

agreed from time to time **provided that** if any additional insurance premium costs and expenses by way of/and maintenance is required to be incurred in respect of the Said Complex by virtue of any particular use and/or in the accommodation, the Developer and the Owner shall be liable to pay and bear such additional costs and expenses with regard to their respective Allocations. The Maintenance Charges shall be fixed by the Owner and the Developer after mutual discussion and till such maintenance is handed over to Society/Association and/or any other organization, the Developer shall collect the Maintenance Charges.

14. **Obligations of Developer**

- 14.1 **Completion of Development:** The word 'completion' and its grammatical variants shall mean habitable and tenantable state with adequate water supply, sewage connection, electrical installation and all other facilities and amenities as be required to be provided to make the Units ready-for-use and occupation.
- 14.2 **Compliance with Laws:** The execution of the Project shall be in conformity with the prevailing laws, rules and bye-laws of all concerned authorities and State Government/Central Government bodies and it shall be the mutual responsibility of the Parties to ensure proper compliance.
- 14.3 **Planning, Designing and Development:** The Developer shall be responsible for planning, designing and development of the New Buildings with the help of the Architect, professional bodies, contractors, etc.
- 14.4 **Commencement of Project:** The Parties confirm that the development of the Said Property will be commenced as per the Specifications, Building Plans, schemes, rules, regulations, bye-laws and approvals of the Planning Authorities.
- 14.5 **Strict Adherence by Developer:** The Developer has assured the Owner that it shall implement the terms and conditions of this Agreement strictly without any violation and shall adhere to the strict quality controls.
- 14.6 **Construction at Developer's Cost:** The Developer shall construct the Said Complex at its own cost and responsibility. The Developer shall be responsible and liable to Government, Corporation and other authorities concerned.
- 14.7 **Tax Liabilities:** All tax liabilities in relation to the development, namely sales tax, value added tax, service tax, works contract tax and other dues shall be paid by the Developer. Any tax on income arising out of transfer of the Owner's Allocation and service tax relating to the Owner's Units shall be borne by the Owner.
- 14.8 **Permission for Construction:** Subject to the specific responsibilities mentioned in this Agreement, it shall be the responsibility of the Developer to obtain all permissions required from various Government authorities for further sanction of the Building Plans and permission to execute the Project. The expenses to be incurred for obtaining all such sanctions and permissions shall (unless otherwise provided for in this Agreement) be borne by the Developer.
- 14.9 **Responsibility for Marketing:** The Developer shall be responsible for marketing of the Project and the cost shall be shared by the Parties in proportion to their allocation as mentioned in this Agreement.

- 14.10 **No Violation of Law:** The Developer hereby agrees and covenants with the Owner not to violate or contravene any of the provisions of the rules applicable to construction of the Said Complex.
- 14.11 **No Obstruction in Dealing with Owner's Units:** The Developer hereby agrees and covenants with the Owner not to do any act deed or thing whereby the Owner is prevented from enjoying, selling, assigning and/or disposing off any part or portion of the Owner's Units.
- 15. Obligations of Owner**
- 15.1 **Co-operation with Developer:** The Owner undertakes to fully co-operate with the Developer for obtaining all permissions required for development of the Said Property as also in compliance of all the statutory regulations and acts as applicable for development of the Said Property/Said Complex.
- 15.2 **Act in Good Faith:** The Owner undertakes to act in good faith towards the Developer (and any appointed and/or designated representatives) so that the Project can be successfully completed.
- 15.3 **Documentation and Information:** The Owner undertakes to provide the Developer with any and all documentation and information relating to the Said Property as may be required by the Developer from time to time provided the same are available with the Owner.
- 15.4 **No Obstruction in Dealing with Developer's Functions:** The Owner hereby covenants not to do any act, deed or thing whereby the Developer may be prevented from discharging its functions under this Agreement.
- 15.5 **No Obstruction in Construction:** The Owner hereby covenants not to cause any interference or hindrance in the construction of the Said Complex.
- 15.6 **No Dealing with Said Property:** The Owner hereby covenants not to let out, grant lease, mortgage and/or charge the Said Property or any portions thereof save in the manner envisaged by this Agreement.
- 15.7 **Strict Adherence by Owner:** The Owner has assured the Developer that it shall implement the terms and conditions of this Agreement strictly without any violation and shall adhere to the stipulations of time limits without default in terms of this Agreement.
- 15.8 **No Assignment:** The Owner hereby agrees and covenants with the Developer not to transfer and/or assign the benefits of this Agreement or any portion thereof, without the prior consent in writing of the Developer and any assignment or transfer without such prior written consent shall make the Owner collectively liable for damages and compensation to the Developer.
- 16. Indemnity**
- 16.1 **By Developer:** The Developer hereby indemnifies and agrees to keep the Owner saved harmless and indemnified of from and against any and all loss, damage or liability suffered by the Owner in relation to the Project and/or to the development and/or to the construction of the Said Complex and/or defect therein and those resulting from breach of this Agreement by the Developer.

16.2 **By Owner:** The Owner hereby indemnifies and agrees to keep the Developer saved harmless and indemnified of from and against any and all actions, suits, costs, proceedings and claims that the Developer may suffer due to any defect in title of the Owner to the Said Property and/or any encumbrance or liability whatsoever thereon.

17. Corporate Warranties

17.1 **By Developer:** The Developer warrants to the Owner that:

17.1.1 **Proper Incorporation:** it is properly incorporated under the laws of India.

17.1.2 **Right Power and Capacity:** it has the right, power and capacity to enter into this Agreement and to perform the obligations hereunder and in so doing, is not in breach of any obligations nor duties owed to any third parties and will not be so as a result of performing its obligations under this Agreement.

17.1.3 **Permitted by Memorandum and Articles of Association:** the Memorandum and Articles of Association permit the Developer to undertake the activities covered by this Agreement.

17.1.4 **Board Authorization:** the Board of Directors of the Developer has authorized the signatory to sign and execute this Agreement.

17.2 **By Owner:** The Owner warrant to the Developer that:

17.2.1 **Proper Incorporation:** they are properly incorporated under the laws of India.

17.2.2 **Right Power and Capacity:** they have the right, power and capacity to enter into this Agreement and to perform the obligations hereunder and in so doing, is not in breach of any obligations nor duties owed to any third parties and will not be so as a result of performing their obligations under this Agreement.

17.2.3 **Permitted by Memorandum and Articles of Association:** the Memorandum and Articles of Association permit the Owner to undertake the activities covered by this Agreement.

17.2.4 **Board Authorization:** the Board of Directors of the Owner has authorized the signatory to sign and execute this Agreement.

17.3 **Warranties Independent:** Each of the warranties, covenants, indemnities and undertaking set out in this Agreement is separate and independent.

18. Limitation of Liability

18.1 **No Indirect Loss:** Notwithstanding anything to the contrary herein, neither the Developer nor the Owner shall be liable in any circumstances whatsoever to each other for any indirect loss suffered or incurred.





19. Miscellaneous

- 19.1 **Parties Acting under Legal Advice:** Each Party has taken and shall take their own legal advice with regard to this Agreement and all acts done in pursuance hereof and the other Party shall not be responsible for the same.
- 19.2 **Essence of Contract:** The Owner and the Developer expressly agree that the mutual covenants and promises contained in this Agreement shall be the essence of this contract.
- 19.3 **Documentation:** The Developer shall be responsible for meeting all costs and expenses towards execution and registration of any document for giving effect to all or any of the terms and conditions set out in this Agreement. The Owner shall however pay legal fees and other professional charges for any advice not common to the Project.
- 19.4 **Valid Receipt:** The Owner shall pass valid receipts for all amounts paid under this Agreement.
- 19.5 **No Partnership:** The Owner and the Developer have entered into this Agreement purely as a contract and nothing contained herein shall be deemed to be or construed as a partnership between the Parties in any manner nor shall the Parties constitute an association of persons.
- 19.6 **No Implied Waiver:** Failure or delay by either Party to enforce any rights under this Agreement shall not amount to an implied waiver of any such rights.
- 19.7 **Further Acts:** The Parties shall do all further acts, deeds and things as may be necessary to give complete and meaningful effect to this Agreement.
- 19.8 **No Demise or Assignment:** Nothing in these presents shall be construed as a demise or assignment or conveyance in law of the Said Property or any part thereof to the Developer by the Owner or as creating any right, title or interest therein in favour of the Developer except to develop the Said Property in terms of this Agreement **provided however** the Developer shall be entitled to borrow money for the Project in the manner stated in this Agreement without creating any financial or other liability on the Owner.

20. Termination

- 20.1 **Circumstances of Mutual Termination:** In the event final sanction of the Building Plans and all other permissions, consents, clearances, registrations and no objections required for commencement of construction not being obtained for any reason whatsoever, this Agreement shall stand terminated by mutual consent.
- 20.2 **No Cancellation:** Except as mentioned in Clauses 15.8 and 20.1 above, none of the Parties shall be entitled to cancel or rescind this Agreement without recourse to arbitration. In the event of any default on the part of either Party, the other Party shall be entitled to claim specific performance of this Agreement and also for damages and the Parties agree that the Arbitration Tribunal shall be empowered to award specific performance or cancellation of this Agreement and additionally also to award damages and other such reliefs.

21. Force Majeure

21.1 **Meaning:** Force Majeure shall mean and include an event preventing either Party from performing any or all of its obligations under this Agreement, which arises from, or is attributable to unforeseen occurrences, acts, events, omissions or accidents which are beyond the control of the Party so prevented and does not arise out of a breach or default by such Party of any of its obligations under this Agreement, including, without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supply, war, military operations, riot, crowd disorder, terrorist action and civil commotion strike, lock-outs, labor unrest or other industrial action, non-availability of construction material, hike in prices of construction material and any legislation, regulation, ruling or any relevant Government or Court orders.

21.2 **Saving Due to Force Majeure:** If either Party is delayed in or prevented from performing any of its obligations under this Agreement by any event of force majeure, that Party shall inform the other Party in writing within 7(seven) days of the commencement of the event of force majeure specifying the nature and extent of the circumstances giving rise to the event/s of force majeure. Subject to written notification as above, neither Party shall be deemed to have defaulted in the performance of its contractual obligations whilst the performance thereof is prevented by force majeure and the time limits laid down in this Agreement for the performance of such obligations shall be extended accordingly upon occurrence and cessation of any event constituting force majeure.

21.3 **Reasonable Endeavours:** The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of an event of force majeure shall use all reasonable endeavors to bring the event of force majeure to a close or to find a solution by which this agreement may be performed despite the continuance of the event of Force Majeure.

22. Confidentiality

22.1 **Confidential Information:** Confidential Information shall mean and include all trade secrets, business plans and other information relating to (whether directly or indirectly) the businesses thereof (including, but not limited to, the provisions of this Agreement) and in whatever form, which is acquired by or disclosed to the other Party pursuant to this Agreement but excluding anything which is known/ available in the public domain (**Confidential Information**).

22.2 **Handling of Confidential Information:** In consideration of Confidential Information of each Party (**Disclosing Party**) being made available to the other Party (**Receiving Party**) under this Agreement, the Receiving Party shall at all times:

22.2.1 **Secrecy:** treat all such Confidential Information as secret and confidential and take all necessary steps to preserve such confidentiality.

22.2.2 **No Misuse:** not use any such Confidential Information other than for the purpose of performing its obligations under this Agreement and in particular, not use or seek to use such Confidential Information to obtain (whether directly or indirectly) any commercial, trading or other advantage (whether tangible or intangible) over the Disclosing Party.

- 22.2.3 **No Third Party Disclosure:** not disclose such Confidential Information to anyone other than with the prior written consent (such consent to be granted or withheld at the Disclosing Party's absolute discretion) of the Disclosing Party provided that no consent shall be required for any disclosure to third parties for the purpose of compliance with law and/or for implementation of this Agreement.
- 22.2.4 **No Copying:** not make any copies of any such Confidential Information (including, without limitation, any document, electronic file, note, extract, analysis or any other derivation or way of representing or recording any such Confidential Information) without the Disclosing Party's prior written consent (such consent to be granted or withheld at the Disclosing Party's absolute discretion).
- 22.2.5 **Acting on Instruction of Disclosing Party:** upon written request by the Disclosing Party, promptly deliver to the Disclosing Party or at the direction of the Disclosing Party, destroy all materials containing any such Confidential Information and all copies, extracts or reproductions of it (as permitted under this Agreement) and to certify compliance to the Disclosing Party in writing.
- 23. Entire Agreement**
- 23.1 **Supersession:** This Agreement constitutes the entire agreement between the Parties and revokes and supercedes all previous discussions/correspondence and agreements between the Parties, oral or implied.
- 24. Severance**
- 24.1 **Partial Invalidity:** If any provision of this Agreement or the application thereof to any circumstance shall be found by any court or administrative body of competent jurisdiction to be invalid, void or unenforceable to any extent, such invalidity or unenforceability shall not affect the other provisions of this Agreement and the remainder of this Agreement and the application of such provision to circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 24.2 **Deletion of Invalid Provision:** If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification/s as may be necessary to make it valid and enforceable.
- 24.3 **Reasonable Endeavour for Substitution:** The Parties agree, in the circumstances referred above, to use all reasonable endeavors to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves, to the greatest extent possible, the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the Parties (if any) under any invalid or unenforceable provision of this Agreement shall be suspended whilst an attempt at such substitution is made.
- 25. Reservation of Rights**
- 25.1 **Right to Waive:** Any term or condition of this Agreement may be waived at any time by the Party who is entitled to the benefit thereof. Such waiver must be in writing and must be executed by such Party.

- 25.2 **Forbearance:** No forbearance, indulgence or relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision.
- 25.3 **No Waiver:** Any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver or acquiescence to or recognition of any right under or arising out of this Agreement or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.
- 25.4 **No Continuing Waiver:** A waiver on occasion shall not be deemed to be waiver of the same or any other breach or non-fulfillment on a future occasion. No omission or delay on the part of either Party to require due and punctual performance of any obligation by the other Party shall constitute a waiver of such obligation of the other Party or the due and punctual performance thereof by such other Party and it shall not in any manner constitute a continuing waiver and/or as a waiver of other breaches of the same or other (similar or otherwise) obligations hereunder or as a waiver of any right or remedy that such Party may otherwise have in law or in equity.
- 26. Amendment/Modification**
- 26.1 **Express Documentation:** No amendment or modification of this Agreement or any part hereof shall be valid and effective unless it is by an instrument in writing executed by both the Parties and expressly referring to the relevant provision of this Agreement.
- 27. Notice**
- 27.1 **Mode of Service:** Any notice or other written communication given under or in connection with this Agreement may be delivered personally, or by facsimile transmission, or sent by prepaid recorded delivery, or registered post with acknowledgement due to the proper address and for the attention of the relevant Party (or such other address as is otherwise notified in writing by each Party from time to time). The Owner shall address all such notices and other written communications to the Director of the Developer and the Developer shall address all such notices and other written communications to the Director of the Owner.
- 27.2 **Time of Service:** Any such notice or other written communication shall be deemed to have been served:
- 27.2.1 **Personal Delivery:** if delivered personally, at the time of delivery.
- 27.2.2 **Registered Post:** if sent by prepaid recorded delivery or registered post on the 4th day of handing over the same to the postal authorities/service provider.
- 27.2.3 **Facsimile:** if sent by facsimile transmission, at the time of transmission (if sent during business hours) or (if not sent during business hours) at the beginning of business hours next following the time of transmission, in the place to which the facsimile was sent.

27.3 **Proof of Service:** In proving such service it shall be sufficient to prove that personal delivery was made by producing the acknowledgement of receipt or in the case of prepaid recorded delivery or registered post, that such notice or other written communication was properly addressed and delivered to the postal authorities or in the case of a facsimile message, that an activity or other report from the sender's facsimile machine can be produced successful transmission in respect of the notice or other written communication showing the recipient's facsimile number and the number of pages transmitted.

27.4 **Electronic Mail:** Any notice sent by way of electronic mail (e-mail) shall be considered not to have been served, unless duly confirmed by the recipient by email or any other form of communication.

28. Arbitration

28.1 **Disputes and Pre-referral Efforts:** The Parties shall attempt to settle any disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively **Disputes**), by way of negotiation. To this end, each of the Parties shall use its reasonable endeavors to consult or negotiate with the other Party in good faith and in recognizing the Parties' mutual interests and attempt to reach a just and equitable settlement satisfactory to both Parties.

28.2 **Referral to Arbitration:** If the Parties have not settled the Disputes by negotiation within 30 (thirty) days from the date on which negotiations are initiated, the Disputes shall be referred to and finally resolved by a sole arbitrator jointly appointed by the Parties (**Sole Arbitrator**), in terms of the Arbitration and Conciliation Act, 2013.

28.3 **Conduct of Arbitration Proceeding:** The Parties irrevocably agree that:

28.3.1 **Place:** The place of arbitration shall be Kolkata only.

28.3.2 **Language:** The language of the arbitration shall be English.

28.3.3 **Interim Directions:** The Sole Arbitrator shall be entitled to give interim awards/directions regarding the Disputes.

28.3.4 **Procedure:** The Sole Arbitrator shall be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The arbitration shall otherwise be carried out in terms of and in accordance with the Arbitration and Conciliation Act, 1996 with modifications made from time to time and the provisions of the said Act shall apply to the arbitration proceedings.

28.3.5 **Binding Nature:** The directions and interim/final award of the Sole Arbitrator shall be binding on the Parties.

29. Jurisdiction

29.1 **Court:** In connection with the aforesaid arbitration proceedings, the District Court of South 24 Parganas and the Hon'ble High Court at Calcutta only shall have jurisdiction to receive, entertain, try and determine all actions and proceedings.

30. Rules of Interpretation

- 30.1 **Presumptions Rebutted:** It is agreed that all presumptions which may arise in law at variance with the express provisions of this Agreement stand rebutted and that no presumptions shall arise adverse to the right, title and interest of Parties to the Said Property.
- 30.2 **Statutes:** In this Agreement, any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether before or after the date of this Agreement and shall also be construed as referring to any previous statute, statutory provision or subordinate legislation amended, modified, consolidated, re-enacted or replaced by such statute, statutory provision or subordinate legislation. Any reference to a statutory provision shall be construed as including references to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision.
- 30.3 **Number:** In this Agreement, any reference to singular includes plural and vice-versa.
- 30.3 **Gender:** In this Agreement, words denoting any gender including all other genders.
- 30.4 **Party:** In this Agreement, any reference to a Party is to a party to this Agreement.
- 30.5 **Clause or Paragraph:** In this Agreement, any reference to a clause or paragraph or schedule (other than to a schedule to a statutory provision) is a reference to a clause or paragraph or schedule (as the case may be) of this Agreement and the schedules form part of and are deemed to be incorporated in this Agreement.
- 30.6 **Including:** In this Agreement, any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 30.7 **Headings:** In this Agreement, the headings are inserted for convenience of reference only and are not intended to impact the interpretation or meaning of any clause and shall consequently not affect the construction of this Agreement.

1st Schedule (Said Property)

Land measuring 87 (eighty seven) *cottah* and 5 (five) *chittack*, more or less, **together with** RT sheds and structures measuring 5000 (five thousand) square feet erected thereon, situate, lying at and being Municipal Premises No. 73, Diamond Harbour Road, Post Office Behala, Kolkata-700104, Police Station Behala, within the jurisdiction of Ward No. 144 of Kolkata Municipal Corporation, comprised in L.R. *Dag* Nos. 649, 650, 650/997, 650/998, 651, 652, 653 and 654, recorded in L.R. *Khatian* No. 2605, *Mouza* Joka, J.L. No. 21, Sub-Registration District Behala, District South 24 Parganas, delineated on the **Plan** annexed hereto and bordered in color **Red** thereon and butted and bounded as follows:

On the North : By Embankment Road

- On the East** : By Naravani Studios
- On the South** : By Indian Institute of Management and vacant plot
- On the West** : By Diamond Harbour Road

2nd Schedule
(Devolution Of Title)

1. **Ownership of Lawrence Chemical & Engineering Co. Private Limited:** By a Deed of Conveyance dated 12th July, 2002 (**Said Deed**), registered in the Office of the Additional Registrar of Assurances, Calcutta, in Book No. I, being No. 5041 for the year 2002, Excel Frits & Colours Limited (formerly known as Ferro Coatings & Colours Limited) sold, conveyed and transferred the entirety of the Said Property to Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited), free from all encumbrances. Thus, Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited) [Owner herein] became the sole and absolute owner of the Said Property.
2. **Loss of Said Deed:** Inadvertently the original of the Said Deed along with other documents with regard to the Said Property got misplaced by one of the employee of the Owner i.e. Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited) [Owner herein].
3. **General Diary & Paper Publication:** Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited) [Owner herein] for the above loss of original of the Said Deed and the other documents lodged a report with Bhowanipore Police Station which was registered as G.D.E. No. 1487 dated 15th July, 2009. In this regard Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited) [Owner herein] had also issued Public Notices in The Telegraph and Ananda Bazar Patrika, but no claim or objection were raised against the Said Property or the Said Deed or with regard to the other documents.
4. **Deed of Declaration:** By a Deed of Declaration dated 4th November, 2009, registered in the Office of the Additional District Sub-Registrar, Alipore, in Book No. IV, CD Volume No. 5, at Pages 542 to 554, being No. 01832 for the year 2009, Lawrence Chemical & Engineering Co. Private Limited (presently known as Rajat Gateway Private Limited) [Owner herein] made a declaration with regard to the loss of the Said Deed and other documents with regard to the Said Property.
5. **Change of Name:** The name of Lawrence Chemical & Engineering Co. Private Limited has been changed from Lawrence Chemical & Engineering Co. Private Limited to Rajat Gateway Private Limited on 17th January, 2014 and it has been recorded in the Fresh Certificate of Incorporation issued by the Registrar of Companies.