



**BETWEEN**

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

**AND**

**THE CUSTOMER NAMED HEREIN**  
**(Customer)**

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**SPECIFIC DEBENTURE (PROJECT)**

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**SPECIFIC DEBENTURE  
(PROJECT)**

**THIS DEED OF DEBENTURE** (this “**Debenture**”) is made on 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 (“**Customer**”).

**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**” which expression shall include its successor in title and assign).

**WHEREAS:-**

**I. THE FACILITY AGREEMENT**

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

**II. TERMS OF THE FACILITY AGREEMENT**

It is a term of the Facility Agreement that simultaneously with the execution of the Facility Agreement, the Customer 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 this Debenture upon terms and conditions acceptable to the Bank as security for the due payment and satisfaction by the Customer of the Indebtedness and the due performance by the Customer of its obligations and undertakings under the Facility Agreement.

**III. DEBENTURE**

As a condition precedent to the disbursement and/or further disbursement by the Bank of the Facilities or any part thereof and in pursuance to the terms of the Facility Agreement, the Customer executes this Debenture as security for the payment of the Indebtedness together with all other moneys covenanted to be paid under the Facilities.

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

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions in the Facility Agreement**

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

**1.2 Further Definitions**

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

- “Companies Act”** : The Companies Act, 2016 including any statutory amendments, modification, re-enactment or substitution thereof;
- “Facilities”** : The Islamic banking facilities granted or made available by the Bank to the Customer and includes all other facilities or accommodation granted or made available or agreed to be granted or made available or to be continued to be made available by the Bank to the Customer now or hereafter in accordance with the Letter of Offer and/or the Facility Agreement and where relevant “Facilities” will include any part of such Islamic banking facilities and the outstanding balance from time to time and reference to “Facility” includes reference to any one of them;
- “Charged Properties”** : The Customer’s undertaking, properties and assets (including the Lands) charged by the Customer to the Bank as security pursuant to this Debenture and includes the Fixed Assets and the Other Assets;
- “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 or matters as specified in Clause 7.1 herein;

- “Facility Agreement”** : The facility agreement entered into between the Customer and the Bank in relation to the Facilities or any additional or further facilities or any variation, restructuring, conversion, interchange or substitution of the Facilities and includes any supplemental, amendments and variations made thereto;
- “Fixed Assets”** : All those immovable properties and assets of the Customer 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, profit, compensation (Ta'widh), commission, fees, costs or charges) outstanding or payable or agreed to be payable by the Customer and/or any other Security Party to the Bank from time to time in respect of the Facilities or any account and includes all liabilities and obligations incurred by the Customer and/or any other Security Party to the Bank 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 as particularly described in Section 4 of the First Schedule to this Debenture;
- “Legal Process”** : May include, but is not limited to, any originating process including writ of summons and originating summons as well as any other forms of originating process, pleadings, interlocutory applications, affidavits, orders, judgments and any other documents which are required to be served under any written law and such notices under the Companies Act 2016 and the Insolvency Act 1967 and the National Land Code 1965;
- “Letter of Offer”** : The letter(s) of offer issued by the Bank and accepted by the Customer from time to time by which the Bank agreed to grant and the Customer agreed to accept the Facilities, including any amendments, additions, supplements, or substitutions;
- “month”** : A Gregorian calendar month;

- “Other Assets”** : All the undertakings and movable properties and assets of the Customer (other than the Fixed Assets) whatsoever and wheresoever situate, both present and future in connection with the Project including the Customer’s uncalled capital, goodwill book debts, accounts receivables and stock-in-trade (including semi- finished and finished products) and raw materials and any Shariah-compliant shares, financing stocks, warrants and other Islamic commercial papers owned or to be acquired by the Customer in connection with the Project;
- “Project”** : The development project as particularly described in Section 5 of the First Schedule of this Debenture currently provided/to be provided in the Development Order (subject to such changes as the Customer may require and may be approved by the relevant authority) proposed to be developed by the Customer on the Land in accordance with the Development Order and building plans approved by the relevant authorities;
- “Receiver / 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;
- “Security”** : The security or securities required to be created in the Bank’s favour or given to the Bank in consideration for the Bank granting to the Customer the Facilities more particularly described in the Letter of Offer;
- “Security Documents”** : Any document relating to the Facilities and the Security and includes the Letter of Offer, the Facility Agreement, this Debenture 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 Customer if the Customer is a person creating or giving any of the Security; and
- “year”** : A period of 365 days.

## **2. REPRESENTATIONS AND WARRANTIES**

### **2.1 Representations and Warranties**

The Customer acknowledges that the Bank has entered into this Debenture in full reliance of the representations and warranties by the Customer on the following terms:

- 2.1.1 the constitution of the Customer includes provisions which give power and authority for the Customer to own its assets, carry on its business and operations as they are now being conducted, and to execute and deliver, and to perform its obligations under this Debenture to which it is a party;
  - 2.1.2 neither the execution and delivery of this Debenture nor the performance of any of the transactions contemplated herein does or will contravene or constitute a default under, or cause to be exceeded any limitation on the Customer or the powers of its directors imposed by or contained in, (i) any law by which it or any of its subsidiaries or any of its assets are bound or affected, (ii) its constitution or (iii) any agreement to which it or any of its subsidiaries are a party or by which any of its assets are bound;
  - 2.1.3 all consents, licences, approvals, authorisations, orders and exemptions of any ministry, agency, department or authority in Malaysia and elsewhere which are required or advisable to be obtained in connection with the execution, delivery and performance, legality and enforceability of this Debenture have been obtained and are in full force and effect and that no further consent, licence, approval, authorisation, order or exemption is required;
  - 2.1.4 other than those Security Interest created pursuant to the Security Documents, none of the assets of the Customer is affected by any Security Interest, and the Customer is not a party to, nor any of its assets bound by, any order, agreement or instrument under which the Customer is (or in certain events may be,) required to create, assume or permit to exist any Security Interests;
  - 2.1.5 the Customer is the beneficial owner and has title to the Land, the Fixed Assets and the Other Assets;
  - 2.1.6 this Debenture is and will be the legal, valid and binding and the obligations of the Customer enforceable in accordance with the terms and the obligations herein contained and will be direct, unconditional and general obligations of the Customer; and
  - 2.1.7 the Customer shall cover/insure all its assets and properties for a sum satisfactory to the Bank against loss of damage by fire, lightning, tempest, flood, riot, civil, commotion, malicious acts and strike and such other risks.
- 2.2 Survival and Continuity**
- 2.2.1 The representations and warranties set out in Clause 2.1 shall survive the signing and delivery of this Debenture and any utilisation of the Facilities and until the full and final settlement of the Indebtedness.
  - 2.2.2 The Customer warrants that each representation and warranty in Clause 2.1 is or shall be correct in all respects on each date on which a disbursement of the Facilities is requested or made as if repeated by reference to the then existing circumstance.



### **3. COVENANT TO PAY**

The Customer hereby covenants with the Bank that:

- 3.1 the Customer shall observe, comply with and perform all its terms, agreements, covenants and obligations under the Facility Agreement and to pay to the Bank the Indebtedness and all other sums payable thereunder promptly in accordance with the Facility 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 Debenture 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 Debenture and/or any of the other Security Documents and/or by law, the Customer shall pay to the Bank ON DEMAND the Indebtedness.

### **4. SECURITY**

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

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

- 4.1.1 by way of a first fixed charge, the Fixed Assets of the Customer, 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 Customer (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 Customer's uncalled capital, goodwill, book-debts, accounts receivables, stock-in-trade (including semi-finished and finished products), raw materials and any Shariah-compliant shares, financing stocks, warrants and other Islamic commercial papers owned or to be acquired by the Customer.

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

The Bank may at any time, by notice in writing to the Customer, forthwith convert the floating charge over the Customer's properties and assets described in Clause 4.1.2 into a fixed charge as regard to 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 Customer 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 Customer 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 National Land Code, 1965, Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be, and upon such terms as the Bank shall deem fit in respect of any lands amongst the Customer'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 Customer 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 Customer the floating charge hereby created over the Other Assets of the Customer 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 **Refloating 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 Customer 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 Customer 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 Customer'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 Customer (including any vendor's lien) and the benefit of all licences held in connection therewith to secure the Indebtedness 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 Customer 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 Customer 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 Customer for any tenure and all or any debentures, shares, stocks or other investments or securities registered in the name of the Customer or otherwise belonging to the Customer. Such deposit may be by way of collateral security for the payment of monies and liabilities secured by this Debenture and may also or otherwise be for the purpose of securing any other monies owing to the Bank and not secured by this Debenture.

#### 4.7 **Restriction against other charges**

The Customer 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 Debenture shall not be discharged except on payment by the Customer 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 financing and/or 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 Customer (or by any person through whom the Customer claims) or otherwise.

#### 4.9 **Continuing security**

The securities created pursuant to this Debenture are expressly intended to be and shall be a continuing security not only for all moneys actually debited pursuant to, upon or under the Facilities to the account(s) of the Customer 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 Islamic bills of exchange, Islamic promissory notes or Islamic negotiable instruments, guarantees or otherwise howsoever for which the Customer may be absolutely or contingently liable to the Bank pursuant to, upon or under the Facilities but also for all other moneys whatsoever now or hereafter from time to time owing to the Bank by the Customer notwithstanding:

- 4.9.1 that the Customer 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 Customer 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 Customer and/or the Security Party;

- 4.9.4 the voluntary or compulsory liquidation of the Customer 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 Customer and/or the Security Party is currently being carried on.

#### 4.10 **Additional Security**

The securities created pursuant to this Debenture 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 Customer 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 Customer 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 Customer, failing which, such fees shall form part of the Indebtedness in accordance with Clause 6.

### 5. **UNDERTAKINGS**

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

- 5.1 observe and comply with its undertakings and covenants stipulated in the Facility 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 Customer.

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

- 6.1 In the event of the failure by the Customer to make any of the payments mentioned in Clause 3, the Bank shall be entitled to pay such sums as may be required for such payments and all sums so paid by the Bank, shall be recoverable by the Bank from the Customer and shall be paid by the Customer to the Bank whether demanded or not, in default of which payment, the Bank shall be entitled to debit the sums paid by the Bank to the Customer's account with the Bank.
- 6.2 All sums payable by the Customer hereunder whether in respect of principal, profit, compensation (*Ta'widh*) 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**

If:-

- 7.1.1 The Customer shall fail to observe or perform any of its agreements, covenants, stipulations, terms and conditions contained in this Debenture, and in the case of failure capable of being remedied, the Bank does not determine, within seven (7) days after the Customer became aware of the failure, that it has been remedied to the Bank's satisfaction; or
- 7.1.2 Any event which constitutes an event of default under the Facility Agreement shall have occurred;

then and in either of such cases, the amount of the Indebtedness outstanding for the time being shall immediately become payable by the Customer to the Bank on demand and the Customer agrees that the Bank shall forthwith be entitled to exercise the rights and powers upon default provided by law and this Debenture without any previous notice to or concurrence on the part of the Customer.

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

Upon an Event of Default, the Indebtedness shall become immediately due and payable by the Customer to the Bank and the security hereby constituted shall become immediately enforceable and the Customer agrees that 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 Customer, 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 Customer;

- 7.2.3 to collect all monies outstanding in respect of any debts owing by any person or persons to the Customer 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; and
- 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.

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

A Receiver and/or Manager shall be the agent of the Customer and the Customer 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 Customer or otherwise;
- 7.3.2 to manage or carry on or concur in carrying on the Customer'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 or obtain financing upon such terms as he may deem fit and rank for payment in priority to the charges created by this Debenture 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 Customer'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 Customer's business and the Charged Properties or any of them;
- 7.3.6 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;

- 7.3.7 to make calls, whether conditionally or unconditionally, on the members of the Customer 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 Customer conferred upon the Directors of the Customer in respect of calls authorised to be made by them and in their names or in that of the Customer or otherwise and to the exclusion of the powers of the Director of the Customer in that respect;
- 7.3.8 to make any arrangement or compromise which he may think expedient in the interests of the Bank;
- 7.3.9 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;
- 7.3.10 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
- 7.3.11 generally to use the name of the Customer in the exercise of all or any of the powers, authority and discretion conferred upon him.

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

The Customer agrees that 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 of the Companies Act, 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 7.3.9;
- 7.4.3 Thirdly, to pay the Bank all profits, costs, charges, commission, compensation (*Ta'widh*) and other monies which are outstanding in connection with the Facilities;
- 7.4.4 Fourthly, to pay all principal monies owing to the Bank in connection with the 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 Customer'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 Customer'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 Customer 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-profit 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 Debenture 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 Customer shall also indemnify the Bank against all loss and damages suffered by the Bank arising out of or resultant from the granting of the Facilities to the Customer, in particular in dealing with all cheques issued or purported to be issued by the Customer and in observing such instructions whether written (delivered in any manner whatsoever, including by facsimile, post or hand) or oral given by the Customer 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 Debenture; 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 regard to 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 Customer 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 Customer 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 Debenture and the powers exercised by them hereunder.

## **8. POWER OF ATTORNEY**

### **8.1 Power of Attorney**

- 8.1.1 In consideration of the premises the Customer hereby irrevocably appoints jointly and severally:
  - (i) Any and every Receiver and or Manager appointed pursuant to this Debenture as the attorney of the Customer (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Charged Properties) for and on behalf of the Customer and in the name of the Customer or otherwise, to execute, seal, deliver and perfect any deed, assurance, agreement or instrument or to do anything or perform any act which may be required or may be deemed proper for any of the purposes set out in this Debenture in any manner whatsoever and to do all things as fully and effectually as the Customer could do itself.
  - (ii) The Manager or Acting Manager or any authorised officer of the Bank for the time being and from time to time as the attorney of the Customer (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Charged Properties) for and on the Customer's behalf and in the name of the Customer or otherwise, to execute, seal, deliver and perfect any deed, assurance, agreement or instrument or to do anything or perform any act which may be required or may be deemed proper for the purposes set out in this Debenture.

- 8.1.2 The Customer also agrees and undertakes at all times hereafter to ratify and confirm whatsoever the attorney shall lawfully do or cause to be done by virtue of the power given by this Power of Attorney.
- 8.1.3 The Customer further agrees and undertakes at all times hereafter to indemnify and keep the attorney indemnified against all actions proceedings costs expenses claims and demands which may be taken incurred or suffered by the attorney arising from the execution of or exercise of any power granted by this Power of Attorney or from anything done or caused to be done by the attorney by virtue of the power given by this Power of Attorney.
- 8.1.4 The Customer further declares that the attorney shall not be held responsible or liable to the Customer for any loss or damage howsoever and whatsoever arising as a result of any act or omission of the attorney in the execution of or exercise of any power granted by this Power of Attorney or arising from anything done or caused to be done by the attorney by virtue of the power given by this Power of Attorney.
- 8.1.5 The Customer hereby declares that the powers and authority hereby conferred are given for valuable consideration and shall remain irrevocable for so long as this Debenture shall remain valid and subsisting.

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

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

If the Customer 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 Customer in its books and if the Bank does not in fact open such new or separate account with the Customer 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 Customer of any further or subsequent Encumbrance over the Charged Properties all payment in account made by the Customer 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 Customer 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 Customer 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 Customer to assign and transfer the Bank's rights, interest and benefits in, to and under this Debenture 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 Customer.

In default of payment by the Customer as aforesaid, it shall be lawful for the Bank to make payment of the aforesaid costs and expenses, the amount whereof will then be 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 Debenture shall, in the absence of manifest error, be conclusive and binding for all purposes against the Customer.

## **11. IRREVOCABLE RIGHT TO DEBIT ACCOUNT**

The Customer hereby agrees that without prejudice to any other rights and remedies of the Bank, the Bank shall have the right (without being obliged to) at any time without prior notice to debit the Customer's current or other account or accounts with the Bank with all amounts due and payable to the Bank including but not limited to valuation fees, takaful contribution/insurance premium, fees, commissions, charges, cost and expenses and all other monies due on the Facilities PROVIDED THAT no such debiting shall be deemed to be a payment of the amount due (except to the extent of any amount in credit in the Customer's current or other account or accounts) or a waiver of any Event of Default under this Debenture or any other agreement relating to the Facilities. If such debiting causes the Customer's accounts to be overdrawn and the Customer fails to regularize the accounts within the period as determined by the Bank, such amount shall be payable to the Bank upon demand.

## **12. SEVERABILITY AND OTHER DOCUMENTS/CONDITIONS**

Each of the provisions of this Debenture 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.

## **13. SPECIFIC COVENANTS IN RELATION TO SHARIAH-COMPLIANCE**

The Customer hereby irrevocably agrees that the nature of the Security Documents are in conformity with Shariah principles as determined by the Shariah Committee of the Bank and further agree that:

- 13.1 it shall not take any steps or bring any proceedings in any forum to challenge that the Security Documents are not *Shariah*-compliant;
- 13.2 nothing in the Security Documents shall oblige any party to pay or to receive interest on any amount due or payable to the other party to the Security Documents; and
- 13.3 none of its obligations under the Security Documents shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, any tribunal or any other body that the Security Documents are not *Shariah*-compliant.

## **14. IRREGULARITIES AND CHANGES**

### **14.1 Irregularities**

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

### **14.2 Changes in the Customer**

The security, liabilities and/or obligations created by this Debenture 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 Customer and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Customer shall in any way affect the security, liabilities and/or obligations created hereunder in relation to any transaction whatsoever whether part, present or future.

### **14.3 Changes in the Bank**

This Debenture 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 Debenture 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.

## **15. LAW AND JURISDICTION**

This Debenture shall be governed by and construed in accordance with the laws of Malaysia and the Customer hereby irrevocably agrees to:

- 15.1 submit to the non-exclusive jurisdiction of the Courts in Malaysia;

- 15.2 waive any objections on the suitability of venue or jurisdiction or any similar grounds;
- 15.3 consent to the service of Legal Process in any manner permitted by this Debenture and/or any applicable laws; and
- 15.4 be bound by any decision or conclusion related to Shariah matters pronounced by Shariah Advisory Council of Bank Negara Malaysia or made by the Bank's Shariah Committee in respect of the Facilities.

## **16. PROVISIONS OF THE FACILITY AGREEMENT**

The provisions of the Facility Agreement shall be incorporated in this Debenture 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 Facility Agreement, the provisions in this Debenture shall prevail.

## **17. NOTICES**

- 17.1 Any notice, demand, request or communication (other than Legal Process) that the Bank sends to the Customer may be:
  - 17.1.1 delivered by hand to the Customer's address as stated in this Debenture or such other address last known to the Bank;
  - 17.1.2 sent by post (registered, AR registered, ordinary or otherwise) to the Customer's address as stated in this Debenture or such other address last known to the Bank;
  - 17.1.3 sent by facsimile transmission to the facsimile number last known to the Bank;
  - 17.1.4 sent by electronic mail to the electronic mail address last known to the Bank;
  - 17.1.5 sent by short message system ("SMS") to the mobile phone number last known to the Bank;
  - 17.1.6 by posting on the Bank's website; or
  - 17.1.7 by insertion in any statement of account which the Bank sends to the Customer.
- 17.2 The said notice, demand, request or communication will be deemed to have been received by the Customer:
  - 17.2.1 at the time of delivery at the Customer's address, if delivered by hand;
  - 17.2.2 on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted, even if it is undelivered or returned;
  - 17.2.3 at the time the facsimile transmission is completed;
  - 17.2.4 at the time the electronic mailing is completed;

- 17.2.5 at the time the sending by SMS is completed;
  - 17.2.6 at the time of posting on the Bank's website; or
  - 17.2.7 at the time the statement of account is deemed to have been received by the Customer.
- 17.3 The Bank will not be responsible for what may happen to notices or communications after they are sent, for example if any notice or communication is delayed, intercepted, lost, fails to reach or is disclosed to any one during transit.
- 17.4 The Bank also reserves the right to serve on the Customer any notice in connection with the Facilities or the Security by advertisement in any one daily newspaper and such notice will be deemed to have been served on the Customer on the day the advertisement appears in the newspaper regardless of whether the Customer has actually seen the advertisement.
- 17.5 The Customer must notify the Bank in writing immediately on any change in the Customer's address, facsimile number, electronic mail address or mobile phone number.
- 17.6 If the Customer does not inform the Bank of any change in the Customer's address, facsimile number, electronic mail address or mobile phone number, the Customer agrees that the Bank may at the Bank's discretion rely on:
- 17.6.1 any address as stated in this Debenture; or
  - 17.6.2 any address, facsimile number, electronic mail address or mobile phone number the Bank obtains from any communication purportedly issued by the Customer to the Bank or last known to the Bank.
- 17.7 The Bank's rights under this Debenture and the Security Documents are not to be affected by any failure on the part of the Customer to notify the Bank of any change in the Customer's address, facsimile number, electronic mail address or mobile phone number.

## **18. LEGAL PROCESS**

In addition to and not in substitution of any mode of service that may be permitted or prescribed by any written law in force for the time being, any service of Legal Process by or on behalf of the Bank can be effected on the Customer:

- 18.1 by leaving a copy at the address as stated in this Debenture or in any communication purportedly issued by the Customer to the Bank or last known to the Bank or the Customer's last known place of business or registered or principal office address and it shall be deemed to have been duly received by the Customer on the day it was left at the address; or
- 18.2 by sending a copy via prepaid registered or ordinary post to the address as stated in this Debenture or in any communication purportedly issued by the Customer to the Bank or last known to the Bank or the Customer's last known place of business or registered or principal office address and it shall be deemed to have been duly received by the Customer on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted, even if it is undelivered or returned.

## **19. TAXES, DUTIES AND LEVIES**

- 19.1 The Customer is liable to pay for any taxes or levies which as at the date of the Letter of Offer or at any date subsequent to the date of the Letter of Offer, is required by law, regulations, guidelines, decisions or directives issued under such laws (and shall include any amendments made to such laws, regulations, guidelines, decisions or directives) to be paid to anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank or services provided in connection with the Facilities, during the continuation of the Facilities so long as the Facilities or any part of it remains outstanding and unpaid..
- 19.2 Any taxes or levies incurred by the Bank in relation to the Facilities and any other goods or services provided under the Facilities shall be borne and charged to the Customer and in the event that the Bank shall effect payment on the Customer's behalf the Customer shall be liable to reimburse the Bank for such amounts paid.

## **20. PRINCIPAL AND SECONDARY INSTRUMENTS**

This Debenture Charge and the Security Documents are instruments employed in one transaction to secure the payment of the Indebtedness within the meaning of Section 4(3) of the Stamp Act 1949, and for the purpose of the said section, the Facility Agreement is the principal instrument and this Debenture is deemed to be a secondary or collateral instrument.

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**FIRST SCHEDULE**

Relevant Particulars of the Facilities and the Land etc.

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

**Section 2:           Description of the Customer**

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

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

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



**IN WITNESS WHEREOF** the Customer 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 Customer was )  
hereunto affixed in the )  
presence of:- )

.....  
Director

.....  
Director / Secretary

Signed 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

*\*Delete wherever inappropriate*