement.

**III. DEED OF DEBENTURE**

As a condition precedent to the disbursement and/or further disbursement by the Bank of the Banking Facilities or any part thereof and in pursuance to the terms of the Facilities Agreement, the Borrower is entering into this Deed of Debenture upon the terms and conditions hereinafter appearing.

**NOW THIS DEED WITNESSETH** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions in the Facilities Agreement**

Except as otherwise defined in this Deed or where the context otherwise requires, all expressions used in this Deed, including the Recitals shall have the same meanings as those assigned to such expressions by the Facilities Agreement.

**1.2 Definitions**

In this Deed, unless the context otherwise requires, the following expressions shall have the meanings set forth opposite such expressions:-

- “Bank” : **UNITED OVERSEAS BANK (MALAYSIA) BHD** (Company No. 271809 K) described above and includes its successors-in-title and persons deriving title thereunder
- “Banking Facilities” : the banking facility or facilities offered by the Bank to the Borrower in the Letter of Offer and all other banking facilities offered to the Borrower in further or other letters of offer issued after the date of the Facilities Agreement and if any of the Banking Facilities is varied and/or substituted in any way by a letter from the Bank to the Borrower, “**Banking Facilities**” will also refer to such Banking Facilities as varied and/or substituted, “**Banking Facility**” means any one of the Banking Facilities
- “Borrower” : the party whose name and description are stated in Section 2 of the First Schedule and includes its successors-in-title and persons deriving title thereunder
- “Charged Properties” : the Borrower’s undertaking, properties and assets (including the Lands) charged by the Borrower to the Bank as security pursuant to this Deed and includes the Fixed Assets and the Other Assets
- “Deed” : this Deed of Debenture
- “Development Order” : such planning permission granted by the relevant authority, comprised in a development order or otherwise under or pursuant to the Town and Country Planning Act 1976 (Act 172) and/or such other relevant laws

- “Encumbrance” : any mortgage, pledge, lien, charge (whether fixed or floating), hypothecation, assignment or transfer by way of security or other security interest of any kind or any other arrangement having substantially the same economic effect as any of the foregoing
- “Event of Default” : any of the events of default described in Clause 7.1
- “Facilities Agreement” : the Facilities Agreement bearing the same date as this Deed and made between the Bank and the Borrower
- “Fixed Assets” : all those immovable properties and assets of the Borrower whatsoever and wheresoever situate, both present and future in connection with the Project including all buildings and fixtures, plant, equipment, machinery and motor vehicles, computers, office equipment and other equipment in connection with the Project and all equipment, accessories and parts pertaining to the aforesaid plant, equipment, machinery and motor vehicles, computers, office equipment and other equipment;
- “Indebtedness” : the aggregate of all monies whether principal, interest, capitalised interest, commission, fees, costs or charges outstanding or payable or agreed to be payable by the Borrower and/or any other Security Party to the Bank from time to time in respect of the Banking Facilities or any account and includes all liabilities incurred by the Borrower to the Bank in respect of:
- (i) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Borrower; or
  - (ii) any other payments, loans, credit or advances made to or for the use or accommodation or on behalf of the Borrower; or
  - (iii) any bond, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Borrower’s request; or
  - (iv) foreign exchange transactions, and any contracts for the forward delivery of goods, bills, or specie; or

- (v) any other banking facilities, trust receipts, or any other security,  
whether present or future, actual or contingent, alone or jointly with any other person and in whatever style or name, and whether as principal or surety
- “Land”** : all that piece of land particularised in Section 4 of the First Schedule to this Deed
- “Letter of Offer”** : the letter with the date as stated in Section 4 of Schedule 1 to the Facilities Agreement issued by the Bank to the Borrower and will also refer to further or other letters of offer issued by the Bank to the Borrower after this Agreement, whether to grant additional or other banking facilities to the Borrower or to vary and/or to substitute all or any of the Banking Facilities already granted to the Borrower
- “month”** : a Gregorian calendar month
- “Other Assets”** : all the undertakings and movable properties and assets of the Borrower (other than the Fixed Assets) whatsoever and wheresoever situate, both present and future in connection with the Project including the Borrower’s uncalled capital, goodwill book debts, accounts receivables and stock-in-trade (including semi-finished and finished products) and raw materials and any shares, loan stocks, warrants and other commercial papers owned or to be acquired by the Borrower in connection with the Project
- “Project”** : the development project particularised in Section 5 of the First Schedule of this Deed currently provided/to be provided in the Development Order (subject to such changes as the Borrower may require and may be approved by the relevant authority) proposed to be developed by the Borrower on the Land in accordance with the Development Order and building plans approved by the relevant authorities
- “Receiver and/or Manager”** : the person or persons appointed to be receiver and/or manager or receivers and/or managers of the Charged Properties pursuant to Clause 7.2.4

- “RM” and “Ringgit”** : the lawful currency of Malaysia
- “Security”** : the security or securities required to be created in favour of the Bank or given to the Bank in consideration for the Bank’s granting or continuing to grant to the Borrower of the Banking Facilities and shall also include the Security more particularly described in the Letter of Offer;
- “Security Documents”** : any document relating to the Banking Facilities and the Security and includes the Letter of Offer, the Facilities Agreement, this Deed and any other agreement entered into between the Bank and any Security Party
- “Security Party”** : any person creating or giving the Security and can also mean the Borrower if the Borrower is a person creating or giving any of the Security
- “year”** : a period of 365 days

### 1.3 **Interpretation**

Clause 1.2 of the Facilities Agreement shall apply mutatis mutandis to this Deed as though the same is set forth herein at length.

## 2. **REPRESENTATIONS AND WARRANTIES**

### 2.1 **Representations and Warranties**

The Borrower hereby repeats and confirms all the representations and warranties made by the Borrower in Clause 2.1 of the Facilities Agreement and all the representations and warranties made by the Borrower therein shall continue to apply to the Borrower with full force and effect with such modifications as may be necessary under this Deed. Further, the Borrower represents and warrants to the Bank as follows:-

- 2.1.1 that this Deed constitutes legal, valid and binding obligations on the part of the Borrower in accordance with the terms herein contained;
- 2.1.2 that the execution of and performance by the Borrower of this Deed will not exceed the powers granted to the Borrower by or violate the provisions of:-
- (i) any regulation or any order or decree of any governmental authority, agency or court to which the Borrower is subject; or

- (ii) the Borrower's Memorandum and Articles of Association or other undertaking or instrument to which the Borrower is a party or which is binding upon the Borrower or any of the Borrower's assets;

2.1.3 that all consents, approvals and authorisations of any relevant authority which are required on the part of the Borrower or which are advisable, for or in connection with the acceptance, execution, performance, legality or enforceability of this Deed have been obtained and are in full force and any conditions contained therein or otherwise applying thereto have been complied with; and

2.1.4 Recitals I, II and III are true and accurate in all respects.

## **2.2 Continuing nature of warranties and representations**

The Borrower shall be deemed to represent and warrant to the Bank that the representations and warranties contained in sub-Clause 2.1 are true and accurate in all respects as if made on each date on which the Borrower utilises the Banking Facilities.

## **2.3 Truth and correctness of representations and warranties**

The truth and correctness of all the matters stated in the representations and warranties set forth in sub-Clause 2.1 shall form the basis of the Bank's commitment to make or continue to make available the Banking Facilities to the Borrower. If any such representations and warranties made shall, at any time hereafter, be found to have been incorrect in any material respect then and in such event and notwithstanding anything to the contrary contained herein, the Bank shall be entitled at its absolute discretion to review, suspend, recall or terminate the Banking Facilities or any part thereof.

## **3. COVENANT TO PAY**

The Borrower hereby covenants with the Bank that:-

3.1 the Borrower shall observe, comply with and perform all its terms, agreements, covenants and obligations under the Facilities Agreement and to pay to the Bank all sums payable thereunder promptly in accordance with the Facilities Agreement; and

3.2 as and when the Indebtedness or any part thereof is due for payment to the Bank or on such earlier date as the security constituted by this Deed and/or any of the other Security Documents becomes enforceable and the Bank becomes entitled to exercise the rights and powers upon default provided under this Deed and/or any of the other Security Documents and/or by law, the Borrower shall pay to the Bank ON DEMAND the Indebtedness.

#### **4. SECURITY**

##### **4.1 Fixed and Floating Charge**

As security for the payment by the Borrower to the Bank of the Indebtedness, the Borrower as beneficial owner hereby charges with the payment to the Bank of the Indebtedness, the following charges which shall rank in priority to any prior charges created by the Borrower:-

4.1.1 by way of a first fixed charge, the Fixed Assets of the Borrower, namely all buildings and fixtures, plant, equipment, machinery and motor vehicles, computers, office equipment and other equipment in connection with the Project and all equipment, accessories and parts pertaining to the aforesaid plant, equipment, machinery and motor vehicles, computers, office equipment and other equipment; and

4.1.2 by way of a first floating charge, the Other Assets, namely, all the undertakings and movable properties and assets of the Borrower (other than the Fixed Assets described in Clause 4.1.1), whatsoever and wheresoever situate, both present and future in connection with the Project, including the Borrower's uncalled capital, goodwill, book-debts, accounts receivables, stock-in-trade (including semi-finished and finished products), raw materials and any shares, loan stocks, warrants and other commercial papers owned or to be acquired by the Borrower.

##### **4.2 Conversion of floating charge into fixed charge**

The Bank may at any time, by notice in writing to the Borrower, forthwith convert the floating charge over the Borrower's properties and assets described in Clause 4.1.2 into a fixed charge as regards any properties and assets specified in the said notice which the Bank shall, in its absolute discretion, consider to be in jeopardy or in danger of being seized or sold under any form of distress or execution levied or threatened and may appoint a receiver thereof AND the Borrower hereby undertakes to do and execute all acts, documents and things to effect the aforesaid conversion in respect of the properties and assets specified in the said notice AND in particular, the Borrower undertakes forthwith upon receipt of the aforesaid notice, to execute in favour of the Bank, a memorandum of charge in the appropriate form under the NLC and upon such terms as the Bank shall deem fit in respect of any lands amongst the Borrower's assets and to do all acts as may be necessary to effect the registration of such memorandum of charge with the relevant authorities.

##### **4.3 Conversion of floating charge to fixed charge without notice**

Notwithstanding the provisions of Clause 4.2 or anything herein contained, if the Borrower shall charge, pledge, assign, factor or otherwise encumber (whether by way of fixed or floating security, equitable or otherwise) any of the assets hereby charged to the Bank or attempts so to do without the prior written consent of the Bank, or if any creditor or other person attempts to levy any distress, execution proceedings or other process against any of



the assets hereby charged to the Bank, or any step is taken or a petition is presented to wind-up the Borrower the floating charge hereby created over the Other Assets of the Borrower specified in Clause 4.1.2 shall automatically, without any notice whatsoever, crystallise into a first fixed charge instantly ranking pari passu in all respect with the fixed charge in Clause 4.1.1.

#### **4.4 Refloatation of Floating Charge/Discharge of Receiver(s) and/or Manager(s)**

Subsequent to the appointment of Receiver(s) and/or Manager(s) by the Bank pursuant to the provisions of Clause 7.2.4 and at any time after the crystallisation of the floating charge referred to in Clause 4.1.2, the Bank may by written notice:-

4.4.1 to the Receiver(s) and/or Manager(s) to discharge any Receiver(s) and/or Manager(s) so appointed and to notify any director or officer of the Borrower to refloat the said floating charge referred to in Clause 4.1.2 subject to such terms and conditions as the Bank deems fit; or

4.4.2 to the Receiver(s) and/or Manager(s) to discharge the Receiver(s) and/or Manager(s) so appointed and to appoint new receiver(s) and/or manager(s) in substitution thereof.

#### **4.5 Legal mortgages, charges, etc**

The Borrower shall at any time, if and when required by the Bank so to do, execute in favour of the Bank such legal or other mortgage, charges, assignments, transfers or agreements as the Bank shall require in respect of all or any of the Borrower's estate, right, title and interest in any property or assets or business now belonging to or which may hereafter be acquired by or belong to the Borrower (including any vendor's lien) and the benefit of all licences held in connection therewith to secure all monies and liabilities hereby agreed to be paid or hereby or intended to be hereby secured, such mortgages, charges, assignments, transfers or agreements to be prepared by or on behalf of the Bank at the cost and expense of the Borrower and to contain all such terms and conditions for the benefit of the Bank and as the Bank may deem fit.

#### **4.6 Deposit of documents-of-title**

The Borrower shall at all times, if and when required by the Bank so to do, deposit with the Bank, the documents of title to any or all immovable properties vested in the Borrower for any tenure and all or any debentures, shares, stock or other investments or securities registered in the name of the Borrower or otherwise belonging to the Borrower. Such deposit may be by way of collateral security for the repayment of monies and liabilities secured by this Deed and may also or otherwise be for the purpose of securing any other monies owing to the Bank and not secured by this Deed.

**4.7 Restriction against other charges**

The Borrower hereby declares that there is no mortgage, charge, pledge, lien or other form of security interest upon, over or in respect of the Charged Properties ranking prior to or pari passu with or conferring rights ranking prior to or pari passu with the rights conferred upon the Bank hereunder.

**4.8 No restriction on consolidation**

Notwithstanding anything to the contrary herein contained, it is hereby declared and agreed that in addition and without prejudice to any other right of consolidation, the securities created pursuant to this Deed shall not be discharged except on payment by the Borrower of not only the Indebtedness but also all moneys which may be due or owing to the Bank (whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint) under any loans and or banking facilities which may be granted from time to time by the Bank, whether secured by any other charge, whether legal or equitable, created in favour of or vested in the Bank by the Borrower (or by any person through whom the Borrower claims) or otherwise.

**4.9 Continuing security**

The securities created pursuant to this Deed are expressly intended to be and shall be a continuing security not only for all moneys actually debited pursuant to, upon or under the Banking Facilities to the account(s) of the Borrower with the Bank at the time when the said account(s) shall be closed and all moneys outstanding and payable then or at any future date(s) on bills of exchange, promissory notes or negotiable instruments, guarantees or otherwise howsoever for which the Borrower may be absolutely or contingently liable to the Bank pursuant to, upon or under the Banking Facilities but also for all other moneys whatsoever now or hereafter from time to time owing to the Bank by the Borrower notwithstanding:-

- 4.9.1 that the Borrower may at any time or times cease to be indebted to the Bank for any period(s);
- 4.9.2 that the account(s) of the Borrower with the Bank may from any cause whatsoever cease to be a current account(s) and notwithstanding any settlement of account(s) or otherwise;
- 4.9.3 the death, insanity or bankruptcy of the Borrower and/or the Security Party;
- 4.9.4 the voluntary or compulsory liquidation of the Borrower and/or the Security Party; or
- 4.9.5 any change by amalgamation, consolidation or otherwise which may be made in the constitution of the company by which the business of the Borrower and/or the Security Party is currently being carried on.

#### **4.10 Additional Security**

The securities created pursuant to this Deed are in addition and without prejudice to any collateral or other securities which the Bank may now or hereafter hold from or on account of the Borrower and such collateral or other security or any lien to which the Bank may be otherwise entitled (including any security, charge or lien prior to the date hereof on the Fixed Assets and the Other Assets) and the liability of any person(s) not parties hereto for all or any part of the Indebtedness shall not be in any way prejudiced or affected by the security hereby created.

All moneys received by the Bank from the Borrower or from any person(s) liable to pay the same may be applied by the Bank to any account or item of account or any transactions to which the same may be applicable.

#### **4.11 Revaluation of Charged Properties**

The Bank shall be entitled at its absolute discretion to arrange for a re-valuation of the Charged Properties at such intervals as the Bank shall deem fit or appropriate and all valuation fees incurred in such exercise shall be borne and paid by the Borrower, failing which, such fees shall form part of the Indebtedness in accordance with Clause 6.

### **5. UNDERTAKINGS**

The Borrower hereby undertakes and covenants with the Bank that it will at all times during the continuance of the security created by this Deed and so long as the Indebtedness remains outstanding and unpaid:-

- 5.1 observe and comply with its undertakings and covenants stipulated in Clauses 18 and 19 of the Facilities Agreement; and
- 5.2 observe, comply with and perform its several undertakings, terms, covenants, obligations and discharge all liabilities and agreements and shall indemnify and keep indemnified the Bank and its servants and agents against all cost, charges, expenses, loss and damages and all demands, claims and proceedings that may be brought against the Bank, its servants or agents, as a result of or incidental to any acts and/or things performed and/or not performed by the Borrower.

### **6. PAYMENTS BY THE BANK**

- 6.1 In the event of the failure by the Borrower to make any of the payments mentioned in Clauses 4 and 5, the Bank shall be entitled to pay such sums as may be required for such payments and all sums so paid by the Bank with interest thereon calculated at such rate as may be determined by the Bank from time to time and at any time, from the date of payment by the Bank until the date of repayment by the Borrower to the Bank, shall be recoverable by the Bank from the Borrower and shall be repaid by the Borrower to the Bank whether demanded or not, in default of which repayment, the Bank shall be entitled to debit the sums paid by the Bank

together with interest thereon calculated as aforesaid to the Borrower's account with the Bank and the same shall henceforth be chargeable with interest as principal sums lent, advanced or, disbursed pursuant to, upon and under the Banking Facilities.

- 6.2 All sums payable by the Borrower hereunder whether in respect of principal, interest or otherwise shall be paid in full without set-off, counterclaim, condition or qualification of any nature whatsoever.

## **7. EVENTS OF DEFAULT**

### **7.1 Events of Default**

Each of the following events shall be an Event of Default:-

- 7.1.1 if the Borrower commits any breach of or omit to observe any of its obligations under this Deed and/or any of the other Security Documents; or
- 7.1.2 if any representation or warranty made or deemed to be made by the Borrower pursuant to this Deed and/or any other Security Documents or in any notice, certificate, instrument or statement contemplated hereby or, as the case may be, this Deed and/or any of the other Security Documents is/are incorrect in any respect which, in the opinion of the Bank, is materially prejudicial to the interest of the Bank under the Security Documents; or
- 7.1.3 if any licence, consent, approval, waiver or authorisation necessary for the Borrower to enter into and perform its obligations under this Deed and/or any other Security Documents is withdrawn, modified, revoked or terminated or expires and is not renewed or is otherwise not in full force and effect; or
- 7.1.4 if a receiver and/or manager of the Borrower's undertaking or property or any part thereof shall be appointed other than by the Bank pursuant to the provisions of this Deed; or
- 7.1.5 if the power of attorney in this Deed and/or the Forms 34 (Statement of Particulars to be Lodged with Charge) pertaining to the charges under this Deed shall be rejected for registration by the Registrar of Companies and/or the High Court of Malaya; or
- 7.1.6 if any event should occur which in the Bank's opinion (which opinion shall be final and conclusive) would materially prejudice or affect the Bank's security hereunder; or
- 7.1.7 if any Event of Default stipulated in the Facilities Agreement and/or any other Security Documents or such other security documents for which any other facility or facilities is/are granted by the Bank to the Borrower shall occur.

## **7.2 Upon happening of an Event of Default**

Upon the happening of an Event of Default, the Indebtedness shall become immediately due and payable by the Borrower to the Bank and the security hereby constituted shall become immediately enforceable and the Bank may at its discretion exercise all or any of the following powers:-

- 7.2.1 to enter without notice, whether by itself, its officers, its servants and/or its agents, into and upon the premises where the Charged Properties are situated and to take possession and control of such properties and assets, including the Project and all books of account, contracts and documents relating to such properties, assets and the Project;
- 7.2.2 upon giving not less than 24 hours written notice of intended sale to the Borrower, to sell any of the Charged Properties of which the Bank shall have taken possession pursuant to Clause 7.2.1, in such manner as the Bank shall deem fit with liberty to buy in and resell the same without being liable for any loss thereby caused to the Borrower;
- 7.2.3 to collect all monies outstanding in respect of any debts owing by any person or persons to the Borrower and to give such notices as may be deemed necessary by the Bank to such person or persons that all such monies be paid to the Bank alone;
- 7.2.4 to appoint in writing under the hand of a manager or any officer in charge for the time being of the Bank, any person or persons to be receiver and/or manager or receivers and/or managers of all or any part of the Charged Properties and, in like manner, from time to time, to remove any receiver and/or manager or receivers and/or managers so appointed and appoint another or others in his or their place and also at the time of appointment or at any time thereafter to fix the remuneration of any receiver and/or manager or receivers and/or managers appointed; and
- 7.2.5 to charge interest on the amount of the Indebtedness which was due and payable by the Borrower to the Bank, at the rate under Clause 12.7.2 of the Facilities Agreement from the date on which such amount was due and payable as aforesaid until the date of actual payment of such amount.

## **7.3 Power of Receiver/Manager**

A Receiver and/or Manager shall be the agent of the Borrower and the Borrower shall be responsible for his acts and defaults and for his remuneration, costs, charges and expenses or for any loss occasioned by the acts and defaults of the Receiver and/or Manager and shall have power:-

- 7.3.1 to take possession of and get in the Charged Properties, including the land on which the Project is being carried out and all materials on site, whether belonging to the Borrower or otherwise;

- 7.3.2 to manage or carry on or concur in carrying on the Borrower's business, including the development, construction and completion of the Project and the marketing and sale of the units in the Project;
- 7.3.3 to raise or borrow money upon such terms as he may deem fit and rank for repayment in priority to the charges created by this Deed and with or without a charge on all or any part of the Charged Properties;
- 7.3.4 to sell (whether by public auction or private contract or otherwise) lease or surrender or accept surrenders of leases of, or concur in selling, leasing or surrendering leases or accepting surrenders of leases of all or any part of the Charged Properties on such terms and for such consideration as he may think fit;
- 7.3.5 to bring, take, defend, prosecute, discontinue and compromise any actions, suits, or proceedings whatsoever whether civil or criminal, arising in connection with or in any way relating to the Borrower's Business and the Charged Properties or any of them; and to settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever arising in connection with or in any way relating to the Borrower's business and the Charged Properties or any of them;
- 7.3.6 to compromise or compound any debt owing by any person or persons to the Borrower and to give time or indulgence for payment of any monies outstanding in respect of any debt either with or without security;
- 7.3.7 to give valid receipts, releases and other proper and sufficient discharge and acquittance for all monies received and execute all assurances which may be proper or desirable for realising the Charged Properties;
- 7.3.8 to make calls, whether conditionally or unconditionally, on the members of the Borrower in respect of its uncalled capital, with such and the same powers for that purpose of enforcing payment of any calls so made as are by the Articles of Association of the Borrower conferred upon the Directors of the Borrower in respect of calls authorised to be made by them and in their names or in that of the Borrower or otherwise and to the exclusion of the powers of the Director of the Borrower in that respect;
- 7.3.9 to make any arrangement or compromise which he may think expedient in the interests of the Bank;
- 7.3.10 to appoint managers, valuers, agents, officers, servants, consultants, advocates and solicitors, accountants and/or workmen for any of the aforesaid purposes at such remuneration for such periods and upon such terms as he may think fit;
- 7.3.11 to do all such other acts and things as he may consider incidental, conducive, necessary or desirable to effect any of the foregoing matters and powers; and

7.3.12 generally to use the name of the Borrower in the exercise of all or any of the powers, authority and discretion conferred upon him.

#### **7.4 Application of Proceeds of Sale**

All monies realised upon a sale pursuant to Clause 7.2.2 or collected pursuant to Clause 7.2.3 or received by the Receiver and/or Manager in the exercise of his powers, authorities and discretion pursuant to Clause 7.3 shall be applied by the Bank or as the case may be, the Receiver and/or Manager subject to Section 191 of the Companies Act 1965, as follows:-

- 7.4.1 Firstly, to pay the quit rent, rates, taxes, assessments and other outgoings due to the relevant authorities;
- 7.4.2 Secondly, to pay all costs (including the Bank's solicitors costs on a solicitor and client basis), charges, expenses, and liabilities incurred by the Bank and every Receiver and/or the Manager in connection with the exercise of its or his powers including the costs, charges and expenses of and incidental to the appointment of and the remuneration of the Receiver and/or Manager and/or the persons mentioned in Clause 7.3.10;
- 7.4.3 Thirdly, to pay the Bank all interests, costs, charges, commission and other monies which are outstanding in connection with the Banking Facilities;
- 7.4.4 Fourthly, to pay all principal monies owing to the Bank in connection with the Banking Facilities;
- 7.4.5 Fifthly, to pay the Bank all other monies due and remaining unpaid under any of the Security Documents;
- 7.4.6 Sixthly, to pay the Bank any of the Borrower's and/or the Security Party's liabilities to the Bank (whether present, future, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any account, agreement, or contract with the Bank;
- 7.4.7 Seventhly, towards settlement of any monies owing by any other company in the Borrower's and/or the Security Party's group of companies (including holding, subsidiary, and associated companies) to the Bank (if any); and
- 7.4.8 Eighthly, to the Borrower and/or the Security Party or any other entitled persons.

The Bank can at its sole and absolute discretion change the order of payment above, or keep such amounts in a non-interest bearing suspense account. However, the change in the order of payment will not affect the Bank's right to receive the full amount to which the Bank would have been entitled to receive if the primary order of payment had been observed, or any lesser amount which the sum ultimately realized from the security may be sufficient to pay.

## **7.5 Indemnity to the Bank and Receiver and/or Manager**

- 7.5.1 The Bank and the Receiver and/or Manager, attorney and other person appointed by the Bank and the Receiver and/or Manager pursuant to this Deed shall be entitled to be indemnified out of the Charged Properties in respect of all liabilities, costs, charges and expenses incurred directly or indirectly by them or any of them in the exercise or purported exercise of any of the powers, authorities or discretion conferred upon them or any of them and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done relating to the Charged Properties and they or any of them may retain and pay all sums in respect of the same out of any monies received in the exercise of the powers, authorities or discretion conferred upon them or any of them.
- 7.5.2 The Borrower shall also indemnify the Bank against all loss and damages suffered by the Bank arising out of or resultant from the granting of the Banking Facilities to the Borrower, in particular in dealing with all cheques issued or purported to be issued by the Borrower and in observing such instructions whether written (delivered in any manner whatsoever, including by facsimile, post or hand) or oral given by the Borrower to the Bank.

## **7.6 Enquiry by third parties**

No person dealing with any Receiver and/or Manager or Receivers and/or Managers appointed by the Bank or with their or his attorneys or agents shall be required or concerned to enquire whether:-

- 7.6.1 the security hereby constituted has become enforceable; or
- 7.6.2 the appointment of the Receiver and/or Manager shall have been valid; or
- 7.6.3 whether any monies remain due to the Bank upon the security of this Deed; or
- 7.6.4 as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made; or
- 7.6.5 otherwise as to the propriety or regularity of any sale, calling in, collection or conversion; or
- 7.6.6 to see to the application of any money paid to or received by any Receiver and/or Manager or Receivers and/or Managers or their or his attorneys or agents

AND in the absence of fraud on the part of such person, such dealings shall be deemed so far as regards the safety and protection of such person, to be exercised by the properly appointed Receiver and/or Manager and within the powers hereby conferred and to be valid and effectual accordingly and the remedy of the Borrower in respect of any irregularity or impropriety whatsoever in the exercise of such power shall be in damages only against the Receiver and/or Manager AND the Borrower hereby irrevocably and



unequivocally endorse, consent and ratify the acts, documents and things, done, executed and performed by the Receiver and/or Manager so far as the aforesaid persons are concerned notwithstanding any impropriety in the mode or power of appointment of the Receiver and/or Manager under this Deed and the powers exercised by them hereunder.

## **8. POWER OF ATTORNEY**

### **8.1 Power of Attorney**

For the purpose of giving effect to the Borrower's obligations under this Deed, the Borrower hereby irrevocably appoints the Bank and the officer in charge for the time being of the Bank and/or any person nominated in writing under the hand of any officer of the Bank and/or the Receiver and/or Manager and his substitute or substitutes the attorney or attorneys of the Borrower for the Borrower and in his the attorney's or their the attorneys' own name or names or, in the name of the Borrower or in the joint names of the attorney or attorneys and the Borrower and on behalf of the Borrower as its act and deed, to execute, seal, complete, sign transfer and deliver or otherwise perfect and do any transfer, deed, assurance, agreement, instrument, assignment, act or thing and to bring, take, defend, prosecute, compromise, submit to arbitration and/or discontinue any actions, suits or proceedings whatsoever which may be required or may be deemed proper for any of the purposes of this Deed or which the Borrower ought to execute, seal, complete, sign, transfer and deliver or otherwise perfect and do pursuant to its obligations under this Deed with power for such attorney or attorneys to appoint and remove any substitute or substitutes.

### **8.2 Ratification**

The Borrower hereby undertakes that it will ratify and confirm whatsoever the attorney or attorneys appointed pursuant to Clause 8.1 shall lawfully do or cause to be done and hereby expressly agrees that all acts done or caused to be done by such attorney or attorneys shall be as good and effectual to all intents and purposes whatsoever as if the same had been done by the Borrower in its own person.

### **8.3 Irrevocability**

The Borrower hereby further declares that the power and authority conferred by Clause 8.1 are given for valuable consideration and shall remain irrevocable by the Borrower.

## **9. NEW OR SEPARATE ACCOUNT/FURTHER ENCUMBRANCE**

### **9.1 Opening of new/separate account**

If the Borrower shall execute or create any further or subsequent Encumbrance over the Charged Properties or any part(s) thereof in favour of any other person(s) or company of which the Bank shall receive notice, whether actual or constructive, the Bank may on receiving such notice

forthwith open a new account with the Borrower in its books and if the Bank does not in fact open such new or separate account with the Borrower in its books, the Bank shall nevertheless be deemed to have done so as at the time when the Bank received or was deemed to have received such notice.

## **9.2 Payments after notice of Encumbrance**

As from and after the time when the Bank received notice, (either actual or constructive) of the execution or creation by the Borrower of any further or subsequent Encumbrance over the Charged Properties all payment in account made by the Borrower and/or any other person to the Bank shall, (notwithstanding any legal or equitable rule of presumption to the contrary), be placed to the credit of the new or separate account opened as aforesaid or deemed to have been opened as aforesaid and shall not go in reduction of the amount due by the Borrower to the Bank at the time when the Bank received notice as aforesaid.

## **9.3 Security not prejudiced**

Nothing in Clauses 9.1 and 9.2 contained shall prejudice the security which the Bank otherwise would have had under the Security Documents for the payment of the Indebtedness notwithstanding that the same may become due or owing or be incurred after the time when the Bank received notice as aforesaid of the execution or creation by the Borrower of any further or subsequent Encumbrance over the Fixed Assets and/or the Other Assets.

## **10. ASSIGNMENT/TRANSFER**

### **10.1 The Bank's rights to assign/transfer**

The Bank shall be at liberty at any time with or without the concurrence of the Borrower to assign and transfer the Bank's rights, interest and benefits in, to and under this Deed and the costs and expenses of the Bank and of the assignee or transferee of and incidental to such assignment or transfer shall be paid by the Borrower.

In default of payment by the Borrower as aforesaid, it shall be lawful for the Bank to make payment of the aforesaid costs and expenses, the amount whereof together with interest thereon from the date of payment of the said amount by the Bank and calculated at the rates and in the manner then applicable to the Indebtedness.

### **10.2 Amount of Indebtedness**

Any recital or statement in the document of assignment or transfer of the amount of the Indebtedness due to the Bank under or by virtue of this Deed shall, in the absence of manifest error, be conclusive and binding for all purposes against the Borrower.

**11. SEVERABILITY AND OTHER DOCUMENTS/CONDITIONS**

Each of the provisions of this Deed is severable from the others of such provisions and if at any time any provision hereof is or become illegal, invalid or unenforceable in any respect the remaining provisions hereof shall in no way be affected or impaired thereby.

**12. DEMAND/NOTICES****12.1 Written demands and notices**

Any demand or notice required by the terms of this Deed or by statute to be given to or served on the Borrower shall be in writing.

**12.2 Address for service**

Any demand or notice required to be made or given or supplied under this Deed shall be given and deemed sufficiently made, given or supplied if made, given or supplied in accordance with Clause 54 of the Facilities Agreement.

**13. IRREGULARITIES AND CHANGES****13.1 Irregularities**

This Deed shall be binding on the Borrower, its successors-in-title and assigns notwithstanding that the borrowing or incurring of the liabilities under this Deed may be invalid or in excess of the powers of the Borrower or of any director, attorney, agent or other person purporting to borrow or act on behalf of the Borrower and notwithstanding any irregularity in such borrowing or the incurring of such liabilities.

**13.2 Changes in the Borrower**

The security, liabilities and/or obligations created by this Deed shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation, liquidation, reconstruction or otherwise howsoever in the constitution of the Borrower and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Borrower shall in any way affect the security, liabilities and/or obligations created hereunder in relation to any transaction whatsoever whether part, present or future.

**13.3 Changes in the Bank**

This Deed shall be binding upon the successors-in-title assigns and persons deriving title under the Bank and the security liabilities and/or obligations created by this Deed shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or otherwise which may be made in the constitution of the

Bank may for the time being be carried on and shall be available to the company carrying on that business for the time being.

**14. LAW AND JURISDICTION**

This Deed shall be governed by and construed in all respects in accordance with the laws of Malaysia and the Bank and the Borrower hereby submit to the jurisdiction of the courts of Malaysia in all matters arising out of or in connection with this Deed.

**15. PROVISIONS OF THE FACILITIES AGREEMENT**

The provisions of the Facilities Agreement shall be incorporated in this Deed by reference as though the same is set forth herein at length and if any of the provisions herein shall be inconsistent with the provisions in the Facilities Agreement, the provisions in this Deed shall prevail.

**16. PRINCIPAL/ANCILLARY INSTRUMENTS**

This Deed, the Facilities Agreement, the other Security Documents and all other documents executed pursuant to this Agreement to secure the Indebtedness are instruments employed in 1 (One) transaction namely to secure the repayment by the Borrower to the Bank of the Indebtedness including all interest, commission, Commitment Fee, Default and Additional Interest on the principal sums lent, advanced or disbursed for the benefit of the Borrower pursuant to, upon and under the Banking Facilities and all costs, charges, expenses and other monies owing and remaining unpaid by the Borrower to the Bank from time to time and for the purpose of Section 4(3) of the Stamp Act, 1949 (Consolidated and Revised, 1989), the Facilities Agreement shall be deemed to be the principal instrument and this Deed being one of the subsidiary instruments.

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**FIRST SCHEDULE**

Relevant Particulars of the Banking Facilities and the Land etc.

**Section 1:           The date of this Deed of Debenture:**

**Section 2:           Description of the Borrower:**

**Section 3:           The business address of the Bank:**

**Section 4:           Description of the Land:**

**Section 5:           Description of the Project:**

**IN WITNESS WHEREOF** the Borrower hereto has caused its Common Seal to be affixed hereunto in the presence of its officers duly authorised and the Bank hereto, has by its Attorney duly authorised hereunto set its hand and seal the day and year first above written.

The Common Seal of the )  
abovenamed Borrower was )  
hereunto affixed in the )  
presence of:- )

.....  
Director

.....  
Director / Secretary

Signed, Sealed and Delivered )  
by )  
 )  
for and on behalf of )  
**UNITED OVERSEAS BANK** )  
**(MALAYSIA) BHD** )  
(Company No. 271809 K) )  
the aforesaid Bank )  
in the presence of:- )

**CERTIFICATE OF AUTHENTICATION**

I, \_\_\_\_\_ an Advocate and Solicitor of the High  
Court of \*Malaya/Borneo and practising at \_\_\_\_\_, hereby  
certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ the Common Seal of

\_\_\_\_\_ was duly affixed on the above written instrument in my presence in accordance with  
the regulations of the said Company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Witness my hand,

Advocate & Solicitor