



## TRIPARTITE AGREEMENT

THIS INDENTURE OF AGREEMENT (**Agreement**) made on this the day of \_\_\_\_\_, 20\_\_\_\_ (Two Thousand \_\_\_\_\_).

AMONG

[Name of the SPV constituted to undertake the project], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [Address], (hereinafter referred to as the "**BORROWER/DEVELOPER**") (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **FIRST PART**.

AND

The [Name of the Bank] [Address] called as the "**FINANCIER**", (which expression unless repugnant to the context shall include its successors and assigns), of the party of the **SECOND PART**.

AND

**BHUBANESWAR DEVELOPMENT AUTHORITY (BDA)**, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Akash Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns); of the **THIRD PART**.

AND

[Name of Selected Bidder], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [Address], (hereinafter referred to as the "**Confirming Party**") (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

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AND WHEREAS

The primary objective of the BDA is to address the supply and demand gap in affordable housing in its jurisdiction in line with the Policy for Housing for All in Urban Areas, Odisha 2015 of the GoO. With a view to increase the housing stock for EWS households in the Bhubaneswar Development Area, BDA has decided to undertake an Affordable Housing Project/ Slum Redevelopment Project at [Location of the Project] (hereinafter referred to as "Project") over a land area of [Project area] under Model III/IV of the Housing for All Policy.

AND WHEREAS

For the purpose of undertaking an affordable housing project/slum redevelopment project at the Site, the General Administration Department, GoO has transferred [Project area] Acres of land, through the Notification No. \_\_\_\_\_, at [Location of the Project] to BDA under CDP Land Implementation Policy (CLIP) 2015.

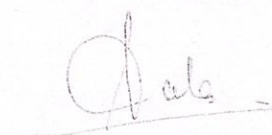
AND WHEREAS

For taking up the Project under Model- III/ IV of the Housing For All Policy, BDA intended to engage a developer to: (i) design, develop, finance, construct, complete and hand over Affordable Housing Project (AHP) and the AHP Assets/ Slum Redevelopment Project(SRP) and SRP Assets to BDA free of cost on the AHP Area/SRP Area in accordance with the terms of the Development Agreement; and (ii) have the right to design, finance, construct, market, allot, complete and transfer Private Developer Project and the PDP Units on the Developer's Area in accordance with the Development Agreement.

AND WHEREAS

The Selected Bidder has been selected after following a transparent bidding process commenced by BDA on date [Date of RFP publication] and subsequently, an agreement was executed between BDA and the Developer (the special purpose vehicle incorporated by the Selected Bidder to implement the Project) on [Date of execution of Development Agreement] to undertake the Project (the **Development Agreement**).

AND WHEREAS



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The Development Agreement requires the Developer to achieve Financial Close as certified by the Lenders and submit a copy of the Financing Documents to BDA, as a condition precedent to the effectiveness of the Development Agreement. The Development Agreement also allows the Developer to create Security over all of its right, title and interests in and to the Development Agreement and the Developer Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to BDA, except as expressly provided in this Agreement.

AND WHEREAS

The Borrower/Developer has approached the Financier to avail a loan for an amount of INR [Total Loan Amount] for the purpose of financing the Project and achieving Financial Close and the Financier has agreed to provide such loan.

AND WHEREAS

The Borrower/Developer as well as the Financier approached the BDA to enter into a tripartite agreement in order to facilitate the disbursement of the loan, its recovery, creation and the enforcement of the Security by way of equitable mortgage created over the Developer's Area in Financier's favor.

Therefore, it is hereby agreed by between and among the parties hereto as follows:-

1) **Definitions and Interpretation**

All capitalized terms used in this Agreement shall, if not specifically defined in this Agreement, have the meaning ascribed to them in the Development Agreement.

In this Agreement, unless the context otherwise requires, the following terms have the following meaning:

- a. **Benchmark Value** means the value of the Developer's Area determined on the basis of the circle rate notified by the revenue authorities of the GoO for the land forming part of the Developer's Area, as on the date of this Agreement. It is clarified that for the

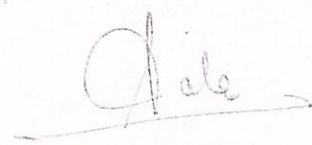
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purposes of calculating the Benchmark Value of the Developer's Area, the prevailing circle rate of INR [•] shall be considered.

- b. **Market Value** means the market value of the Developer's Area at the time of enforcement of the Security over the Developer's Area in accordance with Clause 6 of this Agreement, which shall be mutually determined by BDA and the Financier taking into consideration the prevailing market prices and the valuation reports submitted to the Joint Committee from the independent valuers appointed by BDA and the Financier respectively.
- c. **Debt Due** means the aggregate of the following sums expressed in Rupees outstanding as on the date of issue of a notice of intent to enforce the Security by the Financier under Clause 6a. of this Agreement: (i) the principal amount of the loan provided by the Financier to the Developer to fund the Project; and (ii) all accrued interest, financing fees, expenses and charges payable under the Financing Documents on, or in respect of the loan referred to in (i) above, until the date of the notice of intent to enforce the Security. For the purposes of this Agreement, the maximum Debt Due that may be recovered by the Financier through the enforcement of the Security created by BDA over the Developer's Area shall in no event exceed the Benchmark Value. However, the Financier shall be entitled to recover its balance dues from the Developer through enforcement of any other collateral security offered by the Developer and/or its guarantor(s) to the Financier under the Financing Documents.
- d. **Joint Committee** means the committee comprising representatives of the BDA and the Financier, which is to be formed jointly by the BDA and the Financier for the purpose of carrying out the substitution and if applicable, the auction of the Developer's Area, in accordance with Clause 5 and 6 of this Agreement, respectively.

**2) Creation of Equitable Mortgage over Developer's Area**

- a. BDA has handed over a site measuring \_\_\_\_\_ Acres to Developer for the Project, out of which, \_\_\_\_\_ Acre is the AHP/SRP Area and \_\_\_\_\_ Acre is the Developer's Area.



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- b. The ownership of the AHP/SRP Area and the Developer's Area lies with BDA.
- c. For the sole purpose of assisting the Developer in availing of the loan from the Financier, BDA shall create Security by way of an equitable mortgage over the Developer's Area in favour of the Financier in accordance with Applicable Laws to secure repayment of the Debt Due to the extent of the Benchmark Value. For this purpose, BDA shall deposit the ownership documents, including a copy of the GoO Land Allotment Notification and Record of Rights (RoR) for the Developer's Area of \_\_\_\_\_ acres (if available) with the Financier for the creation of the Security over the Developer's Area.
- d. After successful completion of [each phase of (*if applicable*)] the Affordable Housing Project//Slum Redevelopment Project in accordance with the terms of the Development Agreement, the BDA shall execute the Conveyance Deed(s) for the Developer's Area in favour of the Developer and thereafter, the Developer shall be the rightful owner of the Developer's Area / the BDA shall execute the Conveyance Deed(s) in favour of the Developer in a phased manner for parts of the Developer's Area, as per the terms and conditions of Development Agreement and thereafter, the Developer shall be the rightful owner of the part of Developer's Area for which the Conveyance Deed has been executed.
- e. Upon execution of [each] Conveyance Deed, BDA shall hand over the executed Conveyance Deed with the Financier along with a notice for release of the Security created by BDA over [such portion of/entire] Developer's Area for which the Conveyance Deed has been executed.
- f. The Financier on receiving the notice from BDA, shall take all necessary action to release the equitable mortgage created by BDA over [such portion of / entire] Developer's Area. Once the final Conveyance Deed for the Developer's Area is handed over to the Financier, the Financier shall return to BDA all documents deposited by BDA with the Financier to create the Security over the Developer's Area.

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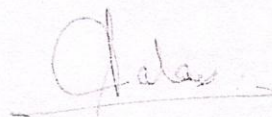
- g. Upon release of the Security created by BDA over the Developer's Area by the Financier, the Developer shall, as Security for the financing provided by the Financier, mortgage the Developer's Area in favour of the Financier, in accordance with the Financing Documents.

**3) Payment Mechanism:**

- a. The Developer shall repay the loan amount as per the Financing Documents executed between the Developer and the Financier.
- b. The Developer shall submit a quarterly status report with respect to such loan repayment to BDA.

**4) Escrow Mechanism:**

- a. As per the Development Agreement, the Developer, BDA, the Developer Escrow Agent, and the Lenders' representative shall enter into the Developer Escrow Agreement and the Developer shall open the Developer Escrow Account with the Developer Escrow Agent in accordance with the Developer Escrow Agreement.
- b. The Financier, second part, shall act as the Developer Escrow Agent as required by the Development Agreement and Developer Escrow Agreement.
- c. The flow of money into the Developer Escrow Account as well as withdrawal from the account shall be as per the terms and conditions of Developer Escrow Agreement.
- d. The funds in the Developer Escrow Account shall be hypothecated to the Financier and in case of Developer Event of Default, subject to Clause 5 and 6 below, the Financier and BDA shall have the right to appropriate the funds in the Developer Escrow Account on a pari passu basis, proportionate to the amounts due to the BDA under the Development Agreement and the Financier under the Financing Documents to the extent of Debt Due, subject to any claims of other Government Authorities.



5) **Developer Default, Substitution of Developer in case of Developer Event of Default and Termination of Development Agreement:**

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- a. In case of default of the Developer under the Development Agreement or the Financing Documents before the execution of the Conveyance Deeds for the entire Developer's Area in favour of Developer, the BDA and the Financier shall form the Joint Committee with representatives from BDA and the Financier, and the Joint Committee shall make all reasonable efforts to substitute the Developer with a third party acceptable to the BDA as well as Financier, in accordance with the Development Agreement. The Joint Committee shall comply with all Applicable Laws, including specifically the Real Estate (Regulation and Development) Act, 2016 (RERA) and the rules and regulations framed thereunder, in undertaking any substitution of the Developer and transfer of the Project to a substitute developer.
- b. In case the substitution does not occur within [•] days from the date of notification of the Developer's event of default by the BDA or the Financier, as the case may be, and the Developer's event of default under the Development Agreement and/or Financing Documents shall lead to termination of the Development Agreement, the consequences of termination as set out in the Development Agreement and Clause 6 of this Agreement shall apply.
- c. If the Developer is entitled to receive any compensation upon termination of the Development Agreement, the Financier shall have the right to receive such termination compensation instead of the Developer.

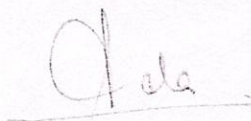
6) **Enforcement of the Security:**

- a. Prior to release of the Security created by the BDA over the Developer's Area: If the Financier fails to recover its loan amount under the Financing Documents from the Borrower/Developer and further, the Joint Committee fails to substitute the Developer under the Development Agreement, then the Financier shall have the right to enforce the Security by furnishing a written notice of its intent to enforce the Security to BDA and the Developer, in accordance with

*[Handwritten signature]*

Applicable Laws.

- b. Within [•] days of receipt of the notice of intent to enforce the Security the Joint Committee will convene to auction the Developer's Area at a price equal or higher than the Market Value of the Developer's Area. Notwithstanding the proceeds received from such sale, the Financier shall be entitled to recover an amount up to the Debt Due. In case, the auction is not successful for two consecutive times and the Financier is unable to sell the Developer's Area at a price equal or higher than the Market Value of the Developer's Area, the Financier may auction the Developer's Area as per its internal guidelines or banking sector guidelines, for a price lower than the Market Value of the Developer's Area, with the prior intimation to the BDA. In such case, the prospective bidder is required to complete AHP/ SRP assets as per the provision of the Development Agreement executed with the First Part.
- c. The enforcement of Security over the Developer's Area and recovery of the Debt Due to the extent of the Benchmark Value (or part thereof) from the sale proceeds shall be subject to the following conditions:
- (i) any enforcement of the Security shall be undertaken in accordance with Applicable Laws, including the RERA;
  - (ii) BDA shall have no liability towards any PDP Allottee;
  - (iii) any termination compensation received by the Financier (as payable to the Developer under the Development Agreement and given to Financier as stated in clause 5(c) above) shall be deducted from the total Debt Due recoverable by the Financier;
  - (iv) the Debt Due (as reduced by the termination compensation paid by BDA under the Development Agreement, as stated in clause 5(c) above) recoverable by the Financier from the sale proceeds of PDP asset shall in no event exceed the Benchmark Value;
  - (v) subject to (iv) above, the amount payable to the Financier from the sale proceeds of the PDP assets shall in no event exceed the Debt Due (as reduced by the termination compensation paid by the BDA under the Development Agreement);





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knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

### 8) Notices

- a. Any notice or request in reference to this Agreement shall be written in English language and shall be sent by registered airmail or facsimile and shall be directed to the other Party at the address mentioned below:

**BDA:** Attention: [●]

Address: [●]

Tel: [●]

Fax: [●]

Email: [●]

**Developer/Borrower** : Attention:

Address: [●]

Tel: [●]

Fax: [●]

Email: [●]

**Financier:** Attention:

Address:

Tel:

Fax:

Email: [●]

- b. Any notice or demand served by registered airmail shall be deemed to be duly served 48 (forty eight) hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and in the case of

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and

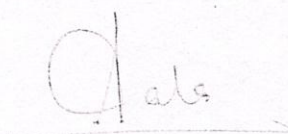
- (vi) the balance sale proceeds after recovery of the Debt Due, as reduced by the termination compensation already paid by BDA under the Development Agreement and subject further to a cap of the Benchmark Value, shall be paid to BDA and shall be the property of BDA.

d. It is clarified that nothing contained in sub-clauses a. to c. above will apply to any enforcement of the security created over the Developer's Area by the Developer in favour of the Financier after release of the equitable mortgage created by the BDA upon handover of the Conveyance Deeds by the BDA to the Financier. Any enforcement of the security created by the Developer over the Developer's Area will be in accordance with the documents executed by the Developer in favour of the Financier for the purposes of security creation and all Applicable Laws (with no liability whatsoever on BDA). Provided further that, BDA shall have no liability towards any PDP Allottee regardless of whether any security over the Developer's Area is enforced prior to or after release of the security created by the BDA over the Developer's Area.

#### 7) Representations and Warranties

Each Party represents and warrants to the other Parties that:

- a. it is duly organised, validly existing and of good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; and
- e. there are no actions, suits or proceedings pending or to its best



a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.

- c. Each Party may change the above address by prior written notice to the other Party.

**9) Governing Law and Jurisdiction:**

- a. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India.
- b. The Courts at Bhubaneswar shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to a sole Arbitrator appointed by BDA with the consent of the Financier and the Developer, to be governed as per the provisions of Arbitration and Conciliation Act, 1996 as amended from time to time, the last of such amendment in 2015 and the Rules framed thereunder. The sitting of the arbitrator shall be at Bhubaneswar.
- c. Only the courts at Bhubaneswar shall have the jurisdiction to decide any dispute if it so arises other than the dispute covered under arbitration.

**10) Amendments, Successors and Assigns**

- a. All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.
- b. This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

**11) Counterparts**

This Agreement may be executed in three counterparts, each of which, when executed and delivered, will be an original, and all counterparts together shall constitute one and the same instrument.

*Dals*

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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

For and on behalf of Developer by:

[THE COMMON SEAL OF.....  
has pursuant to the Resolution of its Board of Directors passed in  
That behalf on the ..... day of ..... hereunto been affixed  
in the presence of ..... and.....  
Directors who have signed Presents in token thereof and Secretary/  
Authorised Person who has countersigned the Same in token thereof

Signature:  
Name:  
Designation:  
Address:  
Fax:  
E-Mail:  
Attn:

SIGNED, SEALED AND DELIVERED

For and on behalf of the Financier by:

Signature:  
Name:  
Designation:  
Address:  
Fax:  
E-Mail:  
Attn:

SIGNED SEALED AND DELIVERED

For and on behalf of Bhubaneswar Development Authority by:

Signature:  
Name:  
Designation:  
Address:  
Fax:  
E-Mail:  
Attn:

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*[Handwritten signature]*