

Sikkim Housing & Development Board (SH&DB)

AWAS Bhavan,
Church Road,
Gangtok, East Sikkim – 737101

**Development of Residential Property at Lumsey,
5th Mile Tadong, Gangtok, East Sikkim.**

Draft Agreement

December 2017

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AGREEMENT

THIS Agreement (the "**Agreement**") is entered into on this the _____ day of _____, 20____
BETWEEN

SIKKIM HOUSING & DEVELOPMENT BOARD, a body corporate constituted by Sikkim Housing & Development Board Act, 1979 represented by Secretary, Sikkim Housing & Development Board and having its principal office at Awas Bhawan, Church Road, Gangtok, East Sikkim- 737101 (hereinafter referred to as the "**SH&DB**", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

_____, a company registered under Companies Act, 2013/1956 and having its registered office at _____, represented by its Director/ officer _____ duly authorized by board resolution dated _____ (hereinafter referred to as the "Developer" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) SH&DB has decided to undertake **development of Residential Property at Lumsey, 5th Mile Tadong, Gangtok, East Sikkim** in accordance with the terms and conditions set forth in the Agreement entered into.
- (B) SH&DB had prescribed the technical and commercial terms and conditions, and invited bids (the "**Request for Proposals**" or "**RFP**") dated _____ from the bidders for undertaking the Project of Developing the Residential Property including residential flats and other facilities and additional amenities area on land parcel admeasuring approximately 2 (Two) acres at Lumsey, 5th Mile Tadong, Gangtok, East Sikkim, more fully described in Schedule A, and its operation and maintenance and transfer in accordance with the provision of this Agreement.
- (C) After evaluation of the bids received, SH&DB had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. _____ dated _____ (hereinafter called the "**LOA**") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Agreement for the purpose of implementing the Project within _____ (_____) days of the date of issue thereof.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and provisions set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 38) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or of the State of Sikkim or laws applicable in Sikkim or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- (f) references to **"construction"** or **"building"** include, unless the context otherwise requires, geo-technical survey, investigation, design, drawing, developing, landscaping, provision of bulk services, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **"construct"** or **"build"** shall be construed accordingly;
- (g) reference to **"development"** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **"develop"** shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) reference to a **"business day"** shall be construed as a reference to a day on which banks in Gangtok are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) reference to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing **"from"** a specified day or date and **"till"** or **"until"** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- (n) the words importing singular shall include plural and vice versa;
- (o) reference to any gender shall include the other and the neutral gender;
- (p) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (r) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the SH&DB hereunder or pursuant hereto in any manner whatsoever;
- (s) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (t) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (u) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (w) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the SH&DB and/or the Independent Engineer shall be provided free of cost and in three copies, and if the SH&DB and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof (rule of proferentem), shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of Agreements, Clauses and Schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement;
- (b) all other agreements and documents forming part hereof or referred to herein; and
- (c) RFP

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the project (the “**Scope of the Project**”) shall mean and include:

- (a) geotechnical investigation, survey, engineering, designing, financing, procurement, and construction, of Project in accordance with Applicable Laws, Applicable Permits, as per Good Industry Practice and on terms and conditions as set forth in Schedule-A and as specified in Schedule-B together with provision of utilities as specified in Schedule-C and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) Comply with the maintenance requirements (the “**Maintenance Requirements**”) of Residential Property, in accordance with the provisions of this Agreement till the expiry of 1 (One) year from the achievement of Date of Completion Certificate; thereafter handing over the O&M work to the society/association/body corporate incorporated by the SH&DB for this purpose; and
- (c) handing over the Residential Property to the SH&DB upon completion of construction as set forth in Schedule-A and as specified in Schedule-B together with provision of Project Utilities as specified in Schedule-C and in conformity with the Specifications and Standards set forth in Schedule-D save and except the site access to fulfill Maintenance Requirement related obligations;
- (d) performance and fulfillment of all other obligations of the Developer in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Developer under this Agreement; and
- (e) Marketing and allotment of flats will be carried out by the SH&DB and the Developer in accordance to their respective allocations. However, if and as required, marketing assistance will be provided by the SH&DB as and when requested by the Developer.

**ARTICLE 3
GRANT OF LICENSE**

3.1 Grant of the License

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the SH&DB hereby grants to the Developer:

- (a) the license right asset forth herein including the exclusive right and authority to develop Residential Property (the "**Licensed Rights**") with the right to construct, build residential flats and Project Utilities on Residential Property and Assets as per Applicable Laws and the terms and conditions set forth here in this Agreement during the period commencing from the Appointed Date to the date of issuance of Completion Certificate; and
- (b) Operate and Maintain the Residential Property and comply with Maintenance Requirements in accordance with the provisions of this Agreement till the expiry of 1 (one) year from the achievement of the date of issuance of Completion Certificate; and
- (c) the Developer hereby accepts the Licensed Rights and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Licensed Rights hereby granted shall oblige or entitle (as the case may be) the Developer to:

- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) carry out survey, investigation, design, finance and construct the Residential Property;
- (c) manage, operate and maintain the Residential Property and comply with Maintenance Requirements of Residential Property, in accordance with the provisions of this Agreement till the expiry of 1 (one) year from the date of issuance of Completion Certificate and also levy, demand, collect and appropriate charges/User fee from the allottee/transferee/sub-lessee/tenant of the flats on this account. However, the SH&DB shall not pay any charges/User fee on this account and the Developer shall treat these expenses as included in the project development cost;
- (d) perform and fulfill all of the Contractor's/Developer's obligations under and in accordance with this Agreement;
- (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Developer under this Agreement; and
- (f) not to assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Licensed Right hereby granted or on the whole or any part of the Project nor transfer or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.1.3 For the avoidance of any doubt, it is clarified that the Developer shall not have any right in the Site except as expressly given to it in terms of this Agreement.

Rights of the Assets along-with proportionate share of land there under, made by the allottee/transferee shall attract payment of Transfer Dividend to the SH&DB.

3.1.4 Sub-Lease rights of Assets together with proportionate share of land hereunder may be granted/ transferred under intimation to the Lessee/ Developer and the SH&DB. Sub-Lessee may create tenancy, grant license, leave for enjoyment of area or enter into any similar arrangement with any person under intimation to the Lessee/ Developer or the SH&DB. For the avoidance of doubt, it is further clarified that no Transfer Dividend shall be payable in case of Sub-leases/ creating tenancy/ granting license rights.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1** Save and except as expressly provided in Articles 4, 9, 10, 21, 26, 35 and 37 or unless the context otherwise requires the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2** The Developer may, upon providing the Performance Security to the SH&DB in accordance with Article 9, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the SH&DB, by notice require the SH&DB to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 60 (sixty) days of the notice, or such longer period not exceeding 75 (seventy five) days as may be specified therein, and the Conditions Precedent required to be satisfied by the SH&DB shall be deemed to have been fulfilled when the SH&DB shall have executed the Agreement and procured for the Developer the Right of Way to the Site in accordance with the provisions of Clause 10.3.1.
- 4.1.3** The Conditions Precedent required to be satisfied by the Developer during the Pre-Development Period shall be deemed to have been fulfilled when the Developer shall have:
- (a) provided Performance Security to SH&DB;
 - (b) executed and procured execution of the Escrow Agreement;
 - (c) executed and procured execution of the Substitution Agreement;
 - (d) procured all the Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (e) executed the Financing Agreements and delivered to the SH&DB 3 (three) true copies thereof, duly attested by a Director of the Developer;
 - (f) delivered to the SH&DB 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Developer, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
 - (g) delivered to the SH&DB from the Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
 - (h) delivered to the SH&DB a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the Developer, the SH&DB may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the SH&DB may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4** Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5** The Parties shall notify each other in writing at least once in 2 (two) weeks on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the SH&DB

In the event that (i) the SH&DB does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Developer or due to Force Majeure, the SH&DB shall pay to the Developer, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3 Damages for delay by the Developer

In the event that (i) the Developer does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 120 (one hundred and twenty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the SH&DB, or due to Force Majeure, the Developer shall pay to the SH&DB Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent.

**ARTICLE 5
OBLIGATIONS OF THE DEVELOPER**

5.1 Obligations of the Developer

- 5.1.1** Subject to and on the terms and conditions of this Agreement, the Developer shall, at its own cost and expense, procure finance for and undertake the survey, geo-technical investigation, design, engineering, procurement, construction, operation and maintenance of the Project as applicable and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2** The Developer shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement. For the sake of clarity and avoidance of doubt, it is agreed between the Parties that the Developer shall be liable for Goods and Sales Tax and any other tax levied on it by any competent authority on the construction and development of the Project and/or on the procurement of the materials and other services involved in the construction of the Project.
- 5.1.3** Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4** The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.3(d), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Sub-Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's Developer's obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the SH&DB in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (h) transfer and handover possession of the share of Residential Property to the SH&DB upon completion of its construction as per the provisions of this agreement or its earlier Termination, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1** It is expressly agreed that the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Contractor / Developer from its obligations or liability hereunder.
- 5.2.2** The Developer shall submit to the SH&DB the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the SH&DB shall have the right but not obliged to undertake such review and provide its comments, if any, to the Developer within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Developer shall submit to the SH&DB a true copy thereof, duly attested by a Director of the Developer,

for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the SH&DB and/or its failure to review and/or convey its observations on any document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the SH&DB be liable for the same in any manner whatsoever.

- 5.2.3** The Developer shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the SH&DB if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the SH&DB, and in the event that any replacement or amendment is made without such consent, the Developer shall not enforce such replacement or amendment nor permit enforcement thereof against the SH&DB. For the avoidance of doubt, the SH&DB acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Developer.
- 5.2.4** The Developer shall procure that each of the Project Agreements contains provisions that entitle the SH&DB to step into such agreement, in its sole discretion, in substitution of the Developer in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the SH&DB does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the SH&DB and the Covenant shall expressly provide for such eventuality. The Developer expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the SH&DB an acknowledgment and undertaking, in a form acceptable to the SH&DB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the SH&DB in the event of Termination or Suspension.
- 5.2.5** Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that it shall ensure that the EPC Contractor appointed for carrying out Construction Work has completed at least a single package of more than 20% of the Overall Construction/ Development Experience under Eligible Projects specified in Clause 2.20.1 of RFP.

5.3 Obligations Relating to Change in Ownership

- 5.3.1** The Developer shall not undertake or permit any Change in Ownership, except with the prior approval of the SH&DB.
- 5.3.2** Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that:
- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Contractor / Developer; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Developer by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the SH&DB from national security and public interest perspective, the decision of the SH&DB in this behalf being final, conclusive and binding on the Developer, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Developer without such prior approval of the SH&DB. For the avoidance of doubt, it is expressly agreed that approval of the SH&DB hereunder shall be limited to national security and public interest perspective, and the SH&DB shall endeavor to convey its decision thereon expeditiously. It is also agreed that the SH&DB shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations,

- 2011 as amended from time to time or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Developer;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Developer; and
 - (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Developer, not less than half of the directors on the Board of Directors of the Developer or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Developer shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Developer.

5.4 Employment of Foreign Nationals

The Developer acknowledges, agrees and undertakes that employment of foreign personnel by the Developer and/or its sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Developer and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Developer or any of its sub-contractors or their sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Developer from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of Trained Personnel

The Developer shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Sole Purpose of the Developer

The Developer having the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Developer or any of its subsidiaries shall not, except with the previous written consent of the SH&DB, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7 Branding of Residential Property

Developer shall assist the SH&DB in branding and advertising the development of Residential Property. For the same, the Developer will build a model of the total Project, prepare walk through and Perspective views within ____ month/year from the Appointed Date envisaged in the Agreement and keep the same available for branding and advertisement purposes till the hand over. Cost of developing the same will be borne by the Developer and the same shall form part of the Residential Property. On or after the expiry of the Construction Period and handing over of the same to the SH&DB, the Residential Property or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Developer or its shareholders. The Developer undertakes that it shall not, in any manner, use the name or entity of the Residential Property to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed between the Parties that such restriction shall not apply before the handing over of the Residential Property to the SH&DB.

5.8 Facilities for Physically Challenged and Elderly Persons

The Developer shall, in conformity with the guidelines issued from time to time by the Ministry of Urban Development, Government of India, Public Works Department, Government of Sikkim or a substitute thereof or any other Central/State Government Instrumentality, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project.

5.9 Compliance with Labor Law Legislations.

- 5.9.1** During continuance of the contract, the Developer and its sub-contractors shall abide at all times by all existing labor enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labor law (including rules), regulations, bye laws that

may be passed or notification that may be issued under any labor law in future either by the State or the Central Government or the local authority.

- 5.9.2** The Developer shall keep the SH&DB indemnified in case any action is taken against the SH&DB by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments. If the SH&DB is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Developer, the Independent Engineer/the SH&DB shall have the right to deduct any money due to the Developer including its amount of performance security.
- 5.9.3** The SH&DB shall also have right to recover from the Developer any sum required or estimated to be required for making good the loss or damage suffered by the SH&DB.

ARTICLE 6
OBLIGATIONS OF THE SH&DB

6.1 Obligations of the SH&DB

- 6.1.1** The SH&DB shall, at its own cost and expense undertakes to comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2** The SH&DB agrees to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) Upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide reasonable support and assistance to the Developer in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (b) Upon written request from the Developer, provide reasonable assistance to the Developer in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Developer than those generally available to commercial customers receiving substantially equivalent services;
 - (c) Not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
 - (d) Support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (e) The onus of shifting and relocating existing tenants/encroachers, if any, would remain with the SH&DB;
 - (f) The SH&DB will provide vacant possession of the land parcels, free from any encroachment, to the Developer;
 - (g) Upon written request from the Developer and subject to the provisions of Clause 5.4, provide reasonable assistance to the Developer and any expatriate personnel of the Developer or its Sub-Contractors to obtain applicable visas and work permits for the purposes of discharge by the Developer or its Sub-Contractors their obligations under this Agreement and the Project Agreements.

6.2 Marketing by the SH&DB

6.2.1 The SH&DB shall market, book and allot flats. In this regard, assistance and support as required from the Developer, including branding, will be sought and obtained by the SH&DB.

6.2.2 The SH&DB will sell the flats within the following payment framework from the buyers.

Demand Collection and Receipt of Money from the flat buyers to be made on installment basis on or before every 04 months as follows:

Sl. No.	Payment	Payment Percentage (%)
01	Booking Advance	5% on Cost of Flat Price
02	1st Installment	20% on Cost of Flat
03	2nd Installment	20% on Cost of Flat
04	3rd Installment	20% on Cost of Flat
05	4th Installment	15% on Cost of Flat
06	5th Installment	15% on Cost of Flat
07	6th Installment	5% on Cost of Flat

All money collected by the SH&DB from the buyers will be deposited in a specially designated bank account separate from other/usual bank accounts of the SH&DB. The specially designated bank account will be operated by authorized officials of SH&DB.

6.3 Payment to Developer

Payment to the Developer is construction-linked and sale of flats, and shall be made by the SH&DB as follows:

Sl. No.	Payment	Payment Percentage (%)
01	Approval of Design/Building Plan/other related approvals/permission for construction	5%
02	On completion of R.C.C. structure and infrastructure development	20%
03	On construction of walls	10%
04	On flooring, installation of doors, windows and electrical wiring	10%
05	On Plumbing Work and installation of common amenities	15%
06	On completion of service areas and amenities	10%
07	On completion of utilities (laying of sewerage lines, start of road work, laying of electrical lines and water services)	20%
08	On completion of total allotment	10%

All payments to the Developer shall be made by SH&DB from the aforementioned specially designated bank account after checking the invoice submitted by the Developer as per the payment milestone and certified by the Independent Engineer. The payment shall be made by the SH&DB within 15 (Fifteen) working days from the date of receipt of invoice certified by the Independent Engineer and in order in all respects. Such payments will be made for each tower constructed and certified by Independent Engineer.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Developer

The Developer represents and warrants to the SH&DB that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India or of the State, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the selected bidder/ Consortium Members, together with its/ their Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each member of the Consortium whose technical and financial capacity was evaluated in response to the Request for Proposal shall, during the Construction Period and three years thereafter along with its Associates, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the Developer; and (ii) 5% (five per cent) of the Total Project Cost;
- (l) the Developer/ each Consortium Members and its/their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

- (m) the Developer/ each Consortium Member is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the SH&DB to enter into this Agreement with the Developer pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the SH&DB on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the SH&DB, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the SH&DB or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing this Agreement or for influencing or attempting to influence any officer or employee of the SH&DB in connection therewith; and
- (q) all information provided by the Developer/each Consortium Members in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and Warranties of the SH&DB

The SH&DB represents and warrants to the Developer that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the SH&DB's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has the right, power and authority to manage and operate the Project up to the Appointed Date; and
- (h) it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Developer.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

**ARTICLE 8
DISCLAIMER**

8.1 Disclaimer

- 8.1.1** The Developer acknowledges that prior to the execution of this Agreement, the Contractor/ Developer has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the SH&DB or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The SH&DB makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor/ Developer confirms that it shall have no claim whatsoever against the SH&DB in this regard.
- 8.1.2** The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the SH&DB shall not be liable for the same in any manner whatsoever to the Developer, the Consortium Members and their Associates or any person claiming through or under any of them.
- 8.1.3** The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4** In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the SH&DB to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the SH&DB contained in Clause 8.1.1 and shall not in any manner shift to the SH&DB any risks assumed by the Developer pursuant to this Agreement.
- 8.1.5** Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Developer and the SH&DB shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9
PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1** The Developer shall, for the performance of its obligations hereunder during the Construction Period and the Defects Liability Period, provide to the SH&DB to be remain valid for 48 (forty eight) months from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to ₹ **8 Crores (Rupees Eight Crores only)** (the "**Performance Security**"). Until such time the Performance Security is provided by the Developer pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the SH&DB shall release the Bid Security to the Developer.
- 9.1.2** Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Developer within a period of 90 (Ninety) days from the date of this Agreement, the SH&DB may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Developer Default or failure to meet any Condition Precedent, the SH&DB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the SH&DB shall be entitled to terminate this Agreement in accordance with Article 32. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the SH&DB shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect till the expiry of three months from the date of expiry of Defect Liability Period, however the Performance Security shall not be released if the Developer is in breach of this Agreement. Upon request made by the Developer for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the SH&DB shall release the Performance Security forthwith.

**ARTICLE 10
RIGHT OF WAY**

10.1 The Site

The site of the Project shall comprise the land parcels described in Schedule-A and in respect of which the right of way shall be provided and granted by the SH&DB to the Developer as a license under and in accordance with this Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for Construction of the Project as set forth in Schedule-A.

10.2 License, Access and Right of Way

10.2.1 The SH&DB hereby grants to the Developer access to the Site for carrying out any surveys, investigations and soil tests that the Developer may deem necessary during the Pre-Development Period. It is however being expressly agreed and understood that the SH&DB shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Developer on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of this Agreement, and the covenants and warranties on the part of the Developer herein contained, the SH&DB, in accordance with the terms and conditions set forth herein, hereby grants to the Developer, commencing from the COD,

(a) Licensed Rights in respect of all the land along with any buildings, constructions or immovable assets, if any, thereon comprising the Residential Property which is described, delineated and shown in Schedule-A hereto, called the "**Licensed Premises**"; and

(b) site access to fulfill Maintenance Requirement related obligations of Residential Property, for the purposes permitted under this Agreement, and for no other purpose whatsoever;

on an "as is where is" basis, free of any Encumbrances, to develop the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the license period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access and right of way granted by this Agreement to the Developer shall always be subject to existing rights of way of the SH&DB.

10.2.4 It is expressly agreed that the License granted hereunder and/or pursuant to this Agreement shall terminate automatically and forthwith, without the need for any action to be taken by the SH&DB, upon the Termination of this Agreement for any reason whatsoever.

10.2.5 It is expressly agreed that trees on the Site, if any, are the property of the SH&DB except that the Developer shall be entitled to exercise usufructory rights thereon during the Licensee Period.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the SH&DB Representative and the Developer shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall be appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Developer. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Developer for free and unrestricted use and development of the vacant and unencumbered Site during the license period in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the Site as

set forth in the Appendix shall be deemed to have been granted to the Contractor/ Developer upon vacant access thereto being provided by the SH&DB to the Developer.

- 10.3.2** Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the SH&DB shall have granted vacant access license and Right of Way to the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the SH&DB shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.
- 10.3.3** On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Developer shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Developer shall report such encroachment or occupation forthwith to the SH&DB and undertake its removal at its cost and expenses.
- 10.3.4** The SH&DB shall make best efforts to procure and grant from the Appointed Date, the Right of Way to the Developer in respect of all land required for the Project. However, if any part of land is included in the Appendix such that License and Right of Way could not be granted to the Developer on the Appointed Date, for any reason other than Force Majeure or breach of this Agreement by the Developer, the SH&DB shall pay to the Developer, Damages in a sum calculated at the rate of ₹ . _____ (Rupees _____) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the Appointed Date and until such Right of Way is procured.
- 10.3.5** Upon receiving Right of Way in respect of any land included in the Appendix, the Developer shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Completion Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Developer or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

10.4 Site to be Free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the SH&DB to the Developer pursuant hereto free from all Encumbrances and occupations and without the Developer being required to make any payment to the SH&DB on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Licensed Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Developer accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encroachments

During the License Period, the Developer shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-Contractor or other person claiming through or under the Developer to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Developer therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/Temporary Right of Way

The Developer shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Developer shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access the SH&DB and Independent Engineer

The license, right of way, lease and right to the Site granted to the Developer hereunder shall always be subject to the right of access of the SH&DB and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and Archaeological Finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, metals, including gold, silver etc., gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the SH&DB or the concerned Government Instrumentality. The Developer shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the SH&DB forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Developer hereunder shall be reimbursed by the SH&DB. It is also agreed that the SH&DB shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

**ARTICLE 11
UTILITIES AND TREES**

11.1 Existing Utilities

Notwithstanding anything to the contrary contained herein, the Developer shall ensure that the respective entities owning the existing right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent changes with the authority of the controlling body of that right of way or utility, and the SH&DB shall, upon written request from the Developer, initiate and undertake at the Contractor's/Developer's cost, legal proceedings for acquisition of any right of way necessary for such changes .

11.2 Shifting of Obstructing Utilities

The SH&DB shall ensure that at the time of handing over of the Site, there exist no utilities which shall cause adverse effect on the construction, operation and maintenance of the Project as applicable by the Developer. However, in case any such utilities is discovered during the Construction Period by the Developer, it shall, subject to Applicable Laws and with assistance of the SH&DB, undertake shifting of such utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the SH&DB and in the event of any delay in shifting thereof, the Developer shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New Utilities

11.3.1 The Developer may allow, subject to such conditions as it may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Developer, it may require the entity owning such utility to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3.1 shall not in any manner relieve the Developer of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

Provided the Developer shall allow access to and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities in case any such utility is required by the User of the Project subject to such condition as determined by the Developer in consultation with the SH&DB/ Independent Engineer. The Developer may require the User and/or entity owning such utility to reimburse any loss suffered by the Developer on account of laying of such utilities.

11.4 Felling of Trees

The SH&DB shall assist the Developer in obtaining the Applicable Permits for felling of trees to be identified by the SH&DB for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the SH&DB, and in the event of any delay in felling thereof for reasons beyond the control of the Developer, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the SH&DB and shall be disposed in such manner and subject to such conditions as the SH&DB may in its sole discretion deem appropriate.

ARTICLE 12
CONSTRUCTION OF THE PROJECT

12.1 Obligations Prior to Commencement of Construction

Prior to commencement of Construction Works, the Developer shall:

- (a) submit to the SH&DB and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the construction of the Residential Property in accordance with a Project Completion Schedule. For Residential Property, the Developer shall submit structural design & drawing to the Independent Engineer with copy to the SH&DB, duly proof checked by an Indian Institute of Technology (IIT) or National Institute of Technology (NIT);
- (b) appoint, nominate its representative duly authorized to deal with the SH&DB in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

12.2.1 In respect of the Contractor's/Developer's obligations relating to the Drawings of the Residential Property, the following shall apply:

- (a) The Developer shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all structural Drawings duly proof checked by IIT or NIT to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Developer shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Developer with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Contractor/ Developer shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Developer and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the SH&DB be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.2.1, the Developer shall submit to the SH&DB for review and comments, its final Drawings, overall layout of the demarcated residential zone, plans of the proposed residential units, single-line electrical drawing, elevation, process flow chart for Water Lines and Sewer Lines, and the overall layout indicating the internal road network, storm water drains and landscaping. For the avoidance of doubt, it is clarified that in case of any inconsistency

between the reviews of the Independent Engineer and the SH&DB as regards any Drawings, the review of the SH&DB shall prevail to the extent of such inconsistency; and

- (g) Within 90 (ninety) days of the Project Completion Date, the Developer shall furnish to the SH&DB and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the SH&DB, reflecting the Residential Property as actually designed, engineered and constructed, including as-built drawings of all structures, instruction manuals for supporting infrastructure.

12.3 Completion of the Construction of the Residential Property

- 12.3.1** On or after the Appointed Date, the Developer shall undertake Construction of Residential Property as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The ____ (_____) day from the Appointed Date shall be the scheduled date for completion of Construction of the Residential Property (the “**Scheduled Completion Date**”) and the Developer agrees and undertakes that Construction of the Residential Property shall be completed on or before the Scheduled Completion Date.
- 12.3.2** The Developer shall construct the Residential Property in accordance with the Project Completion Schedule. In the event that the Developer fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the SH&DB, it shall pay damages to the SH&DB in a sum calculated at the rate of 1% (one per cent) of the amount of project cost for delay of each day or part thereof until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in the Project Implementation Schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if the Project Implementation Schedule has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the SH&DB to the Developer, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the SH&DB under this Agreement, including the right of Termination thereof.
- 12.3.3** In the event that Construction of the Residential Property is not completed within ____ (____) **days** from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the SH&DB or due to Force Majeure, the SH&DB shall be entitled to terminate this Agreement.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 Monthly Progress Reports

During the Construction Period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish to the SH&DB and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

13.2.1 During the Construction Period, the Independent Engineer shall inspect the Residential Property at least once in fortnight and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the SH&DB and the Developer within 7 (seven) days of such inspection and upon receipt thereof, the Developer shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Developer of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Developer to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Tests shall be carried out as per the prescribed provisions of the NBC, IS Codes and CPWD Specifications or equivalent specification in the State of Sikkim as laid out in the Schedule I of this Agreement. The Developer shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. The costs incurred on such tests shall be borne by the Developer.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Developer shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Contractor/ Developer to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Developer for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Developer to the Independent Engineer forthwith.

13.4 Delays during Construction

Without prejudice to the provisions of Clause 12.2.1, if the Developer does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that completion of the construction work is not likely to be achieved by the Scheduled Completion Date, it shall notify the Developer to this effect, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Video Recording

During the Construction Period, the Developer shall provide to SH&DB for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the SH&DB within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14
COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 45 (forty five) days prior to the likely completion of the Construction of the Residential Property, the Developer shall notify the Independent Engineer of its intent to subject the Residential Property to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Developer, and notified to the SH&DB who may designate its representative to witness the Tests. The Developer shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Developer and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor/ Developer shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer.

14.1.2 The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Residential Property with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the Residential Property or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies.

Upon completion of each Test, the Independent Engineer shall provide to the Developer and the SH&DB copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Residential Property with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works with respect to the Residential Property and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Developer and the SH&DB a Completion Certificate (the "**Completion Certificate**").

Provided that the Independent Engineer shall refuse issuance of the Completion Certificate in case any work(s) or thing(s) forming part of the Construction of the Project is/are outstanding and the decision of the Independent Engineer in this regard shall be final and binding upon the Developer. Provided further that the Independent Engineer shall not withhold the Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof, is attributable to the SH&DB.

14.3 Withholding of Completion Certificate

14.3.1 If the Independent Engineer determines that the Residential Property or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the SH&DB and the Developer. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the SH&DB is of the opinion that the Residential Property is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Developer of the defects and deficiencies in the Residential Property and direct the Independent Engineer to withhold issuance of the Completion Certificate. Upon receipt of such notice, the Developer shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.3.2 Notwithstanding anything to the contrary contained in Clause 14.3.1, the SH&DB may, at any time after receiving a report from the Independent Engineer under that Clause 14.3.1, direct the Independent Engineer to issue a Completion Certificate and such direction shall be complied forthwith.

14.4 Rescheduling of Tests

If the Independent Engineer certifies to the SH&DB and the Developer that it is unable to issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 15
ISSUANCE OF COMPLETION CERTIFICATE

15.1 Commercial Operation Date (COD)

Construction of the Residential Property shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14. Upon the issuance of the Completion Certificate, the Developer shall be required to handover possession of the Residential Property to the SH&DB thereby divesting all its rights and/or obligation with respect to the Residential Property to the SH&DB except the site access right/ obligation to fulfill Maintenance Requirement related obligations and also the right to levy, demand, collect and appropriate charges/User fee in terms of the provisions of this Agreement. The Commercial Operation Date of the Project shall be the date of issuance of Completion Certificate for the Residential Property

15.2 Damages for Delay

Subject to the provisions of Clause 12.3, if COD does not occur prior to the ____ (____) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the SH&DB or due to Force Majeure, the Developer shall pay Damages to the SH&DB in a sum calculated at the rate of 1% (one per cent) of the amount of Project Cost for delay of each day or part thereof until COD is achieved.

**ARTICLE 16
CHANGE OF SCOPE**

16.1 Change of Scope

- 16.1.1** The SH&DB may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Developer and reimbursed to it by the SH&DB in accordance with Clause 16.3.
- 16.1.2** If the Developer determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users of the Residential Property, it shall by notice in writing require the SH&DB to consider such Change of Scope. The SH&DB shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings thereof in accordance with this Article 16 or inform the Developer in writing of its reasons for not accepting such Change of Scope.
- 16.1.3** Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1** In the event of the SH&DB determining that a Change of Scope is necessary, it shall issue to the Developer a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 16.2.2** Upon receipt of a Change of Scope Notice, the Developer shall, with due diligence, provide to the SH&DB such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labor costs calculated in accordance with the schedule of rates applicable to the works assigned by the SH&DB to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Developer in providing such information shall be reimbursed by SH&DB to the extent such cost is certified by the Independent Engineer as reasonable.
- 16.2.3** Upon receipt of information set forth in Clause 16.2.2, if the SH&DB decides to proceed with the Change of Scope, it shall convey its preferred option to the Developer, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, The SH&DB shall issue an order (the "Change of Scope Order") requiring the Developer to proceed with the performance thereof. In the event that the Parties are unable to agree, the SH&DB may, by issuing a Change of Scope Order, require the Developer to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4** The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Developer under this Article 16.

16.3 Payment for Change of Scope

- 16.3.1** Within 7 (seven) days of issuing a Change of Scope Order, the SH&DB shall make an advance payment to the Developer in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Developer shall, after commencement of work, present to the SH&DB bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the SH&DB to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the SH&DB shall disburse to the Developer such amounts as are certified by the Independent

Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- 16.3.2** Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Developer, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the SH&DB in accordance with Clause 16.3.1. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Developer, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on Certain Works

- 16.4.1** Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the SH&DB shall not require the Developer to undertake any works or services if such works or services are likely to delay completion of Construction of the Residential Property; provided that in the event that the SH&DB considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Construction of the Residential Property and issuing the Completion Certificate and shall allowed to be considered separately for completion.
- 16.4.2** Notwithstanding anything to the contrary contained in this Article 16, the Developer shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 10% (ten per cent) of the Total Project Cost at any time during the Construction of the Residential Property.

16.5 Power of SH&DB to Undertake Works

- 16.5.1** Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.1.2 and 16.1.3, the SH&DB may, after giving notice to the Developer and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Developer shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the SH&DB, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Developer shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Developer shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.5.2** The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project. The provisions of this Agreement, in so far as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1** If the Developer shall have failed to complete any Construction Works with respect to the Residential Property on account of Force Majeure or for reasons solely attributable to the SH&DB, the SH&DB may, in its discretion, require the Developer to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the SH&DB, the obligations of the Developer in respect of such works shall be deemed to have been fulfilled. It is further agreed that the liability of the SH&DB under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.
- 16.6.2** For determining the obligations of the Developer under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the SH&DB hereunder, the Developer shall pay forthwith the sum specified therein.

ARTICLE 17
OPERATION AND MAINTENANCE

17.1 O&M Obligations and Maintenance Requirements of the Developer

17.1.1 Till the expiry of 1 (one) year from the achievement of COD, the Developer shall operate and maintain the Residential Property in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Utilities and facilities within Residential Property to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. Thereafter, the SH&DB shall ensure incorporation of the society/ association/ body corporate of the allottees and the Developer shall be required to hand over the O&M work to the aforesaid society/association/body corporate. The obligations of the Developer hereunder within the Maintenance Requirements Period of two years shall include:

- (a) providing quality living environment in the residential zone by making available functional living facilities and supporting infrastructure as per Good Industry Practice;
- (b) carrying out periodic preventive maintenance of the Residential Property;
- (c) undertake repairs and maintenance of the supporting infrastructure like prompt repairs of pothole in the internal road network, prevention of leakages in water lines and fittings, etc
- (d) undertake servicing of the Lifts, DG Sets, Pumps, Motors etc to prevent unexpected breakdown;
- (e) attend to any emergency breakdown maintenance of all utilities and other supporting facilities to ensure delivery of quality services to the inhabitants;
- (f) protection of the environment and provision of equipment and materials therefore;
- (g) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Residential Property;
- (h) maintaining a complaint redressal cell/ unit to interface with and attend to suggestions from the Users; and
- (i) complying with Safety Requirements in accordance with Article 18.

17.1.2 The Developer shall remove promptly from the Residential Property all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Residential Property in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2 Maintenance Requirements

The Developer shall procure that at all times till the expiry of 1 (one) year from the achievement of COD, the Residential Property conforms to the maintenance requirements set forth in Clause 17.1.

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Developer shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Residential Property in conformity with the maintenance requirements set forth in Clause 17.1, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to SH&DB and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated upon completion of one year and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Program

- 17.4.1** On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Maintenance Requirements period, as the case may be, the Developer shall provide to the SH&DB and the Independent Engineer, its proposed annual program of preventive, urgent and other scheduled maintenance (the “**Maintenance Program**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Program shall include:
- (a) preventive maintenance schedule;
 - (b) arrangements and procedures for carrying out urgent repairs;
 - (c) criteria to be adopted for deciding maintenance needs;
 - (d) intervals and procedures for carrying out inspection of all elements of the Residential Property;
 - (e) intervals at which the Developer shall carry out periodic maintenance;
 - (f) arrangements and procedures for carrying out safety related measures; and
 - (g) intervals for major maintenance works and the scope thereof.
- 17.4.2** Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer shall review the same and convey its comments to the Developer with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- 17.4.3** The Developer may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.5 Safety and Accidents

- 17.5.1** The Developer shall ensure safe conditions for the Users, and in the event of unsafe conditions and accidents, it shall follow the relevant operating procedures including the removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.5.2** The Contractor’s/Developer’s responsibility for rescue operations on the Residential Property shall be limited to an initial response to any particular incident which is otherwise not covered in the Safety Requirements, till the time competent authority takes charge.

17.6 Temporary Vacation of the Residential Property due to Emergency

- 17.6.1** If, in the reasonable opinion of the Developer, there exists an Emergency which warrants vacation of the whole or any part of the Residential Property, the Developer shall be entitled to get the whole or such part of the Residential Property vacated for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning shall only be with the prior written approval of the SH&DB/ Independent Engineer, and the Developer shall diligently carry out and abide by any reasonable directions that the SH&DB may give for dealing with such Emergency.
- 17.6.2** The Developer shall support the SH&DB in putting the Residential Property or the affected part thereof into operation as quickly as practicable after the circumstances leading to its vacation have ceased to exist or have so abated as to enable the SH&DB to start the operation of the Residential Property.
- 17.6.3** Any decommissioning of any part of the Residential Property and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Closure of any Part of the Residential Property

- 17.7.1** The Developer shall not close any part of the Residential Property for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer where such closure is necessary for undertaking maintenance or repair works. Such approval shall be sought by the Developer through a written request to be made to the Independent Engineer, and a copy thereof furnished to the SH&DB, at least 7 (seven) days before the proposed closure of such part of the Residential Property and shall be

accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer may in its sole discretion grant permission to such closure with such modifications as it may deem necessary and a copy of such permission shall be sent to the SH&DB. Denial of the permission to close any part of the Residential Property by the Independent Engineer shall not absolve the Developer of its maintenance obligation in accordance with the provisions of this Agreement.

- 17.7.2** Upon receiving the permission pursuant to Clause 17.7.1, the Developer shall be entitled to close the designated part of the Residential Property for the period specified therein, and in the event of any delay in re-opening such part of the Residential Property, the Developer shall pay Damages to the SH&DB calculated at the rate of Rs. 10,000/- (Rs. Ten Thousand only) for every super built up area of 250 (two hundred and fifty) square meters, or part thereof of the Residential Property so closed, for each day of delay until the part of the Residential Property has been re-opened for use by the User.

17.8 Damages for Breach of Maintenance Requirements Related Obligations

- 17.8.1** In the event that the Developer fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the SH&DB shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the SH&DB under this Agreement, including the right of Termination thereof.

- 17.8.2** The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the SH&DB may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Developer is otherwise in compliance with its obligations hereunder. The Developer shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 The SH&DB's Right to take Remedial Measures

- 17.9.1** In the event the Developer does not maintain and/or repair the Residential Property or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the SH&DB or the Independent Engineer, as the case may be, the SH&DB shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Developer, and to recover its cost from the Developer. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Developer to the SH&DB as Damages. For the avoidance of doubt, the right of the SH&DB under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

- 17.9.2** The SH&DB shall have the right, and the Developer hereby expressly grants to the SH&DB the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Developer hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the SH&DB under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding Powers of the SH&DB

- 17.10.1** If in the reasonable opinion of the SH&DB, the Developer is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the SH&DB may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Developer to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be

- 17.10.2** In the event that the Developer, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the SH&DB may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the SH&DB shall be of no greater scope and of no longer duration than is reasonably required hereunder;

provided further that any costs and expenses incurred by the SH&DB in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the SH&DB shall be entitled to recover them from the Developer in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 29.3, the SH&DB may take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Residential Property or give such directions to the Developer as may be deemed necessary; provided that the exercise of such overriding powers by the SH&DB shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the SH&DB. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 29. It is also agreed that the Developer shall comply with such instructions as the SH&DB may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the SH&DB, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of Loss or Damage to Residential Property

Save and except as otherwise expressly provided in this Agreement, in the event that the Residential Property or any part thereof suffers any loss or damage during the Maintenance Requirements period from any cause whatsoever, the Developer shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Residential Property conforms to the provisions of this Agreement.

17.12 Modifications to the Project Utilities

The Developer shall not carry out any material modifications to the Project Utilities save and except where such modifications are necessary for the Residential Property to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Developer shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Contractor's/Developer's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from Performance of Obligations

The Developer shall not be considered in breach of its obligations under this Agreement if any part of the Residential Property is not available to User on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Residential Property except when unsafe conditions occurred because of failure of the Developer to perform its obligations under this Agreement; or
- (c) compliance with a request from the SH&DB or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Residential Property.

Notwithstanding the above, the Developer shall keep all unaffected parts of the Residential Property open to Users provided they can be operated safely.

17.14 Barriers

The SH&DB shall procure that during the Maintenance Requirements period, no barriers, except as followed in the Good Industry Practice, are erected or placed by any Government Instrumentality on the Residential Property except for reasons of Emergency, national security or law and order.

17.15 Liability of Developer

17.15.1 The Developer shall remain responsible for all the defects for which the Developer is held accountable during the entire Defects Liability Period.

17.16 Advertisements on the Site

17.16.1 The Developer shall have no advertisement rights on the Site for Residential Property at any time during the Construction Period except for the branding related activities as prescribed in Clause 5.7.

ARTICLE 18
SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1** The Developer shall comply with the Applicable Laws and Applicable Permits; rules, directions and guidelines of National Disaster Management Authority (NDMA) and conform to Good Industry Practice for securing the safety of the Users. In particular, the Developer shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with all the safety requirements (the **"Safety Requirements"**).
- 18.1.2** Independent Engineer shall be responsible for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements during the construction.

ARTICLE 19
MONITORING OF MAINTENANCE REQUIREMENTS

19.1 Monthly Status Reports

During Maintenance Requirements period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish to the SH&DB and the Independent Engineer a monthly report stating in reasonable detail the condition of the Residential Property including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Residential Property at least once a month. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the SH&DB and the Developer within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Residential Property conforms to the Maintenance Requirements, the Independent Engineer shall require the Developer to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Developer shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the SH&DB to the Developer.

19.4 Remedial Measures

19.4.1 The Developer shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the SH&DB within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Developer shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Developer to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Residential Property into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Residential Property conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Developer in conformity with the provisions of this Agreement, the SH&DB shall be entitled to recover Damages from the Developer under and in accordance with the provisions of Clause 17.8.

19.5 Reports of Unusual Occurrence

The Developer shall, prior to the close of each week, send to the SH&DB and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Residential Property relating to the safety and security of the Users and Residential Property. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month. For the purposes of this Clause 19.5, accidents and unusual occurrences on the Residential Property shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Residential Property, which results in slow down of the services being provided by the Developer;

- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of Residential Property;
- (f) smoke or fire;
- (g) flooding of Residential Property; and
- (h) such other relevant information as may be required by the SH&DB or the Independent Engineer.

**ARTICLE 20
INDEPENDENT ENGINEER**

20.1 Appointment of Independent Engineer

The SH&DB shall appoint a consulting engineering firm from a panel of 5 (five) firms or bodies corporate, constituted by the SH&DB to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 60 (sixty) days from the date of this Agreement and shall be for a period of ***** (*****) years or till the expiry of the Defect Liability Period, whichever is later.

20.2 Duties and Functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the Terms of Reference to be provided to it.

20.2.2 The Independent Engineer shall submit regular periodic reports (at least once in fortnight) to the SH&DB in respect of its duties and functions set forth in its Terms of Reference.

20.2.3 The Independent Engineer shall be responsible for the ascertaining the physical and financial progress for the Residential Property and report the same to the SH&DB in the manner as set forth in its Terms of Reference with a copy to the Developer.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the SH&DB and subject to the limits set forth in the Terms of Reference of the Independent Engineer, one-half of such remuneration, cost and expenses shall be reimbursed by the Developer to the SH&DB within 15 (fifteen) days of receiving a statement of expenditure from the SH&DB.

20.4 Termination of Appointment

20.4.1 The SH&DB may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2 If the Developer has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, the Developer may make a written representation to the SH&DB and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the SH&DB shall hold a tripartite meeting with the Developer and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the SH&DB and the Developer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the SH&DB shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorized Signatories

The SH&DB shall require the Independent Engineer to designate and notify to the SH&DB and the Developer up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 Dispute Resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 21
FINANCIAL CLOSE

21.1 Financial Close

- 21.1.1** The Developer hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the SH&DB in a sum calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day or part thereof of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the SH&DB in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Developer shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 21.1.2** The Developer shall, upon occurrence of Financial Close, notify the SH&DB forthwith, and shall have provided to the SH&DB, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Developer, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

21.2 Termination due to Failure to Achieve Financial Close

- 21.2.1** Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 21.2.1 shall not apply.
- 21.2.2** Upon Termination under Clause 21.2.1, SH&DB shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the SH&DB being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the SH&DB shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 22
MARKETING/ALLOTMENT/BOOKING OF RESIDENTIAL PROPERTY

22

22.1 The SH&DB shall be entitled to commence booking of units /flats/spaces in the Residential Property through letter of allotment (herein the "Letter of Allotment") after the Appointed Date.

22.2 The SH&DB shall allot all the units /flats/spaces in the Residential Property as per its own terms and conditions for the share of SH&DB's allocation; and receive the money from the allottees/customers to its own account.

22.3 The Developer shall not under any circumstances book and/or allot any the units /flats/spaces in the Residential Property which belongs to SH&DB.

22.4 SH&DB may at the will of the developer shall market the flats allotted to the developer subject to mutually agreed price.

**ARTICLE 23
ESCROW ACCOUNT**

23.1 Escrow Account

23.1.1 The Developer shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

23.1.2 The nature and scope of the Escrow Account are (the "**Escrow Agreement**") to be entered into amongst the Developer, the SH&DB, the Escrow Bank and the Senior Lenders through the Lenders' Representative.

23.2 Deposits into Escrow Account

The Developer shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all the proceeds of any deposits, User fee/charges, or insurance claims;
- (c) funds to make up the shortfall in the amount in the Escrow Account as against the cash flow requirement during the construction period:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

(d) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of and Subordinated Debt;

(e) all funds received by the Developer from its share-holders, in any manner or form.

23.2.1 The Developer shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Developer for and in respect of the Project;
- (b) all payments relating to Construction of the Residential Property, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M expenses of Residential Property, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) Other costs and expenses incurred by the SH&DB in accordance with the provisions of this Agreement, and certified by the SH&DB as due and payable to it;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by the SH&DB as due and payable by Developer to the SH&DB;
- (g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Developer.

23.2.2 The Developer shall not in any manner modify the order of payment specified in Clause 23.3.1, except with the prior written approval of the SH&DB.

23.3 Withdrawals upon Termination

23.3.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination prior to expiry of the Defect Liability Period, be appropriated in the following order:

- (a) all taxes due and payable by the Developer for and in respect of the Project;
- (b) Lender's dues as per the provisions of this Agreement;
- (c) all payments and Damages certified by the SH&DB as due and payable by Developer to the SH&DB;
- (d) retention and payments relating to the liability for defects and deficiencies set forth in Article 30;
- (e) outstanding Debt Service;
- (f) outstanding Subordinated Debt;
- (g) any other payments required to be made under the Agreement for development of Residential Property
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Developer:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 23.4.1 until a Vesting Certificate has been issued by the SH&DB under the provisions of Article 29

23.3.2 The provisions of this Article 23 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 23.4.1 have been discharged or 30 (thirty) days after the expiry of the Defect Liability Period, whichever is later.

ARTICLE 24 INSURANCE

24.1 Insurance during Construction Period

The Developer shall effect and maintain at its own cost, for the Project as a whole, during the Construction Period after achieving COD till the expiry of this Agreement, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on SH&DB as a consequence of any act or omission of the Developer during the Construction Period. The Developer shall procure that in each insurance policy, the SH&DB shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Developer after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

24.2 Notice to the SH&DB

No later than 45 (forty-five) days prior to commencement of the Construction Period, the Developer shall by notice furnish to the SH&DB, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the SH&DB may require the Developer to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

24.3 Evidence of Insurance Cover

All insurances obtained by the Developer in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Developer shall furnish to the SH&DB, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Developer to the SH&DB.

24.4 Remedy for Failure to Insure

If the Developer shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the SH&DB shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Developer, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Developer.

24.5 Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Developer pursuant to this Article 24 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the SH&DB, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

24.6 Contractor's/Developer's Waiver

The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the SH&DB and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Developer may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Developer pursuant to this Agreement, other than third party liability insurance policies, or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

24.7 Application of Insurance Proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Developer by credit to the Escrow Account and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement,

replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 25
ACCOUNTS AND AUDIT

25.1 Audited Accounts

- 25.1.1** The Developer shall maintain books of accounts recording all its payments and receipts, income, expenditure, payments, including payments from the Escrow Account, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. Till the completion of 1 year from the date of expiry of Defects Liability Period, The SH&DB shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the SH&DB for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 25.1.2** Till the expiry of one year from the Defects Liability Period, the Developer shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the SH&DB its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

25.2 Appointment of Auditors

- 25.2.1** The Developer shall appoint, and have till the expiry of one year from the Defects Liability Period as its Project Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), to be prepared. All fees and expenses of the Project Auditors shall be borne by the Developer.
- 25.2.2** The Developer may terminate the appointment of its Project Auditors after a notice of 45 (forty five) days to the SH&DB, subject to the replacement Project Auditors being appointed from the Panel of Chartered Accountants.
- 25.2.3** Notwithstanding anything to the contrary contained in this Agreement, the SH&DB shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Project Auditors are required to do, undertake or certify pursuant to this Agreement.

25.3 Certification of Claims by Project Auditors

- 25.3.1** Any claim or document provided by the Developer to the SH&DB in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Project Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

25.4 Set-off

- 25.4.1** In the event any amount is due and payable by the Developer to the SH&DB, it may set-off any sums payable to it by the SH&DB and pay the balance remaining. Any exercise by the Developer of its rights under this Clause 25.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

25.5 Dispute resolution

- 25.5.1** In the event of there being any difference between the findings of the Additional Auditors, as the case may be, and the certification provided by the Project Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the SH&DB by recourse to the Dispute Resolution Procedure.

ARTICLE 26
FORCE MAJEURE

26.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India or in the State of Sikkim of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 26.2, 26.3 and 26.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

26.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Developer, Sub-Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 26.3;
- (c) any failure or delay of a Sub-Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Sub-Contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the SH&DB;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

26.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Sub-Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

26.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 32 and its effect, in financial terms, exceeds the sum specified in Clause 32.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Sub-Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Developer or any of the Sub-Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's/Developer's or any Sub-Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Sub-Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

26.5 Duty to Report Force Majeure Event

26.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

26.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 26.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

26.6 Effect of Force Majeure Event on the Licensed Rights

26.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

26.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before completion of Construction of the Residential Property, the license and the dates set forth for Scheduled Completion Date shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;
- (b) After the completion of the Construction of the Residential Property, the license and the dates set forth for achieving COD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

26.7 Allocation of Costs Arising out of Force Majeure

26.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

26.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event or Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the SH&DB to the Developer.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations and O&M Expenses, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

26.7.3 Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

26.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 26, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days’ time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

26.9 Termination Payment for Force Majeure Event

26.9.1 If Termination is on account of a Non-Political Event or Indirect Political Event, the Developer shall not be entitled for any Termination Payment.

26.9.2 If Termination is on account of a Political Event, the SH&DB shall make a Termination Payment to the Developer in an amount that would be payable under Clause 28.3.2 as if it were a the SH&DB Default.

26.10 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

26.11 Excuse from Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 27
SUSPENSION OF CONTRACTOR'S/DEVELOPER'S RIGHTS

27.1 Suspension upon Developer Default

Upon occurrence of a Developer Default prior to issuance of the Completion Certificate, the SH&DB shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the SH&DB to the Developer and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Developer and the Lenders' Representative, the SH&DB shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

27.2 The SH&DB to Act on Behalf of Developer

27.2.1 During the period of Suspension, the SH&DB shall, on behalf of the Developer, operate and maintain the Project under and in accordance with this Agreement. The SH&DB shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 23.3.

27.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Developer in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the SH&DB for discharging the obligations of the Developer under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Developer and the Developer undertakes to indemnify the SH&DB for all costs incurred during such period. The Developer hereby licenses and sub-licenses respectively, the SH&DB or any other person authorized by it under Clause 27.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Developer with respect to the Project and its design, engineering, construction, operation and maintenance as applicable, and which is used or created by the Developer in performing its obligations under the Agreement.

27.3 Revocation of Suspension

27.3.1 In the event that the SH&DB shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement. For the avoidance of doubt, the Parties expressly agree that the SH&DB may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

27.3.2 Upon the Developer having cured the Developer Default within a period not exceeding 90 (ninety) days from the date of Suspension, the SH&DB shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement.

27.4 Substitution of Developer

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Developer under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative thereunder, the SH&DB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 27.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

27.5 Termination

27.5.1 At any time during the period of Suspension under this Article 27, the Developer may by notice require the SH&DB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the

period specified in Clause 27.4, SH&DB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 28.

27.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 27.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the SH&DB upon occurrence of a Developer Default.

**ARTICLE 28
TERMINATION**

28.1 Termination for Developer Default

28.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Developer shall be deemed to be in default of this Agreement (the “**Developer Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the SH&DB or due to Force Majeure. The defaults referred to herein shall include:

- (a) has been paying damages in terms of Clause 4.3 of the Agreement but has not been able to fulfill all the Condition Precedent in terms of Article 4 within the Cure period of 30 days.
- (b) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (c) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Developer fails to cure, within a Cure Period of 90 (ninety) days, the Developer Default for which whole or part of the Performance Security was appropriated;
- (d) the Developer does not achieve the latest outstanding Project Milestone as mutually set and agreed by both the parties and continues to be in default for 120 (one hundred and twenty) days;
- (e) the Developer abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the SH&DB;
- (f) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (g) the Developer is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Developer has failed to make any payment to the SH&DB within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Developer fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the SH&DB to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Developer fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Developer has caused a Material Adverse Effect;
- (l) the Developer creates any Encumbrance in breach of this Agreement;
- (m) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Developer under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Developer, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Developer has caused a Material Adverse Effect;

- (q) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Developer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the SH&DB, a Material Adverse Effect;
- (s) a resolution for winding up of the Developer is passed, or any petition for winding up of the Developer is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Developer is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Developer are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Developer under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Developer as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Developer herein contained which is, as of the date hereof, found to be materially false or the Developer is at any time hereafter found to be in breach thereof;
- (u) the Developer submits to the SH&DB any statement, notice or other document, in written or electronic form, which has a material effect on the SH&DB's rights, obligations or interests and which is false in material particulars;
- (v) the Developer has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Developer commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the SH&DB.

28.1.2 Without prejudice to any other rights or remedies which the SH&DB may have under this Agreement, upon occurrence of a Developer Default, the SH&DB shall be entitled to terminate this Agreement by issuing a Termination Notice to the Developer; provided that before issuing the Termination Notice, the SH&DB shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Developer to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 28.1.3.

28.1.3 The SH&DB shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 28.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Developer in accordance with the Substitution Agreement. In the event the SH&DB receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the SH&DB shall withdraw its notice referred to above and restore all the rights of the Developer:

Provided further that upon written request from the Lenders' Representative and the Developer, the SH&DB shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the SH&DB may deem appropriate.

28.2 Termination for the SH&DB Default

28.2.1 In the event that any of the defaults specified below shall have occurred, and the SH&DB fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the SH&DB shall be deemed to be in default of this Agreement (the "**SH&DB Default**") unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure. The defaults referred to herein shall include:

- (a) The SH&DB commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Developer;
- (b) The SH&DB has failed to make any payment to the Developer within the period specified in this Agreement;
- (c) The SH&DB repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

28.2.2 Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of the SH&DB Default, the Developer shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the SH&DB; provided that before issuing the Termination Notice, the Developer shall by a notice inform the SH&DB of its intention to issue the Termination Notice and grant 15 (fifteen) days to the SH&DB to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

28.3 Termination Payment

28.3.1 Upon Termination on account of a Developer Default during the Operation Period, the SH&DB shall pay to the Developer, by way of Termination Payment, an amount equal to 65% (Sixty Five per cent) of Fair Value of the Assets developed by the Developer on the Residential Property as determined by a registered independent valuer mutually appointed for the purpose less insurance cover.

For the avoidance of doubt, the Developer hereby acknowledges that no Termination Payment shall be due or payable on account of a Developer Default occurring prior to issuance of the Completion Certificate.

28.3.2 Termination Payment shall become due and payable to the Developer within 15 (fifteen) days of a demand being made by the Developer to the SH&DB with the necessary particulars, and in the event of any delay, the SH&DB shall pay interest at a rate equal to 3% (three per cent) above the Base Rate of State Bank of India on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the SH&DB of its payment obligations in respect thereof hereunder.

28.3.3 The Developer expressly agrees that Termination Payment under this Article 28 shall constitute a full and final settlement of all claims of the Developer on account of Termination of this Agreement for any reason whatsoever and that the Developer or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

28.4 Other Rights and Obligations of the SH&DB

Upon Termination for any reason whatsoever, the SH&DB shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

- (c) be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Site or any part of the Project;
- (d) require the Developer to comply with the Divestment Requirements set forth in Clause 29.1; and
- (e) succeed upon election by the SH&DB, without the necessity of any further action by the Contractor/ Developer, to the interests of the Developer under such of the Project Agreements as the SH&DB may in its discretion deem appropriate, and shall upon such election be liable to the Sub-Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the SH&DB elects to succeed to the interests of the Contractor/ Developer. For the avoidance of doubt, the Developer acknowledges and agrees that all sums claimed by such Sub-Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Contractor/ Developer and such Sub-Contractors, and the SH&DB shall not in any manner be liable for such sums. It is further agreed that in the event the SH&DB elects to cure any outstanding defaults under such Project Agreements, the amount expended by the SH&DB for this purpose shall be deducted from the Termination Payment.

28.5 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 28.3.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 29
DIVESTMENT OF RIGHTS AND INTEREST

29.1 Divestment Requirements

29.1.1 Upon Termination, the Developer shall comply with and conform to the following Divestment Requirements:

- (a) notify to the SH&DB forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Assets and utilities, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Assets, including the building, structures and equipment, of all defects and deficiencies; provided that in the event of Termination during the Construction Period, all Project Assets
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance as applicable, including all programs and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Developer represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project as applicable and shall be assigned to the SH&DB free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the SH&DB may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the SH&DB, absolutely unto the SH&DB or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, free from all Encumbrances, absolutely unto the SH&DB or to its nominee.

29.1.2 Subject to the exercise by the SH&DB of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Developer, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

29.2 Cooperation and assistance on Transfer of Project

29.2.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

29.2.2 The Parties shall provide to each other, immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Developer shall further provide such reasonable advice and assistance as the SH&DB, its sub-contractor or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

29.2.3 The SH&DB shall have the option to purchase or hire from the Developer at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the Project Assets specified in Clause 29.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

29.3 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the SH&DB shall, without unreasonable delay, thereupon issue a "**Vesting Certificate**", which will have the effect of constituting evidence of divestment by the Developer of all of its rights, title and interest in the Project, and their vesting in the SH&DB pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the SH&DB or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Developer.

29.4 Divestment Costs etc.

29.4.1 The Developer shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Developer in the Project in favor of SH&DB upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Developer in connection with such divestment shall be borne by the SH&DB.

29.4.2 In the event of any dispute relating to matters covered by and under this Article 29, the Dispute Resolution Procedure shall apply.

**ARTICLE 30
DEFECTS LIABILITY**

30.1 Defect Liability Period

With respect to the Residential Property, the Developer shall be responsible for all defects and deficiencies for a period of 1 (One) year from the date of issuance of Completion Certificate in terms of Article 14 or its Termination, whichever is earlier ("**Defect Liability Period**" or "**DLP**"), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer and/or the SH&DB in the Residential Property during the aforesaid period. In the event that the Developer fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Independent Engineer/ the SH&DB in this behalf, the SH&DB shall be entitled to get the same repaired or rectified at the Contractor's/Developer's risk and cost. All costs incurred by the SH&DB hereunder shall be reimbursed by the Developer to the SH&DB within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the SH&DB shall be entitled to recover the same from the Escrow Account.

30.2 Maintenance of Performance Guarantee

The Developer shall, for the performance of its obligations under this Article 30, provide to the SH&DB a guarantee from a scheduled Bank for a sum equivalent to the amount determined by the Independent Engineer as required by the Developer to carry out its obligation as stated under Clause 30.1 and for the period specified therein, substantially in the form set forth in Appendix (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the SH&DB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Contractor's/Developer's risk and cost in accordance with the provisions of this Article 30.

**ARTICLE 31
ASSIGNMENT AND CHARGES**

31.1 Restrictions on Assignment and Charges

- 31.1.1** Subject to Clauses 31.2 and 31.3, this Agreement shall not be assigned by the Developer to any person, save and except with the prior consent in writing of the SH&DB, which consent the SH&DB shall be entitled to decline without assigning any reason.
- 31.1.2** Subject to the provisions of Clause 31.2, the Developer shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Developer is a party except with prior consent in writing of the SH&DB, which consent the SH&DB shall be entitled to decline without assigning any reason.

31.2 Permitted Assignment and Charges

The restraints set forth in Clause 30.1 shall not apply to:

- (a) liens arising by operation of law or by an agreement evidencing the same in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Residential Property and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Developer to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

31.3 Substitution Agreement

- 31.3.1** The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Developer pursuant to the agreement for substitution of the Developer (the "**Substitution Agreement**") to be entered into amongst the Developer, the SH&DB and the Lenders' Representative, on behalf of Senior Lenders.
- 31.3.2** Upon substitution of the Developer under and in accordance with the Substitution Agreement, the Nominated Company substituting the Developer shall be deemed to be the Developer under this Agreement and shall enjoy all rights and be responsible for all obligations of the Developer under this Agreement as if it were the Developer; provided that where the Developer is in breach of this Agreement on the date of such substitution, the SH&DB shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Developer for curing such breach.

31.4 Assignment by the SH&DB

Notwithstanding anything to the contrary contained in this Agreement, the SH&DB may, after giving 60 (sixty) days' notice to the Developer, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the SH&DB, capable of fulfilling all of the SH&DB's then outstanding obligations under this Agreement.

ARTICLE 32 CHANGE IN LAW

32.1 Increase in Costs

During the Construction Period, if as a result of Change in Law, the Developer suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds ₹ .1 Crore (Rupees One Crore only) in any Accounting Year, the Developer may so notify the SH&DB and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Developer, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Developer may by notice require the SH&DB to pay an amount that would place the Developer in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the SH&DB shall pay the amount specified therein; provided that if the SH&DB shall dispute such claim of the Developer, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that the Clause shall be restricted to changes in law directly affecting the Contractor's/Developer's costs of performing its obligations under this Agreement during the Construction Period post issuance of Completion Certificate.

32.2 Reduction in Costs

If as a result of Change in Law, the Developer benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds ₹ .1 Crore (Rupees One Crore only) in any Accounting Year, the SH&DB may so notify the Developer and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the SH&DB, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the SH&DB may by notice require the Developer to pay an amount that would place the Developer in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Developer shall pay the amount specified therein to the SH&DB; provided that if the Developer shall dispute such claim of the SH&DB, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to changes in law directly affecting the Developer's costs of performing its obligations under this Agreement during the Construction Period post COD.

32.3 Protection of NPV

Pursuant to the provisions of Clauses 32.1 and 32.2 and for the purposes of placing the Developer in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

32.4 Restriction on Cash Compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 32 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

32.5 No Claim in the Event of Recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the SH&DB shall not in any manner be liable to reimburse to the Developer any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 33
LIABILITY AND INDEMNITY

33.1 General indemnity

- 33.1.1** The Developer will indemnify, defend, save and hold harmless the SH&DB and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**SH&DB Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Developer of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Developer to any User or from any negligence of the Developer under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of SH&DB Indemnified Persons.
- 33.1.2** The SH&DB will indemnify, defend, save and hold harmless the Developer against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the SH&DB in the land comprised in the Site, and/or (ii) breach by the SH&DB of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Developer of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Developer, its subsidiaries, affiliates, sub-contractors, servants or agents, the same shall be the liability of the Developer.

33.2 Indemnity by the Developer

- 33.2.1** Without limiting the generality of Clause 33.1, the Developer shall fully indemnify, hold harmless and defend the SH&DB and the SH&DB Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Developer to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Developer in respect of the income or other taxes of the Contractor's/Developer's sub-contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Developer or any of its sub-contractors which are payable by the Developer or any of its sub-contractors.
- 33.2.2** Without limiting the generality of the provisions of this Article 33, the Developer shall fully indemnify, hold harmless and defend the SH&DB Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the SH&DB Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Contractor's/Developer's Sub-Contractors in performing the Contractor's/Developer's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Developer shall promptly make every reasonable effort to secure for the SH&DB a license, at no cost to the SH&DB, authorizing continued use of the infringing work. If the Developer is unable to secure such license within a reasonable time, the Developer shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

33.3 Notice and Contest of Claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 33 ("**Indemnified Party**") it shall notify the other Party ("**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

33.4 Defense of Claims

33.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 33, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

33.4.2 If the Indemnifying Party has exercised its rights under Clause 33.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

33.4.3 If the Indemnifying Party exercises its rights under Clause 33.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 33.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

33.5 No Consequential Claims

Notwithstanding anything to the contrary contained in this Article 33, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

33.6 Survival on Termination

The provisions of this Article 33 shall survive Termination.

**ARTICLE 34
RIGHTS AND TITLE OVER THE SITE**

34.1 License Rights

For the purpose of this Agreement, the Developer shall have rights to the use of the Site as licensee subject to and in accordance with this Agreement.

34.2 Access Rights of the SH&DB and Others

34.2.1 The Developer shall allow free access to the Site at all times for the authorized representatives of the SH&DB, Senior Lenders, and the Independent Engineer, and for the persons duly authorized by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Developer shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

34.2.2 The Developer shall, for the purpose of operation and maintenance of any utility specified in Article 11 and Article 17, allow free access to the Site at all times for the authorized persons of the controlling body of such utility.

**ARTICLE 35
DISPUTE RESOLUTION**

35.1 Dispute Resolution

- 35.1.1** Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 35.2.
- 35.1.2** The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

35.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the _____, SH&DB and the _____ of the Board of Directors of the Developer for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 35.1.1, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 35.3.

35.3 Arbitration

- 35.3.1** Any Dispute which is not resolved amicably by conciliation, as provided in Clause 35.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 35.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Gangtok, and the language of arbitration proceedings shall be English.
- 35.3.2** There shall be a tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 35.3.3** The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 35 shall be final and binding on the Parties as from the date it is made, and the Developer and the SH&DB agree and undertake to carry out such Award without delay.
- 35.3.4** The Developer and the SH&DB agree that an Award may be enforced against the Developer and/or the SH&DB, as the case may be, and their respective assets wherever situated.
- 35.3.5** This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

35.4 Adjudication by Regulatory Authority or Commission or Tribunal

In the event of constitution of a statutory Regulatory Authority or Commission or Tribunal with powers to adjudicate upon disputes between the Developer and the SH&DB, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 35.3, be adjudicated upon by such Regulatory Authority or Commission or Tribunal in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court of Sikkim, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

**ARTICLE 36
DISCLOSURE**

36.1 Disclosure of Specified Documents

The Developer shall make available for inspection by any person, copies of this Agreement and any other documents and/or approvals with respect to the Project (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the designated place to be decided by the SH&DB/Independent Engineer and Contractor's/Developer's Registered Office. The Developer shall prominently display at all conspicuous place at the Site as determined by the SH&DB/Independent Engineer stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

36.2 Disclosure of Documents Relating to Safety

The Developer shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Contractor's/Developer's Registered Office. The Developer shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

Notwithstanding the provisions of Clauses 36.1 and 36.2, the SH&DB shall be entitled to direct the Contractor/ Developer, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 36.1 and 36.2, or portions thereof, the disclosure of which the SH&DB is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 37
MISCELLANEOUS

37.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the state, and the courts at Gangtok shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

37.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

37.3 Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Base Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

37.4 Waiver

37.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

37.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

37.5 Liability for Review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the SH&DB or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Developer nor any observation or inspection of the construction, operation or maintenance as the case may be of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Developer from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) The SH&DB shall not be liable to the Developer by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

37.6 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

37.7 Survival

37.7.1 Termination shall:

- (a) not relieve the Developer or the SH&DB, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

37.7.2 37.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

37.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Developer arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

37.9 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

37.10 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

37.11 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

37.12 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

37.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Developer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Developer may from time to time designate by notice to the SH&DB; provided that notices or other communications to be given to an address outside Gangtok may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Developer may from time to time designate by notice to the SH&DB;
- (b) in the case of the SH&DB, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the _____ of the SH&DB with a copy delivered to the SH&DB Representative or such other person as the SH&DB may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in Gangtok it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

37.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

37.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 38 DEFINITIONS

38.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Accounting Year" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

"Affected Party" shall have the meaning set forth in Clause 26.1;

"Agreement" or **"Development Agreement"** means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Appendix" shall have the meaning set forth in Clause 10.3.1; **"Applicable Laws"** means all laws, brought into force and effect by Government of India or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"Applicable Permits" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project as applicable during the subsistence of this Agreement;

"Appointed Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Construction Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"Assets" shall mean the assets permitted to be developed by the Developer on the Residential Property.

"Associate" or **"Affiliate"** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Authority Contractor" means such person or persons as may be authorized in writing by the SH&DB to act on its behalf under any of the SH&DB's agreements, including this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of SH&DB under any of SH&DB's agreements, including this Agreement.

"Bank" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"Base Rate" means the base rate declared by the State Bank of India for providing credit facilities;

"Bid" means the documents in their entirety comprised in the bid submitted by the selected bidder/Consortium in response to the Request for Proposals in accordance with the provisions thereof;

"Bid Security" means the security provided by the selected bidder/Consortium to SH&DB along with the Bid in a sum of ₹ .50 Lakhs (Rupees Fifty Lakhs only) in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**BIS**” shall mean Bureau of Indian Standards;

“**Change in Law**” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law or law of the State;
- (b) the repeal, modification or re-enactment of any existing Indian law or law of the State;
- (c) the commencement of any Indian law or law of the State which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law or law of the State by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder/ Consortium Members, together with its/their Associates, in the total Equity to decline below 51% (fifty one per cent) thereof prior to issuance of Completion Certificate and three years thereafter, provided that any material variation as compared to the representations made by the Developer during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be, in the proportion of the equity holding of the selected bidder/ any Consortium Member to the total Equity, if it occurs prior to completion of a period of three years after issuance of the Completion Certificate, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 16.1;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

“**CPWD**” shall mean Central Public Works Department;

“**Company**” means the company acting as the Developer under this Agreement;

“**Completion Certificate**” shall have the meaning set forth in Clause 14.2;

“**Conditions Precedent**” shall have the meaning something that take place before party to a contract, must perform to do their part. set forth in Clause 4.1.1;

“**Consortium**” shall have the meaning as defined in clause 1.3 of RFP;

“**Consortium Member**” shall have the meaning as defined in RFP;

“**Construction Period**” means the period beginning from the Appointed Date and ending with the issuance of the Completion Certificate;

“**Construction of the Project**” means the construction and completion of all works included in or constituting a Project, as specified in Article 2 read with Schedule-B and Schedule-C;n

“**Construction of the Residential Property**” means the construction and completion of all works included in or constituting Residential Property, as specified in Article 2 read with Schedule-B and Schedule-C;

“**Construction Works**” means all works and things necessary to complete the Project in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Developer has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Developer;

“**Covenant**” means establish contract and relationship between two, or formal agreement or promise between two or more.

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Developer requires any reasonable action by the Developer that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“Damages” shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Defect Liability Period” shall have the meaning set forth in Clause 30.1;

“Developer” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Developer Default” shall have the meaning set forth in Clause 28.1.1;

“Dispute” shall have the meaning set forth in Clause 35.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 35;

“Divestment Requirements” means the obligations of the Developer for and in respect of Termination as set forth in Clause 29.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programs, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Developer with one or more Contractors for, inter alia, engineering and Construction of the Project in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Developer has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Developer for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component,

“Escrow Account” means an Account which the Developer shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and

debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"Escrow Agreement" shall have the meaning set forth in Clause 23.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 23.1.1;

"FAR" means Floor Area Ratio of the Site in accordance with area master plan/ development plan and applicable development control regulations, and applicable building norms as amended from time to time;

"Fair Value" means the updated estimated cost of construction of similar assets of equal size and specifications, calculated in accordance with the schedule of rates applicable to the works assigned by the SH&DB to its contractors, less depreciation calculated by what is known as the Age/ Life method as applicable at the time of Termination, as arrived at by the independent valuer mutually appointed by the Parties for the purpose. For this purpose, developer shall submit the design life of the proposed development at the start of Construction Period, as certified by IIT/ NIIT, and this shall further be acknowledged and approved by the SH&DB. This approved design life shall be the basis of calculating depreciation while determining the Fair Value of assets;

"Financial Close" means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"Financial Model" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

"Financial Package" means the financing package indicating the total capital cost of Construction of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"Financing Agreements" means the agreements executed by the Developer in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 26.1;

"GOI" or **"Government"** means the Government of India;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"Government Instrumentality" means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement;

"GOS" means the Government of Sikkim;

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Clause 33.3;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Clause 33.3;

"Independent Engineer" shall have the meaning set forth in Clause 20.1;

"Indirect Political Event" shall have the meaning set forth in Clause 29.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to Article 24, and includes all insurances required to be taken out by the Developer under Clause 24.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (D);

“Lead Member” shall have the meaning as defined in Clause 2.2.2(d) of RFP;

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Maintenance Requirements” shall have the meaning set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“NBC” shall mean National Building Code;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to SH&DB for substituting the Developer in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning set forth in Clause 26.2;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Developer and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Developer has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Developer;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 25.2.1;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning set forth in Clause 26.4

“Pre-Development Period” means the period from the signing of the Agreement till the Appointed Date;

“Prevailing Market Value” shall be equal to the prevalent Circle Rate as notified by the competent authority and as amended from time to time.

“Project” means the **construction of Residential Property** and **operation and maintenance of the Residential Property** in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or material contracts that may be entered into by the Developer with any person in

connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to ₹ .5 crores (Rupees Five Crores);

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as the dwelling units constructed at each site as per the requirement of the SH&DB; (c) All Project Utilities situated at the site, other than the dwelling units, comprising of the entire infrastructure for water supply and electric supply, the facilities created for transmission and treatment of sewage, the internal road network within the residential zone and other appurtenances; (d) all rights of the Developer under the Project Agreements; (e) insurance proceeds; and (f) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Date” means the date on which the Completion Certificate is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth for completion of the Construction of the Project on or before the Scheduled Completion Date;

“Project Utilities” means all the amenities and facilities situated on the Residential Property, as described in Schedule-C;

“Project Milestones” means the project milestones set forth in Project Implementation Schedule;

“PWD” shall mean Public Works Department of Government of Sikkim;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Residential Property” means the site for development of residential flats and other facilities, at Lumsey, 5th Mile, Tadong, Gangtok, East Sikkim.

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital (B);

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project as applicable in accordance with this Agreement;

“Safety Requirements” shall have the meaning set forth in Clause 18.1.1;

“Scheduled Completion Date” shall have the meaning set forth in Clause 12.3.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Developer to the extent as permissible in accordance with Article 31 of the Agreement;

“SH&DB Representative” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Developer to, and expressly approved by, the SH&DB;

“**State**” means the State of Sikkim and “**State Government**” means the Government of Sikkim;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Developer under the provisions of the Companies Act, 2013/1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 25.2.1;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Contractor’s/Developer’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Base Rate in case of loans expressed in Indian Rupees but does not include any interest that had fallen due one year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Developer’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Substitution Agreement**” shall have the meaning set forth in Clause 31.3;

“**Suspension**” shall have the meaning set forth in Clause 31.1;

“**Taxes**” means any Indian taxes including Goods & Services Tax, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by SH&DB to the Developer upon Termination in accordance with the provisions of this Agreement;

“**Tests**” means the tests set forth in Schedule-I to determine the completion of Construction of the Project in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package; and
- (b) the actual capital cost of the Project upon completion of Construction of Project ;

“**Transfer Date**” means the date on which this Agreement and the Lease Right hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**User**” means any person who is authorized by the SH&DB and /or Developer or any agency claiming through it to use the Project or any part thereof;

“**Vesting Certificate**” shall have the meaning set forth in Clause 29.4;

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
SECRETARY acting through _____,
Sikkim Housing & Development Board by:
(Signature)
(Name)
(Designation)
In the presence of:

THE COMMON SEAL OF DEVELOPER has been affixed
pursuant to the resolution passed by the Board of
Directors of the Developer at its meeting held on the
..... day of 20..... hereunto affixed in the presence of
....., Director, who has signed these
presents in token thereof and,
Company Secretary / Authorized Officer who has
countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED
For and on behalf of
Director acting through _____, Sikkim
(Name of Developer) by:
(Signature)
(Name)
(Designation)
In the presence of: