

₹ 100



सत्यमेव जयते

₹ 100

ONE

HUNDRED RUPEES

भारत INDIA
INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA

जिल्हा कार्यालय, कोल्हापूर,

दिनांक

29 AUG 2012

मुद्रांक प्रमुख लिपीक/लिपीक

29/8/12

निर्यात स्टॅम्प वेन्डर

FX 944385

मिळोवडे दिनांक 2/4/12, सेक्टर-2,
वाशी, नवी मुंबई - 400 603.

परवाना क्र. 3/2002 (उत्ते)

- 5 SEP 2012

कनु. क्र. नं. 56564

उत्ते. क्र. 27823613

नाव: SUPREME SUYOG FUNICULAR ROPEWAYS PRIVATE LIMITED

8, Bhawani Services

पत्ते: 3rd Floor, Opp. M.T. Road, Powai,,

MUMBAI - 400078

Maharashtra, INDIA

स्टॅम्प वेन्डर

२९. ०९. २०१२

SUBSTITUTION AGREEMENT


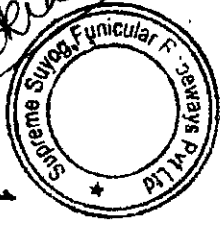
THIS SUSTITUTION AGREEMENT is entered into on this the 24th day of September 2012 at MUMBAI

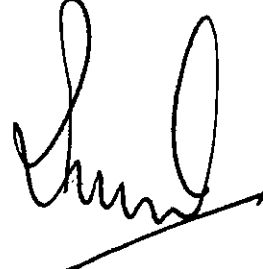
AMONGST, ✓

The Governor of Maharashtra acting in his executive capacity for the Government of Maharashtra represented by the Public Works Department GOM, hereinafter referred to as "GOM" (Which expression shall unless repugnant to the context of meaning. Thereof include its successors and assigns);

Mumbai (SRV.)

M/s. Supreme Suyog Funicular Ropeways Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 8, Bhawani Services





Industrial Estate, 3rd Floor, Opp IIT Main Gate, Powai, Mumbai – 400076, hereinafter referred to as "the Concessionaire" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

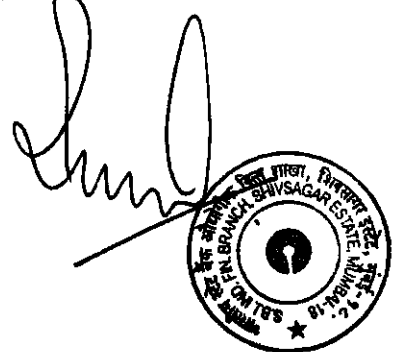
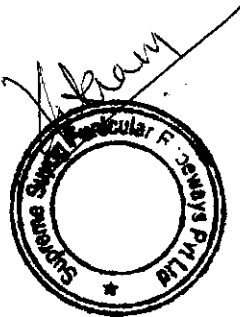
AND

STATE BANK OF INDIA, a statutory corporation constituted under the State Bank of India Act, 1955 and having its Corporate Centre at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai – 400 021 and amongst other a branch named **Industrial Finance Branch at 1st Floor, Dev Chand House, Shiv Sagar Estate, Dr. Annie Besant Road, Worli, Mumbai – 400 018** hereinafter referred to as "the Lender".

WHEREAS,

- A. ✓ The GOM is keen to implement a project envisaging construction, operation and maintenance of **Construction of Funicular Railway at Haji Malang Gad, Tal. Ambernath, District Thane, THE STATE OF MAHARASHTRA ON BUILD, OPERATE AND TRANSFER (BOT) BASIS** (more particularly described in Schedule 'A' of Concession Agreement dated 09-09-2008 executed by GOM Maharashtra, Concessionaire Supreme Suyog Yashita Consortium and hereinafter referred to as "the Project") with private sector participation on Build, Operate and Transfer - (BOT) basis;
- B. ✓ By the Concession Agreement dated **09/09/2008** entered into between the GOM and the Concessionaire (hereinafter referred to as "the Concession Agreement") the Concessionaire has been granted the Concession to implement the Project on BOT basis;
- C. ✓ With a view to facilitate financing of the project by the Concessionaire, in pursuance of Article 10 of the Concession Agreement, the GOM and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender Representative.
- D. ✓ As a condition to making any disbursement pursuant to the Financing Documents, the Lender have required that the substitution Agreement being these presents be entered into, and the GOM and the Concessionaire have agreed to the same.

✓ NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS .



ARTICLE-1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Agreement**" means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

"**Financial Assistance**" means the financial assistance set forth in Schedule I hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the project.

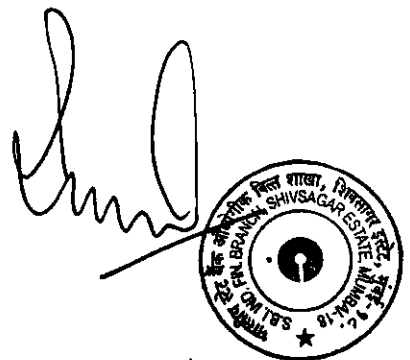
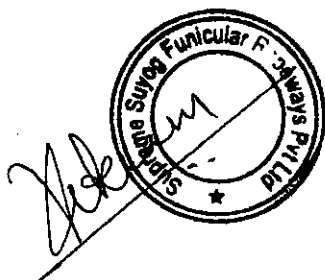
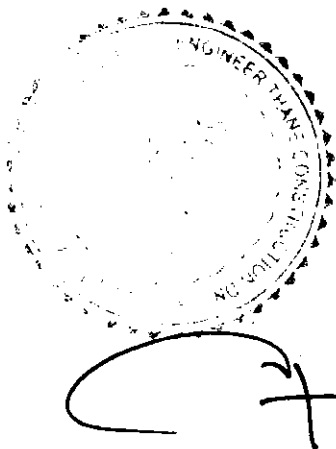
"**Lender(s)**" means the financial institutions/ banks whose name(s) and addresses are set out in Schedule I hereto.

"**Residual Concession Period**" means the period which shall be aggregate remainder of the Concession Period as the Suspension Period.

"**Selectee**" means a Person proposed by the Lender/ Lender's Representative pursuant to this Agreement and approved by GOM for substituting the Concessionaire for the residual Concession Period, in accordance with the Provisions of this Agreement.

"**Suspension Period**" means the period commencing from the expiry of the cure Period specified in the Preliminary Notice, and ending on the date on which all formalities connected with substitution of the Concessionaire by the Selectee including handling over of Project Site/Project Facility, in accordance with this Agreement are completed and the substitution has become effective.

1.2 Capitalized terms use in this Agreement but not defined shall have the Meaning assigned to them respectively in the Concession Agreement,



ARTICLE 2

SUBSTITUTION OF THE CONCESSIONAIRE BY THE SELECTEE

2.1 Lenders Right to Substitute

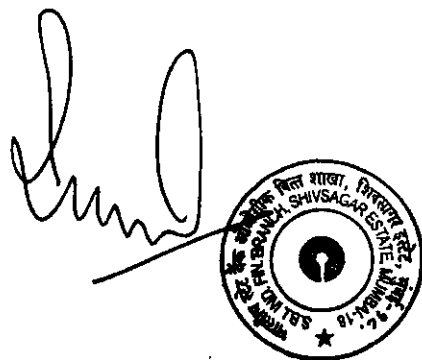
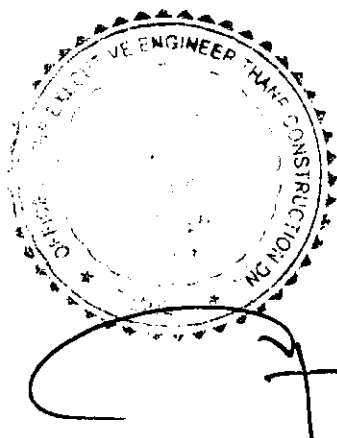
The GOM and the concessionaire hereby irrevocably agree that upon occurrence of an Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/ Financing Documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Concessionaire by the Selectee for the residual Concession under Concession Agreement in accordance with the provisions of this Agreement. Provided upon substitution the Selectee shall be entitled to the extension of the remainder of the Concession Period by the Suspension Period.

2.2 Preliminary Notice of Termination

The GOM shall as soon as 'possible but in any case not later than 45 days' of its knowledge of the occurrence of the Concessionaire Event of Default issue Preliminary Notice of Termination to the Concessionaire in terms of Article 16.2 (a) of the Concession Agreement, with a copy thereof simultaneously to the Lenders. Provided if the Concessionaire Event of Default is the one set out in Article 16.1(a)(9) of the Concession Agreement, the GOM shall not be obliged to issue Preliminary Termination Notice until receipt by the GOM of the recall notice issued 'by the Lender(s) to the Concessionaire.

2.3 Suspension of Concession and Takeover of the Project Facility

The Concessionaire' irrevocably agrees that if the Cure Period specified in the Preliminary Notice of Termination lapses without the Concessionaire Event of Default having been cured, the Concession 'shall effective from the expiry of such Cure Period stand suspended without any further notice or other act of the GOM being required, and the GOM shall have the right to enter upon and takeover the Project Site/ Project Facility and to take all such steps as are necessary for the continued operation and maintenance of the Project Facility, levy, collection and appropriation of Toll subject to servicing the Debt due as per the Financing Documents, and the substitution of the Concessionaire by the Selectee in accordance with this Agreement. The Concessionaire hereby irrevocably consents to the takeover of the Project Facility/ Project Site by the GOM forthwith upon suspension becoming effective.



2.4 Substitution Notice

The GOM and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire failure to cure the Event of Default specified in the Preliminary Notice of Termination. The Lender/Lender's Representative may, within 30 (thirty) days of the expiry of the Cure Period specified therein notify the GOM and the Concessionaire about the intention of the Lender(s) to seek substitution of the concessionaire by the Selectee for the Residual Concession (the "Substitution Notice")

2.5 Criteria for selection of the Selectee

The Lender/ Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (i) The Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all residual duties, obligations and liabilities of the Concessionaire in respect of the Concession, under the Concession Agreement;
- (ii) The Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to the GOM under and in accordance with the Concession Agreements and also payment of Debt Due to the Lender(s) upon Terms and conditions as agreed to between the selectee and the Lenders.

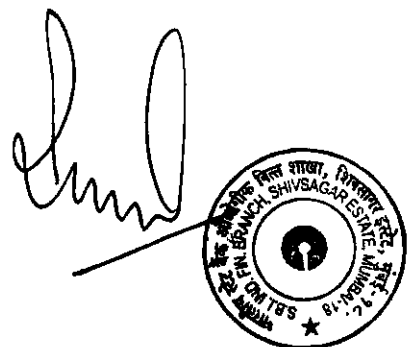
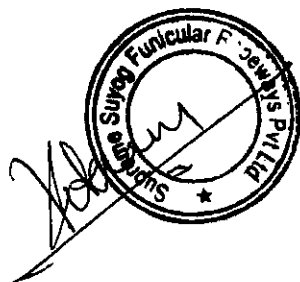
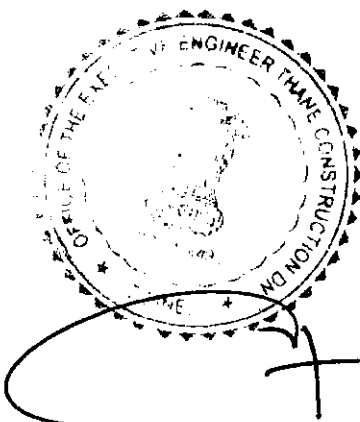


ARTICLE-3
MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution

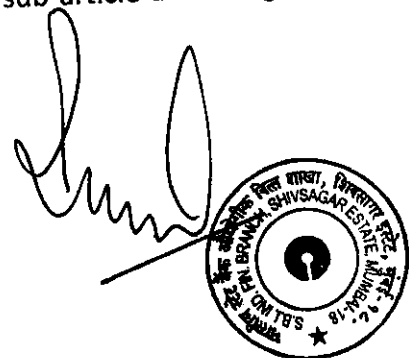
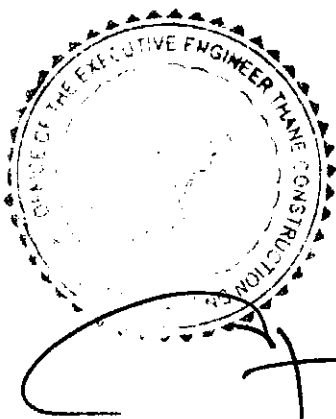
The following modalities shall be followed for substitution of the Concessionaire by the Selectee Pursuant to this Agreement:

- i) ✓ The Lender(s) / Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the preceding Article 2.2 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible persons, for the substitution of the Concessionaire by the Selectee and propose to the GOM for its approval the Selectee (the "Proposal"). The Proposal of the Lender/ Lender's Representative shall contain the particulars and information in respect of the Selectee, the terms of Substitution, particulars of the Debt Due and such data and information as would be necessary and relevant for the GOM to decide as to the acceptability of the Selectee. The Lender/ Lender's Representative shall provide to the GOM such additional information and clarification in respect of any data, particulars of information contained in the Proposal, as the GOM may promptly and reasonably require.
- ii) ✓ The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the GOM of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with the GOM and the Lender(s) as may be necessary or required to give effect to the substitution of the, Concessionaire by the Selectee.
- iii) ✓ The GOM shall convey to the Lender/ Lenders' Representative its acceptance or otherwise of the Selectee within 30(thirty) days of (a) the date of receipt of the Proposal by the GOM, or (b) the date of receipt of



the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender/ Lender's Representative to the GOM, whichever is later.

- iv) ✓ At any time prior to the acceptance of the Selectee by the GOM pursuant to this Agreement, the GOM may require the Lender, " Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of the GOM as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the concessionaire. In the event that the GOM fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal / the Selectee within a period of 30 days prescribed in preceding sub-article (iii), the GOM shall be deemed to have accepted the proposal/ the selectee.
- v) The rejection of the Selectee if made by the GOM shall be reasoned and be made after hearing the Lender/ Lenders' Representative. Following the rejection of the Proposal, the Lender/ Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 days of receipt of the communication regarding rejection of the Selective previously proposed. The provisions of preceding sub-article (iii) and (iv) shall apply mutatis mutandis to such fresh Proposal.
- vi) ✓ If the GOM accepts the Proposal / fresh Proposal, the GOM shall take all necessary steps to substitute the Concessionaire by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Concessionaire by the Selectee for the Residual Concession Period.
- vii) ✓ The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the *Selectee* executing all necessary documents and writings with or in favour of the GOM and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and the GOM and upon the delivery by the GOM of the Project Assets to the Selectee. Upon the substitution becoming effective pursuant to this sub-article all the rights

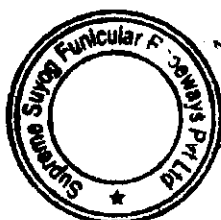
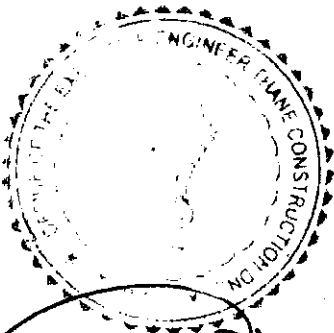


of the Concessionaire under the Concession Agreement shall cease to exist. Provided nothing contained in this sub-article shall prejudice any pending/ subsisting claims of the Concessionaire against the GOM or any claim of the GOM against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/ default and shall subject to terms and conditions of substitution, have a period of 90 days to cure any breach/default subsisting on the date of substitution and required to be cured.

- viii) The decision of Lenders and the GOM in the selection of the Selectee shall be final and binding to the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire. The Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.2 Termination and Termination Payment.

- (i) Where the Lender/Lenders' Representative (on behalf of the all the Lenders) communicates in writing that (i) the Lender/ Lender's Representative does not intend to seek substitution of the Concessionaire, or (ii) that the Lender/ Lender's Representative has not been able to find suitable Selectee or (iii) that the GOM has declined to accept the Selectee proposed by the Lenders/Lenders Representative, the GOM shall proceed to terminate the Concession and to make Termination Payment, in accordance with the Provisions of the Concession Agreement.
- (ii) Notwithstanding anything contained herein above, the GOM shall not upon Termination of Concession Agreement, be required to take over, the Debt Due save and except to the extent of Termination Payment due and payable under the Concession Agreement. In such an event the GOM's obligation shall be limited to assumption of such liabilities and payments of Debt Due as the GOM has agreed to bear under the Concession Agreement.
- (iii) Nothing Contained in these presents shall mean or be interpreted as provision of any guarantee or surety by the GOM and it is expressly agreed that the GOM has not provided any surety, guarantee or counter



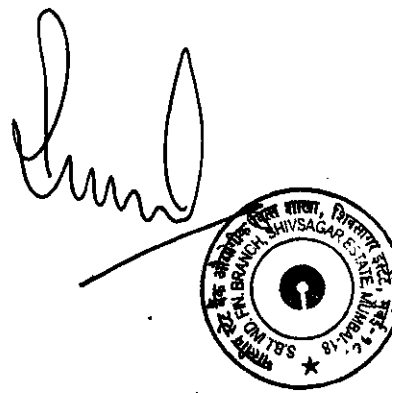
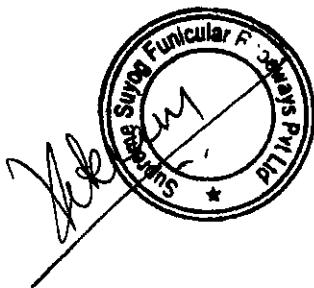
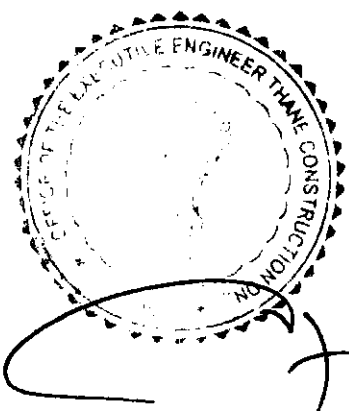
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ARTICLE-4
MODE OF TERMINATION PAYMENT

4.1 Mode of payment

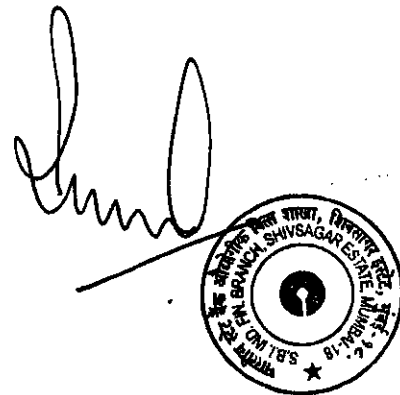
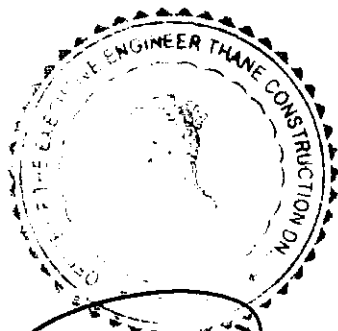
- (i) The GOM and Concessionaire hereby irrevocably agree, and confirm that so long as the Debt due is outstanding the Termination Payment and any other amounts due and payable by the GOM to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefore by the Lender(s)/Lenders' Representative and advised to the GOM and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire towards the satisfaction of the Debt Due, subject to payment by the Lender(s) of the surplus amount if any remaining after satisfaction of the Debt Due, to the Concessionaire. Any payment so made shall to the extent of such payment constitute a valid discharge to the GOM of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.
- (ii) For the purpose of giving full effect to the provisions contained in the preceding sub-article (i), the Lender (s)/ lenders' Representative shall be entitled to make a demand for payment of the Termination Payment if the Concessionaire has failed to make such demand as required under Article 16.4 of the Concession Agreement within 15 days from the Termination Date under intimation to the Lender(s)/ Lender's Representative.
- (iii) The Concessioner hereby irrevocably appoints and constitutes the Lender(s)/ Lenders' Representative as its agent to make such demand for Termination Payment. Any demand made by the Lender(s)/ Lenders' Representative pursuant to the power and authority conferred hereby shall for the purpose of the Article 16.4 of the Concessionaire Agreement be deemed to be a demand for Termination Payment made by the Concessionaire.



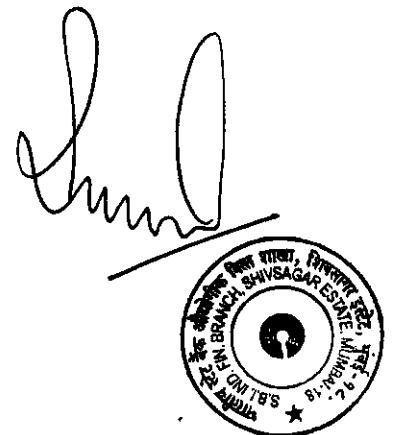
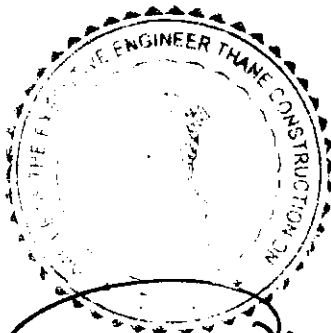
ARTICLE-5
GENERAL

5.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement and the Lenders Representative is duly and fully authorized by each of the Lenders to enter into this Agreement on their behalf.
- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.
- (iii) The expression the "GOM", the "Concessionaire", the "Lender" and the "Lenders' Representative" herein used shall unless there be anything repugnant to the subject or context include the respective successors, legal representatives, administrations and permitted assigns.
- (iv) This Agreement shall not be affected by reorganization of any Lender, the Concessionaire or the GOM and the successor in the interest of the Lender or the GOM shall have the benefit of this Agreement.
- (v) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by arbitration as per the provisions of the Arbitration and Conciliation Act, 1966. The Arbitrators shall issue a reasoned award. The venue of such arbitration shall be Regional Headquarter of the Chief Engineer, Public Works Department. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay.
- (vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in Maharashtra alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of relating to the arbitration proceedings thereunder.

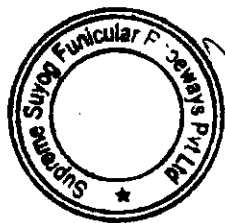
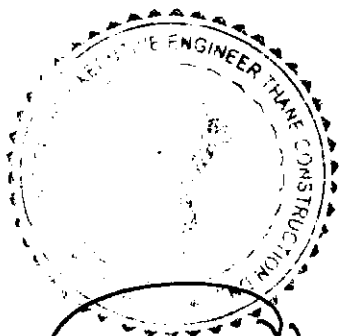


- (vii) ✓ The consultation, recommendation or approval of the Lender's Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (viii) ✓ This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (ix) ✓ It shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (x) ✓ No amendment, variation or modification to this agreement shall be valid and effectual unless made in writing and executed by the duly authorized representative of all the parties hereto.
- (xi) ✓ All stamp duties or other imposts and charges as per applicable on this agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the Concessionaire. In the event of the lender making such payment of the time being, it shall be deemed to be a part of debt dues.
- (xii) The parties hereby expressly agree that for the purpose of giving full and proper effect to this agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession agreement.



SCHEDULE-I
PARTICULARS OF FINANCIAL ASSISTANCE

Name and address of the Lender	Nature and Amount of Financing Assistance (Amount in crores)
State Bank of India having its Corporate Centre at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai - 400 021 and amongst other a branch named Industrial Finance Branch at 1 st Floor, Dev Chand House, Shiv Sagar Estate, Dr. Annie Besant Road, Worli, Mumbai - 400 018 hereinafter referred to as "the Lender".	50.00 (RS FIFTY CRORE) For Implementation of Haji Malang furicular Railway project At Haji Malang Aad, Tal- Amheroth, Dist-Thane Maharashtra.



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IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED

Signed and delivered on behalf of Supreme
Suyog Funicular Ropeways Private Limited
And Common seal of Supreme Suyog Funicular
Ropeways Private Limited has been affixed
Pursuant to the resolution Passed by its Board
Of Director at its meeting held on 5th September
2012 Hereunto affixed in the presence of
Mr. Vikram Sharma (Director) of the
Company who have signed in Token Thereof.

Name: Mr. Vikram Sharma

Title: Director

Signed and Delivered on behalf of
Government of Maharashtra

By

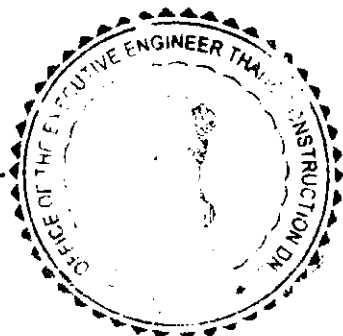
Name Shri. V. L. Ramble.

Title Executive Engineer, Thane Construction Division,
THANE.

Executive Engineer

Thane Construction Division,

THANE.



Signed and Delivered by the Lenders

State Bank of India, by the hand of

Shri Praseon Kumar Relationship
Manager

And authorised official on behalf of

The Lender set forth in the
Schedule. **For STATE BANK OF INDIA**

By

Name:

संबंध प्रबंधक / Relationship Manager
औद्योगिक वित्त विभाग / Ind. Finance Branch
शिवासागर इस्टेट / Shivasagar Estate
मुंबई-400 018 / Mumbai-400 018.

(Praseon Kumar)