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Certified that the document is admitted to registration. The signature sheet and the endorsement sheet attached with this document are the part of this document.

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District Sub-Registrar-II  
Alipore, South 24 Parganas.

10 JAN 2017

This Development Agreement made this the 10th day of January 2017 ("Agreement") Between (1) Adya Kutir Private Limited, a company existing under the provisions of the Companies Act, 2013, having its registered office at 'Todi Mansion', 9th floor, 1, Lu Shun Sarani, Kolkata - 700 073, Police Station Bowbazar, Post Office Chittaranjan Avenue, having Income Tax PAN No. AAHCA0922H, (2) Three Ha Industries Private Limited, a company existing under the provisions of the Companies Act, 2013, having its registered office at 'Todi Mansion', 9th floor, 1, Lu Shun Sarani, Kolkata - 700 073, Police Station Bowbazar, Post Office Chittaranjan Avenue, having Income Tax PAN No. AABCT1357K, (3) Adya Plaza Private Limited, a company existing under the provisions of the Companies

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Act, 2013, having its registered office at 14F, Swinhoe Street, Kolkata - 700 019, Police Station Gariahat, Post Office Ballygunge, having Income Tax PAN No. AAHCA8063F, and (4) **Suhana Awas Private Limited**, a company existing under the provisions of the Companies Act, 2013, having its registered office at 14F, Swinhoe Street, Kolkata - 700 019, Post Office Gariahat, Police Station Ballygunge, having Income Tax PAN No. AALCS3838C, each represented by its authorized signatory/director, as the case may be, Mr. Arpan Dutta, son of Sambhu Nath Dutta, residing at Ramkrishna Ashram, Kumarpara, Kamarpol, Diamond Harbour - 743 368, Police Station Diamond Harbour, Post Office Sarisha, having Income Tax PAN No. ARQPD3478A, collectively hereinafter referred to as the "Owners" (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include each of their respective successors-in-interest and/or permitted assigns) of the **One Part**

**And**

**Hazra Exotica LLP**, a limited liability partnership incorporated under the provisions of the Limited Liability Partnership Act, 2008, having its registered office at 14F, Swinhoe Street, Kolkata - 700 019, Post Office Ballygunge, Police Station Gariahat, having Income Tax PAN No. AAIFH0141H, represented by its authorized signatory, Mr. Amit Kumar Bhawsinghka, son of Ganpat Ram Bhawsinghka, residing at AF 365, Hanapara Kestopur, Flat No. 2B, Kolkata - 700 102, Police Station Baguihati, Post Office Milan Bazar (Keshtopur), having Income Tax PAN No. AHMPB7407M, hereinafter referred to as the "Developer" (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and/or permitted assigns) of the **Other Part**.

The "Owners" and the "Developer" are hereinafter collectively referred to as the "Parties" and individually as a "Party".

**Whereas:**

- A. By and under several registered deeds of conveyance the Owners herein became and are the full and absolute owners of All That the Premises No. 650, Raja Ram Mohan Roy Road, Kolkata - 700 008 recorded to admeasure 1 (one) bigha 8 (eight) cottahs 7 (seven) chittacks and 29 (twenty nine) sq.ft. more or less together with all structures thereon ("Said Premises") more specifically described in the **First Schedule** hereunder written, with each of the Owners being respectively entitled to an equal undivided 1/4<sup>th</sup> (one-fourth) share and/or interest therein.

- B. The Developer having been incorporated to *inter alia* engage in the business of and/or to undertake construction and development of real estate projects, on or about the Effective Date, the Developer and the Owner Nos. 1, 2 and 3 along with the then erstwhile co-owner of the Said Premises, namely Well Plan Corporate Management Private Limited, arrived at a mutual understanding whereby it was agreed that the Developer shall undertake, execute and complete, at its own costs and expenses, the designing, planning, development, construction, etc. of the Project and further shall be entitled to deal with and/or alienate the same, in lieu of the consideration and other terms and conditions, each as mutually agreed between the said parties.
- C. In furtherance/pursuance of the aforesaid understanding, several acts, deeds and things were done, executed and performed including submission of a plan to the Kolkata Municipal Corporation for the development of the Said Premises.
- D. Subsequent to the purchase on 2<sup>nd</sup> December, 2015 by the Owner No. 4 of the undivided 1/4<sup>th</sup> (one-fourth) share and/or interest of the said Well Plan Corporate Management Private Limited in the Said Premises, the Owner No. 4 duly accepted, confirmed and consented to each of the several acts, deeds and things already done, executed and performed in pursuance/furtherance of the aforesaid understanding arrived at with the Developer in the respect of the Said Premises, and the Developer continued with the performance and fulfilment of its obligations in respect of the development of the Project including but not limited to causing the building plan to be sanctioned by the Kolkata Municipal Corporation vide Building Permit No. 2016130109 on 27<sup>th</sup> September, 2016 ("Plan").
- E. The Parties are now desirous of recording in writing the agreed terms and conditions already mutually agreed to on the Effective Date (being the one which is first and prior in time) pertaining to the commercial exploitation of the Said Premises.

**Now Therefore**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement and other good and valuable consideration (the sufficiency whereof is hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows:-



## Article 1

### Definitions and Interpretation

#### 1.1 Definitions

In addition to any other terms which are defined in this Agreement, and unless the context otherwise requires, each of the following terms, when used in this Agreement, shall have the respective meaning assigned to them in this Article:

- 1.1.1 **"Agreement"** shall mean this Agreement together with each of the Schedules stated and/or incorporated herein, by reference or otherwise, as the case may be, as may be amended in writing by the Parties from time to time by way of letters and/or supplemental agreements and/or addenda to the Agreement.
- 1.1.2 **"Applicable Law(s)"** shall mean and include all applicable Indian laws, statutes, enactments, acts of legislature, parliament, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives, orders, binding actions etc. of any Governmental Authority, tribunal, board, court, as updated or revised or amended from time to time.
- 1.1.3 **"Arbitrator"** shall mean Mr. Tushar Jhunjhunwala, son of Mr. Gopal Jhunjhunwala, residing at 2/2, Bright Street, Kolkata - 700 019.
- 1.1.4 **"Business Day"** shall mean all days on which commercial banks are generally open for business in Kolkata.
- 1.1.5 **"Common Areas And Facilities"** shall mean such areas, parts and portions, facilities and utilities at the Project, as may be mutually identified and agreed to in writing by and between the Parties, intended to be made available for the common use and enjoyment of/by the Identified Person(s) and/or for the lawful occupiers of the several units comprising the Project.
- 1.1.6 **"Completion Certificate"** shall have the meaning ascribed to such term in Clause 6.1(i) of this Agreement.
- 1.1.7 **"Deposits"** shall mean each of the amounts levied/charged/imposed/received by the Developer upon/from any Identified Person as deposits, sinking funds, corpus deposits, etc. by whatever name called, for the installation as also for the on-going maintenance and management of *inter alia* the electrical infrastructure, the water connections, generator, all facilities serving the Project, municipal rates and taxes, land revenue, duties, charges

and other outgoings, and towards the proportionate costs and expenses for the maintenance and management of the Common Areas And Facilities including the proportionate share of *inter alia* the municipal rates and taxes and land revenue in respect of the Common Areas And Facilities, and further all other deposits applicable to/imposed on the Identified Person(s), each as determined by the Developer, with the frequency, quantum and heads thereof to be also determined by the Developer, and to be either appropriated by the Developer or to be held by the Developer till the same, as applicable and subject to deductions as the case may be, are transferred to the Holding Organisation or made over to any body/authority, statutory or otherwise.

1.1.8 "Developer's Cure Period" shall have the meaning ascribed to such term in Clause 12.1.2.1 of this Agreement.

1.1.9 "Developer's Event of Default" shall have the meaning ascribed to such term in Clause 12.1.1 of this Agreement.

1.1.10 "Development Rights" shall mean and include all rights, titles, interests, benefits and privileges in the Said Premises and the constructions thereon, which rights, interests, benefits and privileges shall include without limitation, *inter alia*, all rights, benefits, interests and privileges appurtenant thereto, as also the rights stipulated in Article 3 of this Agreement and further the right to *inter alia*:-

- (a) enter into and/or access the Said Premises for the specific purpose of developing, constructing and completing the Project;
- (b) commercially exploit the Said Premises by way of execution and implementation of the Project thereon, and to deal with the Project in terms of this Agreement;
- (c) determine the mode and manner of execution and implementation of the Project including the phases in which the same shall be developed and completed;
- (d) have the Said Premises surveyed and the soil tested;
- (e) appoint architects, surveyors, engineers (civil, structural, mechanical, electrical amongst others), contractors, specialists, valuers, consultants, agencies, service providers and other Person(s) in connection with the execution and implementation of the Project;
- (f) prepare and/or cause to be prepared plans for carrying out any modification(s), revision(s), amendment(s) etc. to/in the Plan as

it stands on the Execution Date in consultation with the Owners, and thereafter submit to/with the concerned statutory authority such plan as mutually approved in writing by and between the Parties, and subsequently to have the same approved and sanctioned by such statutory authority ("Revised Plan"), and further to sign, execute and deliver all writings, undertakings and agreements as may be necessary in connection with the aforesaid, it being agreed and understood that any changes, modifications, revisions, amendments etc. to/in the Revised Plan shall also be done only in consultation with the Owners and as mutually agreed to/approved in writing by and between the Parties hereto;

- (g) prepare and make necessary application(s) to the relevant Governmental Authorities and/or other bodies/authorities and/or to revise, modify or amend such application(s), with the assistance of the Owners, or as the constituted attorney of the Owners, as the case may be, as may be determined by the Developer from time to time, for the smooth execution and implementation of the Project including for obtaining connections of water, electricity and all other utilities and facilities, as also permits for cement, steel and other controlled building materials, if any;
- (h) take such steps as may be necessary to divert all pipes, cables or other conducting media in, under or above the Said Premises or any adjoining or neighbouring premises, and which need to be diverted as a result of the development;
- (i) serve such notices and enter into such agreements with statutory undertakers or other companies as may be necessary to install all the services;
- (j) construct/install/lay internal pathways, drainage facilities, water supply facilities, sewage disposal facilities, electricity supply lines, gas lines, telecommunications and surface and foul water drainage at the Said Premises etc., and to ensure that the same connect directly to the mains;
- (k) determine from time to time, in consultation with the Owners, the mode, manner and calculation of the built-up area and the super built-up area of the several spaces to comprise/comprising the Project;
- (l) carry out the publicity, marketing and sales of every part and portion of the Project in such a manner as may be determined by the Developer, all its own cost and expenses including the fees,

charges etc. payable to any brokers, real estate agents, consultants who may be designated/identified by the Developer for the sales and marketing of the Project;

- (m) sell and/or transfer and/or deal with and/or create any manner of right, title or interest over/in respect of the various areas comprising the Project, in lieu of receipt of the Minimum Consideration and other amounts, and to execute all agreements, deeds, documents in respect thereof, and further to receive and deal with the Gross Revenues and other proceeds generated therefrom/in respect thereof, in the manner stipulated in this Agreement;
- (n) mortgage, create any charge, lien etc. on/in respect of the Said Premises and/or any part or portion thereof and/or on/in respect of the building and the other constructions/improvements constructed/made on any part or portion of the Said Premises and/or any part or portion of the Project, in order to obtain financial assistance from any bank(s) and/or financial institution(s) as identified by the Developer for the purpose of execution and implementation of the Project;
- (o) apply for, obtain and keep renewed from time to time, all sanctions, approvals, no objection certificates, permissions, etc., statutory or otherwise, as may be required for the construction and completion of the Project including but not limited to those pertaining to environment etc., and to comply with and adhere to each of the terms, conditions and stipulations as contained in each of such sanctions, approvals, no-objection certificates, permissions etc., and to keep each of the Owners and the Indemnified Parties safe, harmless and fully indemnified from and against all costs, charges, claims, liabilities, losses and damages in respect thereof;
- (p) apply for and obtain the occupancy certificate, completion certificate, approvals, certificates, consents relating to fire, sewage, environmental clearance, pollution and all other certificates/approvals/licenses/consents/registrations etc. required for the execution, implementation and completion of the Project;
- (q) develop the Project under the joint and/or the collective brand names of the Owners and the Developer, and to display and advertise the name, brand name etc. of the Owners and the Developer at the Said Premises;



- (r) establish such new entity(ies) as the Developer may determine to assume the obligations, liabilities and costs connected with the management and maintenance of the Project, and to entrust/assign/delegate such obligations, liabilities and costs to such entity(ies) as may be determined by the Developer;
- (s) do, execute and perform such other acts, deeds, things etc. as may be required to ensure the smooth execution, implementation and completion of the Project, including those incidental and/or related to any of the rights stated herein.

1.1.11 "Developer's Share" shall have the meaning ascribed to such term in Clause 4.3 (ii) of this Agreement.

1.1.12 "Dispute" shall have the meaning ascribed to such term in Clause 14.1 of this Agreement.

1.1.13 "Effective Date" shall mean the date on which the Owner Nos. 1, 2 and 3 and the Developer entered into an understanding in respect of the subject matter of this Agreement, being the 1<sup>st</sup> day of January, 2015 and/or the date on the which the Owner No. 4 accepted and confirmed each of the acts, deeds, and things done executed and performed by the aforesaid concerned Parties in furtherance/pursuance of their abovementioned understanding.

1.1.14 "Execution Date" shall mean the date of execution of this Agreement.

1.1.15 "Extra Charges" shall mean the extra amounts paid by and/or reimbursements received from any Identified Person towards any extra charges, generator charges together with the charges and expenses allied/related thereto, charges towards electrical infrastructure, charges/fees towards in lieu of having sanctioned any deviations in the construction from the sanctioned plan(s) as stipulated in the relevant statute(s) governing the same, legal fees, legal expenses, stamp duty, registration fees etc., each as determined by the Developer.

1.1.16 "Force Majeure Event" in relation to a Party shall include:

- i) fire, explosion etc.;
- ii) natural calamity, earthquake, lightning, floods, environmental issues and other unforeseeable severe weather conditions;
- iii) any act of God;
- iv) abnormal increase in the price of building materials;



- v) non-sanction and/or non-availability and/or irregular and/or delayed supply/availability and/or scarcity of building materials, essential inputs, water, electricity, sewerage disposal, any connection(s) from the concerned authority etc.;
- vi) labour unrest, lock-out, strike, slow down, disputes with contractors/construction agencies employed and/or to be employed;
- vii) local problem(s), local disturbance(s), sabotage, disturbances, insurrection, enemy action, embargoes;
- viii) war (declared or undeclared), civil commotion;
- ix) terrorist action, litigation, blockade, bandh, armed conflict, riots, curfew, acts of government, any judgment/injunction/interim order and/or any other order of and/or any restriction(s) imposed by any court of competent jurisdiction and/or by any statutory authority and/or by any Governmental Authority;
- x) any notice, order, rule or notification of/from/by the government and/or any other public/competent/statutory authority and/or any court and/or the Kolkata Municipal Corporation and/or any Governmental Authority;
- xi) delay due to any application under any of the building rules of the Kolkata Municipal Corporation;
- xii) temporary or permanent interruption and/or failure of any utilities serving the Project and/or necessary in connection with the development thereof;
- xiii) delay in decisions/clearances/approvals/connections/permissions from/by any statutory and/or other authorities/bodies and/or any Governmental Authority;
- xiv) any delay, obstruction or interference whatsoever in the work of construction resulting from any cause which has or may reasonably be expected to have a material adverse effect on the Developer's rights or duties to perform its obligations under this Agreement;
- xv) any other circumstance beyond the control of a Party and/or beyond the anticipation of a Party.

1.1.17 "Further Gross Revenues" shall have the meaning ascribed to such term in Clause 4.4 of this Agreement.

1.1.18 "Governmental Authority" shall mean: (a) any national, state, city, municipal or local government, governmental authority; and/or (b) any agency or instrumentality of any of the authorities referred to in (a) above; and/or (c) any non-governmental regulatory or administrative authority, body or other organization, to the extent that the rules, regulations, standards, requirements, procedures or orders of such authority, body or other organization have the force of law; and/or (d) any competent court or tribunal; and/or (e) any law, rules or regulations making entity, having or purporting to have jurisdiction on behalf of the Government of India or any State or other sub-division thereof or any municipality, district or other subdivision thereof and any other municipal/local authority including but not limited to those having jurisdiction over the Said Premises.

1.1.19 "Gross Revenues" shall mean and comprise of only:

- (a) the consideration received by the Developer from any Identified Person in lieu of transfer and/or alienation of and/or dealing with any of the units/constructed spaces/areas (covered and/or open) comprising the Project and/or the vehicle parking spaces (covered and/or open) thereat; and
- (b) the amount if any received from any Identified Person towards the interest payable on account of the delay/default made by such Identified Person in payment of any part or portion of the abovementioned consideration amount; and
- (c) the amount if any received from any Identified Person as compensation for cancellation of an agreement executed with such Identified Person.

and shall not include and/or comprise of any other charges, expenses, consideration received/levied by the Developer on any account whatsoever or howsoever, including but not limited to the Deposits, Extra Charges, Other Charges, Taxes, each of which shall exclusively belong to the Developer.

1.1.20 "Holding Organisation" shall mean the entity to be formed and/or caused to be formed by the Developer (the nature, composition, constituents, structure and manner of governance, administration, functioning, management etc. of such entity to be mutually determined by and between the Parties), to be entrusted *inter alia* with the maintenance, management, upkeep and administration of the Project

and such other roles and obligations as may be mutually determined by the Parties.

- 1.1.21 **"Identified Person"** shall mean any Person acceptable to the Developer, who intends to acquire any manner/nature of right or title or interest in or permission to use any unit/constructed space/area (open or covered) and/or any vehicle parking space (open or covered) at the Project, each as identified by the Developer.
- 1.1.22 **"Indemnified Parties"** shall mean each of the Owners and the respective directors, shareholders, officers, personnel, members, representatives, employees, servants and agents of each of the Owners.
- 1.1.23 **"Initial Gross Revenues"** shall have the meaning ascribed to such term in Clause 4.4 of this Agreement.
- 1.1.24 **"Minimum Consideration"** shall have the meaning ascribed to such term in Clause 6.1(ix)(a) of this Agreement.
- 1.1.25 **"Other Charges"** shall mean and include amongst others the interest if any received from any Identified Person on account of the delay/default made by such Identified Person in payment of any amount save and except the amount towards the same which comprises a part of the Gross Revenues, amounts received towards/as fees for nomination, transfer, assignment etc. by an Identified Person if expressly permitted by the Developer in terms of and subject to the provisions of the agreement executed with such Identified Person, the amounts received by way loan(s) from any bank(s), financial institution(s), etc. identified by the Developer to finance the construction and implementation of the Project, and legal fees.
- 1.1.26 **"Outgoings"** shall mean the property taxes, municipal rates, land revenue and all other charges and outgoings, by whatever name called, payable in respect of the Said Premises, each together with interest and penalty thereon, if any.
- 1.1.27 **"Owners' Authorised Representative"** shall have the meaning ascribed to such term in Clause 9.2.1 of this Agreement.
- 1.1.28 **"Owners' Cure Period"** shall have the meaning ascribed to such term in Clause 12.2.2.1 of this Agreement.
- 1.1.29 **"Owners' Event of Default"** shall have the meaning ascribed to such term in Clause 12.2.1 of this Agreement.
- 1.1.30 **"Owners' Share"** shall have the meaning ascribed to such term in Clause 4.3(i) of this Agreement.



- 1.1.31 "**Person(s)**" shall mean any individual, firm, proprietorship enterprise, unincorporated association, body corporate, corporation, company, partnership, limited liability partnership, joint venture, Governmental Authority, trust, a hindu undivided family, union, association or any other entity or organization, and where permitted, such person's respective successor(s), permitted assign(s) and permitted transferee(s);
- 1.1.32 "**Plan**" shall have the meaning ascribed to such term in Recital D of this Agreement.
- 1.1.33 "**Project**" shall mean the development proposed to be undertaken, executed, implemented and completed by the Developer on/at the Said Premises, in terms of and subject to the terms of this Agreement, with the Specifications And Finishes, intended to comprise of a building having self-contained units and areas identified, demarcated and reserved by the Developer for parking of vehicles.
- 1.1.34 "**Revised Plan**" shall have the meaning ascribed to such term in Clause 1.1.9(f) of this Agreement.
- 1.1.35 "**Said Premises**" shall have the meaning ascribed to such term in Recital A, more specifically described in the **First Schedule** hereunder written.
- 1.1.36 "**Sanction Date**" shall have the mean the 27<sup>th</sup> day of September, 2016.
- 1.1.37 "**Security Deposit**" shall have the meaning ascribed to such term in Clause 5.1 of this Agreement.
- 1.1.38 "**Specifications and Finishes**" shall have the meaning ascribed to such term in Clause 6.1 (ii) of this Agreement
- 1.1.39 "**Taxes**" shall mean all the taxes, cesses, assessments, duties, levies, impositions etc. by whatever name called including but not limited to sales tax, service tax, works contract tax, value added tax, GST etc. imposed/leviable/levied/charged/chargeable *inter alia* on any amount paid/payable/deposited/to be deposited by any Identified Person and/or in respect of the Said Premises, irrespective of whether such taxes, cesses, levies etc. are subsisting as on the date hereof or are imposed/levied/revived in the future, with retrospective effect or otherwise, and shall mean and include any increments thereof.

## 1.2 Interpretation:

In the interpretation of this Agreement, the following rules of interpretation shall apply, unless the contrary intention appears:

- 1.2.1 references to any law shall include any statutes and/or rules and/or regulations made or guidelines issued thereunder, and any other rules, regulations, guidelines, policy statements, orders or judgments having the force of law, and in each case, as amended, modified, restated or supplemented from time to time;
- 1.2.2 reference to any agreement, contract, deed or document shall be construed as a reference to it as it may have been or may from time to time be amended, varied, altered, modified, supplemented or novated;
- 1.2.3 references to Recitals, Clauses and Schedules are references to the recitals, clauses and schedules of/to this Agreement. The Recitals and Schedules form an integral part of this Agreement and/or a part of the operative provisions of this Agreement, and references to this Agreement shall, unless the context otherwise requires, include references to the Recitals and Schedules;
- 1.2.4 an obligation and/or covenant of a Party to do something shall include an obligation and/or covenant to ensure that the same shall be done, and an obligation and/or covenant on its part not to do something shall include an obligation and/or covenant not to permit, suffer or allow the same to be done;
- 1.2.5 headings have been incorporated in this Agreement only for convenience of reference, and shall not, in isolation or otherwise, be considered in or affect the construction and/or interpretation of this Agreement;
- 1.2.6 the term "or" shall not be exclusive, and the terms "herein", "hereof", "hereto" and "hereunder" and other terms of similar import shall refer to this Agreement as a whole and not merely to the specific provision where such terms may appear;
- 1.2.7 the words "include", "including" and "amongst others" 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 or words of like import;
- 1.2.8 in the determination of any period of days for the occurrence of an event or the performance of any act or thing, the day on which the event happens or the act or thing is done shall be deemed to be excluded, and if the last day of the period is not a Business Day, then the period shall include the next following Business Day;

- 1.2.9 the words "directly or indirectly" mean directly or indirectly through one or more intermediary Persons or through contractual or other legal arrangements, and "direct or indirect" shall have the correlative meanings;
- 1.2.10 words denoting masculine gender shall include the feminine and neutral genders as well;
- 1.2.11 words denoting singular number shall include the plural and vice versa;
- 1.2.12 where a word or phrase is defined, other parts of speech and grammatical forms and the cognate variations of that word or phrase, shall have the corresponding meanings;
- 1.2.13 any reference to this Agreement or to any of the provisions of this Agreement shall include all amendments, modifications etc. made to this Agreement from time to time by the Parties hereto;
- 1.2.14 in the event of any inconsistency between the Articles/Clauses and the Schedules hereto, the Articles/Clauses of this Agreement shall prevail;
- 1.2.15 all approvals/consents to be granted by any of the Parties under this Agreement and/or any mutual agreements to be arrived at between the Parties shall be in writing.

## Article 2

### Representations and warranties

- 2.1 Each Party hereby represents and warrants to the other Parties as under:
- 2.1.1 it is respectively duly organized and validly existing under the laws of India, and respectively has the full power and authority to enter into this Agreement and to perform its obligations under this Agreement; and
- 2.1.2 the execution and delivery of this Agreement and the performance by each Party of its obligations under this Agreement have been duly and validly authorised by all necessary corporate actions on the part of such Party, and if



called upon, each Party(ies) shall provide copies of all documents in support thereof to the other Party(ies); and

2.1.3 this Agreement constitutes a legal, valid and binding obligation of each Party enforceable against it in accordance with its terms; and

2.1.4 the execution, delivery and performance by each Party of this Agreement and the acts and transactions contemplated hereby do not, with or without the giving of notice or lapse of time or both, violate, conflict with, or require any consent under or result in a breach of or a default under:

(i) Applicable Law(s); and/or

(ii) any order, judgment or decree applicable to it; and/or

(iii) any term, condition, covenant, undertaking, agreement or other instrument to which it is a party or by which it is bound; and/or

(iv) any provision of its respective memorandum of association and/or articles of association, if any, or any other similar constitutional document(s).

2.2 In addition to the above:

2.2.1 the Developer represents that after carrying out its internal survey, valuation, assessment etc. vis-à-vis the marketability of the Project and of all other matters pertaining to the development thereof together with the costs associated therewith, and only after being completely satisfied in all respects, the Developer agreed to undertake the development of the Said Premises, and

2.2.2 the Owners represent that the Said Premises is free from any encumbrances and charges created by the Owners, and has been in the vacant possession of the Owners, and save and except the Owners, no other Person has any right or claim in respect of the ownership of the Said Premises or any part thereof, whether by way of any agreement or otherwise.

## Article 3

## Grant of Development Rights

- 3.1 Subject to and in accordance with the terms and provisions of this Agreement and in lieu of the consideration recorded herein, on and from the applicable Effective Date, each of the Owners confirm the grant, transfer, assurance and assignment in favour of the Developer of the sole and exclusive Development Rights (de hors any exclusive right or interest in the Said Premises and further de hors any exclusive possession thereof).
- 3.2 Subject to and in accordance with the terms and provisions of this Agreement and in lieu of the consideration recorded herein, the Developer confirms acceptance of the aforesaid grant and transfer of the Development Rights, and agrees and covenants to undertake the development of the Project, at its own costs and expense.
- 3.3 It is further clarified and understood that on and from the applicable Effective Date:-
  - 3.3.1 the Owners did not retain any right to transfer and/or deal with and/or encumber the Said Premises other than in the manner stipulated herein and/or as mutually agreed to in writing between the Parties;
  - 3.3.2 the Developer became entitled to commence the work of construction on the Said Premises to the extent the same was/is permissible under Applicable Law(s); and
  - 3.3.3 the Developer became entitled to enter into and/or access the Said Premises without any hindrance, impediment, restriction, prohibition etc. for the specific purpose of developing, constructing and completing the Project.
- 3.4 The Owners hereby agree and undertake that the grant and transfer of the Development Rights to the Developer are on an irrevocable basis, free and clear of all encumbrances.
- 3.5 The Owners shall, without any demur or delay or cavil, co-operate with the Developer and do all acts, deeds, things etc. that may be required or deemed desirable by the Developer to give effect to the provisions of this Agreement, including but not limited to signing and submitting any plans, applications, consents, proposals, permissions etc. to various Governmental Authorities and/or other bodies/authorities, to enable the Developer to *inter alia* exercise the Development Rights.

- 3.6 It is agreed that the Developer shall implement and execute the Project itself and/or through the agencies of/by Person(s) identified and/or nominated by the Developer, on the account of and at the cost of the Developer.

#### Article 4

##### Consideration

- 4.1 The consideration in lieu whereof the Owners have granted and transferred and/or confirmed the grant and transfer of the Development Rights to, unto and in favour of the Developer is:- (i) the Developer agreeing to undertake the construction and completion of the Project at its own cost and expense; and (ii) the receipt (subject to and in accordance with the terms hereof) by the Owners from the Developer of the Owners' Share in the manner stipulated herein.
- 4.2 The consideration in lieu whereof the Developer has accepted and/or confirmed the acceptance of the grant and transfer of the Development Rights *inter alia* by undertaking the construction and completion of the Project at its own cost and expense, is the receipt (subject to and in accordance with the terms hereof) by the Developer of the Developer's Share together with *inter alia* the Deposits, Extra Charges and Other Charges all in the manner stipulated herein.
- 4.3 Subject to the provisions of this Agreement:
- (i) 35% (thirty five percent) of the amounts comprising the Gross Revenues shall belong collectively to the Owners ("Owners' Share");
- and
- (ii) 65% (sixty five percent) of the amounts comprising the Gross Revenues shall belong to the Developer ("Developer's Share").
- 4.4 In order to initially facilitate the Developer in incurring the costs and expenses that would need to be expended towards the development of the Project, and on the basis of the present estimated cost of construction of the Project, it has been mutually agreed and understood between the Parties that the Developer shall be entitled to appropriate the entirety of the initial Gross Revenues that may be received until such Gross Revenues aggregate to a sum of Rs. 11,00,00,000/- (Rupees Eleven Crores only) ("Initial Gross Revenues") as on account/advance receipt of the Developer's Share (subject to subsequent accounting and adjustment thereof), and the Developer will not be obliged to disburse any part or portion of the



Owners' Share from such Initial Gross Revenues. Subsequent to the receipt of the Initial Gross Revenues, all sums received by the Developer towards the Gross Revenues upto a sum of Rs. 5,00,00,000/- (Rupees Five Crores only) ("Further Gross Revenues") shall be paid/distributed by the Developer to the Owners as on account/advance payment/distribution of the Owners' Share (subject to subsequent accounting and adjustment thereof), and the Developer will not be entitled to appropriate any part or portion of the Developer's Share from such Further Gross Revenues. After receipt of the Further Gross Revenues, the Parties shall mutually determine the quantum of their respective entitlements (being respectively the Owners' Share and the Developer's Share) comprised in each of the Initial Gross Revenues and the Further Gross Revenues, and thus ascertain the amount(s) received in excess or in deficit by each of the concerned Parties, such that both the Parties mutually agree to the manner in which all amounts subsequently received/to be received towards the Gross Revenues shall be distributed/appropriated, with the intent that the deficit amount if any receivable by any of the Parties shall first be paid (after taking into account each of the amounts stipulated in Clause 4.5 hereinbelow), and thereafter all Gross Revenues shall be distributed between the Owners (collectively on the one hand) and the Developer (on the other hand) in the ratio of 35:65 respectively.

- 4.5 The Owners' Share shall be payable to the Owners subject to:-
- (a) deduction of the then applicable tax deductible at source; and
  - (b) deduction of the Taxes, if any, payable on the Owners' Share; and
  - (c) deduction of all costs and expenses incurred by the Developer for and on behalf of the Owners including those towards/on account of performing (without prejudice to its rights) any of the obligations which the Owners are/were bound and obliged to do, execute and perform; and
  - (d) deduction of any further/other amounts reimbursable/payable to the Developer whether in terms of any of the terms and conditions stipulated herein or in any other written understanding between the Parties.
- 4.6 It is further agreed and understood between the Parties that in the event it is determined by the Developer that any amount comprising the Gross Revenues is required to be refunded/paid to any Identified Person on any account whatsoever or howsoever, and the Owners' Share in respect thereof has already been paid/distributed to the Owners, then the Owners shall also be obliged to and undertake to so refund/pay such amount as may be advised by the Developer.

- 4.7 The Developer shall, as and when requested for by the Owners' Authorised Representative, provide copies of the agreements entered into with Identified Person(s), and further will maintain only the books of accounts and other papers connected only with the Gross Revenues at its registered office, and the Owners' Authorised Representative shall be entitled to inspect only such books of accounts and to make excerpts therefrom, after prior written notice of 7 (seven) Business Days to the Developer.

## Article 5

### Security Deposit

- 5.1 In order to secure due performance by the Developer of its obligations, the Developer has agreed to deposit with the Owners a sum as mutually agreed to in writing between the Parties as and by way a refundable interest free security deposit ("**Security Deposit**"), the repayment whereof has been secured by the Owners by way of the unhindered, unimpeded and unrestricted right of the Developer and/or its nominee(s), designates(s), representative(s) etc. to enter into and/or access the entirety of the Said Premises.
- 5.2 The **Security Deposit** shall be held by the Owners free of interest, and shall be refunded by the Owners to the Developer within 30 (thirty) days of issuance of the Completion Certificate.

## Article 6

### Obligations of the Developer

- 6.1 The Developer agrees, covenants and undertakes to carry out the construction and completion of the Project at its own cost and expense including those towards the material costs, labour costs and all ancillary costs for construction of the Project, including the fees payable to the architects, contractors, builders, surveyors, consultants etc. appointed by the Developer, and to further do, execute and perform the following acts, deeds and things:-
- i) subject to Force Majeure Events, complete the Project in accordance with the Plan and/or the Revised Plan, as the case may be, as evidenced by a completion certificate issued by the Kolkata Municipal Corporation ("**Completion Certificate**"), within a period of 4 (four) years from the Sanction Date with a grace period of 12 (twelve) months thereafter;

- ii) carry out the development and completion of the Project as also perform its obligations stipulated herein diligently and with due skill, care and efficiency and in a good and workmanlike manner, materially in accordance with the Plan and/or the Revised Plan, as the case may be, and with such specifications and finishes as may be mutually agreed between the Parties from time to time ("**Specifications and Finishes**");
- iii) pay and bear all the Outgoings in respect of the Said Premises commencing on and from the Effective Date (being the one which is first and prior in time) till the date of issuance of the Completion Certificate;
- iv) remain liable and responsible for material compliance of/with all statutory requirements, whether local, state or central in respect of the construction, development and completion of the Project, and keep each of the Owners and the Indemnified Parties safe, harmless and indemnified from and against all costs, charges, claims, liabilities, losses and damages in respect thereof;
- v) remain liable and responsible for any accident and/or mishap taking place while undertaking the construction and completion of the Project save and except any accident and/or mishap caused due to any internal work permitted by the Developer to be carried out by any Identified Person(s), for which such Identified Person(s) shall be and shall remain liable and responsible, and to keep each of the Owners and the Indemnified Parties safe, harmless and indemnified from and against all costs, charges, claims, liabilities, losses and damages in respect thereof;
- vi) make proper provision for security of the Said Premises and the goods, articles, equipments etc. lying thereat;
- vii) make payment of all statutory taxes, rates, etc. payable in relation to the construction, development and completion of the Project;
- viii) periodically or as and when reasonably requested by the Owners' Authorised Representative, inform the Owners' Authorised Representative about the progress of the Project;
- ix) within 7 (seven) Business Days from the Execution Date, mutually decide with the Owners;

- a) the minimum amount to comprise the consideration forming the Gross Revenues payable by an Identified Person ("Minimum Consideration"), on the understanding that the Minimum Consideration shall, as and when requested for by either Party, be reviewed and shall be subject to revision as may be mutually agreed to by and between the Parties hereto, bearing in mind the then prevailing circumstances; and
- b) the terms and conditions governing the alienation of every part and portion of the Project;
  - x) not to allow any person or party to encroach into or upon any part or portion of the Said Premises;
  - xi) not to expose any of the Owners and/or the Indemnified Parties to any liability, and to remain solely liable and/or responsible for all acts, deeds, matters and things pertaining to the construction and completion of the Project, and to pay, perform and observe all the amounts, terms, conditions covenants and obligations on the part of the Developer to be paid, performed and observed;
  - xii) appoint its own professional team for undertaking the development of the Project;
  - xiii) take all necessary action to enforce the due, proper and prompt performance and discharge by members of its professional team and third parties of their respective obligations under all contracts, sub-contracts, agreements etc. executed by the Developer.

6.2 The Developer shall be responsible and liable for the due performance and fulfilment of all the contracts pertaining to the Project, it being clarified and understood that each of the architects, contractors, consultants, service providers, personnel etc. appointed by the Developer for the Project shall be deemed to be the employees, personnel etc. of the Developer, and shall not have and/or shall not be deemed to have any privity of contract with the Owners, and further no right or interest shall be deemed to have been created in the Said Premises in favour of any such entity/person by virtue of the contracts executed by the Developer. The Developer shall be solely liable and responsible for the performance and fulfilment of all obligations (both by itself and by the parties with whom the Developer has contracted) under each of the contracts executed by the Developer and also for compliance of/with Applicable Law(s) in respect of its personnel, employees, etc., and shall keep each of the Owners and the



Indemnified Parties fully safe, harmless and indemnified in respect thereof.

- 6.3 The Developer shall hand over to the Owners, true copies of all the permissions, clearances, no-objection certificates etc. pertaining to the Project as also provide inspection of the same from time to time as may be requested by the Owners.

## Article 7

### Obligations of the Owners

- 7.1 The Owners agree, covenant and undertake that the Owners shall:-
- i) not deal with any part or portion of the Said Premises save in the manner specified in this Agreement;
  - ii) co-operate with the Developer in the execution and implementation of the Project in terms of this Agreement;
  - iii) not cause any hindrance or obstruction in the work of construction provided that the Developer has not committed breach of any of its obligations stipulated in this Agreement;
  - iv) provide the Developer with any documentation and information relating to the Said Premises as may be reasonably required by the Developer from time to time related to the development of the Said Premises provided that the same be available with the Owners;
  - v) render all assistance as may be reasonably requested for by the Developer in obtaining statutory clearances and permissions for the Project, it being clarified and understood that the role of the Owners in this regard shall be merely to assist the Developer and such assistance shall in no manner cast any obligation or liability or responsibility on the Owners regarding the same;
  - vi) sign, execute and deliver such applications, papers, deeds and documents as may be reasonably requested by the Developer from time to time for submission to any Governmental Authority for applying for and obtaining any permission pertaining to the Project;
  - vii) as and when required by the Developer, appear before the concerned Governmental Authorities and/or government departments and/or officers and also all other state, executive,

judicial or quasi-judicial, municipal and other authorities and all courts and tribunals, for all matters connected with the Said Premises and/or in relation to the execution and implementation of the Project;

- viii) remain liable and responsible for payment of all the Outgoings in respect of the Said Premises for the period upto the Effective Date (being the one which is first and prior in time) together with the interest and penalty thereon, if any, irrespective of when the demand for the same is raised and/or received by the Owners;
- ix) in the event of there being any established defect in the title of the Owners in respect of any part or portion of the Said Premises, to cure the same at its own cost and expense;
- x) execute and deliver registered and unregistered power(s) of attorney (each as determined by the Developer) to authorise and empower the Developer and/or the nominee(s) of the Developer, as may be required by the Developer for carrying out various acts, deeds and things in respect of the development and implementation of the Project and also to deal with the same;
- xi) do, execute and perform all such acts, deeds and things as may be reasonably requested from time to time by the Developer;
- xii) act and co-operate in good faith with the Developer in all respects for the execution and implementation of the Project in terms of this Agreement, and provide all assistance as may be required/requested from time to time by the Developer to enable the Developer to implement and complete the Project.

7.2 The Owners have permitted and authorized the Developer to enter the Said Premises to develop the same in terms of this Agreement, it being agreed and understood that such permission/license granted to enter the Said Premises shall however not be construed as delivery of possession under Section 53A of the Transfer of Property Act, 1882, read with Section 2(47)(v) and (vi) of the Income Tax Act, 1961, it being clarified and understood that the legal physical possession of the Said Premises shall always remain and continue to vest and remain with the Owners only. The Developer shall only be permitted to enter upon the Said Premises by way of a licensee to develop the same in terms hereof.

## Article 8

**Borrowing and funding for the Project**

- 8.1 For the sole purpose of raising funds for the execution and implementation of the Project, the Owners shall, as and when requested by the Developer and from time to time as the Developer may deem necessary, cause such parts and portions of the Said Premises as determined by the Developer from time to time together with all rights in respect thereof, to be charged or mortgaged or encumbered including by way of equitable mortgage by deposit of the original title deeds in respect of the Said Premises in favour of bank(s) and/or financial institution(s) identified by the Developer, whereupon the Owners shall hand over the originals of the said title deeds to the aforesaid bank(s) and/or financial institution(s) identified by the Developer, and each of the Owners shall do, carry out, execute and perform each of the several acts, deeds and things in respect of creation of such mortgage, charge etc. including procuring permissions if any required for the same, and signing, executing and delivering all deeds and documents as may be requested for and provided by the Developer.
- 8.2 It is clarified and understood that for the aforesaid purpose of raising funds for the execution and implementation of the Project, the Developer shall, also be entitled to create a charge/mortgage/encumbrance on any part or portion of the building and/or the structure(s) constructed/erected on/at the Said Premises and/or forming a part or portion of the Project, and each of the Owners shall execute such deeds and documents, and furthermore shall do, execute and perform such acts, deeds and things as may be requested for from time to time by the Developer in respect thereof.
- 8.3 The Developer shall remain liable and responsible for the repayment of the aforesaid specific borrowings and shall keep each of the Owners and the Indemnified Parties safe, harmless and indemnified in respect thereof, it being agreed and understood that no charge shall be created over/in respect of the Owners' Share for such borrowings.
- 8.4 Each of the Owners also undertake to execute, submit and make all statutory filings pertaining to the creation of the aforesaid mortgage, charge etc., it being clarified for the avoidance of any doubt that the finance raised by mortgage, charge etc. of the Said Premises will be used only and exclusively for the Project, and such funds will not be diverted for any other project or purpose.
- 8.5 Without prejudice to above mentioned obligations of the Owners, each of the Owners shall authorize and empower the Developer and/or the

nominee(s) of the Developer to do, carry out, execute and perform various acts, deeds and things in respect of creation of such mortgage, charge, encumbrance etc. including signing and executing all necessary deeds and documents.

- 8.6 The Owners shall also provide and render all necessary co-operation and assistance to the Developer as may be required to amend or extinguish any of the aforesaid mortgage rights and/or other encumbrances.

## Article 9

### Authority

#### 9.1 Authority in favour of the Developer

- 9.1.1 In order to facilitate the Developer to undertake the Project and/or for the speedy construction, execution, completion and implementation of the Project, and to, *inter alia*:

- (a) exercise the Development Rights; and
- (b) exercise the rights granted under Article 8 hereinabove; and
- (c) sell, license, lease, transfer, encumber or otherwise dispose of and/or deal with and/or alienate and/or create third party rights, interests etc. over/in respect of any part or portion of the Said Premises (including an undivided share and/or interest therein) and/or the Project.

without prejudice to and in addition to each of the other powers, rights and authorities granted by each of the Owners in favour of the Developer, each of the Owners hereby and hereunder appoint the Developer, as their respective constituted attorney and authorized representative, *inter alia* for each of the aforesaid purposes, and unconditionally grant to, unto and in favour of the Developer and Mr. Anant Nathany, son of Mr. Rajesh Nathany, working for gain at 14F, Swinhoe Street, Kolkata - 700 019, with the power to act jointly and/or severally, the irrevocable powers stated in the **Second Schedule** hereunder written, and further, on the Execution Date the Owners have granted irrevocable powers and authorities to/in favour of the Developer and the said Anant Nathany by way of a separate power(s) of attorney, and furthermore, the Owners will also execute and register requisite documents, including specific powers as may be reasonably required by the Developer in this regard, at the cost and expense of the Developer.