

**REQUEST FOR PROPOSAL**

**VOLUME III**

**DRAFT DEVELOPMENT AGREEMENT  
&  
DRAFT CONVEYANCE DEED**

**DEVELOPMENT OF COMMUNITY MARKET &  
RESIDENTIAL CUM/OR COMMERCIAL  
FACILITIES  
AT JHARPADA ON PPP MODE**

**FEBRUARY 2026 (CALL -2)**

**RFP No. 3701/BDA, 18.02.2026**



**Bhubaneswar Development Authority  
Akash Shova Building, Sachivalaya Marg  
Bhubaneswar, Odisha 751 001**

<b>SL. No</b>	<b>CONTENTS</b>	<b>Page No.</b>
1	<b>Article I- Definitions and Interpretations</b>	<b>7</b>
2	<b>Article-II- Scope of Project and Access to Site</b>	<b>17</b>
3	<b>Article- III- Grant of Development Right</b>	<b>18</b>
4	<b>Article- IV- Conditions Precedent</b>	<b>24</b>
5	<b>Article- V- Equity Lock in Obligations of the Bidder</b>	<b>27</b>
6	<b>Article- VI- Representations and Warranties</b>	<b>28</b>
7	<b>Article-VII- Obligations of the Developer and BDA</b>	<b>30</b>
8	<b>Article- VIII- Payment and Consideration</b>	<b>39</b>
9	<b>Article- IX- Financing Arrangement and Security</b>	<b>43</b>
10	<b>Article-X- Insurance</b>	<b>44</b>
11	<b>Article-XI- Marketing/Right of Allotment/Booking of Residential and Commercial Spaces in the Assets</b>	<b>46</b>
12	<b>Article-XII- Grant of Rights in the Assets to Users</b>	<b>47</b>
13	<b>Article-XIII- Term and Expiry</b>	<b>48</b>
14	<b>Article- XIV- Force Majeure</b>	<b>48</b>
15	<b>Article-XV- Default and Termination</b>	<b>51</b>
16	<b>Article- XVI- Rights and Title Over the Site</b>	<b>56</b>
17	<b>Article- XVII- Vesting and Provisions</b>	<b>56</b>
18	<b>Article- XVIII- Dispute Resolution</b>	<b>57</b>
19	<b>Article-XIX- Liability and Indemnification</b>	<b>59</b>
20	<b>Article- XX- Miscellaneous</b>	<b>61</b>
21	<b>Draft Conveyance Deed</b>	<b>69</b>



**WHEREAS:**

- A. BDA is a statutory authority constituted and created by the Government of Odisha in the year 1983 under the Orissa Development Authorities Act, 1982 with the objective inter alia undertaking works pertaining to construction of housing colonies, shopping centers, markets and public amenities.
- B. In order to achieve such objectives, ..... Department, Government of Odisha, has allotted a land measuring 1.932 acres more or less bearing Plot No. 686, Khata No. 969, Jharpada, Bhubaneswar, Odisha, India for development vide its allotment letter no. -----<sup>1</sup> dated -----<sup>2</sup> as more particularly described in 'Schedule I' to this Development Agreement (the "**Site**") on 'freehold' basis and possession of the Site had been handed over to BDA vide Government Order No. -----<sup>3</sup> dated -----.
- C. BDA intends to undertake development of a Community Market on the Site by following a Public Private Partnership mode, for providing such facility to the citizens and particularly residents of Kalinga Nagar. In order to capture the FAR available for the site (both side frontage of 60-meter roads), the Authority has decided to allow residential cum/or commercial facilities in balance built-up area, within the composite project.
- D. As part of the proposed development of the Site, BDA had conducted a competitive bidding process by inviting proposal in the form of bids (the "**Bid**") vide its Request for Proposal No. -----<sup>4</sup> dated -----<sup>5</sup> (the "**RfP Document**") to undertake the development of the Site, on the terms and conditions as specified and contained therein.
- E. M/s. -----<sup>6</sup> or a consortium of M/s. -----<sup>7</sup>, and M/s. -----<sup>8</sup> [*insert names of the Lead Member and members*] submitted the highest Financial Bid with a Maximum Land Premium ("**MLP**") of INR -----<sup>9</sup> (Indian Rupees -----<sup>10</sup> only)<sup>10</sup> and was selected by BDA as the Selected Bidder (the "**Selected Bidder**") vide the Letter of Award ("**LoA**") no. -----<sup>11</sup> dated -----<sup>12</sup>;

---

<sup>1</sup> Please insert the details.

<sup>2</sup> Please insert the details.

<sup>3</sup> Please insert the details.

<sup>4</sup> Please insert the details.

<sup>5</sup> Please insert the details.

<sup>6</sup> Please insert the details.

<sup>7</sup> Please insert the details.

<sup>8</sup> Please insert the details.

<sup>9</sup> Please insert the details.

<sup>10</sup> Please insert the details.

<sup>11</sup> Please insert the details.

<sup>12</sup> Please insert the details.

- F. The Selected Bidder has, in accordance with RfP and LoA, promoted, organized and incorporated the SPV Company under the provisions of the Indian Companies Act, 2013 and has, by its letter no. -----<sup>13</sup> dated -----<sup>14</sup>, requested BDA to accept the SPV Company as Developer, which in turn shall undertake and perform all the obligations and enjoy the rights as specified herein.
- G. In addition, the Selected Bidder, in compliance of the terms and conditions of LoA, has:
- a) paid to BDA an amount of INR -----<sup>15</sup> (Indian Rupees ----- only)<sup>16</sup> towards the First Instalment of MLP as specified in LoA vide Demand Draft/ Pay Order /RTGS/ Banker's Cheque No. -----<sup>17</sup> dated -----<sup>18</sup> drawn on -----<sup>19</sup> Bank, -----<sup>20</sup>- Branch, -----<sup>21</sup> payable at Bhubaneswar in favour of "Bhubaneswar Development Authority"; (the "**First Instalment**");
  - b) paid to BDA the **Project Development Fees**, an amount of INR 1,00,00,000/- (Indian Rupees One Crore only) plus applicable GST to be paid to '**Bhubaneswar Development Authority**' in the form of a Demand Draft, by the preferred bidder, before execution of the Development Agreement, and in the manner specified in the Letter of Award (LoA), as non-refundable reimbursement of Project Development Expenses.
  - c) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----<sup>22</sup> (Indian Rupees ----- only)<sup>23</sup> (BG no. ----- issued by -----<sup>24</sup> Bank, -----<sup>25</sup>- Branch, -----<sup>26</sup>; dated -----<sup>27</sup>) as Construction Performance Security (the "**Construction Performance Security**");

---

<sup>13</sup> Please insert the details.

<sup>14</sup> Please insert the details.

<sup>15</sup> Please insert the details.

<sup>16</sup> Please insert the details.

<sup>17</sup> Please insert the details.

<sup>18</sup> Please insert the details.

<sup>19</sup> Please insert the details.

<sup>20</sup> Please insert the details.

<sup>21</sup> Please insert the details of the city and State.

<sup>22</sup> Please insert the details.

<sup>23</sup> Please insert the details.

<sup>24</sup> Please insert the details.

<sup>25</sup> Please insert the details.

<sup>26</sup> Please insert the details of the city and State.

<sup>27</sup> Please insert the details.

- d) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----<sup>28</sup> (Indian Rupees ----- only)<sup>29</sup> (BG no. ----- issued by -----<sup>30</sup> Bank, -----<sup>31</sup> Branch, -----<sup>32</sup>; dated -----<sup>33</sup>) as outstanding amount of the MLP (the “**BG for 2<sup>nd</sup> Instalment of the MLP**”) to be deposited with **90 days** of execution of this agreement.
- e) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----<sup>34</sup> (Indian Rupees ----- only)<sup>35</sup> (BG no. ----- issued by -----<sup>36</sup> Bank, -----<sup>37</sup> Branch, -----<sup>38</sup>; dated -----<sup>39</sup>) as outstanding amount of the MLP (the “**BG for 3<sup>rd</sup> Instalment of the MLP**”) to be deposited with **240 days** of execution of this agreement.

- H. The Selected Bidder having duly complied with the abovementioned formalities is desirous of acquiring the development rights over the Site in favour of the Developer for the purposes of conceptualizing, designing, financing and construction of the Community Market and handing it back to the Authority in the manner specified in the RFP document, and a parking space not lesser than 60% of the built-up-area of the Community Market, completed in all respect.  
Additionally, conceptualizing, designing, financing, construction, marketing, take bookings through ‘Agreement for Sale’, operating and maintaining the other Project Assets (*as defined hereinafter*) upon the Site by signing this Development Agreement.
- I. Accordingly, BDA on the basis of the representations and warranties of the Developer has agreed to grant to the Developer development rights in the Site as specified herein for the purposes as set out herein in this Development Agreement, subject to the fulfilment of the Developer’s obligations as set out and contained herein in this Development Agreement in accordance with the terms and conditions of this Development Agreement.

---

<sup>28</sup> Please insert the details.

<sup>29</sup> Please insert the details.

<sup>30</sup> Please insert the details.

<sup>31</sup> Please insert the details.

<sup>32</sup> Please insert the details of the city and State.

<sup>33</sup> Please insert the details.

<sup>34</sup> Please insert the details.

<sup>35</sup> Please insert the details.

<sup>36</sup> Please insert the details.

<sup>37</sup> Please insert the details.

<sup>38</sup> Please insert the details of the city and State.

<sup>39</sup> Please insert the details.

J. M/s. -----<sup>40</sup> (single Bidder) or (Lead Member of the consortium) has agreed to be a Conforming Party to 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 is hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows in Articles I to XXI, Schedules I to ----- and Annexure A to ----- :

---

<sup>40</sup> Please insert the details.

## Article I

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions:

In these presents, including the recitals hereof, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

- a) **“Affected Party”** shall have the meaning ascribed to it in Article 15.1 of this Development Agreement;
- b) **“Appendix”** and **“Appendices”** mean any of the schedules, annexures, supplements or documents appended to this Development Agreement;
- c) **“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision or determination by, or any interpretation or administration of Government of India (GoI) / Government of Odisha (GoO) or Bhubaneswar Development Authority (BDA) or by any Government Authority(ies) or instrumentality thereof, as may be in effect on the date of this Development Agreement and during the subsistence thereof and shall not include any change in decision of the Authority subsequent to execution of this Development Agreement adversely affecting the right title and interest of the Developer, BDA and the Confirming Party herein;
- d) **“Applicable Permits”** means any or all permissions, licenses, sanctions, clearances, authorizations, consents, rulings, exemptions, no-objections, approvals of and / or from any Government Authority(ies) / Bodies and any other quasi governmental, administrative, judicial, public or statutory body, ministry, department, agency, authority, board, bureau, municipality, corporation or body entrusted with and / or carrying out any statutory functions or commissions, required from time to time, as per Applicable Laws required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes as contemplated by this Development Agreement;
- e) **“Appointed Date”** means incorporation of Project SPV, Execution of Development Agreement, submission of 1<sup>st</sup> instalment of MLP, BG of outstanding payments, project development fees and Performance Security within 30 days of the issuance of Letter of Award (LOA) and before execution of this agreement.

- f) **“BDA”** shall have the meaning ascribed to it in Preamble of this Development Agreement;
- g) **“BDA Event of Default”** shall have the meaning ascribed to it in Article 16.2 of this Development Agreement;
- h) **“Bid”** shall have the meaning ascribed to it in Recital D of this Development Agreement;
- i) **“Bid Security”** means the bank guarantee of INR 2 Cr (Rupees Two Crores only) as provided and tendered by the Selected Bidder to BDA along with the Bid;
- j) **“Business Day”** means a day on which banks are generally open in Bhubaneswar/ State of Odisha, for transaction of normal banking business;
- k) **“Change in Law”** means occurrence of any of the following events after the execution of this Development Agreement:
  - i. enactment of any new Applicable Law;
  - ii. the repeal in whole or in part (unless re-enacted with the same effect) or modifications of any existing Applicable Law;
  - iii. the change in interpretation or application of any Applicable Law by a court of record as compared to such interpretation or application by a court of record, prior to the date of this Development Agreement;
  - iv. the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Development Agreement;
  - v. after the date of grant of any Applicable Permit(s), a change in the terms and conditions attaching to such Applicable Permit(s) (other than for cause) or the attachment of any new terms and conditions to the Applicable Permit (s) (other than for cause); or,
  - vi. any Applicable Permit(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a Party (including a failure to renew), or if granted for a limited period, nor being renewed on a timely basis on an application therefore having been duly made in good time.
- l) **“Development of Community Market at Jharpada, Bhubaneswar on PPP mode”** means the project to be developed by Developer on the Site (the project proposal of the Selected Bidder).
- m) **“Compliance Date”** shall have the meaning as ascribed to it in Article 4.5.2 of this Development Agreement.
- n) **“Confirming Party”** to this Development Agreement is the Selected Bidder, be it an individual entity or Lead member of a consortium.

- o) **“Conditions Precedent”** shall have the meaning ascribed to it in Article 4.1.1 of this Development Agreement.
- p) **“Consideration”** shall have the meaning ascribed to it in Article 8.1 of this Development Agreement.
- q) **“Construction Completion Date”** or **“Scheduled Construction Completion Date”** means the date on which the Competent Authority of the Government of Odisha issues the ‘Occupancy Certificate’, certifying the completion of the construction activity relating to the Project Facilities and BDA receiving a copy of the same.
- r) **“Construction Completion Certificate”** means the certificate issued by the BDA to the Developer confirming the completion of the construction of Project facilities.
- s) **“Cure Period”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- t) **“Deficiency”** shall have the meaning ascribed to it in Article 3.3.3 of this Development Agreement.
- u) **“Developer”** shall mean the SPV Company as defined in Article 1.1.(fff) below to execute this Development Agreement and subsequent Conveyance Deed.
- v) **“Development Agreement”** means, this Agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented, or modified in accordance with the provisions hereof.
- w) **“Development Control”** means the fixed parameters of the bid and all other conditions as per the Odisha Development Authorities (Planning and Building Standards) Rules, 2020, including:
  - i. The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
  - ii. There must be at least 230 numbers of shops measuring 150 sq. ft internal area.
  - iii. Common area of at least 40% inside the ‘Community Market’ excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
  - iv. Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
  - v. Ceiling height must be suitable to ensure natural light.
  - vi. Space for Store and industrial refrigerators in the common area.
  - vii. Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be

- designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
- viii. Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1st) basement.
- ix. The indicative specifications of the Community Market are available in Annexure 1 of Vol-1, Project Information Memorandum of the RFP.
- x. All statutory approval is the responsibility of the bidder.
- xi. The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.
- x) **“Dispute”** shall have the meaning ascribed to it in Article 19.1.1 of this Development Agreement.
- y) **“End Date”** means the date immediately following the date of expiry or prior termination, as the case may be, of this Development Agreement in accordance with the provisions hereof.
- z) **“Extended Project Completion Period”** shall have the meaning ascribed to it in Article 7.5.1 of this Development Agreement.
- aa) **“First Installment”** shall have the meaning ascribed to it in Article 8.2.2 of this Development Agreement.
- bb) **“Force Majeure Event”** shall have the meaning ascribed to it in Article 15.1 of this Development Agreement.
- cc) **“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a project of the type and size similar to the Project.
- dd) **“GoI”** shall mean Government of India.
- ee) **“GoO”** shall mean Government of Odisha.
- ff) **“Indemnified Party”** shall have the meaning ascribed to it in Article 20.3.1 of this Development Agreement.
- gg) **“Independent Engineer”** shall mean the firm and/ or any other person appointed by the BDA for acting as an independent evaluator of construction quality, progress of the Project, compliance of various related provisions of this

- Development Agreement and finally authorize person for issuing the Construction Completion Certificate and cost of such Independent Engineer to be borne by the Developer.
- hh) **“Insurance Cover”** shall have the meaning ascribed to it in Article 10 of this Development Agreement.
- ii) **“Lenders”** mean any institution based in India or abroad providing Financial Assistance under the Financing Documents and includes banks, financial institution, non-banking financial companies, funds, trusts and/or trustees for the holders of debentures/ or other debt instruments/securities issued by them who provide Financial Assistance to the Developer under the Financing Documents.
- jj) **“Conveyance Rights”** shall have the meaning ascribed to it in Article 3.2.1 of this Development Agreement.
- kk) **“LoA”** shall have the meaning ascribed to it in Recital E of this Development Agreement.
- ll) **“Material Adverse Effect”** means 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 Development Agreement or the legality, validity, binding nature or enforceability of this Development Agreement.
- mm) **“Material Breach”** means a breach of any of the obligations, terms, conditions and covenants of this Development Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Development Agreement/and has a Material Adverse Effect.
- nn) **“Nominated Company/Substitute Entity”** shall mean the company who will get the right on the Project as per this Development Agreement as replacement of the Developer and shall be selected by the Lender(s) to the Developer or otherwise, but not the Developer itself, with approval from the Authority.
- oo) **“Notice of Intention to Terminate”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- pp) **“On-Site Infrastructure Facilities”** including internal roads, pavements, drains, sewerage, sidewalks, perimeter fencing, street lighting within the perimeter, electricity sub-stations, electricity mains, water mains, sewer mains, power and water supply, rainwater harvesting, waste disposal systems, sewage treatment plant (STP), waste collection for composting, telecom services, logistics

- center, firefighting system, and utility corridor and green belt development within the perimeter of the Site etc., as applicable.
- qq) **“Payment Default”** shall have the meaning ascribed to it in Article 8.4.1 of this Development Agreement.
- rr) **“Person”** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity.
- ss) **“Construction Performance Security”** shall mean the irrevocable and unconditional bank guarantee (Construction Performance Security) provided by the Selected Bidder from a nationalized / scheduled bank having a branch at Bhubaneswar, Odisha as guarantee for the performance of its obligations in respect of the Project.
- tt) **“Selected Bidder”** shall mean the Bidder, either single company or consortium of companies, who has been selected, pursuant to the bid evaluation process set forth in the RfP Document, for implementation of the Project and to whom LoA has been issued by BDA.
- uu) **“Project Agreements”** means collectively (a) this Development Agreement, (b) the Charter Documents, and any other agreement in connection with the Project as and when required by either of the parties and or the Authority, their agents, officials, authorized representatives for the purpose.
- vv) **“Project”** or **“Development of Community Market at Jharpada, Bhubaneswar on PPP mode”** means, the project for financing, construction, operation and maintenance of the Project Facilities at the Project Sites in accordance with the terms and conditions of this Development Agreement.
- ww) **“Project Assets”** means, collectively, all the structures, facilities and areas that are developed on the Project Site, in accordance with as per the terms and provisions of this Development Agreement and the RfP, which would include: (i) all Project Facilities, and (ii) all types of works that the Developer is authorized to undertake and develop, operate and maintain on the Project Site.
- xx) **“Project Facilities”** mean collectively or singularly, as the context may admit or require: (i) Community Market (ii) Residential cum/or Commercial facilities in balance built-up space (iii) external areas like circulation, parking spaces, open area and landscaped areas and (iv) On site Infrastructure along with the structures, common areas, infrastructure and facilities and services relating thereto, that shall be developed, designed, financed, constructed, completed, commissioned and operated and maintained at the Project Site by the Developer in accordance with the provisions hereof.

- yy) **“Project Site”** or **“Site”** means 1.932 acres of land situated in along with the rights in relation thereto, the easementary rights, right of way, appurtenances, the approaches within the site and other areas on, into, at, under, over or through which the Project/Project Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly described in Schedule I hereunder and delineated in Annexure thereto and thereon bordered in red.
- zz) **“Proposal”** or **“Bid”** means the documents in their entirety comprised in the proposal or bid submitted by Any Firm/Bidder (including the technical and financial proposal/ bid) in response to the Request for Proposal, and accepted by BDA, signed for verification by the authorized representatives of the Parties.
- aaa) **“Request for Proposal”** or **“RfP”** means the Request for Proposal in 3 volumes dated \_\_\_\_\_ issued by BDA inviting proposals for the Project, and includes any addendum / clarifications issued in respect thereof by BDA.
- bbb) **“Scheduled Completion Date”** shall have the meaning ascribed to it in Article 7.5.1 of this Development Agreement.
- ccc) **“Scope of the Project”** means the scope for the Project as set out in Article 2.1 in this Development Agreement.
- ddd) **“Second / Third Installment”** shall have the meaning ascribed to it in Article 8.2.3/8.2.4 of this Development Agreement.
- eee) **“Security Interest”** means any mortgage, charge (whether fixed or floating or otherwise), pledge, lien, hypothecation, assignment, security interest, privilege or priority of any kind having the effect of security or other obligation or restriction or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;
- fff) **“SPV Company”** shall mean a company separately formed by the Selected Bidder under Companies Act 2013 as per the terms of the LoA to deal with the Project along with all responsibilities/ obligations arising out of this Development Agreement and Conveyance Deed at its costs and risks.
- ggg) **“Term”** shall have the meaning ascribed to it in Article 14.1 of this Development Agreement.
- hhh) **“Termination”** shall have the meaning ascribed to it in Article 16.4.1 of this

Development Agreement.

- iii) **“Termination Notice”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- jjj) **“Maximum Land Premium/ MLP”** shall have the meaning ascribed to it in Article 8.2.1 of this Development Agreement.
- kkk) **“Users”** shall mean the Person/s who will be allotted units/ spaces in the Project Assets, either whole or in part, by the Developer.
- lll) **“User Agreement”** shall have the meaning ascribed to it in Article 12.1 of this Development Agreement.

## 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 varied, 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 or other deed or document of any description or other instrument (including, without limitation, references to this Development Agreement), includes a reference to any document, agreement, 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, or other instrument (including, without limitation, references to this Development Agreement), means a reference to such document, agreement, or other instrument and to all appendices, annexure, schedules, and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement 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, section, schedule, or annexure shall, except where the context requires otherwise, be a reference to that article, clause, paragraph, sub-paragraph, section, 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 a person or party/ies like the consultants and the legal retainer of BDA, drafting it shall have no application in the case of this Development Agreement.
- 1.2.14. If any provision in this Article 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. All dates are in the form of dd/mm/yyyy.

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.

1.2.19. The terms and expressions elsewhere defined in this Development Agreement shall have the meanings ascribed therein.

1.2.20. 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; and
- b) all other agreements and documents forming part hereof,

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

### **1.3. Measurements and Arithmetic Conventions:**

All measurement and calculations shall be in metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculation, which shall be rounded off to nearest rupee.

## **Article II**

### **2. SCOPE OF PROJECT AND ACCESS TO SITE**

#### **2.1. Scope of Project:**

2.1.1. The scope of the Composite Project is to develop a 'Community Market' and parking as per development guidelines provided by the Authority and utilize the unused built-up space for Residential cum/or Commercial Facilities on the Site by the Developer by following the Applicable Laws, Applicable Permits and in accordance with the terms and conditions of this Development Agreement.

2.1.2. The scope of the Project shall mean and include, during the Term:

- a) Planning, designing, financing, construction of the Assets and Project Facilities upon the Site as per Good Industry Practice, for the purposes of the 'Community Market' and parking as per development guidelines provided by the Authority and handover the same to the Authority, free of cost and as per specifications mentioned in the bidding documents and obtain completion certificate from the Competent Authority.  
Additionally, utilize the unused built-up space for Residential cum/or Commercial Facilities on the Site and its subsequent use as per the discretion of the Developer.
- b) Obtaining the Applicable Permits under the Applicable Law.
- c) After payment of MLP, Performance Security, obtaining all approvals and clearances from competent authority and registration with ORERA, obtain permission from the BDA to execute the 'Agreement to Sale' with the end-users for marketing of the proposed Residential cum/or Commercial Facilities.
- d) Execute the Conveyance Deed for the Residential cum/or Commercial Facilities on the Developer's share of built-up area with proportionate interest on land, parking, and utilities after completion of the Composite Project.
- e) Operating and maintaining the Assets and Project Facilities as per Good Industry Practice till the same is handed over to the Associations of End Users like Resident Welfare Association, Cooperative Housing Society etc in accordance with the prevailing law and till completion of the defect liability period; and,
- f) Performance and fulfillment of all other obligations of the Developer pursuant to this Development Agreement and matters incidental thereto or necessary thereof.

## **2.2. Handover of the Site:**

- 2.2.1. On the execution of this Development Agreement and subject to compliance of Article No. 4.3, BDA shall give the right of way and/ or access (as the case may be) to the Site for the Project to the Developer without any encroachment and encumbrance for the purposes of and to the extent conferred by the provisions of this Development Agreement and subsequent to the execution of the Conveyance Deed handover the formal possession of the Site to enjoy the freehold rights in the proportionate or Developer's share of built-up area with equivalent interest on land.
- 2.2.2. BDA and the Developer shall carry out a joint survey of the Site for the purposes of demarcation of the boundaries of the Site and would sign a joint survey plan of the Site and the joint survey letter.

## **Article III**

### **3. GRANT OF DEVELOPMENT RIGHT / FREEHOLD RIGHT**

#### **3.1. Grant of Development Right:**

- 3.1.1. On payment of 10% of Maximum Land Premium (MLP) as provided in Article No. 8.2.1 and bank guarantee of the balance consideration as per the specific provisions of Article 8 of this Development Agreement and meeting all other conditions as per the LoA, commitment to handover the Community Market and dedicated parking complete in all respect, and in compliance of the Representation and Warranties and covenants by the Developer as specified in Article No. 6.2.1, BDA, in accordance with this Development Agreement, hereby grants,
- ✓ exclusive right and authority for the Term to the Developer for undertaking the Project.
  - ✓ 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 right of development hereby granted shall oblige or entitle (as the case may be) the Developer to the following:
- a) Right to execute Conveyance Deed for the Residential cum/or Commercial Facilities on the Developer's share of built-up area with proportionate interest on land, parking, and utilities after completion of the Composite Project and other terms and conditions as stated in this Development Agreement.
  - b) Right to take formal possession of Developer's share of built-up area and proportionate interest on land, parking and utilities upon signing of Conveyance Deed.

- g) 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 meeting the conditions, obtain permission from the BDA to execute the 'Agreement for Sale' with the end-users for marketing of the proposed Residential cum/or Commercial Facilities.
- c) Enter into sub-contracts for the purposes of the development of the Project.
- d) 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.
- e) Enjoy all the rights, privileges and benefits in accordance with the provisions of this Development Agreement, 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 Facilities, and for that purpose to remove, renovate, use or demolish any structures with prior approval from BDA that may be existing on the Site as on handing over of the possession of the Site to the Developer and/ or after the execution of the Development Agreement.
- f) Proceed with the development of the Project at its own account and at its own risk, costs and expenses and shall be solely responsible and liable to all the Governmental Authorities / Allottees / Sub-Contractors / Lenders / Users.
- g) To facilitate the development of the Project, obtain in its own name loans or raise funds from any Lender and subject to the provisions hereof and with 15 (Fifteen) days prior intimation to BDA as security for the same, to create an encumbrance on the Assets and Project Facilities provided however that the Site is not encumbered in any manner whatsoever.
- h) Subject to the provisions of this Development Agreement, allot built up space in the Developer's share of built-up area and parking on allotment for sale/ rent / licence / right to use right of access or similar rights and facilities to any third party(ies) (the "**Users**") for using the space(s) as may be permitted under applicable Development Controls ("DC") and/ or this Development Agreement for a duration not exceeding the period of Term of the development agreement.
- i) Demand, collect appropriate charges from the Users, who have been granted rights or facilities, including sub-conveyance 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.  
Not to use the Site for any purpose other than the purposes of the Project and purposes incidental thereto as permitted under this Development Agreement.
- k) Not to assign, transfer, sublet or create any lien or Encumbrance on this Development Agreement, or the Grant hereby granted or on the whole or any part of the Site nor transfer, conveyance or part possession thereof, save and except as expressly permitted by this Development Agreement.
- l) Perform and fulfil 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 Developer's share of built-up area and proportionate interest on land, parking and utilities except as expressly given to it in terms of this Development Agreement and / or as set forth in this Development Agreement and the Conveyance Deed to be executed in its favour.

### 3.2. **Grant of Conveyance Right:**

3.2.1. Both the Parties expressly agree that by virtue of Article No. 8.2.3, upon completion of the composite project, and handing over of the Community Market and dedicated parking in the manner specified in the bidding documents and to the satisfaction of BDA, its due acknowledgement by BDA and compliance of all the condition precedent as per Article No. 4 of this Development Agreement, the Parties hereto shall enter into and execute the Conveyance Deed (as set out in the "**Annexure**"), in respect of the Developer's share of built-up area and proportionate interest on land, parking and utilities as described, delineated and shown in "**Schedule \_\_\_\_**", annexed hereto, whereby and whereunder the Conveyance Deed will be executed to provide freehold right on the Developer's share of built-up area and proportionate interest on land, parking and utilities along with all rights, liberties, privileges whatsoever to such area, as contemplated in this Development Agreement and the Developer's obligations hereof, and for no other purpose whatsoever (the "**Conveyance Rights**").

3.2.2. On the execution of the Conveyance Deed by BDA in favor of the Developer, BDA shall issue formal possession of the proportionate built-up area to the Developer and the Parties shall execute a formal possession letter with the condition that conveyance rights of the Developer is confined to the Developer's share of built-up area and proportionate interest on land, parking and utilities. Notwithstanding such handover of possession, the Developer shall not have any claim whatsoever against BDA with respect to the Conveyance Rights from the Effective Date itself so long as the land area is in conformity with joint survey letter; save and except any past claims raised by any third party on the basis of any valid right, title and interest whether disclosed or otherwise.

- 3.2.3. The tenure of conveyance under the Conveyance Deed would be till perpetuity.
- 3.2.4. On execution of the Conveyance Deed, the Developer would be referred to as the freehold owner of their proportion of built-up area and parking with equivalent interest on land.
- 3.2.5. In accordance with this Development Agreement and subsequent Conveyance Deed/s, the Developer will have full right to market the residential cum/or commercial space of the Project to any Users in conformity with this Development Agreement / Conveyance Deed on short term or long-term contract within the overall parameter and timelines of this Development Agreement and the Conveyance Deed. All other terms and conditions relating to implementation and operation and maintenance of the Project will remain unchanged and effective as it is in this Development Agreement.

Further provided that, notwithstanding the approved use of the Assets and Project Facilities by the proposed Users in terms of the letters of allotment issued to them (after meetings the conditions precedent) by the Developer, based on the 'Agreement to Sale' will not be followed by the 'Sale Deed' or any other deed till the Construction Completion Certificate is issued by the Competent Authority. After the receipt of Construction Completion Certificate and Occupancy Certificate from Competent Authority(ies), the Developer shall be entitled to grant sale/ rent / licence / right to use right of access or similar rights and facilities to the Users.

In the event of Termination of this Development Agreement, the 'Agreement to Sale' shall stand automatically terminated on the date of Termination of this Development Agreement and BDA will have no liability towards the allottees who have made advance payments under the 'Agreement to Sale' with the Developer.

- 3.2.6. All the other agreements, sub-conveyance, licence agreement, franchise agreement, etc. entered into by the Developer with any user, shall also co-terminate with this Development Agreement.

### **3.3. Site Conditions:**

- 3.3.1. On execution of this Development Agreement, the Developer has declared and acknowledged that:
  - a. It has inspected the Site and its surroundings and is aware of the existing condition and existing structures etc., if any, on the Site, which is being offered strictly on an "as is where is basis". It is hereby confirmed by the parties hereto that a joint survey by the Confirming Party and BDA is completed before the Appointed Date and the Joint Survey Letter is submitted. The Developer shall not claim for any change on the Site after the Compliance Date so long as the land

area is in conformity with joint survey letter; save and except any past claims whether disclosed or otherwise.

- b.** It has 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 this Development Agreement.
- c.** It has 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 this Development Agreement.
- d.** It has satisfied itself as to the usefulness, usability etc. of the Site.
- e.** It has assessed the applicability of land revenue and BDA's right over the said site.
- f.** It has assessed the availability of power, water and other necessary infrastructure etc.
- g.** It has assessed the existing site of the Project and its surroundings including its land use pattern, local government and other restrictions and difficulties etc.
- h.** It has carried out market study, demand survey, user's opinion survey etc. and satisfied itself regarding the commercial viability of the Project.
- i.** It has assessed the conditions of the approach roads to the Project Site.
- j.** It has assessed the conditions affecting transportation, disposal, handling, and storage of the materials required for construction work.
- k.** It has examined all Applicable Laws and Applicable Permits.
- l.** It shall take over the possession of the Site more elaborately described in Clause 2.2.1 in terms of this Development Agreement on and "as is where is basis".
- m.** It has unconditionally waived its claim against BDA in respect of the Site including in respect of failure to obtain the Applicable Permits.
- n.** All other matters that might affect the performance under this Development Agreement and has determined to the Developer's satisfaction the nature and extent of such difficulties, risks, and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.

3.3.2. The Developer expressly acknowledges that it shall have no recourse against BDA in the event of any mistake made or misapprehension harbored by the Developer in relation to any of the foregoing provisions of this Article 3 and BDA hereby expressly disclaims any liability in respect thereof.

3.3.3. The Developer acknowledges that after a complete and careful examination, the Developer has 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 this Development Agreement. The Developer further acknowledges that it shall have no recourse against BDA if it is, at a later date, found that the Site is deficient in any manner whatsoever (the “**Deficiency**”) except any deficiency in the title of BDA to the Site. If a Deficiency is found, the Developer acknowledges and agrees that it shall, at its own cost and risk, take all appropriate measures to remedy the same in order to undertake the Project and BDA shall not be liable for the same in manner whatsoever to the Developer.

#### 3.4. **Reservation of Mines etc.:**

3.4.1. BDA excepts and reserves unto itself all mines, minerals, coal, gold-washing, earth oils and quarries etc. in or under the Site, and full right and power at all times to do all acts, deeds and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same without providing or leaving any vertical support on the surface of the Site or for any building standing thereon; provided always that BDA / other Government Authority(ies) shall make reasonable compensation to the Developer for all damage directly occasioned by the exercise of the rights hereby reserved or any of them.

3.4.2. All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Site or generated during the implementation of the Project including scrap material, if any, on the Site will belong to the Developer and shall be promptly disposed off by the Developer at its cost. The Developer may if it deems appropriate use the same by selling it or for the execution of the Project.

3.4.3. All articles of antique value found on or under the Site shall be the property of BDA. The Developer shall take reasonable precautions to prevent its labour and personnel and that of its contractors from removing or damaging any such article or thing. The Developer shall immediately upon discovery of such article or thing, inform BDA, which may issue instructions for dealing therewith.

#### 3.5. **Exceptions to the Grant:**

3.5.1. It is expressly agreed between the Parties that BDA 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 or rights of way 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.

## **Article IV**

### **4. CONDITION PRECEDENT**

#### **4.1. Conditions Precedent:**

4.1.1. Save and except as may otherwise be expressly provided herein, the Grant, the respective rights and obligations of a Party under this Agreement shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”).

#### **4.2. Conditions Precedent for BDA:**

4.2.1. The obligations of the Developer hereunder are subject to the satisfaction in full of the following Conditions Precedent by BDA: The BDA shall have:

- a) granted right of way and / or access (as the case may be) to the Site for the Project to the Developer without any encroachment and Encumbrance for the purposes of and to the extent conferred by the provisions of this Development Agreement.
- b) Issued necessary notification / government orders, if required, exempting the Developer from the applicability of the relevant Land Reforms laws or any other ceiling related Applicable Law in relation to the Site for the purposes as contemplated in this Development Agreement.
- c) Satisfied to the Developer and Confirming Party that the Title of the Project Site and/or land of the Site is free from any encumbrances and BDA has full authority and power to deal/handover the Site to the Developer.

4.3. BDA shall grant the right of way and/ or access of the site to the developer after compliance of Article No. 4.4.1.(a) to 4.4.1.(l) of Conditions Precedent required to be satisfied by the Developer.

#### **4.4. Conditions Precedent for Developer:**

4.4.1. The obligations of BDA hereunder are subject to the satisfaction in full of the following Conditions Precedent by the Developer. The Developer shall have:

- a) Executed and procured execution of the Shareholder's Agreement amongst the shareholders of the Developer (i.e. Project SPV) in case of Consortium;
- b) provided the BDA true copies duly attested by notary/ executive magistrate of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Development Agreement by the Developer;
- c) included / inducted a representative of BDA in the Board of Directors of the Developer as BDA's nominee Director;
- d) achieved the Financial Closure and delivered to BDA, 2 (two) true copies each of the Financing Agreement, the Financial Package and the Financial Model, duly attested by a Director of the Developer so far as those documents are as applicable to the developer;
- e) delivered to BDA by the Board/Shareholders of the Developer that their respective confirmation in original, of the correctness of their representation and warranties set forth in this Development Agreement and more particularly in Article 6;
- f) delivered to BDA a legal opinion from the legal counsel of the Developer with respect to rights of the Developer to enter into this Development Agreement and the enforceability of the provisions thereof;
- g) made all the applications at its cost and expense for the Applicable Permits under the Applicable Law and procured and / or obtained all the Applicable Permits as are required for commencing construction and execution of the Project unconditionally or if subject to conditions, then all such conditions have been satisfied in full and such Applicable permits are in full force and effect within 12 (twelve) months from signing of this Development Agreement;
- h) procured environmental clearance from the State Agency and / or Ministry of Environmental and Forests, GoI as the case may be, after having completed preparation of the Detailed Project Report;
- i) fulfilled all the financial obligations including commitment to handover the Community Market and dedicated parking, completed in all respect and to the satisfaction of BDA within the project timeline, as mentioned in the Letter of Award;
- j) completed the payment of all outstanding amounts of the MLP to BDA, paid the project development fees, submitted the performance Bank Guarantee and other requirements more specifically mentioned in the Letter of Award (LoA);

- k) completed the registration with ORERA;
- l) established the project escrow account in which all the receivable from prospective allottees will be deposited.

Provided that upon request in writing by the Developer, the BDA may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.4.

#### **4.5. Obligations to Satisfy Conditions Precedent:**

- 4.5.1. Each Party shall make all reasonable endeavors at its respective cost and expense to procure the fulfillment of the Conditions Precedent relating to it, unless specifically mentioned otherwise.
- 4.5.2. The date, when the Developer and the BDA fulfils its Conditions Precedents shall be the Compliance Date (the “**Compliance Date**”), as jointly certified in writing by the Parties/ their authorized representatives forthwith upon such fulfillment, whereupon the obligations of the Parties under this Agreement shall commence.
- 4.5.3. The permission from BDA to execute ‘Agreement to Sale’ (ATS) with prospective end-users will be accorded on or after the Compliance Date.

#### **4.6. Non-fulfillment of Conditions Precedent:**

- 4.6.1. In the event, the Conditions Precedent of a Party (defaulting party) have not been fulfilled for any reason whatsoever within the stipulated time and the other party (non-defaulting party) has not waived, fully or partially, such conditions relating to the defaulting party nor granted any extension of time for compliance in respect thereof, and the non-defaulting party deciding in such event to terminate this Development Agreement by issuing a notice to the defaulting party to this effect then this Development Agreement shall cease to have any effect as of that date as mentioned in the notice of termination issued by the non-defaulting party and be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Development Agreement. In the event of such termination, BDA shall not be liable in any manner whatsoever to the Developer or any Persons claiming through or under it except otherwise laid down in this Development Agreement. Further, all rights, privileges, claims of the Developer, including those related to this Development Agreement, shall be deemed to have been ceased with the concurrence of the Developer.
- 4.6.2. All the rights of way and / or access in / to the Site as granted / allowed to the Developer shall immediately revert to BDA, free and clear from any Encumbrances, irrespective of any outstanding mutual claims between the Parties.

- 4.6.3. In the event this Development Agreement is terminated due to nonfulfillment of the Developer's Conditions Precedent and the same is not due to any default on the part of BDA, BDA without prejudice to its other rights, claims and contentions shall be fully and legally and lawfully entitled to forfeit the Construction Performance Security as damages. However, the MLP, as paid before execution of this Development Agreement, will be returned to the Developer without any interest thereon.
- 4.6.4. In the event this Development Agreement is terminated due to nonfulfillment of BDA's Conditions Precedent, BDA shall upon such termination return / refund in full the Construction Performance Security, MLP without any interest, but not the non-refundable project development fees, provided there are no other outstanding claims of BDA on the Developer unless the BDA's failure to fulfill its Conditions Precedent is as a result of the Developer's default.
- 4.6.5. Notwithstanding, as mentioned hereinabove, instead of terminating this Development Agreement, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.

#### **Article V**

### **5. EQUITY LOCK IN OBLIGATIONS OF THE DEVELOPER**

- 5.1. The member(s) of the Selected Bidder shall hold singly or jointly not less than 51% (fifty one percent) of the total paid-up equity share capital of the Developer with effect from the Compliance Date.
- 5.2. In case of consortium, the lead member of the Consortium shall not hold less than 51% share until expiry of the construction period including extension, if any, and till expiry of the defect liability period of the property.
- 5.3. In case of formation of SPV, the members of the Consortium shall not be the independent member of the SPV, directly or indirectly.
- 5.4. Any Member, other than the Lead Member, whose technical capacity or financial capacity is being assessed, shall hold at least 15% (fifteen per cent) of the total Share and voting rights of the SPV from the Appointed Date until the expiry Construction Period, including extension, if any and till receipt of the Completion Certificate from BDA.
- 5.5. Consortium, as a whole, shall hold not less than 51% of the total Share and voting rights of the SPV till the expiry of the construction period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.
- 5.6. If the Selected Bidder is a single entity, then the Selected Bidder shall hold at least 51% (fifty-one per cent) of the total Share and voting rights of the SPV from the Appointed Date and until the expiry of the Construction Period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.

- 5.7. After the expiry of the lock-in periods specified above, the Selected Bidder and in case of a Consortium, the Members of the Consortium, will be entitled to dilute their share in the total Capital of the SPV without the consent of BDA, provided that, the Selected Bidder shall inform BDA of any such change in the shareholding at the earliest.
- 5.8. The holding stipulation as mentioned in Article No 5.1 and 5.2 should be maintained up to 5 years from the Scheduled Completion Date (i.e. Defect Liability Period) or any extension thereof ("Equity Lock In Period").
- 5.9. Any violation/ modification in the shareholding pattern in the Equity Lock in Period would be treated as Developers' Event of Default.

## **Article VI**

### **6. REPRESENTATIONS AND WARRANTIES**

#### **6.1. Representations and Warranties of BDA:**

6.1.1. BDA 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) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Development Agreement;
- d) the obligations of BDA under this Development Agreement will be legally valid, binding and enforceable obligations against BDA in accordance with the terms hereof;
- e) it has not violated or defaulted 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 BDA's ability to perform its obligations and duties under this Development Agreement;
- f) the Site is free from all Encumbrances and is available for development, in accordance with the terms of this Development Agreement;
- g) 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 BDA under this Development Agreement or result in impairment of BDA's ability to perform its obligations and duties under this Development Agreement.

## **6.2. Representation and Warranties of the Developer:**

6.2.1. The Developer (i.e. Project SPV) hereby represents and warrants to BDA that as of the Effective Date:

- a) it has constituted for sole purpose of the Project and not for any other purpose;
- b) it is duly organized and validly existing under the laws of India and has been in continuous existence since incorporation;
- c) it shall have full power and authority to execute and deliver as per the terms and conditions of this Development Agreement;
- d) it has taken all necessary corporate and other action under Applicable Laws and its Memorandum of Association and Articles of Association to authorize the execution and delivery of this Development Agreement;
- e) it has the technical and financial standing and capacity to undertake and complete the Project;
- f) 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;
- g) the information furnished in the Bid by the Selected Bidder 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;
- h) 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 of Association 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;
- i) all receivables from the Project through 'Agreement to Sale' will be deposited in the project specific Escrow Account and used for the project;
- j) there are no actions, suits, proceedings, or investigations pending or, to the best of the Developer's knowledge, threatened against it and/ or Selected Bidder 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;

- k) 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;
- l) 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;
- m) no representation or warranty by Developer contained herein or in any other document furnished by it to BDA, 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.

### **6.3. Disclosure:**

- 6.3.1. 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 abovementioned 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 VII**

### **7. OBLIGATIONS OF THE DEVELOPER AND BDA**

#### **7.1. The Developer's Obligations:**

- 7.1.1. The Developer agrees that it shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Development Agreement, the following:

- a) undertake timely and effective designing, engineering, procurement and construction and financing of the Project and operation and maintenance of the Project, Assets and Project Facilities during the tenure of the Term in accordance with this Development Agreement;
- b) make timely payment of consideration as set out in this Development Agreement;
- c) make, or cause to be made in a time bound manner, necessary applications to the relevant authorities with such particulars and details, as may be necessary for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws and comply such other conditions as are set out in this Development Agreement;
- d) follow the conditions of development as set out in this Development Agreement;
- e) follow the conditions relating to construction of the Project as set out in this Development Agreement;
- f) submit to BDA certified true copies of each of the Project Agreements as far as practicable and any agreement if any not submitted, the certified true copies of such agreement may be submitted within 7 (seven) days of such demand by BDA;
- g) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- h) provide all assistance to the Independent Engineer, appointed by BDA, as it may require for the performance of its duties and services;
- i) the Developer shall provide to the BDA and the Independent Engineer reports on a regular basis during the Term including Construction Period, in accordance with the provisions of this Development Agreement and at all times provide the BDA such information, data and documents as the BDA may reasonably require;
- j) obtain and maintain in force on and from the Compliance Date all insurance in accordance with the provisions of this Development Agreement and Good Industry Practice;
- k) undertake servicing of the debt in accordance with any financial arrangement taken by the Developer for the Project;
- l) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Developer's obligations under this Development Agreement;

- m) be solely responsible at all times for its employees and employees of its sub-Contractors and BDA shall not be liable in any manner whatsoever in respect of such employees and their employment;
- n) employ and retain during the Term including Construction Period suitably qualified and experienced personnel on the Site to manage the Project on a day-today basis;
- o) not to place or create and nor permit any Contractor or other person claiming through or under the Developer to create or place any Encumbrance or security interest over all or any part of Site or on the Project Assets, or on any rights of the Developer therein or under this Development Agreement, save and except as expressly set forth in this Development Agreement;
- p) make its own arrangements for quarrying, and observe and fulfill the environmental and all other requirements under the Applicable Laws and Applicable Permits at its own cost and expense;
- q) be responsible for safety, soundness and durability of the Project including other structures forming part thereof and their compliance with the Specifications and Standards;
- r) adhere to Safety Standards as per requirements of Applicable law, Good Industry Practice;
- s) not claim or demand possession or control of any roads, structures or real estate which do not form part of the Project;
- t) from the Effective Date the Developer and from the date as stated in the User Agreement(s), User(s) shall, as the case may be and to the extent as applicable and otherwise provided for in this Development Agreement and in the Conveyance Deed, pay in a timely manner all outgoings, taxes (including municipal taxes), duties, levies, cess, import duties, fee (including any licence fees), rates and charges (including those applicable for existing utility connections) and any other dues, assessments and outgoings in respect of the Project and / or the implementation thereof and / or the Residential cum/or Commercial Complex and / or the units / Assets and Project Facilities. The aforesaid shall also include amongst others income tax, sales tax, service tax, value added tax, excise duty, customs duty, octroi, property and municipal taxes, charges for water, sewerage disposal, fuel, garbage collection and disposal, electricity and other utilities that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected or fines or penalties related thereto. BDA shall not be liable for the payments of the aforesaid, if in any event and under any circumstances, the Developer fails to pay the same. In case, BDA is made and / or caused to pay any sums of money on

account of the aforementioned heads, BDA will be entitled to receive such amounts from the Developer along with interest @ 15% (fifteen percent) per annum from the date the payment is made by BDA till the due receipt thereof by BDA to the complete satisfaction of BDA;

- u) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- v) comply with the divestment requirements and hand over the Project, the Assets and the Project Facilities as the case may be, to BDA upon Termination of this Development Agreement;
- w) the Developer shall be solely responsible for the marketing of the Project to potential Users and shall make its best endeavor in this regard. The Developer shall undertake all marketing activities in this regard at its own costs and expenses;
- x) the Developer shall not directly or indirectly either by itself or through its agents or any person claiming under it, to solicit, accept, collect or appropriate any application or any money, in whatever form, towards the use, allotment, occupation or license of any developed or built-up space or any facilities or amenities proposed to be established, operated and maintained in the Project prior to execution of this Agreement;
- y) Although the developer has the flexibility to develop combination of various type of dwelling units/ commercial spaces, the following development controls must be adhered to:
  - The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
  - There must be at least 230 numbers of shops measuring 150 sq. ft internal area.
  - Common area of at least 40% inside the 'Community Market' excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
  - Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
  - Ceiling height must be suitable to ensure natural light.
  - Space for Store and industrial refrigerators in the common area.

- Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
- Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1<sup>st</sup>) basement.
- The indicative specifications of the Community Market are available in Annexure 1.
- All statutory approval is the responsibility of the bidder.
- The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.

## 7.2. **Indemnification:**

- 7.2.1. The Developer shall indemnify and keep indemnified BDA against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Developer in connection with the enjoyments of its rights and performance, of its obligations under this Development Agreement and shall also indemnify the BDA from any and all liabilities and consequences, in relation to payment of taxes, duties, levies, cess and charges etc., arising from any and all such non-payment, delayed payment, attachment, disturbance of possession, notice, order, litigation etc.

## 7.3. **BDA's Obligations:**

- 7.3.1. BDA agrees to observe, comply and perform the following:
- a) enable the Developer to have access to the Site, free from encumbrances, in accordance with this Development Agreement;
  - b) handover of the site to the Developer free from all Utilities and High-tension electrical lines if any;
  - c) permit use of the Site by the Developer as licensee under and in accordance with the provisions of this Development Agreement without hindrance from BDA or persons claiming through or under it;
  - d) assist and provide all reasonable support to the Developer in obtaining Applicable Permits;

- e) upon written request from the Developer, assist the Developer in obtaining access to reasonable infrastructure facilities and utilities, including water, electricity and telecommunication facilities;
- f) observe and comply with its obligations set forth in this Development Agreement;
- g) provide full cooperation to the Developer in order to achieve the objectives of this Development Agreement.

#### 7.4. **Construction of the Project**

- 7.4.1. The Developer shall have right to start any construction work on the Site from the date of the **Compliance Date** and shall have to mobilize its manpower, equipment, materials and resources for construction within 30 (thirty) days or obtaining Applicable Permits whichever is later;
- 7.4.2. The permission to execute 'Agreement to Sale' with end-users will be granted on achievement of condition precedent by the **Compliance Date**.
- 7.4.3. The Developer shall complete the Project on or before the Scheduled Completion Date, in accordance with Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Developer shall, for such purposes do all such acts, agreements and things, as may be required under this Development Agreement;
- 7.4.4. The date of achieving Construction Completion Certificate and Occupancy Certificate from the Competent Authority and handover of the Community Market and dedicated parking to BDA with all desired specifications and to the satisfaction of the Authority will be identified as the **Completion Date**;
- 7.4.5. The Developer shall undertake at its cost and risk the development (including site development, demolition of existing structure, and removal of utilities at, over or under the Project Site), implementation, financing, design, construction, completion, testing and commissioning of the Project/ Project Assets/ Project Facilities at the Project Site, by itself or through sub-contractors, licensees or franchisees in accordance with provisions hereof, the Development Controls, Applicable Laws, terms of Applicable Permits and Good Industry Practice;
- 7.4.6. The Developer shall obtain and maintain at its cost all Applicable Permits in conformity with the Applicable Laws, including all environmental clearances, if required, for the purposes of the Project, including developing, constructing, operating and maintaining the Project and / or Project Assets and / or Project Facilities in accordance with the terms of this Agreement and be in compliance therewith;

- 7.4.7. The Developer may sub-contract at its cost and risk to sub-contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, as may deem fit, for the designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment and / or operation and maintenance of the Project/ Project Assets/ Project Facilities provided the Developer shall at all times be solely responsible for any defect, deficiency or delay in completion of the Project in accordance with the provisions of this Development Agreement;
- 7.4.8. The Developer shall organize the works at the Project Site during Construction Period with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labor and industrial relations and general site services including access to and from the Site;
- 7.4.9. The Developer shall ensure that the works shall be carried out in accordance with the provisions hereof, the approved building plans and the bye-laws of the relevant municipal or other authority;
- 7.4.10. The Developer shall maintain own vigilance over the Site during the Term to prevent encroachments or occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform BDA thereof;
- 7.4.11. Upon the completion of the activity of construction of the Project, the Developer shall remove from the Site, in accordance with Good Industry Practice, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and shall keep them in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- 7.4.12. In the event that there are any existing utilities / structures laid upon or under the Site, then the Developer shall be required to relocate all such utilities / structures at its own risk and cost, with the prior written approval of BDA and such city utility bodies;
- 7.4.13. The Developer shall also submit to the Independent Engineer, with a copy endorsed to the BDA, the relevant DPR and Designs and other technical information as may be reasonably necessary to determine and confirm compliance with the Specifications and Standards;
- 7.4.14. During the Construction Period, the Developer, on or before the 15<sup>th</sup> (fifteenth) day of fourth month, prepare and submit to the BDA a quarterly progress report, for the previous quarter, in the form and manner prescribed by the Independent Engineer from time to time. Such report shall describe the progress of the design, procurement and completion of the Project;

- 7.4.15. The Developer shall carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Independent Engineer and ensure completion of construction of the Project in all respects in accordance with the provisions of this Development Agreement;
- 7.4.16. Notwithstanding anything contained anywhere else in this Development Agreement, all works under or in course of execution or executed in pursuance of this Development Agreement shall at all times be open to the inspection and supervision by the authorized representatives of BDA or the Independent Engineer. The Developer shall at all times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of BDA to visit the work shall have been given to the Developer, have a responsible agent / representative present at the Site for that purpose. Based on such inspections, BDA may, without being obliged to do so, issue, if found necessary, instructions to the Developer for addressing the Deficiencies noted at the Site in terms of this Development Agreement especially towards health, safety and environmental requirements. The Developer shall comply with such instructions within 30 (thirty) days of receipt of such instructions. No such inspection or communication of comments or non-communication of comments by BDA shall amount to validation or approval or acceptance by BDA of the construction by the Developer or its confirmation to the Applicable Law, Applicable Permits and the terms of this Development Agreement or waiver by BDA of any breach by the Developer. It shall be the obligation of the Developer alone to supervise the construction and to ensure that the construction is being carried out in conformity with the Applicable Law, Applicable Permits and the terms of this Development Agreement.
- 7.4.17. The Project to be undertaken by the Developer is an independent one and accordingly the BDA shall not be deemed as principal employer in respect of any employee engaged by the Developer and/ or its subcontractors and/ or agents, if any and for the purpose the Developer may ensure compliance of all statutory norms specified under different welfare acts including EPF, ESI and labour & industrial laws at its cost and risk and may take necessary and appropriate steps entering into insurance contract at its cost and risk

## 7.5. **Completion of the Project**

- 7.5.1. The Developer shall achieve Construction Completion of the Project/ Project Assets/ Project Facilities within 5 (five) years from execution of the Development Agreement (the “**Scheduled Completion Date**”), failing which it shall be required to complete the same within next 12 (twelve) months (**Extended Project Completion Period**) from such date upon payment of the stipulated damages. “**Construction Period**” means a maximum of 5 years between the date of signing of Development Agreement and issuance of Construction Completion/Occupancy Certificate by Competent Authority.
- 7.5.2. In the event that Scheduled Completion Date of the Project is not achieved for any reason other than Force Majeure or reasons attributable to BDA or any government

authority, as certified by the Independent Engineer, the Developer shall, subject to Article No. 16.1 below, pay to BDA damages for delay beyond the Scheduled Completion Date @ Rs. 30,00,000/- (Rupees Thirty Lakh only) per month of delay or part thereof, as delay charges until such construction completion is achieved. Provided that nothing contained in this Article shall be deemed or construed to authorize any delay by the Developer in achieving construction completion of the Project.

- 7.5.3. In the event that construction completion of the Project does not occur within a period of 12 (twelve) months from the Scheduled Completion Date for reasons attributable to the Developer, BDA shall be entitled to terminate this Development Agreement and the Conveyance Deed for a Developer's Event of Default.
- 7.5.4. On the completion of the construction of the Project, the Developer shall notify BDA in writing. Such notice will set out the place, date and time when the inspection and assessment of such works shall be held (which shall not be a date that is earlier than 7 (seven) days following the date of such notice). It shall be compulsory for the Independent Engineer (as appointed) to attend such inspection and assessment with a view to determining if construction completion has occurred.
- 7.5.5. Within 30 (thirty) days from the date of inspection and assessment, and submission of the Completion/Occupancy Certificate issued by Competent Authority to BDA, the BDA shall either (i) issue the Construction Completion Certificate due to construction completion being achieved, if in the reasoned opinion of BDA construction completion of the Project has been achieved or (ii) notify the Developer of any other item or work which is required to be completed in the reasonable opinion of the Independent Engineer before the Construction Completion Certificate may be issued, whereupon the Developer shall promptly complete such works.
- 7.5.6. Imposition of damages for delay, extended project completion period and termination of Development Agreement, as per the above conditions, shall be at the sole discretion of the BDA and the Developer consents not to challenge such decisions.

## **7.6. Operation and Maintenance of the Project**

- 7.6.1. The BDA will have the sole ownership and responsibility of the Community Market. The Shops/Shop spaces in the Community Market will be allotted to beneficiaries/shopkeepers by the Authority.
- 7.6.2. The Community Market will not be a part of the Apartment (since not within the purview of the conveyance) and not part of the Apartment Owners' Association.
- 7.6.3. There will be two separate Association of Allottees to be formed by the Developer (for the Residential cum/or Commercial Facilities) and BDA (for the Community Market) after submission of separate application to the Competent Authority.

The proportionate Common Area owned by the two Associations will be demarcated in the application forms for formation of the Association of Allottees.

- 7.6.4. The nominated member of the BDA in the board of the SPV will be for the proportionate common area owned by the Authority (as per the share of built-up area of the Community Market).
- 7.6.5. The Selected Developer shall ensure formation of Association / society in accordance with the governing law and amendments made time to time and the occupiers / allottees / any sub-allottees as end user shall become and remain as the member of the association and shall observe and perform the terms and conditions, by-laws and the rules and regulations prescribed by the Association/ society. The society / Association so formed shall maintain the common amenities and shall attend to various matters of common interest including repair, maintenance, whitewashing, painting etc. in respect of residential cum/or commercial complex.
- 7.6.6. The Selected Developer shall be responsible to ensure at its cost and risk, maintenance of the common amenities and to provide common facilities either directly or through maintenance services in respect of residential cum/or commercial complex till formation of the society / Association as referred to in clause 7.6.4 and its functioning and handing over such amenities to the said society / Association.
- 7.6.7. The Association shall be formed in the manner and has been provided under Orissa Apartment Ownership Rules (Feb 2024) while amendments made if any and / or any Act brought in place and /or society formed under Societies Registration Act 1860 irrespective of any provision under the Act referred to and / or any other Act for the purpose and the occupiers / allottees shall become and remain a member of the Association and shall observe and perform the terms and conditions, bye laws and the rules and regulations prescribed by the Association. The Association shall be formed for the purpose of attending to the various matters of common interest, including repairs, maintenance, whitewashing, painting, etc., in respect of the Commercial cum/or Residential Complex.
- 7.6.8. The Special Purpose Vehicle (SPV) so formed by the preferred bidder to undertake the project shall remain in operation for meeting all financial commitments to BDA and any such statutory dues directly to the Govt. of Odisha. However, the ownership of the SPV may be transferred to the Resident's Association after the lock-in period described earlier.

## **Article VIII**

### **8. PAYMENT OF CONSIDERATION**

#### **8.1. Consideration**

8.1.1. The sums payable by the Developer in terms of this Article 8.2 and 8.3 to BDA shall hereinafter together be referred to as Consideration (the “**Consideration**”).

8.2. **Maximum Land Premium (MLP):**

8.2.1. In accordance with this Agreement and other rights, privileges and benefits set forth herein, the Developer hereby undertake to make a payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) only towards Maximum Land Premium (the “**Maximum Land Premium / MLP**”) in 3 instalments of 10% within 30 days, 20% within 90 days and 70% within 240 days of executing this agreement, to BDA and undertake implementation of the Project, in accordance with this Development Agreement. The payment schedule of the MLP may be paid in lump sum or in instalments as specified hereunder.

8.2.2. A sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) (equivalent to 10% of the Maximum Land Premium / MLP) being the First Instalment has already been paid by the Developer as precondition to signing of this Development Agreement on \_\_\_\_\_ (date of payment) vide Demand Draft / RTGS/ Banker’s Cheque No. \_\_\_\_\_ drawn on \_\_\_\_\_ Bank, \_\_\_\_\_ Branch dated \_\_\_\_\_] to BDA (the “**First Instalment**”) along with the Bank Guarantee from a scheduled commercial bank for the outstanding amounts of the Maximum Land Premium (MLP), as described in Clause 8.1.1 above towards the “Second & Third Instalments”.

The balance 90% of the Maximum Land Premium (MLP) is to be paid to BDA as per the following schedule:

8.2.3. Accordingly, the Developer shall pay, by the \_\_\_\_\_ day of \_\_\_\_\_, (due date of payment) which is 90 days from the date of signing of this Development Agreement a total sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) (equivalent to 20% of the Maximum Land Premium) towards the second Instalment (the “**Second Instalment**”) to BDA.

8.2.4. And, the Developer shall pay, by the \_\_\_\_\_ day of \_\_\_\_\_, (due date of payment) which is 240 days from the date of signing of this Development Agreement a total sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) (equivalent to 70% of the Maximum Land Premium) towards the third Instalment (the “**Third Instalment**”) to BDA.

The developer shall have an option of prepayment of balance Maximum Land Premium / MLP in part or full and avoid the submission of Bank Guarantees of such amounts.

8.2.5. The Base Floor Area Ratio (“**FAR**”) of the site is 2 and maximum FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020. If and only if the Developer decides to enhance the Floor Area Ratio (“**FAR**”) of the project from the appointed date and during the term, they will have to pay for the

purchasable FAR in the manner specified in the Statutory documents of the Government of Odisha.

8.2.6. Delayed payment within the period specified in Article 8.2.2, 8.2.3 and 8.2.4, will be treated as Developer's Event of Default by the BDA.

### 8.3. **Default in payment of consideration:**

8.3.1. In the event the Developer fails to pay / defaults in the payment of, all or any amounts along with interest thereof due for payment by the due dates, it shall be construed as a payment default (the "**Payment Default**") on behalf of the Developer. However, any amount secured in the form of Bank Guarantee shall not be construed as payment default.

8.3.2. It is expressly agreed between the Parties hereto that in the event, there is a Payment Default, and the said Payment Default is not rectified within 30 (thirty) days of the occurrence of such default, the Development Agreement shall be terminated as per the provisions of Article 16.4.1. No extension whatsoever shall be provided beyond the aforesaid period and the payment of interest for such period would not entitle the Developer to seek any further extension.

8.3.3. Notwithstanding anything contained herein, in the event there are two consecutive Payment Default(s) by the Developer, this Development Agreement shall be terminated as per the provisions of Article 16.4.1.

8.3.4. Notwithstanding anything contained herein, in the event of Payment Default(s), no Cure Period of any nature whatsoever, other than the period of 30 (thirty) days specified in Article 8.4.2, shall be available to the Developer before termination of this Development Agreement.

### 8.4. **Construction Performance Security:**

8.4.1. For securing the performance of the obligations of the Developer under this Agreement, the Developer had prior to the execution of this Development Agreement, delivered to BDA a bank guarantee for a sum of INR 30,00,00,000/- (Rupees Thirty Crores) only, valid from the date of issue thereof and until the expiry of the 6 (Six) years from the date of this Agreement plus any extension granted in terms of this Development Agreement in favor of BDA from a nationalized / scheduled bank, and payable and enforceable in Bhubaneswar, Odisha (the "**Construction Performance Security**").

8.4.2. The release of "Construction Performance Security" will be made to the Developer by BDA after the submission of Completion/Occupancy Certificate from Competent Authority to BDA by the developer, and release of Completion Certificate by BDA after receipt of the Community Market and related Parking space in the manner specified in this bidding document and to the satisfaction of BDA.

- 8.4.3. The Developer must always keep the Construction Performance Security valid during the stipulated period.
- 8.4.4. In the event of the Developer being in default of the due, faithful and punctual performance of its obligations under the Development Agreement or in case the construction of all the Project Assets/ Project Facilities within the Site is not completed by the Developer within the period of 5 (five) years from the date of signing the Development Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of BDA for or against the Developer under this Development Agreement or against BDA in respect of this Development Agreement, BDA shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant amounts from the Construction Performance Security as damages for such default, or loss suffered due to non-completion of construction within the said time period or dues, demands or claims.
- 8.4.5. The decision of BDA as to any breach / delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Developer and the Developer specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by BDA under this Development Agreement is required to be provided in connection with any demand made by BDA to recover such compensation through invoking and encashment of the Construction Performance Security under this Development Agreement. But however, the parties are free to raise, claim, like damage and compensation, if any, arising out of or as a consequence of the clause.
- 8.4.6. In the event of encashment of the Construction Performance Security by BDA, in full or part, the Developer shall within 30 (thirty) days of receipt of the encashment notice from BDA provide a fresh Construction Performance Security or replenish the existing Construction Performance Security, as the case may be. The provisions of this Article shall apply mutatis mutandis to such fresh Construction Performance Security. The Developer failure to comply with this provision shall constitute a Developer's Event of Default which shall entitle BDA to terminate this Development Agreement in accordance with the provisions of the Development Agreement.
- 8.4.7. Subject to the provisions hereof, BDA shall promptly return the Construction Performance Security to the Developer upon issue of the Construction Completion Certificate within the stipulated time, provided that there are no outstanding claims of BDA on any account whatsoever on the Developer.

## **Article IX**

### **9. FINANCING ARRANGEMENT AND SECURITY**

- 9.1. The Developer expressly agrees and undertakes that the Developer shall himself arrange for financing and / or meeting all financing requirements through suitable debt, equity and quasi-equity contributions 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 Project, Project Assets and Project Facilities. 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 BDA forthwith for information before its execution as more particularly set out in Article 4.4.1. of this Developer Agreement provided however that the site / schedule land cannot be encumbered in any manner whatsoever.
- 9.2. The BDA will consider executing a Tripartite Agreement with the Lender & Developer (Draft provided in Volume 1 – Project Information Memorandum, Annexure 2), if requested by the Developer, after execution of the Development Agreement. Accordingly, the Developer on signing the Development Agreement shall have the right to create mortgage/ charge over the development right, and any or all of the receivables from the Project to its Lenders only.
- 9.3. Additionally, subject to consent from BDA, the Developer can enter into 'Agreement to Sale' (ATS) with allottees/ end-users of the Commercial cum/or Residential portion of the Composite Project, after obtaining all approvals and clearances from the Competent Authority(ies) and registration of the project under ORERA, as per 'Annexure – A' of the ORERA Rules 2017. The proceeds of advances received from end-users through the ATS must be deposited in the designated escrow account created for the project.
- 9.4. Provided further any such mortgage or charge shall not in any way relieve the Developer claiming through or under it of its obligations under this Development Agreement and the same shall be carried out in compliance with the terms and conditions of this Development Agreement.
- 9.5. Provided further that BDA shall be informed by the Developer as to the creation of any Encumbrance together with the Lender's particulars within a period of 14 (fourteen) days from the date such security comes into existence and provide to BDA within such time true copies of documents/ agreements relating thereto. Failure to do so shall amount to an Event of Default on the part of the Developer and any consequential failure or inability on the part of BDA to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Development Agreement, if any required, shall be at the risk and responsibility of the Developer only.
- 9.6. Provided further, nothing contained above shall (i) absolve the Developer from its responsibilities to perform/ discharge any of its obligations under and in accordance with the provisions of this Development Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to BDA.

- 9.7. BDA and the Developer hereby irrevocably agree that upon occurrence of a Developer Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/ Financing documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Developer, after receipt of approval of BDA, by selectee (Substitute Entity) for the remaining period under the Development Agreement in accordance with the provisions of this Agreement on such terms and conditions if any fixed by BDA to ensure compliance of the objective of the Project. In case the Lender resorts to other remedies provided under law shall do the same only after approval of the BDA and in such event the Parties acquiring rights through the lender shall ensure completion of the Project strictly in accordance with the Development Agreement and Conveyance Deed and selection of such person and/ or granting right to such person shall require prior approval of BDA on such terms and conditions fixed to ensure the completion of the Project within the existing/revised timelines.

## **Article X**

### **10. INSURANCE**

- 10.1. The Developer shall during the Term purchase and maintain or cause to be purchased and maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained to insure the Project Facilities and all related assets against risks in an adequate amount, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders (the "Insurance Cover").
- 10.2. The Insurance Cover shall be made assignable to BDA and the respective insurance policies shall contain a specific stipulation to that effect. Upon the termination of this Agreement, all such insurance policies and benefits there under shall forthwith stand transferred and assigned to BDA and BDA alone shall be entitled to the receipt of all amounts receivable under such policies.
- 10.3. Without limiting the generality of the foregoing, the Developer shall, at its cost and expense, purchase and maintain or cause to be purchased and maintained during the Term, and in case of sub-Article (a) and (b) below during the construction period, such insurances as are necessary, including but not limited to the following:
- a) Construction/ builders'/contractors' all risk insurance (during construction period);
  - b) Erection all risk policy (during construction period);
  - c) Comprehensive insurance for the Facilities for their full market value or replacement cost (including fire, burglary, standard and special peril);
  - d) Loss, damage or destruction of Project Assets and Project Facilities;
  - e) Comprehensive third-party liability insurance, including injury or death of Persons who may enter the Project Site;

- f) The Developer's general liability arising pursuant to this Development Agreement;
  - g) Liability to third parties for goods or property damaged;
  - h) Workmen's' compensation insurance;
  - i) Any other insurance that may be necessary to protect the Developer, the Persons claiming through or under it, its employees, and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (i).
- 10.4. The Developer shall, from time to time, furnish to BDA copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical and not later than 30 (thirty) days after they are received by the Developer and furnish evidence to BDA that all premiums have been paid and that the relevant policies remain in existence. Each insurance policy shall provide that the same shall not be cancelled or terminated or changed unless 10 (ten) days' clear notice of cancellation is provided to BDA in writing.
- 10.5. In the event the Developer does not effect, keep in force and maintain Insurance Cover pursuant hereto, BDA shall not be liable in any manner in this behalf and the Developer shall indemnify BDA for and against all liabilities, costs and expenses arising out of or as a consequence of such failure. Such failure shall also constitute a Developers' Event of Default. In such an event, BDA shall have the option to keep in force any such Insurance Cover and pay such premium and recover the cost and expenses thereof from the Developer.
- 10.6. Unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall promptly be applied for the repair, renovation, restoration or reinstatement of the Project/ Project Assets / Project Facilities or any part thereof, which may have been damaged or destroyed.
- 10.7. Further to the above, it is clarified that -
- a) The Developer shall insure all insurable assets comprised in the Project / Assets / Project Utilities through Indian insurance companies and if so permitted by Government of India, through foreign insurance companies, to the extent that insurances can be effective;
  - b) All insurance policies supplied by the Developer shall include a waiver of any right of subrogation of the insurers there under against, inter alia, BDA and its assigns, successor, subsidiaries, 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 under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

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

- 10.8. Further the above provisions to the extent as applicable shall also apply to the insurance of the relevant units and the inventory therein of the Users.

## **11. ACCOUNTS AND AUDIT**

- 11.1. The Developer agrees and undertakes that during the subsistence of this Development Agreement, it shall maintain books of account recording all receipts, income receipt, payments, assets and liabilities in accordance with Good Industry Practice and Applicable Laws. The said account shall, inter-alia, clearly reflect:

- (i) Users wise account of receipts and receivables;
- (ii) Account of all other receipts and receivables;
- (iii) Obligations towards contractors, Sub-Contractors, suppliers and all payments made.

- 11.2. BDA 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 BDA.

- 11.3. The Developer also agrees and undertakes that it shall within 60 (sixty) days of the close of each quarter of a Financial Year / Accounting Year, furnish to BDA its unaudited financial results in respect of the preceding quarter, in accordance with Applicable Law.

## **Article XI**

### **12. MARKETING / RIGHT OF ALLOTMENT / BOOKING OF RESIDENTIAL AND/OR COMMERCIAL SPACES IN THE ASSETS**

- 12.1. The Developer shall be entitled to commence booking of units / spaces in the Assets after the Compliance Date and permission from BDA to execute 'Agreement to Sale' with end-users subject to successful execution of the Project and signing of the Conveyance Deed. Till the time the Conveyance Deed is executed allowing 'Agreement to Sale' / rent / licence / right to use / right of access or similar rights and facilities to the Users, the Developer may market the under-construction built-up space under letter of allotment or such other instruments. On execution of the Conveyance Deed, the Developer shall be allowed to enter into 'Sale Deed' / rent / licence / right to use / right of access or similar rights and facilities with the User (the "**User Agreement**"). The Developer, while

marketing the Assets, shall comply with the following and the same should also be included in the draft letter of allotment, which shall be approved by BDA, prior to booking of any space:

- (i) the Developer shall be solely responsible for timely implementation of the project and shall be answerable to the end users, consequent upon the agreement entered into, between and among them, but however, such obligation shall be limited to Developer's default only;
- (ii) in case any allotment made contrary to this condition shall be deemed void and any consequences shall be at the cost and risk of the Developer;
- (iii) such letter of allotment shall not bestow any right on a User for usage of space in the Assets till such time as the User Agreement is duly executed in terms of this Development Agreement;
- (iv) during the Construction Period, if the Development Agreement is terminated, such letter of allotment shall be liable to be terminated at the discretion of either the Nominated Company or BDA, as the case may be. However, in such an event, the User shall be entitled from the Developer for refund of the amounts of upfront payment already paid and the interest-free security deposit, if any and all other sums of money as paid by the User and / or to the account of the Developer.

12.2. The Developer shall, at all times be required to maintain a Management Information System (MIS), for all bookings done, payments received, and User Agreement executed and this shall, inter alia, include the following details:

- (i) The physical progress of the Project, which would track work-in-progress followed by cold/ warm shell/furnished completion;
- (ii) List and values of allotments/ User Agreement executed;
- (iii) Upfront deposits received from User;
- (iv) Rates agreed with the User;
- (v) Profile of payments made by Users during the Term hereof; and,
- (vi) Track record of Users in terms of promptness of payments /delays.

The Developer shall submit a quarterly MIS covering all the above information.

## **Article XII**

### **13. GRANT OF RIGHTS IN THE ASSETS TO USERS**

- 13.1. The term of User Agreement (including subsequent User Agreements) shall not exceed the Term as defined in this Agreement and same would be run co-terminus with the Conveyance Deed.
- 13.2. The right to grant rights to the User as mentioned in this Development Agreement shall vest solely with the Developer and shall not be transferable in any form except to its successors and permitted assigns.
- 13.3. The Developer agrees and undertakes that during the Term, it shall maintain a User Register in such format as may be acceptable to BDA, of all the User Agreement entered by it throughout the Term.

## **Article XIII**

### **14. TERM AND EXPIRY**

#### **14.1. Term and Expiry:**

- a) Unless terminated earlier in accordance with Article 16.4.1 or by mutual agreement between the Parties in writing, this Development Agreement shall continue in full force until the execution of Conveyance Deed (the “**Term**”).
- b) Upon expiry before execution of Conveyance Deed, the Site, all immovable Project Assets and Project Facilities on the Site will automatically vest in BDA free from all Encumbrances, without BDA being required to pay any consideration in respect thereof and without the requirement of performance of any act or deed by either party to this Development Agreement.
- c) Under exceptional circumstances, if required for BDA’s own use, BDA can take back the Site along with the Project Assets and Project Facilities. In such an event, the Development Agreement will be terminated and BDA or any entity designated by it shall acquire all of Developer’s rights and interests in and to the Project Assets and Project Facilities in the manner set out in this Development Agreement and due compensation would be payable to the Developer as determined by in accordance with Article 16.6.

## **Article XIV**

### **15. FORCE MAJEURE**

- 15.1. A Force Majeure event (the “**Force Majeure Event**”) means any event or circumstance or a combination of events and circumstances set out hereunder or

consequences thereof which affect or prevent the Party claiming to be affected by the Force Majeure Event (the “**Affected Party**”), from performing its obligations in whole or in part under this Development Agreement and which event or circumstance (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) could not have prevented or reasonably overcome by such Party with the exercise of reasonable skill and care in relation to the implementation of the Project, (iii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care, (iv) which do not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder, (v) which are of an incapacitating nature and of a severe magnitude, (vi) has a Material Adverse Effect on the transaction as contemplated between the Parties herein, and (vii) which prevent, restrict or interfere with the performance of obligations by the Affected Party under this Agreement. Such events mean:

- a) Acts of God or natural disasters or events beyond the reasonable control of the Affected Party, which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, tsunami, whirlwind, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire, pandemic or exceptionally adverse weather conditions affecting the Site and / or the implementation of the Project, and also the operation and maintenance thereof.
- b) An act of war (whether declared or undeclared), war like conditions, invasion, armed conflict or act of foreign enemy, in each case involving or directly affecting the Site.
- c) Blockade, embargo, sanctions, revolution, riot, rebellion, insurrection, terrorist or military action or other civil commotion, act of terrorism or sabotage in each case within the Site or near vicinity.
- d) Nuclear blast / explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/ or Project/ Project Facilities, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Site by the Developer or any Sub-Contractor of the Developer or any of their respective employees, servants or agents.
- e) Strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Site.
- f) Explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Site or near vicinity.
- g) Epidemic famine, other epidemic quarantine or pandemic within the Site or near vicinity.

- h) Destruction of infrastructure beyond the control of the Affected Party thereby, revocation of Applicable Permits, no objections, consents, licenses, exemptions, etc. granted by Government Authority and / or statutory authority, Change in Law, action and / or order by Government Authority and / or statutory authority, action or act of commission or omission by Government Authority.
- i) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against BDA, the Developer, the Selected Bidder in any proceedings (which are non collusive and duly prosecuted by the Party) for reasons other than failure of BDA, the Developer, the Selected Bidder, as the case may be, or any person claiming through or under it to comply with the Applicable Law, Applicable Permits etc. or on account of breaches thereof or of any contract or enforcement of this Development Agreement or exercise of any of its rights under this Development Agreement.
- j) Any event or circumstances of a nature analogous to any of the foregoing.

#### **15.2. Procedure for Force Majeure :**

- a) If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail: (i) the Force Majeure Event(s) that has occurred; (ii) the obligation(s) affected as described in this Article 15; (iii) the dates of commencement and estimated cessation of such event of Force Majeure; and (iv) the manner in which the Force Majeure event(s) affect the Party's ability to perform its obligation(s) under this Development Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given notice specified above. The Parties expressly agree that payment of annual statutory taxes/obligations to respective authorities and shall not be suspended during the pendency of Force Majeure Event and / or its effect.
- b) The affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 15, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with sub-Section (a) above. The affected party, to the extent rendered unable to perform its obligations or part thereof under this Development Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- c) The time for performance by the affected Party of any obligation or compliance by the affected Party with any time limit affected by Force Majeure Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event continues and by such additional period

thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the event of Force Majeure Event.

- d) Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- e) The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties to this Development Agreement shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 19.

15.3. **Mitigation:** The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The affected Party shall also make efforts to resume performance of its obligations under this Development Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing.

15.4. If any Force Majeure Event continuously impedes or prevent a Party's performance for a period longer than 6 (six) months from the date of commencement of such Force Majeure Event, the Parties shall decide through consultation either the terms upon which to continue the performance under this Project or to terminate it by mutual consent.

## **Article XV**

### **16. DEFAULT AND TERMINATION**

#### **16.1. Developer Event of Default:**

16.1.1. For the purposes of this Development Agreement, each of the following events or circumstances, to the extent not caused by a default of BDA or Force Majeure Event, shall be considered, as events of default of the Developer (the "Developer Event of Default") which, if not remedied upon receipt of written notice from BDA, shall provide BDA the right to terminate this Development Agreement in accordance with Article 16.4.1:

- 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 issuance of written notice, from BDA 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 BDA'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.
- e) Failure of the Developer to maintain insurance(s) as required in terms of Article 10.
- 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 is using, permitting or causing the use of the Site (i) for purposes other than permissible purpose or (ii) in violation of any of the provisions relating to development of the Project as per the Development Agreement.
- h) The Developer doing or permitting to do any act, matter, Agreement 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 BDA or (ii) a third person; or (iii) claiming an absolute interest in the Site or any portion thereof in itself.
- j) Non-compliance of Equity lock-in provisions set forth in Article 5.
- k) Failure to achieve the Scheduled Completion Date or any extension thereof.
- l) Commits a breach of any of the provisions of the Development Agreement, Conveyance Deed or any of the Financing Document.

Save as the necessary approvals enabling the project could not be secured by the Developer despite best efforts and with no fault attributable to it.

## **16.2. BDA Event of Default:**

16.2.1. 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 BDA (the "**BDA Event of Default**"), which shall provide the Developer the right to terminate this Development Agreement in accordance with Article 16.4.1 :

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

### 16.3. **Termination:**

16.3.1. Upon occurrence of the Developer Event of Default or where the Developer/ BDA elects to terminate this Development Agreement due to a Force Majeure Event it shall be lawful for BDA, or the Developer to issue a Termination Notice (notwithstanding the waiver of any previous cause or right of re-entry upon, the Site/ the building, structures and fixtures there upon/ Project/ Facilities) and upon service of the said Termination Notice to re-enter upon, take possession of the Project Site/ the buildings, structures and fixtures there upon/ Project/ Facilities and this right and everything herein contained shall cease and determine.

16.3.2. All the rights, entitlements and interest of the Developer in this Project/ Project Facility and of persons claiming through or under it, in and to the Site, the buildings, structures and fixtures there upon, the Project, the Facilities, whether complete or incomplete, free and clear of any encumbrances created or suffered by the Developer or by the person's claiming through or under it, shall cease and determine and the Developer and the Persons claiming through or under it shall not be entitled to any payment or compensation whatsoever and shall forthwith vacate the Site/ the Project/ Project Facilities and hand over vacant possession thereof to BDA or its nominated agency. The remedies of all persons claiming through or under Developer shall lie only against the Developer. However, the Developer shall have the right to remove from the Site all moveable properties and assets belonging to the Developer.

16.3.3. The employees and personnel of the Developer and persons claiming through or under it shall continue to be their respective employees and personnel and the transfer of the Site/ the buildings, structures and fixtures there upon /Project Facilities shall not in any manner affect their status as employees or personnel of the Developer and persons claiming through or under it and such employees and personnel shall have no claim to any type of employment or compensation on BDA or its nominated agency.

16.3.4. Provided that, notwithstanding anything contained herein to the contrary, BDA may without prejudice to its right of re-entry as aforesaid, and in its absolute discretion, waive or condone breaches, temporarily or otherwise, or relieve against forfeiture, for

reasons to be recorded in writing, on receipt of such amount and on such terms and conditions as may be determined by it and may also accept any payments hereby reserved which are in arrears together with applicable interest, if any thereon or as decided by BDA.

#### **16.4. Notice of Termination:**

16.4.1. 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 BDA 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 (the “**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**”). Notwithstanding anything contained in the Development Agreement, the Developer cannot exercise the right to issue Notice of Intention to Terminate after expiry of 1 (one) year from the Appointed Date.

16.4.2. Without prejudice to anything to the contrary as contained in this Development Agreement, upon the occurrence of a Payment Default or Payment Default(s) by the Developer in terms of Article no 8.4.1, BDA 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, BDA 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 to 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.

#### **16.5. Consequences of Termination:**

16.5.1. In case of any Termination before completion of the Project due to the Default of the Developer it shall be the responsibility of the Developer to ensure refund any amount received from the Users and/ or to make such other arrangement through the substitute party and/ or to suffer the consequences for the aforesaid latches at its cost and risk and in any circumstances BDA will not be responsible in any manner towards the claim of the Users and in the event claim made against the BDA shall be borne by the Developer and such claim shall be held not maintainable against the BDA.

16.5.2. **Substitution in case of Developer's Event of Default resulting in Termination:** In such case, either the lenders of the Developer or BDA will have the

right to substitute the Developer by a new entity to take over the SPV's rights and obligations under the Development Agreement and Conveyance Deed. The method of selection of such new entity will be decided mutually by the BDA and Lender(s) as applicable.

#### 16.6. Termination Payment:

16.6.1. Termination of this Development Agreement shall be without prejudice to any other right or remedies of Parties under this Development Agreement. Upon Termination of the Development Agreement in accordance with the provisions of this Agreement, the Termination Payment shall be calculated in the following manner:

- a. Developer Event of Default before execution of Conveyance Deed or handover of the Site:** Upon termination by BDA on account of occurrences of a Developer Event of Default prior to the execution of the Conveyance Deed, no termination payment shall be paid, and BDA shall forfeit the full amount of Construction Performance Security. The MLP so paid and bank guarantee (2<sup>nd</sup> installment) if any given by the Developer as per the provisions of this Agreement, to BDA shall be returned without interest to the Developer within Thirty (30) days of realization of the Construction Performance Security by BDA.

The Substitute Entity in the event of default by the developer shall be responsible to make any compensation to the Developer as per the provisions of this Agreement. The Substitute Entity shall be responsible for making compensation payment to the Developer which shall be computed in the following manner: -

85% of the project investment including the cost of the Site (as approved by the Independent Engineer) till the date of termination:

**Less:** Gross project revenues earned (as per the audited financial statements of the project company) till the date of termination;

**Less:** Outstanding debt and other liabilities to be taken over;

**Less:** Dues outstanding, if any to BDA from the Developer; and

**Less:** Amounts, if any, received or receivable by the Developer as insurance claims.

- b. BDA Event of Default before execution of Conveyance Deed:** Upon Termination of this Agreement by the Developer due to a BDA Event of Default, prior to execution of Conveyance Deed, the Developer shall be entitled to receive from BDA the Construction Performance Security and the Maximum Land Premium paid by the Developer to BDA without interest provided there are no outstanding claims of BDA on the Developer. However, the non-refundable payments will be retained.

- c. Termination due to Force Majeure Event:** No compensation to be paid to the Developer upon Termination of this Agreement due to occurrence of any of the Force Majeure Event.

16.6.2. Provided further, any amount which shall be required, as approved by the Independent Engineer, for restoration of the Site in its original condition, shall be borne by the Developer at its own cost and BDA has the authority to adjust the same amount from the Termination Payment, if any.

## **Article XVI**

### **17. RIGHTS AND TITLE OVER THE SITE**

- 17.1. The Parties recognize and agree that nothing contained in this Development Agreement or in the Conveyance Deed, (in the event the same is executed), shall be construed to constitute a transfer of title in the Site or the entire Assets developed thereupon in favour of the Developer.
- 17.2. Notwithstanding anything contained in Article 3.1, for abundant caution, it is clarified that the Developer shall only have freehold rights in relation to the share of balance built-up space after handing over the Community Market to BDA in the manner specified in the bidding documents, with equivalent/proportionate interest on land.
- 17.3. It is expressly agreed, understood and recorded between the Parties that the Developer shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as BDA may specify. Where such access or use causes any financial loss to the Developer, it may seek compensation from such user of the Site as per Applicable Laws.

## **Article XVII**

### **18. VESTING AND PROVISIONS**

- 18.1. In case of expiry of the Term of Development Agreement, before execution of Conveyance Deed, BDA shall take over the possession of the Site, Assets and Project Facilities and the Developer shall ensure that on the Transfer Date, the interest of Developer in:
- a) all the Assets and Project Facilities, as existing, shall be vested in BDA 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 sub-contracts related to Assets and Project Facilities and other arrangements entered into in accordance with the provisions of this Development Agreement between the Developer and any Users shall (in consideration of BDA's assumption of the

obligations under or pursuant to the contracts and other arrangements) be vested in BDA or its nominee, clear of any Encumbrance and with good title; and,

- c) the rights and obligations of the Developer and any User under or pursuant to all letter of allotments and other contracts and arrangements between the Developer and such Users in assets, property and rights relating to Assets and Project Facilities shall (in consideration of BDA's assumption of the obligations under or pursuant to the contracts, arrangements, assets, property and rights) be vested in BDA or its nominee, clear of any Encumbrance and with good title.

- 18.2. Without prejudice to the foregoing, the Developer agrees to indemnify and keep indemnified BDA from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses, whatsoever which may be sustained or suffered by BDA as a result of any actions or omissions of Developer prior to the transfer of the Assets.
- 18.3. The Developer shall ensure that all property, assets, rights and other items (constituting Assets and Project Facilities), which are vested in or transferred to BDA shall be in good working order and in a good state of repair. For this purpose, the Parties shall appoint an independent engineer to conduct an audit of the Assets and Project Facilities being transferred.
- 18.4. Expiry or termination of this Development Agreement shall be without prejudice to all rights and obligations then having accrued to BDA and / or Developer (or which may thereafter 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.
- 18.5. The Parties' rights to terminate this Development Agreement shall be limited to those expressly set out in this Development Agreement.
- 18.6. Transfer costs and taxes, if applicable, for the transfer of the Assets consequent to termination of this Development Agreement in the event of Default of the Developer, shall be borne by the Developer.

## **Article XVIII**

### **19. DISPUTE RESOLUTION**

#### **19.1. Disputes - Amicable Settlement:**

- 19.1.1. The Parties shall use their respective reasonable endeavors to settle any dispute amicably. If a dispute is not resolved within 30 (thirty) days after written notice of a Dispute by one Party to the other Party, then the provisions of Article 19.2 shall apply.

## **19.2. Arbitration:**

- 19.2.1. Any Dispute which is not resolved amicably, as provided in Article 19.1, shall be finally decided by reference to sole arbitration of the Vice Chairman, BDA and / or any other person so nominated / appointed by him. The Developer will have no objection that the arbitrator is a government servant and that he has to deal with the matters to which this Development Agreement relates, or that in the course of his duties as a government servant he has expressed views on all or any of the matter in Dispute.
- 19.2.2. Such arbitration shall be held subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Bill, 2021. The governing law of the arbitration shall be the laws of India.
- 19.2.3. The venue or seat of arbitration shall only be at Bhubaneswar, and the arbitration shall be conducted in English language.
- 19.2.4. The Sole Arbitrator shall make a reasoned award (the “**Award**”) giving reasons for each claim allowed or disallowed. Any Award made in any arbitration held pursuant to this Article 19.2.4 shall be final and binding on the Parties as from the date it is made, and the Parties hereto agree and undertake to obey and implement such Award without delay.
- 19.2.5. The Parties hereto agree that an Award may be enforced against any of the Parties hereto, as the case may be, and their respective assets wherever situated.
- 19.2.6. This Development Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the submission of the dispute, difference, controversy, claim to arbitration and thereafter until the final decision of the arbitrator. Till the Award in any arbitration proceedings hereunder, the Parties shall continue to perform all of their obligations under this Development Agreement, without prejudice to a final adjustment in accordance with such a decision and except for any obligation of BDA, which shall automatically cease and come to an end upon the expiry or Termination of the Development Agreement. Further, this Development Agreement shall remain subsisting and operative during the pendency of such dispute etc. and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.
- 19.2.7. Article 19 shall survive the termination or expiry of this Development Agreement.
- 19.2.8. The Developer and BDA agree that an Award may be enforced against the Developer and / or BDA, as the case may be, and their respective assets wherever situated.
- 19.2.9. The award passed shall be binding to the parties, unless and until reversed by the competent Principal Civil Court at Bhubaneswar only in case challenged by any of the aggrieved parties.

19.2.10. In case any dispute not covered within the scope of Arbitration, shall lie to the Principal Civil Court at Bhubaneswar in exclusion of any other jurisdiction specified under any Act and/or Code.

19.2.11. The costs of the arbitration shall be equally borne by both the Parties. The arbitrator may provide in the arbitral award for reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

## **Article XIX**

### **20. Liability and Indemnification**

#### **20.1. Liability in respect of the Project:**

20.1.1. The 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 Facilities located upon the Site. In no event shall BDA 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 Facilities located upon the Site.

20.1.2. The Developer will have the liability to handover the Community Market and dedicated parking to BDA in the manner specified in the bidding documents.

#### **20.2. General Indemnity:**

20.2.1. The Developer hereby indemnifies and agrees and undertakes that from the Appointed Date and during the Term and thereafter, it shall keep indemnified and otherwise saved and harmless, BDA, 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 BDA, 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 and / or the Users 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 execute sale deed with the allottees, including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the residential/ commercial spaces in the Assets.

20.2.2. The Developer hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold BDA, and the Lenders, acting through the Lenders' Representative, harmless against from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any third party liability, including reasonable attorney's fees, actually incurred or suffered by the Indemnified Party, arising out of or in any way connected with (a) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Developer or Persons claiming through or under it of the Developer's representations and warranties herein; obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (b) failure of the Developer or Persons claiming through or under it to comply with any law or Applicable Permit or pay taxes or make contractual or other payments due and payable to any Person; (c) the employment, sickness, injury or death of any Person employed directly or indirectly by the Developer or Persons claiming through or under it; (d) personal injury and for damage to or loss of any property arising out of or in any way connected with the Developer's performance under this Agreement, except to the extent that such injury, damage on loss is attributable to a negligent or willful act or omission of the party seeking to be indemnified; or (e) as provided elsewhere in this Agreement.

20.2.3. BDA hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of BDA to fulfill any of its obligations under this Development Agreement materially and adversely affecting the performance of the Developer's obligations under the Development Agreement or this Development Agreement other than any loss, damage, cost and expenses, arising out of acts done in discharge of their lawful functions by BDA, its officers, officers, employees, agents, advisors, consultants, authorized representatives.

### 20.3. **Notice and contest of claims / demands:**

20.3.1. In the event that any Party hereto receives a claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 20.2 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and / or shall not settle or pay the claim / demand without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and at its (Indemnifying Party's) risk,

costs and expense. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

20.3.2. Furthermore, the Indemnified Party shall make available to the Indemnifying Party, a copy of the third-party claim or demand and give the Indemnifying Party the opportunity to defend the Indemnified Party against such claim, employing their own counsel at their sole costs, expense and risk. The Indemnifying Party, 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 Indemnifying Party 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 Indemnified Party (with all costs and expenses to be borne by the Indemnifying Party); and (iii) require that the claim be litigated or settled in accordance with the instructions of the Indemnifying Party. The Indemnifying Party shall conduct such proceedings in good faith and take into account the interest of the Indemnified Party. As long as the Indemnifying Party is defending a claim, the Indemnified Party shall provide or cause to be provided, to the Indemnifying Party or its representatives, any information reasonably requested by it and / or them relating to such claim, and the Indemnified Party shall otherwise cooperate with the Indemnifying Party and its representatives in good faith in order to contest effectively such claim. The Indemnifying Party shall inform the Indemnified Party in writing without undue delay of all developments and events relating to such claim.

20.3.3. 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.

20.3.4. Notwithstanding anything to the contrary contained in this Development Agreement, the Developer shall indemnify and hold harmless BDA, 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 this Development Agreement and / or the Conveyance Deed including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the residential and/or commercial spaces in the Assets.

## **Article XX**

### **21. MISCELLANEOUS**

#### **21.1. Assignment**

21.1.1. **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.

21.1.2. **By BDA** – Save and except otherwise permitted by this development agreement, BDA 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.

## 21.2. **Entire Agreement**

21.2.1. This Development Agreement along with terms and conditions of the RfP Document together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by BDA and executed by the authorised person of BDA in this behalf.

21.2.2. Wherever there is discrepancy between this Development Agreement clause and terms and conditions of the RfP Document, the terms and conditions of the Development Agreement will prevail over clauses of this RfP Document.

21.2.3. This Development Agreement, Schedules, Annexure and RfP documents together constitute a complete and exclusive understanding of the terms of the Development Agreement between the Parties on the subject hereof.

## 21.3. **Amendment**

21.3.1. Any amendment or waiver of any provision of this Development Agreement, or consent to any departure by any of the Parties there from, shall be effective only when 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 given.

21.3.2. After the bidding process, any amendment(s) in the Draft Development Agreement may be made on the mutual consent of both the Selected bidder/ Developer and BDA.

## 21.4. **Waiver and Remedies**

21.4.1. Any term or condition of the Development Agreement may be waived at any time by the Party that is entitled to the benefit thereof. Such waiver must be in writing and must be executed by an authorized officer of such Party. A waiver on occasion will not be deemed to be waiver of the same or any breach or non-fulfillment on a future occasion. No omission or delay on the part of either Party to require due and punctual performance of

any obligation of the other Party shall constitute a waiver of such obligation of the other Party or the due and punctual performance thereof by such other Party and it shall not in any manner constitute a continuing waiver and / or as a waiver of other breaches of the same or other (similar or otherwise) obligations hereunder or as a waiver of any right or remedy that it may otherwise have, in law or in equity. However, the waiver by any Party of any breach of the Development Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of the Development Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other Party.

21.4.2. No forbearance, indulgence or relaxation or inaction by any Party hereto at any time to require performance of any of the provisions of the Development Agreement shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver or acquiescence by any Party hereto of any breach of any of the provisions of the Development Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of the Development Agreement, or acquiescence to or recognition of any right under or arising out of the Development Agreement, or acquiescence to or recognition of rights and / or position other than as expressly stipulated in the Development Agreement.

21.4.3. That the failure of either Party to enforce at any time, or for any period of time the provisions hereof shall not be construed to be waiver of any provisions or of the right thereafter to enforce each and every provision.

## **21.5. Severance of Terms**

21.5.1. 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.

## **21.6. Survival**

21.6.1. The Termination of this Agreement:

- a.) shall not relieve the Developer or BDA of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- b.) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

**21.7. Notices, communications, and Language**

21.7.1. The Language of the Development Agreement is English. All notices, certificates, correspondence or other communications, specifications, standard and information under or in connection with this Development Agreement or the Project shall be in English Language. All other written and printed matter, communications, documentation, proceedings, and notices etc. pursuant or relevant to the Development Agreement shall be in English language.

21.7.2. Unless otherwise stated, all notices, communications, letters etc. including but not limited to a notice of waiver of any term, breach of any term of this Development Agreement and Termination of this Development Agreement required to be made, served and communications in terms of this Development Agreement and / or under these presents shall be in writing and shall be deemed to have been duly made, served, communicated or received.

- (i) Immediately, if sent by e-mail or facsimile transmission to the e-mail I. D. or the correct fax number of the addressee (with a confirming copy sent the same business day by registered post acknowledgement due or speed post acknowledgment due or by a reputed and recognized national or international courier service) or by hand delivery (with signed return receipt).
- (ii) Within 72 (seventy-two) hours of posting, if sent by prepaid registered post acknowledgement due or speed post acknowledgment due or by a reputed and recognized national or international courier service only if the notice or letter or communication is addressed to the other Party,

at the following addresses:

**If to BDA :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

Kind Attn : \_\_\_\_\_

**If to the Developer :**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

Kind Attn : \_\_\_\_\_

**If to the Confirming Party:**

\_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

Kind Attn : \_\_\_\_\_

Or

to such other addresses and addressees, as may be intimated in writing by one Party to the other.

If BDA or the Developer or the Confirming Party changes its address or acquires any new address, telephone, facsimile, e-mail for notices, communications, and letters etc. required by or under this Development Agreement, the respective Party shall immediately notify the others of that change as soon as may be practicable and in any event within 72 (seventy-two) hours of such change or acquisition. Written notice required by the Development Agreement shall be deemed sufficient and adequate, if sent to the last known address of the Developer or the Selected Bidder in the manner provided hereinabove.

**21.8. Governing Law and Jurisdiction**

21.8.1. This Development Agreement shall be governed by and construed in accordance with the laws of India and the courts of Bhubaneswar shall have the exclusive jurisdiction over all matters pertaining to or arising out of or in relation to this Development Agreement.

**21.9. No agency or Partnership**

21.9.1. Nothing contained in this Agreement shall be in any manner constructed or interpreted as constituting a partnership or agency for or 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, BDA to incur any obligation or liability on behalf of the other Party. Further, except as otherwise expressly agreed to neither Party shall have any authority to bind the other in any manner whatsoever.

**21.10. Exclusion of Implied Warranties etc.**

21.10.1. 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.

**21.11. Costs and expenses**

21.11.1. 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 and Conveyance Deed 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 this Development Agreement and Conveyance Deed with any relevant Governmental Authority.

**21.12. Timelines**

21.12.1. All the timelines related to this Request for Proposal (RFP) may be extended at the sole discretion of Bhubaneswar Development Authority.

**21.13. Change in Land Area**

21.13.1. If there is any change in the land area after the joint verification by the Selected Bidder and the BDA after the signing of the Development Agreement, then the Selected Bidder will have to pay to BDA a consideration pro rata to the Quoted Bid Amount.

**21.14. Counterparts:**

21.14.1. This Development Agreement is being executed in 3 (three) counterparts 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. One counterpart is to be retained by BDA, the one counterpart to be retained by the Developer (i.e. Project SPV) and the other counterpart to be retained by Selected Bidder (Authorized Signatory in case of Consortium). All counterparts shall constitute but one and the same Development Agreement.

21.14.2. The Parties represent that they have read the entire Agreement constituting 21 Articles including the Schedules therein and Annexures and Appendices thereto and further state that the Parties shall be bound by all the terms and conditions thereof.

**SCHEDULE – 1**  
(the land or Project Site)

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

<b>For and on behalf of Bhubaneswar Development Authority</b>  [NAME] [DESIGNATION]	
<b>For and on behalf of Developer (i.e. Project SPV)</b>  [NAME] DESIGNATION]	
<b>For and on behalf of Selected Bidder (Conforming Party)</b>  [NAME] DESIGNATION]	
<b>Witnesses:</b> 1. 2.	

**Annexure to Draft Development Agreement**

**DRAFT CONVEYANCE DEED OR BUILT-UP AREA FOR DEVELOPMENT OF  
COMMUNITY MARKET AT JHARPADA, BHUBANESWAR ON PPP MODE**

**THIS INDENTURE (“Indenture”)** is made and executed on this the .....day of .....  
2025.

**BETWEEN**

**Bhubaneswar Development Authority**, established under the Orissa Development Authorities Act, 1982 (Orissa Act, 14 of 1982), having its office at Akash Sova Building, Sachivalaya Marg, Bhubaneswar, Odisha (hereinafter referred to as “BDA” which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns) of the **FIRST PART**

**AND**

....., a company incorporated under the Companies Act, 2013 and having its registered office at ....., India. (hereinafter referred to as the “**Developer**” which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors in interest and assigns) of the **OTHER PART**

“**BDA**” and the “**Developer**” are, where the context demands, individually referred to as “**Party**” and collectively as “**Parties**”.

**WHEREAS:**

The Government of Odisha transferred the Government land on freehold basis as per the provision under Section-75 of the ODA Act,1982 vide its Sanction Letter no. .... dated ..... in favour of the First Party for the purpose of affordable housing project.

And whereas, The First Party vide its Notification No. .... dt..... received approval from the Government for developing the Community Market on the land at Jharpada on Public Private Partnership mode.

And whereas, The First Party vide its Notification No. .... dt..... and RFP No ..... dt..... conducted a transparent and competitive bid process to identify the Private Developer for developing the Community Market at Jharpada on Public Private Partnership mode.

Whereas the Second Party was selected as the successful bidder to undertake the project over the schedule plot on terms and conditions specified in the RFP documents and has handed over the Community Market measuring ..... sq. ft of built up area comprising .....

Number of shops/ shop spaces, dedicated parking for the community Market measuring ..... sq. ft, fully completed in all respect to the satisfaction of BDA and achieved the Occupancy Certificate No. .... Dated ..... and Project Completion Certificate No. .... dated ..... from {Competent Authority} and deposited the full bid amount of INR ..... (Rupees ..... only) against the land.

NOW THIS INDENTURE WITNESSES THAT in consideration of the above, the First Party hereby grants, conveys, releases and transfers, assigns and assures unto the aforesaid Second Party/ subsequent allottee(s) / purchaser(s) the permanent, transferable and heritable rights in respect of the built-up area of ..... sq. ft with equivalent interest on proportionate land situated over Plot No. ...., Area Ac..... in Mouza- Jharpada, P.S.- Bhubaneswar of Tahsil - Bhubaneswar District - Khordha (hereinafter referred to as the said land / property) more fully described in the Schedule hereunder TO HAVE AND TO HOLD the same unto the Second Party / subsequent allottee(s) / purchaser(s) of the asset over the land with permanent heritable and transferable rights, subject to the exceptions, reservations covenants and conditions hereafter contained, that is to say, as follows:-

1. The Second Party / subsequent purchaser(s) of the asset(s) developed over the land shall have only the exclusive proportionate rights over the said land for the built-up area covered by the Residential cum/or Commercial facility in the total built-up area of the Project. The exclusive title and rights of the built-up area covered by the Community Market and proportionate land will continue to vest with the BDA.

2. The Government of Odisha except and reserves unto himself all mines and minerals of whatever nature lying in or under the said property together with full liberty at all times for the Government of Odisha and its agents and workmen, to enter upon all or any part of the land / Property to search for, win, make merchantable, and carry away the said mines and minerals under or upon the said property or any adjoining lands of the Government and to lay down the surface of all or any part of the said land / property and any building under or hereafter to be erected thereon making fair compensation to the Second Party / subsequent purchaser(s) of the asset developed over the land for damage done unto him thereby, subjected to the payment of land revenue or other imposition payable or which may become lawfully payable in respect of said land /property and to all public rights or easement affecting the same.

3. The Second Party / subsequent purchaser(s) of the asset so developed over the land shall comply with the building, drainage and other bye-laws of the Bhubaneswar Development Authority for the time being in force.

4. If it is discovered at any stage that this deed has been obtained by suppressions of any fact by any mis-statement, mis-representation or fraud, then this deed shall become void at the option of the Bhubaneswar Development Authority who shall have the right to cancel this deed and forfeit the bid amount paid by the Second Party / Subsequent Purchaser(s) of the land / asset developed over the land. The decision of the BDA in this regard shall be final and binding upon the Second Party / Subsequent Purchaser(s) of the asset over the said land.

5. The Second Party / Subsequent Purchaser(s) of the asset developed over land shall not commit any act of waste on the said land /property so as to render it unfit for the purpose of being used as a commercial / residential purpose. However, the Second Party / Subsequent Purchaser(s) of the land / asset has no right to further sub-division/ amalgamation / change of land use without prior permission of the 1st Party (BDA). If it is found that further sub-division /amalgamation / change of land use made by the Second Party / Subsequent Purchaser(s) and their successor(s), administrator(s) representative(s), permitted assignee(s) and in case of such, the consequences as referred to in Clause-5 shall apply and the deed shall become void and shall stand cancelled on forfeiture of the bid amount paid by the Second Party / subsequent Purchaser(s) of the asset so developed over the land. In such events, the Second Party / subsequent purchaser(s), successor(s), administrator(s), representative(s) permitted assignee(s) shall handover the possession of the land / property to BDA failing which BDA shall proceed to recover the property as per the provisions provided under ODA Act, 1982 and / OPP(EOU) Act 1972 and such other Act(s). The Second Party / Subsequent purchaser shall have to pay the ground rent, cess etc to the concerned Revenue Authorities as per the provision of law. The rent is liable for revision during survey and settlement operations or at the end of each 15<sup>th</sup> year, as the case may be subjected to a maximum limit of 50 (fifty) per cent over the rate of rent in force in the previous year or the rates applicable at the time to similar lands in the vicinity.

6. That the Second Party shall operate the residential cum/or commercial and other facility and other activities permissible as per prevailing Planning and Building Standards Rules / Regulations with all requisite walls sewers, drains and other conveniences as approved by the competent authority or his authorized representatives and shall maintain the same in all respects at all times.

7. The Second Party must always recognize that the Community Market is a public infrastructure and the residential cum/or commercial facilities have been developed on the surplus built-up area after developing the Community Market. Accordingly, they should make all efforts to ensure the seamless functioning of the Community Market and co-operate on all matters related to the same.

Consequent upon cancellation of allotment based on the permission obtained from BDA to execute 'Agreement to Sale' with end -users dated .....; on the grounds referred to in the Transfer of Land conditions, the Second party shall be responsible for all consequences arising out of agreement entered into with the third party allottee, if any, and in case of such, the aforesaid allotment and the claim (s) of the allottee out of such transaction (s) shall be at the cost and risk of the Second party and may form the buildup/part of buildup construction area and in this context the Second party shall be bound by and to comply with the provisions of Real Estate (Regulation and Development) Act 2016 and shall also be responsible for all consequences arising out of the default of the Second party. BDA, in no manner, shall be responsible for all aforementioned transaction (s) made by the Second party.

8. The Second Party shall indemnify and hold harmless the First Party from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the First Party in the event of cancellation of Conveyance Deed for non-fulfilment of the conditions by the Second Party.
9. It is further declared that as a result of this Conveyance Deed, the Second Party/allottee/successful bidder from the date mentioned hereafter will be the owner of the said property with permanent, transferable and heritable rights.
10. The stamp duty and registration charges, if any leviable upon this instrument shall be borne by the Second Party / subsequent purchaser.
11. This transfer shall be deemed to have come into force with effect from the date of registration of this deed.
12. The Second Party shall apply for correction of ROR (Odisha Record of Rights) in respect of the proportionate interest on Scheduled land on the basis of allotment made on free hold i.e. proportion of built-up area used for residential cum/or commercial facilities and excluding the built-up area of the Community Market.
13. The documents furnished by the Second Party / subsequent purchaser(s) during the process of auction and process to execution deed shall form part and parcel of this deed.
14. That the expression "Developer" or the "Alottes" hereinbefore used shall include its heirs, executors, administrators and agents.
15. **IT IS HEREBY FURTHER AGREED** by and between the parties, in case any constraints/ restrains/difficulties arising out of and in connection with conditions mentioned in the Conveyance Deed the rights shall be resolved mutually and in such event the parties in writing may add/alter/modify/repeal any of the condition of explain any of the condition, keeping in view the provisions of law prevailing as on the said date and such addition/alteration/modification/deletion and explanation of any condition(s) shall from part of the conveyance deed.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the date first above written.

Signed and delivered for an on behalf of  
**Bhubaneswar Development Authority**

Signed and delivered for and on behalf of  
**{Developer}**

---

**Name:**

**Name:**

**Title:**

**Title:**

**Witness:**

- 1.**
- 2.**

**Witness:**

- 1.**
- 2.**

**Annexure**

1. Plot map
2. Built-up area as per sanctioned plan
3. Built-up are of Residential cum/or Commercial facilities.
4. Project Completion Certificate from Competent Authority/Independent Engineer
5. Occupancy Certificate from Competent Authority