

# **Bihar State Housing Board (BSHB)**

**Government of Bihar**

## **DRAFT DEVELOPMENT AGREEMENT**

**Grant of Lease for Commercial Development of approx.  
1.70 acres of Land at L- Sector in Kankarbagh, Patna in  
Public Private Partnership (PPP) mode**

**BY AND BETWEEN**

**“BIHAR STATE HOUSING BOARD”**

**AND**

**[NAME OF THE SPV]**

**[ADDRESS OF THE SPV]**

**“DEVELOPER”**

..... 2015

## DEVELOPMENT AGREEMENT

This Development Agreement (the "**Development Agreement**") dated this \_\_\_ day of \_\_\_\_\_ 2015 is entered into at .....

### BY AND BETWEEN

**THE BIHAR STATE HOUSING BOARD**, a body corporate constituted by Bihar State Housing Board Act, 1982, represented by its Managing Director and having its principal office at 6, Sardar Patel Marg, Patna - 800015 (hereinafter referred to as the "**BSHB**" or the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**;

### AND

{..... LIMITED,}, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \*\*\*\*\*, represented by its Director/ officer \*\*\*\*\* duly authorised 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 Second Part

### AND

Selected Bidder (as sole proprietorship firm, Individual, Partnership Firm, Company) as Confirming Party

**BSHB** and the **Developer** shall herein after individually be referred to as "**Party**" and collectively as "**Parties**".

### WHEREAS

- A. BSHB intends to undertake commercial development over a land area of approximately \_\_\_\_\_ Acres (approx. \_\_\_\_\_ Square Meters) of Land at \_\_\_\_\_, India as described, more particularly in Schedule I to this Development Agreement (the '**Site**'); and
- B. As part of the proposed development of the Site, BSHB had conducted a competitive bidding process by inviting proposal in the form of bids (the "**Bid**") vide its Tender Notice no. \_\_\_\_\_ dated \_\_\_\_\_ (the "**Request for Proposal**") to undertake the development of the Site, on the terms and conditions specified herein; and

- C. \_\_\_\_\_ (Sole Selected Bidder) OR a Consortium of \_\_\_\_\_, \_\_\_\_\_, and [insert name of the Lead Member and members] submitted the highest Bid with a one-time Lease Premium of Rs. \_\_\_\_\_ and was selected by BSHB as the Selected Bidder and BSHB accepted the Proposal submitted by [●] and issued a Letter of Award (herein after referred to as “LOA”) bearing number [●] dated [●] requiring, inter alia, the execution of this Development Agreement within 45 (Fourty Five) days of the date of issue thereof. The Authority acknowledges that Selected Bidder has signed and returned the duplicate copy of the LOA in acknowledgement thereof vide their letter bearing number [●] dated [●].
- D. The Developer, in compliance of the terms and conditions of the LOA, has paid to BSHB an amount of Rs. \_\_\_\_\_ towards 50% (fifty per cent) of Lease Premium as specified in the RFP & LoA and also agrees to pay to BSHB another sum of Rs. \_\_\_\_\_ towards balance 50% ( fifty per cent) of aforesaid Lease Premium within 75 days of LOA; and
- E. {The Selected Bidder} has since promoted and incorporated the Special Purpose Vehicle (SPV) as a limited liability company registered under the Companies Act 1956, and has requested the Authority to accept the Developer as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Development Agreement pursuant to the LOA for executing the Project.
- F. By its letter dated [●], the Developer has also joined in the said request of the [Single Entity/ Consortium] to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the [Selected Bidder] including the obligation to enter into this Development Agreement pursuant to the LOA. The Developer has further represented to the effect that it has been promoted by the [Single Entity/ Consortium] for the purposes hereof.
- G. The Authority has agreed to the said request of the [Selected Bidder] and the Developer, and has accordingly agreed to enter into this Development Agreement with the Developer for execution of the Project on the terms and conditions set forth hereinafter.
- H. The Developer shall submit an unconditional and irrevocable revolving Bank Guarantee for a value of Rs. [●] (Rupees [●] Crores only) as Performance Security and shall keep it valid for a period stipulated in Article 13.1.
- I. The Developer is desirous of acquiring development rights over the Site for the purposes of conceptualizing, designing, financing, building, constructing, marketing, leasing, operating and maintaining the Assets (as defined hereinafter) upon the Site and BSHB has agreed to grant to the Developer, Lease Rights and other rights in the Site as specified herein subject to the fulfilment of the obligations of the Developer as contained herein in accordance with the terms and conditions of this Development Agreement.

**NOW, THEREFORE,** in consideration of the mutual covenants, terms and conditions and understandings set forth in this Development Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows :-

## ARTICLE I

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

For the purposes of this Development Agreement, the terms defined in the Recitals to this Development Agreement and elsewhere in the text of this Development Agreement, unless otherwise indicated, shall have such meaning throughout this Development Agreement. The terms defined in this Clause 1.1 whenever used in this Development Agreement, unless repugnant to the meaning or context thereof, shall have the meaning as specified hereunder.

"**Affiliate**" or "**Associate**" means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (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);

"**Annual Lease Rent**" shall have the meaning ascribed to it in Clause 6.2.

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgements, 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, licences, permits, authorisations, 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**" shall mean the date on which the Parties hereto have executed Lease Deed.

"**Arbitral Tribunal**" shall have the meaning ascribed to the term in Clause 26.4.1.

"**Assets**" shall mean the assets permitted to be developed on the Site in conformity with the Applicable Laws and Applicable Permits, but not including the Site itself. It shall include mall/shopping complex, office complex, food & beverage spaces, branded retail outlets, banquet halls, hotels etc.

"**Asset and Project Utility Register**" shall have the meaning ascribed to it in Clause 14.3.2.

"**Authorised Representative**" shall have the meaning ascribed to the term in Clause 14.1.1.

"**Bid**" shall have the meaning ascribed to it in Recital B.

"**Business Day**" shall be construed as references to a working day declared (other than a Sunday or public holiday) by Government of Bihar in Patna for its normal functioning;

"**Commercial Operation**" shall mean the readiness of the Asset and/or Project utilities for being used for business operations upon the issue of Completion Certificate enabling the occupation of the Assets by the Developer or the Sub-Lessees, as the case may be;

"**Common Area**" shall mean and include open area, unreserved parking, lounge, portico, reception area, corridors, ducts for electrical, air-conditioning or fitting for all occupants and visitors, fire fighting facilities, water storage and supply, sewages etc., roof, passages etc.

"**Completion Certificate**" shall have the meaning set forth in Clause 17.1;

"**Completion Date Notice**" shall mean intimation, in writing, from Developer to BSHB stating completion of the design, development, construction and other activities, in relation to the Project along with the receipt of Applicable Permits in relation of the Assets, including notarised copy of the occupancy certificate issued by the Competent Government Authority, as more specifically set forth in Clause 17.1.

"**Consideration**" shall have the meaning ascribed to the term in Clause 6;

"**Consortium**" shall mean the Lead Member and other Members of the Selected Bidder taken collectively;

"**Construction Period**" shall refer to mean the period commencing on the Appointed Date and ending on the Project Completion Date;

"**Controlling**", "**Controlled by**" or "**Control**" with respect to any Person, shall mean: (a) the possession, directly or indirectly, of the power to direct or cause the direction of them management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise, or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such Person, or (b) the possession, directly or indirectly, of a voting interest of more than 50% and a contractual shareholder or director with veto right in management matters;

"**Cure Period**" shall have the meaning ascribed to the term in Clause 24.3.1;

"**Debt Service**" shall refer to mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in a Financial Year/Accounting Year to the Lenders and as provided in the Financing Agreements;

"**Deficiency**" shall have the meaning ascribed to the term in Clause 12.1.3;

"**Developer Event of Default**" shall have the meaning ascribed to the term in Clause 24.1;

"**Development Agreement**" shall mean this Development Agreement covering Articles I to XXVII and various Clauses therein and all attached Annexures, Schedules, Exhibits, maps and instruments supplemental to or amending, modifying or confirming this Development Agreement in accordance with the provisions of this Development Agreement, along with Request for Proposal issued by BSHB for this Project;

"**Dispute**" shall mean any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Development Agreement (including its interpretation) between BSHB and the Developer, and so notified in writing by either Party to the other Party;

"**Encumbrances**" means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, right of others, claim, security interest,

title retention agreement, voting trust agreement, interest, option, lien, charge, easement, encroachment or other condition, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership. The word "encumber" shall be construed accordingly;

**"Extended Project Completion Period"** shall have the meaning ascribed to it in Clause 18.1;

**"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 Authority 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 BSHB. This approved design life shall be the basis of calculating depreciation while determining the Fair Value of assets;

**"Financial Default"** means occurrence of a breach of the terms and conditions of the Financing Agreements or a continuous default in debt service by the Developer for a period of 3 (three) months;

**"Financial Model"** means the financial model, prepared by the Developer and approved/adopted by the Lenders for entering into the Financing Agreement with the Developer, setting forth the capital and operating costs of the Project including replacement costs, the mode of financing of such costs, revenues from the Project over Lease Period on the basis of which financial viability of the Project has been determined by the 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 the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity support, if any;

**"Financial Year"** or **"Accounting Year"** shall, for all purposes, mean the period commencing April 1st each year and ending on March 31<sup>st</sup> of the following year;

**"Financing Agreements"** means the agreements executed by the Developer in respect of financial assistance to be provided by 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 financing of the Project;

**"Force Majeure Event"** shall have the meaning ascribed to the term in Clause 22.1.1;

**"Good Industry Practice"** means the practices, methods, techniques, designs, applicable codes and standards, skills, diligence, efficiency, reliability and prudence, which are generally and reasonably expected from a reasonably skilled, prudent and experienced person engaged in the same type of undertaking as envisaged under this Development Agreement and which would be expected to result in the performance of its obligations by the Developer or

BSHB, as the case may be, in accordance with this Development Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

**"Governmental Authority"** shall mean the Government of India, the Government of Bihar, and any other Government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India, including any Governmental Authority having jurisdiction over the Site;

**"Grant"** shall have the meaning ascribed to the term in Clause 3.1.1;

**"Indemnifier"** shall have the meaning ascribed to the term in Clause 21.4.1.

**"Independent Auditor"** shall have the meaning ascribed to the term in Clause 9.1.3;

**"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to Article VIII, and when used in the context of any actor event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

**"Lead Member"** shall mean [insert name of the lead member as designated in the RFP by the consortium members under a valid power of attorney];

**"Lease Deed"** refers to and shall mean the lease deed to be executed by and between BSHB and the Developer subject to the fulfilment by the Developer of its obligations as contained herein, and substantially in the form set out in **Annexure A** covering all the contained in the Development Agreement, whereby the Site shall be leased to the Developer in terms of this Development Agreement;

**"Lease Period"** shall have the meaning ascribed to it in Clause 23;

**"Lease Premium"** shall have the meaning ascribed to it in Clause 6.1;

**"Lease Rights"** shall have the meaning ascribed to it in Clause 10.1;

**"Lenders"** means financial institutions, banks, housing finance companies, multilateral funding agencies, non-banking finance companies, finance companies, infrastructure funds, and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any Financing Agreements for meeting the costs of the Developer in relation to the design, development and construction of the Assets and Project Utilities;

**"Lender's Representative"** shall refer to mean the person duly authorized by the Lenders to act for and on behalf of the Lenders with regards to matter arising out of and in relation to this Development Agreement, and includes his successors, assigns and substitutes;

**"Letter of Acceptance"** or **"LoA"** shall mean the letter of BSHB communicating the award of the Project to the Selected Bidder and as more specifically described in Recital C;

**"Maintenance Standards"** shall mean the development and maintenance standards as set out in **Annexure E** of this Agreement;

**"Material Adverse Effect"** shall mean circumstances which may or do (i) render any right vested in a Party by the terms of this Development Agreement ineffective, or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its

obligations under this Agreement or the legality, validity, binding nature or enforceability of the same;

"**Member**" shall mean each entity constituting part of the Selected Bidder other than the Lead Member;

"**Nominated Company**" shall have the meaning ascribed to it in Clause 7.1.2;

"**Notice of Intention to Terminate**" shall have the meaning ascribed to the term in Clause 24.3.1.

"**Operation Period**" means the period commencing from Commercial Operation and ending on the Transfer Date;

"**Paying Party**" shall have the meaning ascribed to it in Clause 21.4.1;

"**Performance Security**" shall have the meaning set forth in Clause 13.1;

"**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**" shall, refer to mean (i) design, finance, construction, development, marketing, operation and maintenance and commercial use of the Assets and Project Utilities at Site by the Developer during the Lease Period hereof; and (ii) demanding, charging, collecting, retaining and revision of the sub-lease rentals as per the prevailing market rates to the Sub-Lessee;

"**Project Account**" shall have the meaning ascribed to it in Clause 19.2;

"**Project Completion Date**" shall mean the date on which the Completion Certificate is issued by BSHB based on occupancy certificate and other statutory certificates including but not limited to fire safety certificates, etc. so issued by municipal/appropriate authorities;

"**Project Manager**" shall have the meaning ascribed to it in Clause 14.2.1;

"**Project Utilities**" shall include provision of infrastructure services such as internal roads, street lighting, sewerage, drainage, power supply, rain water harvesting, distribution of water supply, air-conditioning within Site and its linkages and connectivity with external utilities provided by respective governmental utilities at the Project boundary;

"**Request for Proposal**" shall have the meaning ascribed to it in Recital B;

"**Renewal Premium**" shall mean the premium payable on renewal of Lease or Sub-Lease by the Lessee or Sub-Lessee or right claiming thereunder to the Authority/ BSHB which shall be equivalent to 5% of the Prevailing Market Value of the proportionate share in land involved in the renewal as Premium and also the enhanced Annual Lease Rent on the proportionate share of Land for which renewal is sought for.;

Explanation 1: area of land of a sub-lease for the purpose of payment of Renewal Premium shall be determined by dividing corresponding built up area by applicable FAR to Lessee.

Explanation 2: In the event, wherein the Lessee has failed to renew the Lease by way of payment of Renewal Premium, the Sub-Lessee shall be entitled to make the payment of Renewal Premium directly to the Authority. In such event, the Authority shall treat such payment by Sub-Lessee as a valid sub-lease renewal.



"**Scope of the Project**" shall have the meaning ascribed to it in Clause 2.2;

"**Scheduled Completion Date**" shall refer to mean the date which occurs on or before **30 (Thirty) months** from the Appointed Date, and as more specifically set forth in Clause 17.1.3;

"**Site**" shall have the meaning set forth in Recital A. and "Site Inventory" shall refer to and mean the items specified under the head Site Inventory in Part B of Schedule – I;

"**SPV**" shall mean a special purpose vehicle incorporated by the Selected Bidder to implement the Project on the terms and conditions of this Agreement;

"**Sub- Contractors**" means the person or persons, as the case may be, with whom the Developer has entered into any contract or agreement including but not limited to any designing, engineering procurement and construction contract ("EPC Contract"), the operation and maintenance contract ("O&M Contract") for construction, operation and/or management of the Project, Assets and Project Utilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance;

"**Sub-Lease Deed**" shall mean the agreement by the Developer with a third party through which the Developer confer sub-lease rights, licence rights, tenancy or similar arrangements to the third party for use of a space(s) within the Assets;

"**Sub Lease Register**" shall have the meaning ascribed to it in Clause 20.2;

"**Sub-Lessee**" shall mean the party with whom the Developer executes the Sub-Lease Deed, licence or tenancy agreement or agreement conferring similar rights under intimation to the BSHB in terms of this Agreement;

"**Subordinated Debt**" shall refer to mean the funds advanced by any of the shareholders of the Developer for meeting the Total Project Cost Provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the shareholders of the Developers, it shall for the purposes of this Development Agreement be deemed to be Subordinated Debt (and not the Equity) even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"**Substitution Agreement**" shall mean the agreement substantially in the form set forth in Annexure B;

"**Selected Bidder**" shall mean the single entity or bidding consortium which has been selected pursuant to the competitive bidding process; and as more specifically described in Recital C;

"**Taxes**" shall mean all applicable taxes, duties, levies, fees, cess etc. but does not include income tax payable by the Party concerned;

"**Termination Notice**" shall have the meaning ascribed to the term in Clause 24.3.1;

"**Termination Payment**" means the amount payable, under and in accordance with this Development Agreement, by BSHB to the Developer in accordance with the provisions of Clause 24.7;

"**Total Project Cost**" means the lowest of:

- a) the capital cost of the Project, as set forth in the Financial Package;
- b) the actual capital cost of the Project upon completion of Construction of Project; and
- c) a sum of Rs. **59.74 Crores (Rupees Fifty Nine Crores Seventy Four Lakhs Only)**

**"Transfer Date"** shall mean the date on which the Developer transfers possession of the Assets and Project Utilities to BSHB, or its nominee in terms of vesting provisions mentioned in Article XXV and, which shall be the date of termination as per the relevant Termination Notice issued by BSHB or the Developer, as the case may be, or the date of expiry of this Development Agreement and the Lease Right hereunder;

**"Transfer Dividend"** shall mean the amount payable by the Lessee (except for granting sublease, licence) seeking transfer of his right at any time during the currency of the Lease which shall be equivalent to 50% \*[(higher of prevalent circle rate and the price consideration for transfer) – (allotment premium)].

**Explanation:** The allotment premium of land involved under proposed transfer shall be calculated as [proportionate share of land under consideration *multiplied by* (Lease Premium *divided by* total area of land under lease)]. The total area of land under lease shall be equal to [total built up area divided by FAR as allowed to the Lessee under this Development Agreement].

**"Year"** shall mean one year of the Gregorian calendar.

## 1.2 Interpretation

In this Development Agreement, unless the context otherwise requires:

- 1.2.1 Any reference to any statute or statutory provision shall include:
- a) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
  - b) such provision as from time to time, be amended, modified, re-enacted or consolidated (whether before or after the date of this Development Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Development Agreement and to the extent liability there under may exist or can arise;
- 1.2.2 The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.
- 1.2.3 A reference to any document, agreement, deed or other instrument (including, without limitation, references to this Development Agreement), includes a reference to any document, agreement, deed or other instrument as may be varied, amended, supplemented, restated, novated or replaced, from time to time.
- 1.2.4 A reference to any document, agreement, deed or other instrument (including, without limitation, references to this Development Agreement), means a reference to such document, agreement, deed or other instrument and to all appendices, annexures, schedules and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be.
- 1.2.5 A reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to.

- 1.2.6 Where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning.
- 1.2.7 References to a particular article, clause, paragraph, sub-paragraph, clause, schedule or annexure shall, except where the context requires otherwise, be a reference to that article, clause, paragraph, sub-paragraph, clause, schedule or annexure in or to this Development Agreement, as the case may be.
- 1.2.8 The words 'include' and 'including' are to be construed without limitation. The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to this Development Agreement as a whole. Where a wider construction is possible, the words 'other' and 'otherwise' shall not be construed ejusdem generis with any foregoing words.
- 1.2.9 In this Development Agreement, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of this Development Agreement.
- 1.2.10 Where in this Development Agreement, provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificates of determination shall be in writing.
- 1.2.11 Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.
- 1.2.12 A right conferred by this Development Agreement to do any act or thing shall be capable of being exercised from time to time.
- 1.2.13 The rule of interpretation which requires that an agreement be interpreted against the person or Party drafting it shall have no application in the case of this Development Agreement.
- 1.2.14 If any provision in this Article I is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Development Agreement.
- 1.2.15 Unless a Party granted discretion to render a decision or enter in to an agreement is specifically described as being required to act reasonably in making such decision or entering in to such agreement, as the case may be, the Party granted such discretion shall be entitled to act with absolute discretion.
- 1.2.16 Any reference to 'day' shall mean a reference to a calendar day, any reference to 'month' shall mean a reference to a month of the Gregorian calendar.
- 1.2.17 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 and dates.
- 1.2.18 References to a person (or to a word importing a person) shall be construed so as to include:
- a) Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other

Governmental Authority (whether or not in each case having separate legal personality);

- b) That person's successors in title and assigns or transferees permitted in accordance with the terms of this Development Agreement; and
- c) References to a person's representatives shall be to its officers, personnel, legal or other professional advisers, subcontractors, agents, attorneys and other duly authorized representatives.
- d) The terms and expressions elsewhere defined in this Development Agreement shall have the meanings ascribed therein.

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

- a) this Development Agreement;
- b) all other agreements and documents forming part hereof; and
- c) RFP

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

1.2.20 The damages payable by either Party to other of them, as set forth in this Development Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and loss likely to be suffered or incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").

1.2.21 Rule of interpretation of doctrine of proferentum shall not apply to the interpretation of the Agreement.

## ARTICLE II

### 2 RIGHT OF ACCESS TO SITE AND SCOPE OF THE PROJECT

#### 2.1 Right of Access to the Site

2.1.1 The BSHB and the Developer carried out joint demarcation of the site and have signed a joint handing over note in the prescribed form. The signed copy of the joint handing over note is annexed hereto as **Annexure D**.

2.1.2 The Parties shall execute the Development Agreement by virtue of which, BSHB shall provide the right of access to the Site to the Developer on "as is where is basis" and the Developer shall not have any claim whatsoever against BSHB with respect to the condition of the Site or any change in the condition of the Site from the Appointed Date itself.

#### 2.2 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Lease Period:

- a) Right of Way, access and Lease Rights to the Site on the terms and conditions of this Development Agreement and Lease Deed to be executed in pursuance of this Development Agreement subject to prevalent Applicable Laws for the purpose of and to the extent conferred by the provisions of this Agreement;
- b) The conceptualizing, planning, designing, financing, construction of the Assets and Project Utilities upon the Site in accordance with area master plan/ development plan, Applicable Laws, Applicable Permits and as per Good Industry Practice, for the purposes of the commercial development of the Site and its subsequent use as a commercial complex. For the avoidance of doubt, commercial development may include mall/shopping complex, commercial spaces, office complex, food & beverage spaces, branded retail outlets, banquet halls, hotels, multiplex etc.;
- c) Marketing of the proposed Assets and Project Utilities after execution of the Lease Deed by Authority;
- d) Sub-leasing, renting, licensing, any other similar arrangements and/ or commercial use of the proposed Assets and Project Utilities after issuance of Project Completion Certificate by the BSHB;
- e) Generating revenue from the Project by, inter-alia, sub-leasing, renting, licensing, any other similar arrangements/ usage of the Project Utilities and Assets constructed upon the Site;
- f) Demand, collect and appropriate charges/user fee/rentals from all persons, who have been granted rights or facilities, including sub-lease facility, right of use, right of access or similar rights and facilities on the Assets and/or utilities developed on the Site, in accordance with the terms and conditions hereof;and
- g) Operating and maintaining the Assets and Project Utilities;
- h) perform and fulfil all of the Developer's obligations under and in accordance with this Agreement;

- i) 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
- j) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Lease 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.

**2.3** 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 and the Lease Deed to be executed in its favour.

## ARTICLE III

### 3 GRANT OF DEVELOPMENT RIGHTS

#### 3.1 Grant of Development Rights

3.1.1 In consideration of the Developer agreeing to pay the Consideration to BSHB, this Development Agreement and the representation, warranties and covenants on part of the Developer herein contained, BSHB, in accordance with this Development Agreement, the Applicable Laws and the Applicable Permits, hereby agree to grant to the Developer, the exclusive right and authority during the Lease Period to undertake and implement the Project as more specifically mentioned in the Scope of the Project (the "**Grant**") and the Developer hereby agrees to undertake the Project in accordance with the terms and conditions of this Development Agreement.

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

- a) Right of access to the Site for the purposes of and to the extent conferred by the provisions of this Development Agreement, and subsequent to the execution of the Lease Deed to enjoy the Lease Rights of the Site for the purpose of undertaking the Project during the Lease Period;
- b) Enter into sub-contracts for the purposes of the Project;
- c) Apply for and obtain all Applicable Permits required for the Project, including plans for construction of building/s and other structure/s thereon for such uses and purposes as described herein;
- d) Enjoy all the rights, privileges and benefits in accordance with the provisions of this Development Agreement and Applicable Laws and Applicable Permits and subject to receipt of approval and authorization in accordance with the terms hereof, to design, engineer, finance, procure, construct, erect, operate, market and maintain the Assets and Project Utilities, and for that purpose to remove, renovate, use or demolish any structures with prior approval from BSHB that may be existing on the Site as on the date of handing over of the Site to the Developer;
- e) Proceed with the development of the Project, Assets, Project Utilities etc. However, the Developer shall develop the Project on its own account and at its own risk, costs and expenses and shall be solely responsible and liable to all the Governmental Authorities/ Sub-Lessees/ Sub-Contractors;
- f) To facilitate the development of the Project, raise in its own name loans or raise funds from any Lender (subject to the provisions hereof and prior approval of BSHB), and as security thereof to create an Encumbrance upon execution of Lease Rights of the Site and Assets thereon;
- g) Upon achieving Commercial Operation, Developer/Lessee may (i) transfer lease of built up area with the approval of Authority (ii) grant sub-lease, or hire on rent, grant licence, permits or enter into any similar arrangement relating to the Assets or

commercial spaces within the Assets, to third parties, provided, however, any right created (included but not limited to sub-lease) shall be co-terminus with the Lease Deed.

Such first transfer of Lease Rights of the Assets along-with proportionate share of land thereunder shall be made without necessitating any payment towards Transfer Dividend to the Authority by the Developer. Further, such deed for transfer of Lease Rights shall be signed between the Authority and the allottee based on the consent of the Developer. However, any subsequent transfer of Lease Rights of Assets along-with proportionate share of land thereunder, made by the allottee/ transferee shall be shall attract payment of Transfer Dividend to the Authority.

In any other case (including sub-lease), however, it shall be under intimation to Authority and shall not attract payment of Transfer Dividend. Further, during the Lease Period, the sub-lease so executed may be further renewed/ extended by Developer, on the terms and conditions consistent with the terms and conditions of this Development Agreement and according to the Applicable Laws in State of Bihar. However, any such sub-lease, licence, permit or similar arrangement etc. shall be co-terminus with the Lease Period;

- h) Operate and Maintain Project Utilities and Common Area of the Project as per the prevalent standards in accordance with Applicable Laws and Applicable Permits during the lease period;
- i) Demand, collect and appropriate charges including charges for operation and maintenance of Common Facilities, Assets and Project Utilities from all persons, who have been granted rights or facilities by Lessee, including sub-lease facility, right of use, right of access or similar rights and facilities, in accordance with the terms and conditions hereof;
- j) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Developer under this Development Agreement;
- k) Not to assign, transfer or sublet or create any lien or Encumbrance on this Development Agreement, nor transfer, lease, or part possession thereof, save and except as expressly permitted by this Development Agreement or the Substitution Agreement; and,
- l) Perform and fulfill all of the Developer's obligations under and in accordance with this Development 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 Development Agreement and the Lease Deed to be executed in its favour.

### 3.2 Site Conditions

- 3.2.1 The Developer has inspected and conducted its due diligence of the Site and is aware of the existing boundary wall(s), its access, available services, facilities, utilities all third party rights, if any, on the Site, which is being offered on an "as is where is basis". The Developer shall not claim for any change on the Site after the Appointed Date.
- 3.2.2 The Developer hereby admits, agrees and acknowledges that BSHB has not made any representation to the Developer or given any warranty of any nature whatsoever to the Developer in respect of the Site including in respect of its usefulness, utility etc. or the fulfilment of criteria or conditions for grant of Applicable Permits for implementing the Project on the Site.

### 3.3 Exceptions to the Grant

It is expressly agreed between the Parties that BSHB reserves for itself, provided that the same is not inconsistent with the development in accordance with this Development Agreement, the right to grant any easements over or rights of access on, over, under, through or across the Site for:

- a) The purpose of supply of electricity, gas, telecommunication cables, water, sewerage, drainage or any other services and utilities; or,
- b) The purpose of transport or other services to the public.

### 3.4 Approved Development Norms

The developer shall be required to develop the Site based on the following approved development norms ("Development Norms"):

Sl. No.	Particulars	Area
1	Total Site area (a)	1.70 Acres
2	Allowable FAR on the Site (b)	2.5

- 3.5 Non adherence or violation to the above mentioned Development Norms shall be deemed as a Developer Event of Default.
- 3.5A If at the time of handing over of the Site, the area of the Site made available to the Developer is found to be at variance from that stated in the RFP document, the Lease Premium (and consequently Annual Lease Rent) will increase or decrease in proportion to the actual area of the Site.
- 3.6 If the regulations are subsequently amended to increase the FAR, the Development of commercial area would be accordingly amended;
- 3.7 If and only if the Developer decides to enhance the FAR of the Project and in case the Plan is approved, in the form of prior written approval, by the BSHB and/or any other relevant government agency, the Developer would pay BSHB a consideration pro rata to the quoted Premium amount to be calculated as specified in Clause 3.8.

- 3.8** In case BSHB and/or any other relevant government agency approves FAR in excess of 2.5, the Developer would pay an additional consideration equivalent to additional premium, without inflation, {i.e. additional premium = (approved FAR – 2.5) \* (Premium quoted/2.5)} for increase in FAR.

## ARTICLE IV

### 4 INCORPORATION OF SPECIAL PURPOSE VEHICLE (SPV) AND CHANGE OF OWNERSHIP OBLIGATIONS

4.1 The Developer declares that SPV was incorporated in term of the RFP for development of the Project, Assets, Project Utilities and Common Area and operate and maintain during the lease period. The share holding pattern of the SPV is enclosed as Annexure..... hereto.

#### 4.2 Change of Ownership Obligations of the Developer

4.2.1 The Developer shall be permitted to undertake or permit any change in ownership except as provided hereunder in this Article.

4.2.2 The Selected Bidder shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV to implement the Project from the Appointed Date till 3rd anniversary from the achievement of Commercial Operation of the Project. The Selected Bidder shall not divest, transfer its equity in SPV resulting into dilution of its shareholding below 51% (fifty one percent) during the period not earlier than expiry of three years from the achievement of Commercial Operation and pendency of any dues towards BSHB. Further members of consortium whose experience is relied upon for qualification for the purposes of this RFP, shall subscribe to at least 26% of the shareholding of the SPV and hold equity share capital not less than 26% (twenty six per cent) of the shareholding of the SPV till 3 years (three years) from the achievement of Commercial Operation of the Project.

4.2.3 In the event of non-compliance of the shareholding conditions as stated above, the same shall constitute an event of default by the Developer and the Authority shall be entitled to terminate this Agreement in accordance with Article 24.

4.2.4 Notwithstanding anything to the contrary contained in the Development Agreement, the Developer agrees and acknowledges that:

- a) all acquisitions of Equity/ ownership 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/ ownership of the Developer; or
- b) 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 each be subject to prior approval of BSHB from national security and public interest perspective, the decision of BSHB in this behalf being final, conclusive and binding on the Developer, and the Developer undertakes that it shall not give effect to any such acquisition of Equity/ ownership or control of the Board of Directors of the Developer without such prior approval of BSHB. For the avoidance of doubt, it is expressly agreed that approval of BSHB hereunder shall be limited to national security and public interest perspective, and BSHB shall endeavour to convey its decision thereon expeditiously. It is also agreed that BSHB 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 the Development Agreement.

For the purposes of this Clause 4.2.4:

- 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, 1997 or any statutory amendment, 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 situate in India or abroad) the Equity of the Developer, not less than half of the directors on the Board of Directors of the Concessionaire 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.

## ARTICLE V

### 5 REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and Warranties of BSHB

- 5.1.1 BSHB hereby represents and warrants to the Developer that, as of the Appointed Date:
- a) It is duly organized and validly existing under the laws of India and has been in continuous existence since its constitution;
  - b) It has full power and authority to execute, deliver and perform its obligations under this Development Agreement and to carry out the transactions contemplated hereby;
  - c) The obligations of BSHB under this Development Agreement will be legally valid, binding and enforceable obligations against BSHB in accordance with the terms hereof;
  - d) 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 Governmental Authority which may result in any Material Adverse Effect or impairment of BSHB's ability to perform its obligations and duties under this Development Agreement.
  - e) To the best of BSHB's knowledge and belief, the Site is free from all Encumbrances and is available for development, in accordance with the terms of this Development Agreement.
  - f) To the best of BSHB's knowledge and belief, there are no actions, suits, proceedings or investigations pending against it, before any court or Governmental Authority in relation to the Site, the outcome of which may result in the breach of or constitute a default of BSHB under this Development Agreement, or result in impairment of BSHB's ability to perform its obligations and duties under this Development Agreement.

#### 5.2 Representation and Warranties of the Developer

- 5.2.1 The Developer hereby represents and warrants to BSHB that as of the Appointed Date:
- a) It is duly organized and validly existing under the laws of India and has been in continuous existence since incorporation.
  - b) It has full power and authority to execute, deliver and perform its obligations under this Development Agreement and to carry out the transactions contemplated hereby;
  - c) It has taken all necessary corporate and other action under Applicable Laws and its Memorandum and Articles of Association or other similar applicable documents to authorize the execution, delivery and performance of this Development Agreement;
  - d) It has the technical and financial standing and capacity to undertake and complete the Project;

- e) The obligations of Developer under this Development Agreement will be legally valid, binding and enforceable obligations against the Developer in accordance with the terms hereof;
- f) The information furnished in the Bid and as updated on or before the date of this Development Agreement is true and accurate in all respects as on the date of this Development Agreement;
- g) The execution, delivery and performance of this Development 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 any Applicable Laws or any covenant, agreement, 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 the best of the Developer's knowledge, threatened against it before any court or before any other judicial, quasi- judicial or other authority, the outcome of which may result in the breach of or constitute a default of Developer under this Development Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Development Agreement;
- i) 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 Governmental Authority which may result in any Material Adverse Effect or impairment of Developer's ability to perform its obligations and duties under this Development Agreement or to undertake the Project;
- j) It has complied with all Applicable Laws 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 Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Development Agreement and undertake the Project;
- k) executed and procured execution of the Substitution Agreement;
- l) No representation or warranty by Developer contained herein or in any other document furnished by it to BSHB, or to any Governmental Authority in relation to Applicable Permits contains or will contain any untrue, inaccurate or incorrect statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

### 5.3 Disclosure

In the event at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its above mentioned representations or warranties untrue, inaccurate or incorrect, then such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of (i) remedying any breach of the representation or warranty that has been found to be untrue, inaccurate or incorrect; or (ii) adversely affecting or release any obligation of either Party under this Development Agreement.

## ARTICLE VI

### 6 CONSIDERATION

#### 6.1 Lease Premium

In consideration of the Grant made by BSHB in accordance with Article III hereinabove and other rights, privileges and benefits set forth herein, the Developer has paid and agrees to pay to the BSHB Rs. \_\_\_\_\_ {amount of Lease Premium to be} (the "**Lease Premium**") and undertake implementation of the Project, in accordance with this Development Agreement. For the avoidance of doubt, if the 50% of the Lease Premium has been paid but the Developer fails to pay to BSHB another sum of Rs. \_\_\_\_\_ towards balance 50% (fifty per cent) of aforesaid Lease Premium, the Authority reserves the right to terminate this Development Agreement and treat this as Developer Event of Default and forfeit the Lease Premium already paid. Further, it is clarified that the Lease Deed shall be executed only after the Developer has paid the entire amount of Lease Premium to the Authority.

#### 6.2 Annual Lease Rent Payment

6.2.1 Further, in consideration of the Grant made by BSHB in accordance with Article III hereinabove and specifically the Lease Rights in terms of Article X and other rights, privileges and benefits set forth herein, the Developer hereby agrees to make a payment of nominal amount as Annual Lease Rent (the "Annual Lease Rent"). The Developer shall have to pay Annual Lease Rent at the rate of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) annually** to the BSHB. The Annual Lease Rent for the initial year shall be paid before execution of this Agreement, and for every subsequent year the Annual Lease Rent shall be payable by the end of the first month (i.e. January) of the year failing which penal interest at the rate of 18% shall be charged for the period of default. The Annual Lease Rent shall be paid by the Developer till the expiry of the Lease Period as per the provisions of this Agreement.

6.2.2 Upon Renewal of Lease Rights, after the expiry of Lease Period of 30 Years, the amount payable as Annual Lease Rent shall be increased to **Rs. 15,00,000/- (Rupees Fifteen Lakh only) per annum**, which shall be paid to BSHB annually during the next 30 years. Subsequent Renewal of Lease Rights shall be subject to increase in Annual Lease Rent amount at a similar rate.

#### 6.3 Other Conditions

6.3.1 The sums payable by the Developer in terms of Clause 6.1, & 6.2 shall hereinafter together be referred to as Consideration (the "Consideration").

6.3.2 In case of increase in area, the additional Lease Premium over the accepted Lease Premium shall be paid by the Developer to BSHB prior to the Appointed Date. In case the actual area of the site is less than the area stipulated in this RFP document, the extra payments made if any shall be refunded to the Developer prior to the Appointed Date.

6.3.3 If the Annual Lease Rent payable to the BSHB by the Developer or any other statutory charges or other charges which are the responsibility of the Developer or any part thereof shall at any time remain arrears and unpaid for three calendar months after the due date, whether the same has been lawfully demanded or not, it will be deemed as Developer

Event of Default and the Termination actions will be followed in accordance with Article XXIV.

- 6.3.4 All dues payable by the Developer shall be recoverable as a public demand under Bihar and Orissa Public Demands Recovery Act, 1914 as amended time to time.
- 6.3.5 The rights of Government of Bihar and BSHB to the public, roads and paths bounding the leased lands are in no way affected by the Lease;
- 6.3.6 The developer shall duly comply with the provisions of the environment protection act, the rules made thereunder as also with any condition which may from time to time be imposed by Bihar state pollution control board as regards collection, treatment and disposal or discharge of effluents or waste or the otherwise how so ever and similar indemnify and keep indemnified BSHB against any consequences of any breach or non-compliance of any such provisions or conditions aforesaid;



## ARTICLE VII

### 7 FINANCING ARRANGEMENTS AND SECURITY

#### 7.1 Financing Arrangement and Security

##### 7.1.1 Financing

The Developer expressly agrees and undertakes that the Developer shall himself arrange for financing and/or meeting all financing requirements through suitable debt, equity or any other acceptable financial mode in order to comply with its obligations under the Development Agreement including but not limited to its obligations to arrange the financing for the construction of the Assets and Project Utilities. As and when such Financing Agreements are approved by the Lenders, with or without modifications, a copy of the same shall be furnished by the Developer to BSHB forthwith for records before its execution.

##### 7.1.2 Security by way of grant of Substitution Rights

This Development Agreement is non-transferrable. However, subject to the provisions of this Development Agreement, Lenders may be given a right of substitution by execution of the Substitution Agreement in the form annexed hereto (Annexure B).

BSHB shall enter into only 1(one) Substitution Agreement with 1(one) Lenders' Representative (as defined in the Substitution Agreement); such Lenders' Representative being an agent for one consortium of Lenders. Lenders may exercise the rights of step in or substitution subject to the person substituting the Developer (the "**Nominated Company**") shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Developer under this Development Agreement.

##### 7.1.3 Creation of Encumbrance during the Lease Period

After making allowance towards all payments to BSHB as stipulated under this Agreement, the Developer shall have the right to create Encumbrance over the Site, as also Assets developed by the Developer thereon and over any of the receivables due to it from the project revenue in favour of the Lenders for the purposes of obtaining Debt for financing the Project upon completion of the Project and execution lease deed as permissible under lease deed. However, in case there is any default in observing the terms of this Agreement by the Developer, Authority shall have the right to initiate the process of resumption of land to enforce Authority's right in the Site apart from terminating the Project as per the provisions of this Agreement.

#### 7.2 Financial Plan for the Project

The Financing arrangements specified in Clause 7.1 shall be based on the Financial Plan for the Project prepared by the Developer and approved by the Lenders prior to entering into the Financing Agreements. The Financial Plan shall set forth all capital costs, sources of financing such capital costs, O&M expenses, project revenues, other revenues, replacement costs, reserves for emergencies, servicing of various debts, distributions to the shareholders of the Developer and the projected Equity IRR. The Developer shall update the Financial Plan after the issue of the Completion Certificate so as to reflect the actual Total Project Cost incurred on the Project. Thereafter, the Financial plan shall be updated by the Developer every five years till expiry of the Lease Period to reflect the actual O&M expenses, replacement costs, major repairs, realization from project revenues and other revenues, and Distributions to the Equity holders, if any.

The initial Financial Plan and every time the Financing Plan is updated by the Developer, the Developer shall provide to BSHB one copy of the Financing Plan duly approved by the Lenders, and in case there is no Lender at any time, duly certified by the Statutory Auditor of the Developer.

**ARTICLE VIII****8 INSURANCE****8.1 Insurance**

8.1.1 The Developer shall effect and maintain, at its own cost, either directly or through its principal Sub-contractor, during the Construction Period and the Lease Period, Contractor All Risk (CAR) Insurance and other 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 BSHB as a consequence of any act or omission of the Developer, its Sub-Contractors, Sub-Lessees, agents etc. during the Lease Period. The Developer shall procure that in each insurance policy, BSHB shall be co-insured and that the insurer shall pay the proceeds of insurance to the Developer, who, in turn shall compensate BSHB for such losses as shall be assessed by BSHB. For the avoidance of doubt, the level of insurance to be maintained by the Developer after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

8.1.2 Without prejudice to the provisions contained in Clause 8.1.1, the Developer shall, during the Lease Period hereof, procure and maintain Insurance Cover including but not limited to the following risks:

a) External Perils:

Operation of an external peril like fire, lightning, flood, earthquake, act of God, terrorism, sabotage etc. will damage the work in progress or even the completed project leading to loss, damage or destruction of the Assets and Project Utilities.

b) Failure to Perform

After completion, the project fails to perform and fails due to design defect, use of faulty material etc.

c) Damage to Adjacent Property

During construction or repairing under warranty/ guarantee period, the damage to the property adjacent to the Project site.

d) Third Party Liability

During construction or in case of commercial operation once the project is in operation, failure may cause bodily injury, property damage to the third parties including injury to or death of BSHB's personnel or others who may enter the Site.

f) Cross Liability

Damage by one contractor to the works of the other contractor.

g) Damage or Major Breakdowns of Plants and Equipment

Damage/ major breakdown of important Plants and Equipment of the Contractor that might result in major disruption of works and might require immediate replacement or costly repair.

h) **Minor Breakdowns, Repairs and Maintenance**

Minor repairs and maintenance, reworks or modifications in the completed works or minor disruption of works due to routine project related problems.

i) any other insurance that may be necessary to protect the Developer and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e) above.

ii) In case of transfer by way of Lease, the new Lessee (transferee) shall be liable to comply with the obligation under article 8 for the corresponding built up area transferred to him.

**8.2 Notice to BSHB**

Not later than 45 (forty five) days from the Appointed Date, the Developer shall by notice furnish to BSHB, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with Clause 8.1. Within 30 (thirty) days of receipt of such notice, BSHB may require the Developer to effect and maintain such other insurances as may be necessary pursuant hereto and the Developer shall forthwith obtain such insurances.

**8.3 Evidence of Insurance Cover**

All insurance obtained by the Developer in accordance with this Article VIII shall be maintained with insurer or reinsurers, and on terms consistent with Good Industry Practice. Within 45 (fort five) days of obtaining any Insurance Cover, the Developer shall furnish to BSHB, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premium payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by BSHB.

**8.4 Remedy on Failure to Insure**

If the Developer shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, BSHB shall have the option to keep in force any such insurance, and pay such premium and recover the costs thereof together with penal interest @ 18% per annum thereon from the Developer, or for the purposes of computation of payments to the Developer, treat the insurance cover i.e. the maximum sums, which such insurance was providing for had it been in force and effect as being deemed to have been received by the Developer. Notwithstanding above, failure of the Developer to effect and keep in force the insurance for which it is responsible pursuant hereto, at any time, shall be a Developer Event of Default.

**8.5 Waiver of Subrogation**

All insurance policies supplied by the Developer shall include a waiver of any right of subrogation of the insurers there under against, inter alia, BSHB, and its assigns, Affiliates, employees, insurers and underwriters and of any right of the insurers of 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.

**8.6 Developer's waiver**

The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, BSHB 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 Development Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**8.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Developer by a/c payee cheque drawn in its favour and the Developer shall use such amount for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Assets and Project Utilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

## ARTICLE IX

### 9 ACCOUNTS AND AUDIT

#### 9.1 Accounts & Audit

- 9.1.1 The Developer agrees and undertakes that during the subsistence of this Development Agreement, it shall maintain books of account recording all receipts including those on account of project revenue, income receipt, payments, assets and liabilities in accordance with Good Industry Practice and Applicable Laws. The said account shall, inter-alia, clearly reflect:
- a) Sub-Lessee wise account of receipts and receivables;
  - b) Lease transfer receipts and receivables;
  - c) Account of all other receipts and receivables;
  - d) Obligations towards contractors, Sub-Contractors, suppliers and all payments made;
  - e) Application of debt fund; and
  - f) Application of equity fund.
- 9.1.2 BSHB shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of account, duly certified by auditors, and to be provided to BSHB.
- 9.1.3 It is expressly agreed between the Parties hereto that for the purposes of this Article IX, BSHB may appoint an independent auditor (the "Independent Auditor"), the cost whereof during the Construction Period shall be borne by the Developer and thereafter, the same shall be borne by BSHB.

## ARTICLE X

### 10 GRANT OF LEASE RIGHTS TO THE SITE

#### 10.1 Grant of Lease Rights

10.1.1 Both the Parties expressly agree that upon Payment of Lease Premium, Annual Lease Rent, submission of bank guarantees in accordance with the provisions of Recital D and Article XIII of the Development Agreement, the Parties hereto shall execute the Lease Deed (as set out in Annexure A), in respect of all the lands comprising the Site, whereby the Site shall be leased to the Developer on an **“as is where is basis”** and on the terms and conditions contained therein, and subject to the rights and obligations of the Parties hereto as contained herein ( the **"Lease Rights"**). The Date of execution of the Lease Deed shall be deemed to be Appointed Date for the purpose of this Agreement.

10.1.2 The execution of the Lease Deed shall entitle the Developer to the following, amongst other rights as specified:

- a) to design, finance, construct, maintain and market, provided the plans for the Project are duly approved as specified in Article XV of the Development Agreement;
- b) to allow commercial use of the Project Assets provided the Completion Certificate has been issued by the BSHB;
- c) to grant sub-lease rights over the Project Assets by execution of a Sub-Lease Deed between the Developer and the Sub-lessee provided the Completion Certificate has been issued by the BSHB.

10.1.3 Further, notwithstanding the Letters of Allotment issued to the Sub-Lessee by the Developer, the Sub-Lease Deed shall not be executed in their favour till the Completion Certificate is issued by BSHB.

10.1.4 Deleted

10.1.5 The Lease Rights mentioned hereinabove shall be vested solely with the Developer and can be transferred subsequent to the achievement of Commercial Operation, and obtaining prior approval of the BSHB.

**ARTICLE XI****11 LIMITATION ON THE GRANT OF RIGHTS TO THE SITE****11.1 Limitation on the Grant of Rights to the Site**

- 11.1.1 The Parties expressly agree that subject to the provisions of the Development Agreement as provided herein or the Lease Rights as may be provided in the Lease Deed, Grant of Rights to the Site, as may be applicable, is granted exclusively to the Developer under the Development Agreement only for the purposes of the implementation of the Project as per this Development Agreement.
- 11.1.2 Without prejudice to the aforesaid, the Parties expressly agree that ownership of the Assets, so created from time to time on the Site shall always vest with BSHB and the Developer shall, subject to the provisions of this Development Agreement, or the Lease Deed have the necessary rights for creation of lien and/or Encumbrance on the Site and Assets thereon in favour of its Lenders and insurers with prior permission of BSHB, which shall not be unreasonably withheld. It is expressly clarified that such lien and/ or Encumbrance can be made only to the external parties, which are not the subsidiary/ related parties of the Developer, limited for the purpose of availing debt for constructing the Assets on this Site and in no case the Lender shall be entitled to use/ develop the Land for the purposes other than expressly specified in this Agreement under any circumstances. It is specifically clarified that upon the expiry of the Lease Period, in case the same is not renewed in terms of the provisions of this Agreement, the possession of the Assets shall revert back to BSHB in accordance with Article XXV of the Development Agreement.
- 11.1.3 The Parties recognize and agree that nothing contained in the Development Agreement or in the Lease Deed shall be construed to constitute a transfer of title in the Site or the Assets developed thereupon in favour of the Developer. The Developer shall not, at any time during the Lease Period, assert any ownership rights over the Site or the Assets developed thereupon. Notwithstanding anything contained in Clause 12.2, for abundant caution, it is clarified that the Developer shall only have Lease Rights, as the case may be, in relation to the Site and shall have no title to the Site, and the Developer agrees and acknowledges that it has only Lease Rights, as and when the Lease Deed is executed by and between the Parties in the land, built-up structures and all other assets erected on the Site and that the same shall be incapable of conversion into freehold rights and/or interests to the land, built-up structures and all other assets erected on the Site.
- 11.1.4 Without prejudice to the foregoing, the Developer agrees, confirms and undertakes that it shall not sell, lease, sub-lease, assign, underlet or sub-let or part with the possession of the Site or any part thereof or any interest therein except those granted under the Development Agreement without the previous written consent of BSHB.
- 11.1.5 It is expressly agreed understood and recorded between the Parties that:
- a) mining rights cannot, and do not, form part of the rights granted hereunder and the Developer hereby acknowledges that it does not, and shall not, have any mining rights in the Site under the Development Agreement or any interest in the underlying minerals, if any.



- b) Any archaeological discoveries shall belong to and vest in the Government and the Developer shall promptly report the discovery thereof to BSHB and the appropriate Government Authority and follow such authority's instructions for safe removal thereof.

**ARTICLE XII****12 ACCEPTANCE OF THE SITE****12.1 Acceptance of the Site**

12.1.1 For the purposes of this Development Agreement, the Developer shall be deemed to have:

- a) inspected the Site in its entirety and its surroundings, access, easement of any third party etc.;
- b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Assets permitted to be developed at the Site, and the nature of the design, work and materials necessary for the performance of its obligations under the Development Agreement;
- c) satisfied itself as to the means of communication with, access to and accommodation at the Site, it may require or as may be otherwise necessary for the performance of its obligations under the Development Agreement;
- d) satisfied itself as to the usefulness, usability etc. of the Site;
- e) Executed the Development Agreement, the right of access to the Site and accepted the Site in terms of the Development Agreement and/or Development Agreement on and "as is where is basis";
- f) unconditionally waived its claim against BSHB in respect of the Site including in respect of failure to obtain the Applicable Permits; and,
- g) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect its rights and obligations hereunder and its other rights and obligations under or pursuant to the Development Agreement.

12.1.2 The Developer expressly acknowledges that it shall have no recourse against BSHB in the event of any mistake made or misapprehension harboured by the Developer in relation to any of the foregoing provisions of this Clause 12.1 and BSHB hereby expressly disclaims any liability in respect thereof.

12.1.3 The Developer acknowledges that prior to the execution of the Development Agreement, it has, after a complete and careful examination, made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under the Development Agreement. The Developer further acknowledges that it shall have no recourse against BSHB if it is, at a later date, found that the Site is deficient in any manner whatsoever (hereinafter referred to as the "**Deficiency**"). If a Deficiency is found, the Developer acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.

12.1.4 The Developer acknowledges and hereby accepts the difficulties, inputs, costs, time, resources, risks and hazards associated with the performance of its obligations hereunder

and hereby agrees that BSHB shall not be liable for the same in any manner whatsoever to the Developer, other than as expressly otherwise provided in the Development Agreement.

**12.1.5 Deemed Knowledge and Disclaimer**

Subject to the provisions of the Development Agreement, the Developer shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the development of the Assets regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) including underground utilities and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Developer shall not have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from BSHB in respect of the Project other than for those matters in respect of which express provision is made in the Development Agreement

**ARTICLE XIII****13 BANK GUARANTEE****13.1 Performance Security**

13.1.1 BSHB acknowledges the receipt of Performance Security of Rs. **2,99,00,000/- (Two Crores Ninety Nine Lakhs only)** vide BG no. \_\_\_\_\_ issued by \_\_\_\_\_ dated \_\_\_\_\_ paid in accordance with the LoA (the "**Performance Security**") and valid till \_\_\_\_\_ substantially in the form as set out in Schedule III.

13.1.2 Without prejudice to BSHB's other rights and remedies hereunder or in law, it shall have an unqualified option under the Performance Security to draw on the guarantee and claim the amount thereunder in the event of Developer default in the performance of any of its obligations, responsibilities or commitments specified herein this Development Agreement, in achieving the Project Completion Date on or prior to the Scheduled Completion Date, and in making payment of all the amounts due and payable to BSHB in accordance with the provisions of Article VI of the Development Agreement.

In the event BSHB draws on the Performance Bank Guarantee, in part or in full, to recover the Liquidated damages payable in accordance with this Development Agreement, the Developer shall forthwith or within the time so granted at the sole discretion of BSHB restore the value of the Performance Bank Guarantee to such value which existed prior to drawl of the Performance Security to recover any Damages payable hereunder, failing which the BSHB shall be entitled to terminate the Development Agreement.

13.1.3 The Developer undertakes that the Performance Bank Guarantee shall remain valid and effective and be maintained in full force until 6 months after the issuance of Completion Certificate by BSHB.

In the event that 30 (thirty) days prior to the scheduled expiry of the Performance Bank Guarantee, the Project Completion Date has not occurred the Developer shall arrange for an extension of the Performance Bank Guarantee.

In the event the Developer fails to extend the Performance Bank Guarantee, BSHB shall be entitled to receive the undrawn amount thereunder and the Developer shall, within the time so granted at the sole discretion of BSHB, replenish or furnish a fresh Performance Bank Guarantee failing which BSHB shall be entitled to terminate this Development Agreement. The Performance Bank Guarantee shall be returned to the Developer within 21 days after the expiry thereof .

**ARTICLEXIV****14 OBLIGATIONS OF THE DEVELOPER****14.1 General**

- 14.1.1 The Developer shall, within 30 (thirty) days of the Appointed Date, nominate an Authorised Representative (the "**Authorised Representative**") and shall authorise him for all correspondence, communication, signing of documents, participation in meetings etc. with BSHB in respect of the Development Agreement.
- 14.1.2 The Developer agrees and undertakes that it shall be solely responsible for design, planning, financing, construction, operation and maintenance of the Assets and Project Utilities. The Developer shall be solely responsible for seeking connections and ensuring the supply of all essential utilities including but not limited to electricity, water, fuel, consumables and any other services necessary or incidental to the implementation of the Project and that all such facilities shall be at the cost and expense of the Developer. In particular, the Developer shall be solely responsible to procure, at its own cost and expense, all water, electricity and all other utilities required for the construction of the Assets at the Site and BSHB shall not be responsible to provide any infrastructural facilities or services in relation to any such utilities.
- 14.1.3 It is agreed that the Developer shall, with effect from the Appointed Date, pay all outgoing, cess, taxes (including municipal taxes), levies, import duties, fees (including any license fees) rates and other user charges (including those applicable for existing utility connections and any other dues, assessments or outgoing payable in respect of implementation of the Project, (including new utility connections obtained by it, if any) or in respect of the materials stored therein which may be levied by any Governmental Authority. The Developer shall, with effect from the Appointed Date, also pay all outgoing, cess, taxes (including municipal taxes), rates and other user charges whatsoever and all increases thereto, in respect of the Site and Assets. BSHB shall not be liable to pay the same. If the Developer fails to pay any of the above charges, BSHB shall be entitled, but not be obliged to pay the same and will be entitled to receive such amounts paid by BSHB from the Developer along with interest at a rate of 18% (eighteen percent) per annum.
- 14.1.4 The Developer will undertake the Project during the Lease Period with due regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, control of pollution, maintenance of competent personnel and labour and industrial relations.
- 14.1.5 The Developer shall observe and conform to all rules, regulations and bye-laws of all Governmental Authorities, or any other statutory regulations in any way relating to public health and sanitation in force for the time being and to provide sufficient sanitary arrangements for the labour, workmen and other staff employed on the Site in order to keep the Site and the surroundings clean and in good condition to the satisfaction of the BSHB and as required in law and shall not, without the previous consent in writing of the BSHB, permit any labour or workmen to reside upon the Site and in the event of such consent being given, shall comply strictly with the terms thereof.

- 14.1.6 The Developer shall develop the Project in accordance with the pollution control criteria set forth in the Applicable Laws and in accordance with terms and conditions contained in various Applicable Permits. The Developer shall take all precautions to avoid pollution or contamination of the air, land or water arising out of the implementation of the Project (whether at the Site or elsewhere).
- 14.1.7 The Developer shall obtain and maintain in force, on and from the Appointed Date and during the Lease Period thereof, all insurance in accordance with the provisions of the Development Agreement and Good Industry Practice.
- 14.1.8 The Developer shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Assets located upon the Site.
- 14.1.9 The Developer shall ensure and protect that such land remains free from all encroachments during the Lease Period, and or in its possession.
- 14.1.10 The Developer shall, from time to time, pay all the charges/bills for the usage of infrastructure facilities provided to them by the relevant Governmental Authority/bodies.
- 14.1.11 The Developer shall not permit anything to be done on the Site which may be unlawful, a nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises in the vicinity.
- 14.1.12 The Developer shall take all measures, including applying for any and all connections from suitable Governmental Authorities to provide all the Project Utilities at the Site and shall undertake all measures required to be undertaken for separate metering of all Project Utilities utilized by the users of the Site or Assets thereon.
- 14.1.13 The Developer shall ensure and procure that each agreement or contract it enters with any third party in relation to the Grant contains provisions that entitles the Nominated Company to step into such agreement, in its discretion in the event of such Nominated Company's assumption of the liabilities and obligations of the Developer under the Development Agreement.

## 14.2 Construction

- 14.2.1 The Developer shall, within 90 days of Appointed Date, nominate an experienced and competent engineer as the project manager (the "Project Manager"), who shall supervise and be overall in-charge of all construction activities being undertaken by the Developer at the Site during the Construction Period. The Project Manager shall also be available for interaction with the authorised representatives of BSHB visiting the Site during the Construction Period.
- 14.2.2 The Developer shall not commence any work upon the Site, except securing the Site through fencing/boundary wall until approval of requisite plans from the BSHB and the local authorities in terms of Article XVI.
- 14.2.3 BSHB shall be entitled to, but not obliged to do so, without being required to give prior written notice to the Developer, inspect the Site through its duly authorized representative. Provided however, the duly authorized representatives of BSHB shall not interfere with/prevent the Developer's officials from discharging their functions. The

Developer shall provide all necessary assistance including accompanying the BSHB's representative during such inspections, providing information, plans and other details of the Project as asked for by the BSHB's representative.

- 14.2.4 The Developer shall undertake the Project using due care and diligence in a professional manner, using sound engineering, design and project management principles, and supervisory procedures in accordance with Good Industry Practice and for that it shall retain, engage and consult, qualified and experienced professionals and consultants with good credentials and experience in relation to a project similar to the Project, which is the subject matter of the Development Agreement.
- 14.2.5 The Developer shall at all times, obtain and maintain all Applicable Permits, which are required by Applicable Law, to undertake the Project, more specifically in terms of Article XI.
- 14.2.6 During the construction by the Developer, the Developer shall have the Site fenced, at its expense. The fencing shall have a smooth painted surface with a pre-approved design depicting the name and logo of BSHB as well as those of the Developer.
- 14.2.7 The Developer shall be obliged to complete the Project latest by the Scheduled Completion Date and shall obtain Completion Certificate. Upon occurrence of a BSHB Event of Default or Force Majeure Event, which substantially prevents the Developer from achieving the Project Completion Date by the Scheduled Completion Date (subject to the Developer having complied with all its obligations set forth herein), the Developer shall be entitled to a day by day extension equivalent to the time taken by the BSHB to complete its obligations hereunder or the continuation of the Force Majeure Event.
- 14.2.8 The Developer shall not make any excavation upon any part of the Site nor remove any stone, sand, gravel, clay or earth there from except for the purpose of forming foundations of buildings or for the purpose of executing any work pursuant to the terms hereof.
- 14.2.9 The Developer will ensure that all materials, equipment, machinery etc. installed and/or used at the Site will be of sound quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required.
- 14.2.10 Upon completion of the activity of construction of the Project, the Developer shall remove promptly from the Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the land in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

### 14.3 Maintenance

- 14.3.1 The Developer shall be responsible for safety, soundness and durability of the Assets constructed upon the Site and shall ensure that the Assets comply with the specifications and standards as per Good Industry Practice subject to a minimum Maintenance Standards as prescribed in **Annexure E** of this Agreement. The Developer shall operate and maintain the Assets and Project Utilities at all times during the Lease Period as per

the Good Industry Practices so that they perform all the time satisfactorily and meet all the serviceability requirements during the Lease Period.

- 14.3.2 The Developer shall prepare and maintain an Asset and Project Utility register (the "**Asset and Project Utility Register**") of all the Assets and Project Utilities constructed by it. The Asset and Project Utility Register shall be prepared as soon as some of the Assets and Project Utilities are completed. Thereafter, the Developer shall update the Assets and Project Utility Register every six months till the issue of Completion Certificate by BSHB. The Developer shall update the Asset and Project Utility Register as and when any additional Asset or Project Utility is added at the Site or any one of them is replaced by the Developer. The Developer shall provide two copies of the Asset and Project Utility Register within 30 days of preparing or updating it.



## ARTICLE XV

### 15 SUBMISSION OF DRAWINGS

#### 15.1 General

- 15.1.1 Prior to the Commencement of the Construction, the Developer shall submit to BSHB, its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the construction of the Project. The Developer shall submit to the Authority, the structural design & drawing of Assets and/or Project Facilities to be developed on the Site duly proof checked by an Indian Institute of Technology (IIT) or National Institute of Technology (NIT).
- 15.1.2 Within 15 (fifteen) days of the receipt of the Drawings, BSHB shall either on its own or through its authorized representative 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 Developer shall not be obliged to await the observations of the BSHB 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;
- 15.1.3 If the aforesaid observations of the BSHB 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 BSHB for review. The BSHB shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- 15.1.4 No review and/or observation of the BSHB 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 BSHB be liable for the same in any manner; and
- 15.1.5 Within 90 (ninety) days of the Project Completion Date, the Developer shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or on Compact Disc/ DVD or in such other medium/ form as may be acceptable or required to the Authority, reflecting the Assets as actually designed, engineered and constructed, including as-built drawings of all structures, instruction manuals for supporting infrastructure.

## **ARTICLE XVI**

### **16 SUB-CONTRACTS**

#### **16.1 General**

16.1.1 The Developer shall have the right to appoint Sub-Contractors by awarding sub-contracts and entering into agreements for any EPC Contract and/or, O&M Contract for construction, operation and/or management of the Project, Assets and Project Utilities or any other activity relating to the Project or matters incidental thereto. Notwithstanding any such subcontract, the Developer shall retain the overall accountability or responsibility, obligation and liability in relation to the Project. It is clarified that Developer shall remain liable and responsible for any acts, omissions or defaults of any Sub-Contractor for construction or any of the Sub-Lessees for use of spaces inside Assets and shall indemnify BSHB in respect thereof.

**ARTICLE XVII****17 COMPLETION OF THE PROJECT****17.1 General**

- 17.1.1 Upon the completion of the design, development, construction and other activities, including receipt of Applicable Permits in relation to the Project in accordance with the terms of this Development Agreement, including but without limitation all relevant completion and occupancy certificates from Governmental Authorities, the Developer shall intimate BSHB in writing, together with all Applicable Permits required for the purposes of commencement of commercial operations ("**Completion Date Notice**"). The BSHB shall, within 15 (fifteen) days of the receipt of the Completion Date Notice shall issue a completion certificate on the basis of all certifications acquired by the Developer from other relevant governmental agency, permitting the Developer to commence utilization of the Assets and Project Utilities constructed upon the Site ("**Completion Certificate**") substantially in the form as set out in Schedule II.
- 17.1.2 The Developer shall not commence Commercial Operation of the Asset, in whole or in part, prior to receiving a Completion Certificate from BSHB in accordance with Clause 17.1.1 hereinabove, provided however, if BSHB fails to issue the Completion Certificate or respond to the Completion Date Notice within 45 (forty five) days of the receipt of the Completion Date Notice, the BSHB shall be deemed to have issued the Completion Certificate and the Developer shall be free to commence Commercial Operation of the Asset, in whole or in part.
- 17.1.3 The Developer guarantees and warrants to BSHB (the "**Completion Guarantee**") that the Project Completion Date shall have occurred on or before the expiry of **30 (Thirty)** months from the Appointed Date (the "**Scheduled Completion Date**"). If the Developer breaches the Completion Guarantee, the Developer shall pay to BSHB, the Liquidated Damages in respect thereof at the rate as provided under Article XVIII.
- 17.1.4 The Completion Certificate under Clause 17.1.1 shall be issued by BSHB to the Developer only after utilization of minimum 75% ( seventy five percent) of the FAR for the development of the Project by the Developer in accordance with the terms and conditions of this Agreement.

## ARTICLE XVIII

### 18 LIQUIDATED DAMAGES PAYABLE BY THE DEVELOPER

#### 18.1 Liquidated Damages payable by the Developer

18.1.1 Without prejudice to BSHB's other rights and remedies hereunder or in law and/or its rights to terminate this Development Agreement in accordance with the provisions of Clause 24.3 in the event of a breach of the Scheduled Completion Date, the Developer shall pay, to BSHB, Damages for delay at the rate of 0.5% (zero point five percent) of the Performance Guarantee for each day of delay ("Liquidated Damages") as a charge for granting such discretionary extensions by BSHB to the Developer beyond the Scheduled Completion Date as specified herein-below.

Provided that in no event shall BSHB grant an extension(s) in aggregate exceeding beyond a period of six months from the Scheduled Completion Date ("Extended Project Completion Period") and in the event, the Developer fails to procure a Completion Certificate in accordance with the provisions of Clause 18.1 hereinabove on or prior to the date of expiry of Extended Project Completion Period, it shall be construed that a Developer Event of Default has occurred as more specifically mentioned in Clause 24.1, herein below and this Development Agreement shall be terminated in accordance with the provisions of Clause 24.3 herein below.

18.1.2 The Developer hereby acknowledges and agrees that failure of the Developer to satisfy the Completion Guarantee shall cause BSHB substantial damage. The Parties acknowledge that time is of the essence in this Development Agreement. The Developer and BSHB agree that the amounts fixed as Liquidated Damages for each such guarantee under this Clause 18 are genuine pre-estimates of the losses / damages which will be suffered on account of the breach of such guarantees and the prescribed amounts of such Liquidated Damages shall be payable on demand without there being any proof of the actual loss or damages caused by such breach. The Parties irrevocably further agree that the Liquidated Damages have been mutually agreed, arrived at after joint discussions and calculations.

18.1.3 The decision of BSHB in regard to the actual delay shall be final and binding on the Developer.

**ARTICLE XIX****19 MARKETING/ALLOTMENT/BOOKING OF THE ASSETS**

- 19.1 The Developer shall be entitled to commence booking of units / spaces in the Assets after the Lease Deed is executed in favour of the Developer. The Developer shall market the Assets under-construction under Letter of Allotment (the "Letter of Allotment") instrument till the time a formal Sub-Lease Deed is executed between the Developer and a third party as specified in Article XX. Marketing may also be done directly through execution of Sub-Lease Deed complying with the requirements specified in Article XX. The Developer may also market the Assets on the Site for short term usages or otherwise for generating other revenues through sub-licensing.
- 19.2 The Developer, while marketing the Assets, shall comply with the following and the same should also be included in the Letter of Allotment, Sub-Lease Deed or Sub license Deed (as the case may be):
- i. all amounts due and payable by parties desirous of taking sub-lease in the Assets in accordance with Article XX shall be paid through account payee cheque in favour of the project account (the "Project Account") of the Developer and all such cheques shall be deposited in the Project Account only;
  - ii. the Developer, and not BSHB, shall be solely responsible for the timely implementation of the Project and in the event of any breach by the Developer of its obligations of the terms herein or in the agreement executed with/ letter of allotment issued to such third parties which has been caused by any non-performance by the Developer of its obligations as contained in the Development Agreement, the Developer shall on its own account, indemnify such third parties for all losses and damages incurred by such third parties on account of such breach;
  - iii. the consideration shall be paid by the third party in the following manner:
    - a) an interest-free refundable security deposit;
    - b) a monthly sub-lease rent payable for each month, one time up front or in installments; and,
    - c) a monthly O&M charge.
  - iv. such Letter of Allotment shall not bestow any right on a third party for usage of Assets till such time as the Sub-Lease Deed is duly executed in terms of Article XX;
  - v. during the Construction Period, if the Developer gets substituted due to a Developer's Event of Default or a Financial default by a Nominated Company, or the Development Agreement is terminated, such Letter of Allotment shall be liable to be terminated at the discretion of either the Nominated Company or BSHB, as the case may be. However, in such an event, the third party shall be entitled for refund of the amounts of upfront payment of lease rent already paid to the Project Account and the interest-free security deposit; and
  - vi. any booking done through means other than that specified at Clause 14.2.1 (i); such as cash payment, cheque payment in favour of any other account or any other mode of payment etc., shall not be a valid booking under this Development Agreement. Further, if the Developer carries out bookings through means other than that specified at Clause 19.2 (i), the same shall be considered as a Developer Event of Default specified in Clause 24.1.

Further, the Developer shall get the pro-forma/ format of the aforesaid documents (i.e. Letter of Allotment, Sub-Lease Deed or Sub license Deed etc.) approved by BSHB in advance.

- 19.3** Upon receipt of Notice of Financial Default from Lenders' Representative or Notice of Intention to Terminate from BSHB, as the case may be, the Developer shall immediately stop booking of spaces to new third parties. However, the Nominated Company, upon substitution in accordance with the provision of this Development Agreement and the Substitution Agreement, shall be entitled to resume booking;
- 19.4** The Developer shall, at all times be required to maintain a Management Information System (MIS) and submit to the Authority each quarter duly certified by its management and the statutory auditor or such auditor appointed with the approval of the Authority, for all bookings done and, payments received/ receivable executed and this shall, inter alia, include the following details:
- a) List and values of Letter of Allotments executed;
  - b) Upfront deposits received from Third parties;
  - c) All payments agreed with the Third parties during the term of the proposed Sub-Lease;
  - d) Profile of payments made by Third parties; and,
  - e) Track record of Sub-Lessees in terms of promptness of payments/delays.
- 19.5** The Developer shall submit a quarterly MIS covering all the above information to the Authority till the achievement of the Completion Certificate.

**ARTICLE XX****20 GRANT OF SUB-LEASE RIGHTS IN THE ASSETS TO THIRD PARTIES****20.1 Grant of Sub-Lease hold rights in the Assets to third parties**

BSHB agrees that upon the payment of Lease Premium, submission of bank guarantees for and thereby signing of this Development Agreement, execution of the Lease Deed and subject to the provisions of Article X and the provisions of the Lease Deed and issuance of the Completion Certificate, by BSHB, the Developer shall have the right to grant sub-lease of spaces within the Assets or sub-license of spaces on the Site to third parties, and in the following manner:

- a) The Developer shall grant sub-lease, licence, tenancy or similar rights/ arrangements of spaces co-terminus with the Lease Deed within the Assets to third parties, by way of execution of a Sub-Lease Deed to be entered into between the Developer and the Sub-Lessee. The draft of such Sub-Lease Deed or sub-license Deed shall contain the requirements contained in Annexure C;
- b) The term of such Sub-Lease Deed or sub-license Deed or agreement creating any right of enjoyment of built up area shall be co-terminus i.e. not exceed the Lease Period hereof and shall stand terminated upon termination of lease without notice to the Sub-Lessee, licensee or holder of any right including tenancy. The Developer undertake to incorporate such conditions in every agreement entered into by him with the third parties and submit a copy of each Sub-Lease Deed to the Authority within 7 days of signing;
- c) The right to Sub-lease mentioned hereinabove shall be transferable under intimation to Developer and Authority.
- d) Notwithstanding anything contained herein, Transfer Dividend shall not be payable in case of succession and transfer to its successors by way of inheritance. The Developer agrees and undertakes that during the Lease Period, it shall maintain a Sub-lease register (the "Sub Lease Register") in such format as may be acceptable to BSHB, of all the Sub-Lease Deeds, licences, tenancy etc. entered by it with respect to the Assets and in addition within 30 (thirty) days of entering into any agreement with respect to the Assets, a copy of such a deed shall be supplied to BSHB. The Developer shall provide a copy of the Sub Lease Register to BSHB every year before the 15<sup>th</sup> of April.

For the avoidance of doubt, it is clarified that the grant of sub-lease licencing/ renting shall be limited to the structures created by the Developer (defined as Assets in terms of this Agreement) on the land parcel. Only the land parcel/ Site cannot be sub-leased/ licenced/ rented etc. as per the provisions of this Agreement.

## ARTICLE XXI

### 21 LIABILITY AND INDEMNIFICATION

#### 21.1 Liability in respect of the Project

Developer shall be solely responsible for the construction, operation and management of the Project and shall have the overall responsibility and liability with respect to the Project and all Assets and Project Utilities located upon the Site. In no event shall BSHB have any liability or be subject to any claim for the Damages arising out of the design, development, financing, construction, operation, maintenance or management of the Project and the Assets and Project Utilities located upon the Site.

#### 21.2 Indemnity

Developer hereby indemnifies and agrees and undertakes that from the Appointed Date and during the Lease Period and thereafter, it shall keep indemnified and otherwise saved and harmless, BSHB, its agents and employees, its consultants from and against any and all claims, demands made against and/or loss caused and/or the Damages suffered and/or cost, charges/expenses incurred or put to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to BSHB, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Developer or as a result of failure on the part of Developer to perform any of its obligations under this Development Agreement or on the Developer committing breach of any of the terms and conditions of this Development Agreement or on the failure of the Developer to perform any of its statutory duty and/or obligations or failure or negligence on the part of Developer to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Authority or as a result of any failure or negligence or default of Developer or its contractor(s) and/or Sub-Contractors and/or invitees as the case may be, in connection with or arising out of this Development Agreement and/or arising out of or in connection with Developer's use and occupation of the Site and/or Assets located thereon or due to the non-performance by the Developer of any of its obligations under the Development Agreement to sub-lease including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the Assets.

#### 21.3 General

It is expressly understood by the Parties that this Article shall survive the termination or expiry hereof.

#### 21.4 Procedure in Case of Third Party Claims

21.4.1 In the event of any demand or claim by any third entity against either Party, which claim or demand would be payable by that Party at first instance (the "**Paying Party**"), but would sought to be claimed from the other Party (the "**Indemnifier**") pursuant to Clause 21.2 above, then the Paying Party shall, without undue delay from becoming aware of the matter, notify the Indemnifier of such matter in writing, describing the potential claim in reasonable detail and, to the extent possible, state the estimated amount of such claim.



- 21.4.2 Furthermore, the Paying Party shall make available to the Indemnifier, a copy of the third party claim or demand and give the Indemnifier the opportunity to defend the Paying Party against such claim, employing their own counsel at their sole costs, expense and risk. The Indemnifier, at its own cost, shall have the right to defend the claim by all appropriate proceedings and shall have the sole right to direct and control such defense. In particular, without limitation, the Indemnifier may (i) participate in and direct all negotiations and correspondence with the third party; (ii) appoint and instruct counsel acting, if necessary, in the name of the Paying Party (with all costs and expenses to be borne by the Indemnifier); and (iii) require that the claim be litigated or settled in accordance with the Indemnifier's instructions. The Indemnifier shall conduct such proceedings in good faith and take into account the interest of the Paying Party. As long as the Indemnifier is defending a claim, the Paying Party shall provide or cause to be provided, to the Indemnifier or its representatives, any information reasonably requested by it and/or them relating to such claim, and Paying Party shall otherwise cooperate with the Indemnifier and its representatives in good faith in order to contest effectively such claim. The Indemnifier shall inform the Paying Party in writing without undue delay of all developments and events relating to such claim, and the Paying Party shall be entitled to, without being obliged to do so, at the risk, cost and expense of the Indemnifier, employ its own counsel and to attend all conferences, meetings and proceedings relating to such claim and to defend the same.
- 21.4.3 If the Indemnifier does not assume control of a defense of a specific claim, the Paying Party may without being obliged to do so, assume full control of such defense and such proceedings at the risk, cost and expense of the Indemnifier. If requested by the Paying Party, the Indemnifier shall cooperate in good faith with the Paying Party in order to contest effectively such claim. The Indemnifier shall be entitled, at its expense, to employ its own counsel and to attend all conferences, meetings and proceedings relating to such claim.
- 21.4.4 Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall any Party, its officers, employees or agents be liable to indemnify the other Party for any matter arising out of or in connection with this Development Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.
- 21.4.5 Notwithstanding anything to the contrary contained in this Development Agreement, the Developer shall indemnify and hold harmless BSHB, from and against all claims, demands made against and/ or loss caused and/ or the Damages suffered and/ or cost, charges/expenses incurred or put to and/ or penalty levied and/ or any claim pursuant to the non-performance by the Developer of any of its obligations under the Sub-Lease Deed including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the Assets.

**ARTICLE XXII****22 FORCE MAJEURE****22.1 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 Bihar of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 22.2, 22.3 and 22.4 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.

**22.2 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 ionising 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, 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 22.3;
- c) any failure or delay of a 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 Contractor;
- d) any judgement 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 Authority;
- 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.

**22.3 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 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.

#### **22.4 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) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors;
- b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Developer or any of the 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 Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- c) any failure or delay of a 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 Contractor; or
- d) any event or circumstance of a nature analogous to any of the foregoing.

#### **22.5 Duty to report Force Majeure Event**

22.5.1 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 22 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.

22.5.2 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.

22.5.3 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 22.5.2, and such other information as the other Party may reasonably request the Affected Party to provide.

## **22.6 Effect of Force Majeure Event on the Lease Right**

22.6.1 At any time during the Lease Period, if any Force Majeure Event occurs:

- a) before Project Completion Date, the Lease Period 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 Project Completion Date, the Lease Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;

## **22.7 Allocation of costs arising out of Force Majeure**

22.7.1 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.

22.7.2 Upon occurrence of a Force Majeure Event during the Lease Period, 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 Authority to the Developer.

22.7.3 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.

22.7.4 Save and except as expressly provided in this Article 22, 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.

## **22.8 Termination Notice for Force Majeure Event**

22.8.1 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 22, 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.

## **22.9 Termination Payment for Force Majeure Event**

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

22.9.2 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Developer in an amount that would be payable under Clause 24.7.2 as if it were an Authority Default.

## **22.10 Dispute resolution**

22.10.1 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.

## **22.11 Excuse from performance of obligations**

22.11.1 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 XXIII****23 LEASE PERIOD, RENEWAL AND TRANSFERABILITY****23.1 Lease Period**

- a) Unless terminated earlier in accordance with Clause 24.3 or by mutual agreement between the Parties in writing, this Development Agreement shall continue in full force and effect from the Appointed Date until the [30<sup>th</sup> (Thirty) anniversary] of the Appointed Date (the "**Lease Period**")
- b) The Development Agreement shall expire on the [30<sup>th</sup> (Thirty) anniversary] of the Appointed Date. Upon expiry, the Developer and/ or the Sub-lessees, as the case may be, shall have a right of renewal on the payment of Renewal Premium at the time of renewal. Upon expiry if the Agreement is not renewed, respective Assets and Project Utilities on the Site will automatically vest in BSHB free from all encumbrances, without BSHB being required to pay any consideration/ compensation in respect thereof and without the requirement of performance of any act or deed by either party to this Development Agreement. The Lease may be renewed any number of times, at the option of Lessee, subject to payment of Renewal Premium as per the Applicable Law.

**23.2 Renewal of Lease Rights and/ or Sub-Lease Deeds**

- 23.2.1 Upon expiry of the Lease Period of 30 Years, Lease hold Rights and/ or Sub-Lease rights shall be renewed further for each term of 30 (thirty years) subject to payment of Renewal Premium provided that there is no violation of any terms and conditions of lease deed or this Agreement (the "Renewal").
- 23.2.2 In case Lessee failed to renew the Lease within 90 days after expiry of Lease Period of 30 Years, Sub-lessee may apply for renewal of lease of proportionate share of land under its sub-lease and it shall be renewed further for a period of 30 (thirty years) only in respect of proportionate share of land under the Sub-Lease subject to payment of Renewal Premium and also provided that there is no violation of any terms and conditions of lease deed or this Agreement. In such a case, all current and future obligations and liabilities of the Lessee shall be fulfilled by the Sub-lessee to the extent of such proportionate share of land.

**23.3 Transferability of Lease and Sub Lease Rights:**

- 23.3.1 The Lease Rights are not transferable before the date of achievement of Commercial Operation. However, Lease Rights of the built-up area along-with proportionate share of land thereunder may be transferred with the prior permission of Authority subject to payment of Transfer Dividend to the Authority, after the date of achievement of Commercial Operation. For the avoidance of doubt, it is clarified that no Transfer Dividend shall be payable in case of 1<sup>st</sup> transfer of Lease Rights by the Developer. Any subsequent transfer of Lease Rights made by the transferee shall attract Transfer Dividend and shall be payable by the transferee only.

23.3.2 Sub-Lease Rights together with proportionate share may be transferred under intimation to the Lessee/Developer and Authority. Sub-Lessee may create tenancy, grant licence, leave for enjoyment of area or enter into any similar arrangement with any person under intimation to the Lessee/Developer or Authority. For the avoidance of doubt, it is clarified that no Transfer Dividend shall be payable in case of Sub-leases.

## ARTICLE XXIV

### 24 DEFAULT, SUBSTITUTION AND TERMINATION

#### 24.1 Developer Event of Default

24.1.1 For the purposes of this Development Agreement, each of the following events or circumstances, to the extent not caused by a default of BSHB or Force Majeure Event, shall be considered, as events of default of the Developer (the "**Developer Event of Default**") which, if not remedied within the Cure Period upon receipt of written notice from BSHB, shall provide BSHB the right to terminate this Development Agreement in accordance with Clause 24.3:

- a) Any breach, including but not limited to the events specified hereunder by the Developer of its obligations under this Development Agreement, and such breach if capable of being remedied, is not remedied within 60 (sixty) days of receipt of written notice, from BSHB specifying such breach and requiring the Developer to remedy the same;
- b) A breach of any representation or warranty by the Developer which has a Material Adverse Effect on BSHB's ability to perform its obligations under this Development Agreement and such breach, if capable of being remedied, is not remedied;
- c) Suspension by the Developer of the performance of the obligations under this Development Agreement for a period exceeding 30 (thirty) consecutive days (except during the subsistence of a Force Majeure Event);
- d) Failure by the Developer to operate and maintain the Assets in accordance with the Applicable Laws or committing a default of its obligation as provided for in Article XIV;
- e) Failure of the Developer to maintain insurance(s) as required in terms of Article VIII;
- f) The Developer is ordered to be wound up by a court; filing of a petition for voluntary winding up by the Developer; or levy of an execution or restraint on the Developer's assets; or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Developer by a court of competent jurisdiction;
- g) The Developer using or permitting or causing the use of the Site (i) for purposes other than for the development of Assets or (ii) in violation of Schedule I-III, Annexures and/or other provisions of this Development Agreement;
- h) The Developer doing or permitting to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits;
- i) The Developer setting up an interest in the Site or any portion thereof (i) adverse to that of BSHB or (ii) a third person; or (iii) claiming an absolute interest in the Site or any portion thereof in itself;
- j) Failure to achieve the Project Completion Date on or prior to the expiry of the Scheduled Completion Date or the Extended Project Completion Period, as the case may be;
- k) Commits a breach of any of the provisions of the Lease Deed, or the Substitution Agreement; and
- l) Commits a breach of its obligations as contained in Articles XVII, XIX, XX and XXI hereinabove.
- m) Breach or violation of approved building/ construction plans approved by the Competent Authority, and provisions of applicable master plan or zoning regulations.

#### 24.2 BSHB Event of Default

For the purposes of this Development Agreement, each of the following events or circumstances, to the extent not caused by a default of the Developer or are not Force Majeure



Events, shall be considered, as events of default of BSHB ("**BSHB Event of Default**"), which shall provide the Developer the right to terminate this Development Agreement in accordance with Clause 24.3:

- i. failure to provide to the Developer the rights to the Site in accordance with this Development Agreement;
- ii. a breach of any representation or warranty by BSHB, which has a Material Adverse Effect on the Developer's ability to perform its obligations under this Development Agreement.

### 24.3 Notice of Termination

24.3.1 Without prejudice to any other rights or remedies which the non-defaulting Party may have under this Development Agreement, upon the occurrence of either a Developer Event of Default or a BSHB Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Development Agreement to the other Party (the "**Notice of Intention to Terminate**"). Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to rectify or cure the breach within 60(Sixty) days of receipt of such Notice of Intention to Terminate ("Cure Period"). If the breach is not rectified by the defaulting Party within the Cure Period, the non-defaulting Party shall have the right to terminate this Development Agreement by issuance of a termination notice (the "**Termination Notice**").

24.3.2 Without prejudice to anything to the contrary as contained in this Development Agreement, upon the failure of the Developer to rectify a Payment Default as required under Clause 6.2 or upon the occurrence of Payment Default in two consecutive Accounting Years by the Developer, BSHB shall have the right to terminate this Development Agreement by issuance of a Termination Notice. Provided that in case of termination of the Development Agreement under this Clause 24.3.2, BSHB shall not be required to issue any prior notice expressing its intention to terminate the Development Agreement and calling upon him to cure or rectify the Payment Default and the Developer hereby expressly waives his right, if any, to challenge the same on the ground of non-issuance of prior Notice of Intention to terminate in case of termination of this Development Agreement on the ground of Payment Default.

### 24.4 Substitution by Lenders' Representative

24.4.1 In the event of a Developer Event of Default, BSHB shall, if there be Lenders, send a copy of its Termination Notice as specified in Clause 24.3.1 to the Lenders' Representative to inform and grant 15 (Fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Developer in accordance with the Substitution Agreement. In the event BSHB receives such a representation on behalf of the Lenders, BSHB shall withhold the termination for a period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement.

24.4.2 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 Authority shall withdraw its notice referred to above and restore all the rights of the Developer:

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

## 24.5 Substitution Agreement

24.5.1 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 Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Annexure B.

24.5.2 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 Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Developer for curing such breach.

## 24.6 Consequences of Termination

24.6.1 Termination of this Development Agreement shall be without prejudice to any other right or remedies of Parties under this Development Agreement.

24.6.2 In the event of Termination of the Development Agreement prior to the Project Completion Date, all of the Developer's rights and interests in and to the work-in-progress and/or incomplete Assets and Project Utilities in terms of this Development Agreement shall automatically vest in BSHB and Lease Deed shall stand terminated, In such an event, BSHB, may, in its sole discretion, have the right to cancel the sub-lease to the third party without any liability. Developer shall be solely liable for any third party claims.

24.6.3 In the event of Termination of the Development Agreement after the Project Completion Date but prior to scheduled expiry of the Lease Period, all of the Developer's rights and interests in the Assets and Project Utilities in terms of this Development Agreement shall automatically vest in BSHB and Lease Deed shall stand terminated. Upon the vesting of the Assets and Public Utilities as aforesaid, all Sub-Lease Deeds, all sub-contracts and all other rights and obligations of the Developer with respect to third party contracts in relation to the Project, shall either;

i. automatically stand attorned in favour of BSHB, which shall step in as the Developer/ sub-lessor/ principal contractor and the third parties/ Sub-Lessees/ Sub-Contractors shall fulfill and perform all their obligations under the Sub-Lease Deed or sub-contracts or third party contracts towards BSHB as the Developer/sub-lessor; or

ii. stand terminated at the sole option of BSHB.

24.6.4 The Developer shall do all acts, deeds and things as may be necessary pursuant to the vesting of the Assets and Project Utilities in accordance with the provisions specified in Article XXV.

- 24.6.5 In the event of termination of this Development Agreement pursuant to a Developer Event of Default, the Developer shall be entitled to a Termination Payment as specified in Clause 24.7.1.
- 24.6.6 In the event of termination of this Development Agreement pursuant to a BSHB Event of Default, BSHB or any entity designated by it, shall acquire all of Developer's rights and interests in and to the Assets and Project Utilities in terms of this Development Agreement. Further, the Developer shall be entitled to a Termination Payment as specified in Clause 24.7.2.

## 24.7 Termination Payment

- 24.7.1 Upon Termination on account of a Developer Default during the Operation Period, the Authority 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 and Project Utilities developed by the Developer on the Site, and remaining, retained/ registered as lessee with Developer in the records of BSHB as determined by an independent valuer mutually appointed for the purpose less insurance cover. For the avoidance of doubt, it is clarified that the Fair Value so determined shall not, in any case, exceed the respective proportion of the cost incurred by the Developer in developing the Assets (excluding the cost of land) and the Total Project Cost, whichever is less. Further, the Developer hereby acknowledges that no Termination Payment shall be due or payable on account of a Developer Default occurring prior to Project Completion Date.
- 24.7.2 Upon Termination on account of Authority Default, the Authority shall pay to the Developer, by way of Termination Payment, an amount equal to [100% (One Hundred per cent)] of Fair Value of the Assets and Project Utilities developed by the Developer on the Site, and remaining, retained/ registered as lessee with Developer in the records of BSHB as determined by an independent valuer mutually appointed for the purpose less insurance cover. For the avoidance of doubt, it is clarified that the Fair Value so determined shall not, in any case, exceed the cost incurred by the Developer in developing the Assets (excluding the cost of land) and the Total Project Cost, whichever is less.
- 24.7.3 Termination Payment shall become due and payable to the Developer within 15 (fifteen) days of a demand being made by the Developer to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate 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 Authority of its payment obligations in respect thereof hereunder.
- 24.7.4 The Developer expressly agrees that Termination Payment under this Clause 24.7 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.

**ARTICLE XXV****25 VESTING PROVISIONS****25.1 Vesting Provisions**

- 25.1.1 Upon the expiry of the Lease in terms of this Agreement or Termination in terms of Article XXIV, BSHB shall take over the possession of the Site, Assets and Project Utilities and the Developer shall ensure that on the Transfer Date, all interests of the Developer in:
- a. the Assets and Project Utilities, as existing, shall be vested in BSHB or its nominee, clear of any Encumbrances, if any, and with good title;
  - b. the rights and obligations of the Developer under or pursuant to all subcontracts related to Assets and Project Utilities and other arrangements entered into in accordance with the provisions of this Development Agreement between the Developer and any third party shall (in consideration of BSHB's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in BSHB or its nominee, clear of any Encumbrance and with good title; and,
  - c. the rights and obligations of the Developer and any third party under or pursuant to all Sub-Lease Deeds and other contracts and arrangements between the Developer and such third party in assets, property and rights relating to Assets and Project Utilities shall (in consideration of BSHB's assumption of the obligations under or pursuant to the contracts, arrangements, assets, property and rights) be vested in BSHB or its nominee, clear of any Encumbrance and with good title.
- 25.1.2 Notwithstanding anything contained hereinabove, prior to any transfer of the Assets, BSHB shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of BSHB, are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to BSHB, no third entity, including the counter-party of such contract shall have any right, interest, benefit, claim or demand against or over any Assets or Project Utilities and such Assets or Project Utilities shall be transferred to BSHB or its nominee, clear of any Encumbrance and with good title.
- 25.1.3 Furthermore, notwithstanding anything contained in the Clause 25.1, no liability (accrued or contingent) of Developer or relating to the Assets or the Project Utilities arising on account of actions or inactions prior to the Transfer Date, shall be assumed or transferred to BSHB or its nominees. BSHB or its nominees shall only be liable for liabilities in relation to the Assets or the Project Utilities arising after the handing over the Assets or the Project Utilities.
- 25.1.4 Without prejudice to the foregoing, Developer agrees to indemnify and keep indemnified BSHB from and against all actions, proceedings, losses, Damages, liabilities, claims, costs and expenses, whatsoever which may be sustained or suffered by BSHB as a result of any actions or omissions of Developer prior to the transfer of the Assets or the Project Utilities.
- 25.1.5 Developer shall, in accordance with requirements of the Article XIV and Good Industry Practice, ensure that all property, assets, rights and other items (constituting Assets and Project Utilities), which are vested in or transferred to BSHB shall be in good working order and in a good state of repair.

- 25.1.6 Expiry or termination of this Development Agreement shall be without prejudice to all rights and obligations then having accrued to BSHB and/or Developer (or which may there after accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions, which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such expiry or termination.
- 25.1.7 The Parties' rights to terminate this Development Agreement shall be limited to those expressly set out in this Development Agreement.
- 25.1.8 Transfer costs and taxes, if applicable, for the transfer of the Assets consequent to termination of this Development Agreement shall be borne by the Developer.

## ARTICLE XXVI

### 26 DISPUTE RESOLUTION

#### 26.1 Disputes Resolution,-Amicable Settlement

The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party, then the provisions of Clause 26.2 shall apply.

#### 26.2 Dispute resolution

Any dispute, difference or controversy, of whatever nature howsoever arising under or out of or in relation to this Development 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 26.3 herein below.

The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Development 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.

#### 26.3 Conciliation

In the event of any Dispute between the Parties, the Developer may call upon Managing Director of BSHB and BSHB can call upon the Developer for amicable settlement and upon such reference, the Managing Director, BSHB shall, at his sole option, refer the Dispute to the conciliation committee of BSHB ("Conciliation Committee"), which committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Developer and members of BSHB's Conciliation Committee shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) 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 26.2 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.4 here-in-below.

#### 26.4 Arbitration

26.4.1 Any Dispute, which is not resolved amicably by conciliation, as provided in Clause 26.3, shall be finally decided by reference to arbitration by a Arbitral Tribunal appointed in accordance with Clause 26.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (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 governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be Patna, and the language of arbitration proceedings shall be English.

26.4.2 A notice of the intent (the "**Notice of Intent**") to refer the dispute to arbitration may be given by one Party [the "**Claimant(s)**"] to the other Party [the "**Respondent(s)**"]. There shall be an

Arbitral Tribunal consisting of three (3) arbitrators. The Claimant(s) and Respondent(s) shall be entitled to appoint one arbitrator each and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

26.4.3 The Arbitral Tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article XXVI shall be final and binding on the Claimant(s) and Respondent(s) as from the date it is made, and the Developer and BSHB agree and undertake to obey and implement such Award without delay.

## 26.5 **Continued Performance**

While any Dispute under this Development Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Development Agreement without prejudice to the final determination in accordance with the provisions under this Article XXVI.

Notwithstanding anything contained herein, all obligations of BSHB under this Development Agreement shall automatically come to an end upon the expiry or termination of this Development Agreement and BSHB shall not be obliged to perform such obligations during the pendency of any post-expiry or post-termination Dispute, whether referred to arbitration or not.

**ARTICLE XXVII****27 MISCELLANEOUS****27.1 Governing Law and Jurisdiction**

This Development Agreement shall be governed by and construed in accordance with the laws of India and laws as applicable in the State of Bihar. Subject to this Article XXVII and Article XXVI, the courts at Patna alone shall have exclusive jurisdiction on matters pertaining to or arising from this Development Agreement.

**27.2 Amendments**

No amendment or waiver of any provision of this Development Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**27.3 Agreement to Override Other Agreements; Conflicts**

This Development Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto. This Development Agreement, Schedules, Annexures and the Request for Proposal documents together constitute a complete and exclusive understanding of the terms of the Development Agreement between the Parties on the subject hereof. Lease deed and this Agreement shall be construed harmoniously and in concurrence and in case of any contradiction provisions of this Agreement shall prevail.

**27.4 No Waiver; Remedies**

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

**27.5 Severance of Terms**

If for any reasons whatsoever, any provisions of this Development Agreement are declared to be void, invalid, unenforceable or illegal by any competent arbitral tribunal or court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Development Agreement, which shall continue in full force and effect and in such event, the Parties shall endeavour in good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

**27.6 Language**

All notices, certificates, correspondence or other communications under or in connection with this Development Agreement, any other Project Documents or the Project shall be in English.

**27.7 Counterparts**

This Development Agreement is made in 2 (two) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby



affixed their respective signatures and seals before witnesses. All counter parts shall constitute one and the same Development Agreement.

#### 27.8 Assignment

- i. By Developer: Save and except otherwise permitted by this Development Agreement, Developer shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Development Agreement.
- ii. By BSHB: BSHB shall have the unilateral right to assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities (including those relating to arbitration) under this Development Agreement to any entity.

#### 27.9 Survival

Clauses 27.1, 27.8, 27.11, 27.14, Articles XXI, XXIII, XXIV and XXVI shall continue to bind the Parties notwithstanding the termination or expiry of this Development Agreement.

#### 27.10 Costs and Expenses

Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation and execution of this Development Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to this Development Agreement shall be borne by the Developer. The Parties expressly agree that it shall be the responsibility of the Developer to comply with the requirements in relation to the registration of Lease Deed with any relevant Governmental Authority.

#### 27.11 No Agency

The Parties agree that nothing in this Development Agreement shall be in any manner, interpreted to constitute an agency or partnership for and on behalf of any other Party and the relationship between the Parties is as a principal to principal and on an arm's length basis. Except as otherwise expressly agreed to, nothing contained herein shall confer, on any Party, BSHB to incur any obligation or liability on behalf of the other Party or bind the other.

#### 27.12 Notices

All notices, requests, demands or other communication required or permitted to be given under this Development Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the address indicated below:

- i. In the case of BSHB, to
 

ATTN. OF:	Mr. D. K. Shukla, IFS
DESIGNATION:	Managing Director
ADDRESS:	Bihar State Housing Board 6, Sardar Patel Marg Patna- 800 015
FAX NO:	(0612) 2217992
E-MAIL ADDRESS:	<a href="mailto:contactbshb@gmail.com">contactbshb@gmail.com</a>
- ii. In the case of notices to Developer, to:
 

ATTN. OF:	_____
-----------	-------

DESIGNATION: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 FAX NO: \_\_\_\_\_  
 E-MAIL ADDRESS: \_\_\_\_\_

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 27.12 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- i. Sent by registered post, 3 (Three) Business Days after posting it; and
- ii. Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

**27.13 Third Party Benefit**

Nothing herein expressed or implied is intended, nor shall it be construed to confer upon or give to any third party any right, remedy or claim under or by reason of this Development Agreement or any part hereof.

**27.14 Performance of all acts for compliance with the Applicable Laws**

The Parties shall perform all acts including signing any documents, papers, returns, etc. as may be required for compliance with all Applicable Laws or terms of any Applicable Permits for the development, construction and completion of the Project on the Site and also the operation and maintenance thereof.

**27.15 Exclusion of Implied Warranties etc.**

This Development Agreement expressly excludes any warranty, representation, 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 any Party not contained in a binding legal agreement executed by the Parties.

**IN WITNESS WHEREOF** this Development Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and on the date first above written.

For and on behalf of Bihar **State Housing Board**

BY: \_\_\_\_\_

Name:                      Title:

Witness:

For and on behalf of **[insert name of the Developer]**

BY: \_\_\_\_\_

Name:                      Title:

Witness