



हिमाचल प्रदेश HIMACHAL PRADESH

226100

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the 30th day of December, 2011.

AMONGST

1. The Commissioner Municipal Corporation of Shimla, a statutory body constituted in June 1969 under the Municipal Act, having its office at The Mall, Shimla -171001 (H.P.) (hereinafter referred to as the Concessioneing Authority or MCS which expression shall, unless the context otherwise requires, include its successors and assigns);
2. M/s. Tania Sanjauliparkings Private Limited, a company incorporated under the provisions of the Companies Act,1956 and having its registered office at 25/27, Netaji Subhas Road, Kolkata-700001, West Bengal, India (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. The Dena Bank, Manicktala Branch (Particular of Lenders' Representative) and having its registered office at P-241, C.I.T. Road, Scheme-VI(M), Kolkata 700 054 acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this

कृते देना बैंक / For DENA BANK
मानिकतला शाखा, कोलकाता
Manicktala Br., Kolkata

मुख्य प्रबंधक / Chief Manager.

Tania Sanjauli Parkings Pvt. Ltd.

Authorised Signatory

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Agreement (hereinafter referred to as the "Lenders' Representatives", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Concessioneing Authority has entered into a Concession Agreement dated 04.02.2011 with the Concessionaire (the Concession Agreement") on design, build, operate and transfer basis (DBOT)/(Called Project), and a copy of which is annexed hereto and marked as Annexure-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Concessioneing Authority to enter into this Substitution Agreement for securing their interest through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Concessioneing Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions:

In this Substitutions Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Agreement" means the Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3(three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act,1956, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the

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Concessioning Authority for assignment/transfer of the Concession as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

"Parties" Means the parties to this agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2. **Interpretation**

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. Reference to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4. The rules of interpretations stated in clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutaus mutandis*, to this Agreement.

2. **ASSIGNMENT**

2.1. **Assignment of rights and title**

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. **SUBSTITUTION OF THE CONCESSIONAIRE**

3.1 **Right of Substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Concessioning Authority hereby agrees to substitute the Concessionaire by endorsement on the concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

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3.2 **Substitution upon occurrence of Financial Default**

- 3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessioneing Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3. At any time after the Lenders' Representative has issued a notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Concessioneing Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders Representative and the Concessionaire, the Concessioneing Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 **Substitution upon occurrence of Concessionaire Default**

- 3.3.1. Upon occurrence of a Concessionaire Default, the Concessioneing Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15(fifteen) days time to the Lender's Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that the Lenders' representative makes a representation to the Concessioneing Authority within the period of 15 (Fifteen) days specified in Clause 3.3.1, stating that in intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the

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Concessioneing Authority shall either withhold termination or undertake suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1. The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by Private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessioneing Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Concessioneing Authority for short listing the bidders of award of the Concession; provided that the Lenders' Representative may represent to the Concessioneing Authority that all or any of such criteria may be waived in the interest of the project and if the Concessioneing Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessioneing Authority to:
- accede to transfer to the nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession period; and
 - enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Nominated Company shall be deemed to

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have been accepted. The Concessioneing Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company, provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5. Selection to be Binding

The decision of the Lenders' Representative and the Concessioneing Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessioneing Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project of the Concessionaire's shares. It is hereby acknowledged by the Parties that the right of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioneing Authority and the Concessionaire shall have no right or remedy to prevent, obstruct to restrain the Concessioneing Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing Authority shall - undertake Termination under and in accordance with the provisions of Article 22 and 23 of the Concession Agreement.

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5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Concessioneing Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof and set forth in Clause 3.3.2, the Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a) Termination of the Agreement; or
- b) No sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements;

7. INDEMNITY

7.1. General Indemnity

7.1.1. The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses of whatever kind and nature arising out of any breach by the concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2. The Concessioneing Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses arising out of failure of the Concessioneing Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damages, cost and expenses, arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents.

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7.1.3. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses arising out of failure of the Lenders' Representatives to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage cost and expenses, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2. **Notice and contest of claims**

In the event that any Party hereto receives a claims from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other party responsible for indemnifying such claims hereunder (the "**Indemnifying party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claims, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. 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.

8. **DISPUTE RESOLUTION**

8.1. **Dispute Resolution**

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Concessioneing Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of Arbitration shall be (Shimla) and the language of arbitration shall be English.

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9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Court at (Shimla) shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2. Waiver of sovereign immunity

The Concessioneing Authority unconditionally and irrevocably :

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessioneing Authority with respect of its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over the Agreement.

9.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the parties.

9.5. Waiver

9.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provisions of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any

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9.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6. No third party beneficiaries

This Agreement is solely for the benefit of the parties and no other person or entity shall have any rights hereunder.

9.7. Survival

9.7.1. Termination of this Agreement

- a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof, and
- b) except as otherwise provided in any provisions 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.

9.7.2. All obligations surviving the cancellation, expiration or termination of the Agreement shall only survive for a period of 3(three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable, to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after

4.30 (four thirty) p.m. on any day, or on a day that is a public holiday,

कृते देना बैंक / F4.30 (four thirty) p.m. on any day, or on a day that is a public holiday,
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Manickgalla Br., Kolkata

मुख्य प्रबंधक / Chief Manager

Tantia Sanjauli Parkings Pvt. Ltd.

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the notice shall be deemed to be received on the first working day following date of actual receipt. It is hereby agreed and acknowledged that any party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representative

Each of the parties shall be notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which where executed and delivered shall constitute an original of this Agreement.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by

Tantia Sanjauli Parkings Pvt. Ltd.

Signature

Name ATUL AGRAWAL

Designation DIRECTOR

Address 25/27, N.S. ROAD

Fax No. KOLIKATA- 760001
033- 40190001

SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONING, AUTHORITY BY

Signature

Name

Designation

Address The Mall, Shimla 171001

Fax No. 0177 2812899
- 0177 2802346

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the Lenders' Representative

Signature


Name Apurba Kumar Roy


Designation Chief Manager

Address Dena Bank, Manicktalla Br. Kolkata

Fax No. 033 23207018

In the presence of

1.  Amar Singh Verma
Officer in Charge

2.  ARVIND KUMAR SINGH
J-4, DHARAMPURA
TARAF SARH
NEW DELHI-43

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