

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
ORIGINAL COMPANY JURISDICTION
COMPANY PETITION No. 14 OF 2009
[UNDER SECTION 391/394 OF THE COMPANIES ACT, 1956]

CONNECTED WITH
COMPANY APPLICATION No. 03 OF 2009
[Under Section 391/394 of the Companies Act, 1956]

DISTT : GAUTAM BUDDHA NAGAR

IN THE MATTER OF :
COMPANIES ACT, 1956

AND

IN THE MATTER OF AMALGAMATION OF COMPANIES
PETITION TO SANCTION THE SCHEME OF AMALGAMATION

1. JAIPRAKASH ASSOCIATES LIMITED, having its registered office at Sector – 128, NOIDA-201 304, District Gautam Buddha Nagar, (UP) [Also referred to hereinafter as “JAL”] Transferee Company
2. JAYPEE HOTELS LIMITED, having its registered office at Hotel Jaypee Palace, Fatehabad Road, Agra, U.P. [Also referred to hereinafter as “JHL”] Transferor Company No. 1
3. JAYPEE CEMENT LIMITED, having its registered office at 5 Park Road, Hazratganj, Lucknow – 226 001 [Also referred to hereinafter as “JCL”] Transferor Company No. 2
4. JAIPRAKASH ENTERPRISES LIMITED, having its registered office at Sector – 128, NOIDA-201 304, District Gautam Buddha Nagar, (UP) [Also referred to hereinafter as “JEL”] Transferor Company No. 3
5. GUJARAT ANJAN CEMENT LIMITED, having its registered office at Sector – 128, NOIDA-201 304, District Gautam Buddha Nagar, (UP), [Also referred to hereinafter as “GACL”] Transferor Company No. 4

.....PETITIONERS

BEFORE HON'BLE MR. JUSTICE SUNIL AMBWANI

Dated 15th May, 2009

ORDER UNDER SECTION 394

The above petition coming on for hearing on 15th May, 2009, upon reading the said petition; the Order dated 9th February, 2009 as amended vide Order dated 2nd March, 2009, whereby the Petitioner Companies were ordered to convene separate meetings of their equity shareholders and the creditors except the meeting of the shareholders of the Transferor Company No. 2 [Jaypee Cement Limited] which was dispensed with, for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Amalgamation proposed to be made between the petitioner companies and their equity shareholders and annexed to the affidavit of Shri Harish K. Vaid 30-01-2009; the Hindustan Times [English Daily] dated 02-03-2009 published from Delhi, Mumbai and Lucknow, Dainik Jagaran [Hindi Daily] dated 02-03-2009 published from NCR Delhi, Agra and Lucknow, Economic Times [English Daily] dated 02-03-2009 published from Delhi and Mumbai, DLA [English Daily] dated 03-03-2009 published from Agra, Asian Wall Street Journal published from various countries in Asia and Financial Times published from various countries in Europe, each containing the advertisement of the said notices convening the said meetings of the equity shareholders and the creditors of the Petitioner Companies, directed to be held by the said order dated 9th February, 2009 as amended vide Order dated 2nd March, 2009; the affidavit dated 17-03-2009 (filed on 18-03-2009) of Shri S.D. Singh, Chairman appointed for the meetings of the equity shareholders and creditors of the Jaiprakash Associates Limited [Transferee Company] and meeting of the equity shareholders of Jaiprakash Enterprises Limited [Transferor Company No. 3], Affidavit dated 16-03-2009 [filed on 16-03-2009] of Shri Rajnath N. Shukla Chairman appointed for the meetings of the equity shareholders and creditors of the Jaypee Hotels Limited [Transferor Company No. 1] and meeting of the creditors of Jaiprakash Enterprises Limited [Transferor Company No. 3], Affidavit dated 16-03-2009 [filed on 16-03-2009] of Sri Rajiv Gupta, Chairman appointed for the meetings of the creditors of Jaypee Cement Limited [Transferor Company No. 2] and the meetings of equity shareholders and the creditors of Gujarat Anjan Cement Limited [Transferor Company No. 4], all the said affidavits showing the publication and despatch of the notices convening the said meetings; the report dated 27-03-2009 and affidavit dated 01-04-2009 [filed on 02-04-2009] of Shri S.D. Singh, Chairman, as to the result of the meetings of the equity shareholders and creditors of the Jaiprakash Associates Limited [Transferee Company] and meeting of the equity shareholders of Jaiprakash Enterprises Limited [Transferor

Company No. 3], the report dated 28-03-2009 and affidavit dated 02-04-2009 [filed on 04-04-2009] of Shri Rajnath N. Shukla, Chairman, as to the result of the meetings of the equity shareholders and creditors of the Jaypee Hotels Limited [Transferor Company No. 1] and meeting of the creditors of Jaiprakash Enterprises Limited [Transferor Company No. 3], the report dated 29-03-2009 and affidavit dated 01-04-2009 [filed on 04-04-2009] of Shri Rajiv Gupta, Chairman, as to the result of the meetings of the creditors of Jaypee Cement Limited [Transferor Company No. 2] and the meetings of equity shareholders and the creditors of Gujarat Anjan Cement Limited [Transferor Company No. 4]; and it appearing from the said reports of the three Chairmen that the proposed Scheme of Amalgamation as well as the resolution in respect paras 5.02 to 5.05 of the Scheme regarding creation of trusts of the shares held by the petitioner companies, which are not to be cancelled, have been approved by the equity shareholders and the creditors of the petitioner companies at each of the said meetings without any modification by the requisite majority; the affidavits dated 20-04-2009 [filed on 20-04-2009] and another affidavit dated 15-05-2009 [filed on 15-05-2009] of Shri Harish K. Vaid, showing that the copies of the petition and order dated 15-04-2009 were served on the Official Liquidator, Allahabad, and the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida, on 20-04-2009 and that the notices of the petition have been duly published in the same six newspapers in which the notices convening the meetings were published and the directions given by this Court vide order dated 15-04-2009 have been duly complied with; upon perusal of the affidavit dated 11-05-2009 [filed on 15-05-2009] of Shri R. Vasudevan, Regional Director, Northern Region, Ministry of Corporate Affairs, Noida; upon perusal of the Report No. (Judl) 123 of 2009 dated 15-05-2009 [filed on 15-05-2009] of the Official Liquidator, Allahabad; there being no objectors to the proposed Scheme of there being no material or any objection made by any person that any enquiry with regard to corporate affairs is pending against the transferor companies and the transferee company and/or affairs of the companies have been carried out in any manner which is prejudicial to the interest of its shareholders, creditors or public interest, and upon hearing Shri R.P. Agarwal, Advocate, for the petitioner companies, this Court orders to sanction the Scheme of Amalgamation and further orders that all the above-named four Transferor Companies shall stand dissolved without winding up order.

THIS COURT DOTH ORDER

- (1) That all the properties, rights and powers of all the above-named four Transferor Companies specified in the first, second and third part of the Schedules hereto and all other properties, rights and powers of the said four Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of all the above-named four Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of the Transferee Company; and
- (3) That all proceedings now pending by or against all the above-named four Transferor Companies be continued by or against the Transferee Company; and
- (4) That the Transferee Company do, without further application, allot to such members of the Transferor Companies the shares in the Transferee company to which they are entitled under the said Scheme of Amalgamation; and
- (5) That the Transferor Companies do, within 30 days after the date of this order, cause a certified copy of this order to be delivered to the Registrar of Companies, U.P. and Uttaranchal, at Kanpur, for registration and on such certified copy being so delivered the above-named four Transferor Companies shall stand dissolved without being wound up and the Registrar of Companies shall place all documents relating to all the four Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said five Companies shall be consolidated accordingly; and
- (6) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

ANNEXURE

Sanctioned Scheme of Amalgamation

SCHEDULES

[Separate Schedules showing details of properties of each of the four Transferor Companies are ANNEXED]

[PART – I]

Description of free hold properties of the Transferor Companies

[PART – II]

Description of lease hold properties of the Transferor Companies

[PART – III]

Short description of all stocks, shares, debentures and other chose-in-action of the Transferor Companies

XXX

**COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF
JAYPEE INFRA[▲]TECH LIMITED IN ITS MEETING HELD ON 21ST
APRIL 2007**

“RESOLVED THAT the Company do accept the assignment of the Taj Expressway Project (Project) as a going concern, from its holding company Jaiprakash Associates Limited (JAL), along with all the estates, rights, titles, interest, assets, liabilities and obligations of the said Project as on 31st March, 2007, including all rights and obligations under the Concession Agreement (executed on February 7, 2003 between JAL and Taj Expressway Industrial Development Authority), for a mutually agreed consideration not lower than the book value of the assets to be obtained from JAL, to be satisfied by allotment of such number of equity shares of Rs. 10 each fully paid up at par as may be agreed to and balance consideration, if any, may be paid in cash on such terms and conditions as may be agreed upon between the Company and JAL.”

“RESOLVED FURTHER THAT Shri Samir Gaur and Smt. Rita Dixit, Directors of the Company be and are hereby severally authorized to take all steps as may be necessary to give effect to the above resolution including signing of such declarations, agreements, undertakings, deed and other documents/papers which may be required for the purpose of accepting the assignment of the Taj Expressway Project along with all its rights and obligations, from Jaiprakash Associates Limited and, if so required, Common Seal of the Company be affixed on such documents as may be deemed necessary, as per the Articles of Associations of the Company.”

“RESOLVED FURTHER THAT for the purpose of giving effect to this Resolution, a committee of Directors comprising of Shri Samir Gaur, Smt. Rita Dixit, Shri Sachin Gaur and Shri Har Prasad, Directors of the Company be and is hereby authorized to do all such acts, deeds and things and take all such steps as may be necessary, expedient, usual, appropriate or incidental and to settle any question, remove any difficulty or doubt that may arise from time to time in relation to assignment of the Taj Expressway Project to the Company by its holding company Jaiprakash Associates Limited.”

CERTIFY TRUE COPY


For JAYPEE INFRA[▲]TECH LIMITED



दिल्ली DELHI

AGREEMENT TO SUB-LEASE

A 46249

This **Agreement** is made at New Delhi on this 12th day of January, 2006

BETWEEN

Jaiprakash Associates Limited (JAL), a Company incorporated under the Companies Act, 1956 having its Registered Office at 5, Park Road, Hazaratganj, Lucknow, U.P. and Head Office at JA House, 63, Basant Lok Community Centre, Vasant Vihar, New Delhi-110057, India (hereinafter referred to as the "**First Party**" which expression shall, unless repugnant to the context, mean and include its successors and assigns), acting through its authorised signatory Shri. Manoj Gaur, Managing Director, who is duly empowered and competent to execute and bind the **First Party** under this **Agreement**

AND

Jaypee Hotels Ltd., (JHL), a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Jaypee Palace Hotel, Fatehabad Road, Agra, UP and Head Office at Hotel Vasant Continental, Vasant Vihar, New Delhi - 110 057 (hereinafter referred to as the "**Second Party**" which expression shall, unless repugnant to the context, mean and include its successors and assigns), acting through its authorised signatory, Shri. S.G. Awasthi, Managing



Director, **JHL**, who is duly empowered and competent to execute and bind the **Second Party** under this **Agreement**.

WHEREAS

- A. The Government of Uttar Pradesh has set up Taj Expressway Development Authority ("**TEA**"), a statutory body constituted under U.P. Industrial Area Development Act, 1976 and having its principal office at J-3, Sector 41, Noida, Dist. Gautam Budh Nagar – 201301, U.P., India, for anchoring development of Taj Expressway Project which, inter alia, includes construction of six lane, 160 Km long Super Expressway with service roads and associated facilities connecting Noida and Agra, passing through a virgin area along the River Yamuna.
- B. **TEA** executed a **Concession Agreement** with the **First Party** on 7th February, 2003 for development of a Techno Economic Feasibility Report and Detailed Project Report, arrangement of finances and construction and operation of the said Expressway.
- C. In terms of the said Concession Agreement, **TEA**, inter alia, agreed to transfer on lease to the **First Party** as part of consideration thereunder, 25 million square metres of land for commercial, amusement, industrial, institutional and residential development (the "**Land for Development**") at five or more locations along the Expressway, of which one location shall be NOIDA / Greater NOIDA with an area of 5 (five) million Square meters.
- D. **TEA** ("**Lessor**"), in part discharge of its obligations under the Concession Agreement, executed following Lease Deeds, duly registered with the competent authorities, in respect of land admeasuring about 597.501 acres situated in Sector 128, NOIDA ("**Demised Land**"). A plan showing the **Demised Land** is attached hereto as SCHEDULE- 1.



Sl. No.	Lease Deed		Land Area in Acres	Village	Registration Details
	Date of Execution	Date of Expiry			
1.	28.02.2003	27.02.2093	32.590	Sadarpur	Book No. 1, Volume No. 1126 Page 787/818, Sl. No. 1790/1791 dt. 28.02.2003 with Sub-Registrar II, Noida, Gautam Budh Nagar.
2.	28.02.2003	27.02.2093	136.400	Sultanpur	Book No. 1, Volume No. 373 Page 39/72, Sl. No. 1656/1657 dt. 28.02.2003 with Sub-Registrar III, Noida
3.	17.04.2003	16.04.2093	117.656	Sultanpur	Book No. 1, Volume No. 414 Page No. 1/40, Sl. No. 5766/5767 dt. 17.04.2003 with Sub-Registrar III, Noida
4.	17.04.2003	16.04.2093	57.910	Asgarpur	Book No. 1, Volume No. 414 Page No. 41/70, Sl. No. 5768/5769 dt. 17.04.2003 with Sub-Register III, Noida
5.	07.06.2003	06.06.2093	55.765	Sultanpur	Book No. 1, Volume No. 430 Page No. 1069/1098, Sl. No. 7473/7472 dt. 07.06.2003 with Sub-Registrar III, Noida.
6.	03.07.2003	02.07.2093	87.122	Shahpur	Book No. 1, Volume No. 668 Page No. 923/956, Sl. No. 5635/5634 dt. 03.07.2003 with Sub-Registrar, Gautam Budh Nagar.
7.	03.07.2003	02.07.2093	43.082	Asgarpur	Book No. 1, Volume No. 453 Page No. 421/450, Sl. No. 9728/9729 dt. 03.07.2003 with Sub-Registrar, Noida three
8.	03.07.2003	25.07.2093	45.206	Sultanpur	Book No. 1, Volume No. 453 Page No. 391/420, Sl. No.



					9/26/9725 dt. 03.07.2003 with Sub-Registrar, Noida third.
9.	26.07.2003	25.07.2093	21.770	Sultanpur	Book No.1, Volume No. 458 Page No. 49/74, Sl. No.10197/10196 dt. 26.07.2003 with Sub- Registrar, Noida third.
		Total	597.501		

The **First Party** is expecting the **TEA** to execute more Lease Deeds in respect of additional land admeasuring about 638 (six hundred and thirty eight) acres in NOIDA to complete transfer of 5 million Sq. meters of **Land for Development** to the **First Party** in NOIDA.

- E. The **First Party** is in legal possession of the said **Demised Land** and has unfettered right to sub-lease the whole or any part of the **Demised Land**, whether developed or undeveloped, and whether by way of plots or constructed properties or give on lease and license or otherwise dispose of its interest in the **Demised Land** or part thereof / permit any person in any manner whatsoever, without requiring any consent or approval of or payment of any additional charges, transfer fee, premiums etc. to the **Lessor (TEA)** or to any other relevant authority. The sub-lessees of the **Demised Land** or part thereof shall also be entitled to provide the said land on further sub-lease and hence there can be subsequent multiple sub-leases of the said land in smaller parts.
- F. The **Second Party** has represented to the **First Party** that it is desirous to take a part of the **Demised Land**, admeasuring 68.564 (Sixty Eight acres and Five Six Four) acres, delineated in Green colour on the site plan of the **Demised Land** shown in SCHEDULE-2 attached hereto (hereinafter referred to as "**Subject Land**") on sub-lease for the purposes of development and subsequent transfer thereof to third parties.



- G. The **First Party** has agreed to sub-lease the **Subject Land** to the **Second Party** on mutually agreed terms.
- H. The **Parties** hereto have negotiated and reached broad understanding of the terms and conditions which are being recorded in this **Agreement**.

NOW THEREFORE THE **PARTIES** HERETO HEREBY AGREE AND THIS **AGREEMENT** WITNESSETH AS FOLLOWS:

1.0 GENERAL

- 1.1 The **First Party** has agreed to sub-lease to the **Second Party** the **Subject Land** admeasuring 68.564 (Sixty Eight acres and Five Six Four) acres, more particularly shown in the SCHEDULE-2 for the residual and the unexpired period of the related Lease Deeds subject to the rent reserved and the other terms and conditions contained therein, for a total consideration of Rs. 93,93,26,800/- (Rupees Ninety three crores Ninety three lacs Twenty Six thousand Eight hundred only) at the rate of Rs. 1,37,00,000/- (Rupees one crore and thirty seven lacs only) per acre to be paid in a manner described hereinafter.

2.0 PAYMENTS

- 2.1 The **Second Party** has agreed to pay the aforesaid total consideration of Rs. 93,93,26,800/- (Rupees Ninety three crores Ninety three lacs Twenty Six thousand Eight hundred only) in the following manner:
- a) Rs. 3,93,26,800 (Rupees Three crores Ninety three lacs Twenty six thousand Eight hundred only) shall be paid by the **Second Party** to the **First Party** on or before 31st March, 2006.
 - b) The balance consideration amount of Rs. 90,00,00,000/- (Rupees Ninety crores only) would be paid by the **Second Party** to the **First Party** after two years from the date of execution of this Agreement in six equal half yearly instalments as given below:



First instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only)	on or before 31/03/2008
Second instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only) alongwith interest	on or before 30/09/2008
Third instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only) alongwith interest	on or before 31/03/2009
Fourth instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only) alongwith interest	on or before 30/09/2009
Fifth instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only) alongwith interest	on or before 31/03/2010
Sixth instalment of Rs. 15,00,00,000/- (Rupees Fifteen crores only) alongwith interest	on or before 30/09/2010

The outstanding balance shall carry interest from 1st April, 2008 calculated at the rate of 10% PA compounded annually.

The **Second Party** may also choose to make the payments due under this Agreement in advance of their due dates.

3.0 GRACE PERIOD

- 3.1 The **First Party** agrees to allow upto a total cumulative grace period of 12 months or such extended period as may be agreed by the **First Party** for payment of the instalments specified in sub-clause 2.1(b) supra, if requested by the **Second Party** subject to the stipulations in sub-clause 4.1 hereinafter.

4.0 CONSEQUENCES OF DELAYED PAYMENTS

- 4.1 For the period of delay beyond the respective due dates mentioned in sub-clause 2.1(b) supra, the **Second Party** shall pay to the **First Party** additional



interest on the overdue instalment that remains unpaid on the due dates at the rate of 2% (two percent) per annum, in addition to the 10% payable as per Clause No. 2.1 (b). Such interest shall be payable along with balance amount of due instalment.

4.2 Payment of interest for any delayed payment would not amount to condonation of delay for calculating the permissible cumulative grace period of 12 months.

4.3 In case there is any default by the **Second Party** in making the payment as per provisions of this **Agreement**, this **Agreement** shall automatically stand terminated without any further act or deed.

5.0 NO RIGHT OF SECOND PARTY TILL EXECUTION OF SUB-LEASE DEED

5.1 Till the Sub-Lease Deed of the **Subject Land** is executed between the **Parties**, the **Second Party** shall have no right on the **Subject Land** whatsoever and the **Second Party** shall not be entitled to carry out any activity on the **Subject Land** except as specifically provided under Clause 6.0 of this **Agreement**.

6.0 DEVELOPMENT OF THE SUBJECT LAND AND APPROVAL OF PLANS ETC.

6.1 On the request of the **Second Party** to the **First Party**, the **First Party** shall permit the **Second Party** to enter upon the **Subject Land** only to carry out surveys to prepare layout plan, drawings, applications etc. for the purpose of submission thereof to the appropriate regulatory authority / authorities as required under rules / orders/ bye-laws / laws etc.

6.2 The **First Party** agrees, to submit the plans etc. prepared by the **Second Party** to the concerned authority / authorities in its own name in good faith without owning any responsibility and liability.

6.3 The follow up, submission of clarifications, carrying out modifications etc. in order to comply with the requirements of the regulatory authority / authorities, shall be done exclusively by the **Second Party**. The **Second**



Party shall also be responsible for obtaining all approvals and permissions whatsoever from appropriate authorities.

- 6.4 The **First Party** shall give requisite permission / authorisation to the **Second Party**, if necessary and considered appropriate by the **First Party**, to enable the **Second Party** to do such acts as may be necessary for obtaining the approvals from the appropriate authority(ies).
- 6.5 After approval of the layout plan and other requisite approvals from the appropriate authorities, the **Second Party** shall be entitled to carry out development works on the **Subject Land** in accordance with the plans approved by the appropriate authority(ies).
- 6.6 At this stage, subject to such conditions as the **First Party** may impose with the basic and invariable premise that the **First Party** will not be liable on any account to any third party or its transferee, the **Second Party** may start marketing and selling of the land/constructed areas/development rights/ in any other way in such portions as may be specifically requested by the **Second Party** and approved by the **First Party**. In such cases, the **First Party** shall facilitate the **Second Party** in execution of the Agreements with third parties by becoming a conforming party to such Agreement.
- 6.7 The **Second Party** shall furnish to the First Party on monthly basis, details of the transactions/arrangements entered by it with third parties in relation to the Subject Land or part thereof.
- 6.8 The **First Party** shall have no obligation or liability whatsoever towards the third parties and the **Second Party** shall keep the First Party indemnified against any claim/ liability whatsoever raised by any third party in respect of any transactions/ arrangements made by the **Second Party** in respect of the **Subject Land** or part thereof.
- 6.9 All costs, expenses and charges in respect of **Subject Land** shall be borne by the **Second Party** and the **First Party** shall have no liability in this respect.



7.0 EXECUTION OF SUB-LEASE DEED

- 7.1 **First Party** may, on the request of the **Second Party**, execute sub-lease in favour of **Second Party** or its nominees in respect of such portion of **Subject Land** for which full amount has been paid by the **Second Party** to the **First Party**. The area of the aforesaid portion shall be worked out considering various relevant factors such as admissible land use, its location etc. Decision of the **First Party** in this regard shall be final and binding on the **Second Party** and such decisions shall be outside the purview of Arbitration referred to in Clause 16 hereinafter.
- 7.2 The **First Party** shall execute the sub-lease deed for **Subject Land** or balance **Subject Land** as the case may be, in favour of the **Second Party** or its nominees, within 15 (fifteen) days of the receipt of all due payments under the provisions of this **Agreement**.

8.0 LIABILITIES/OBLIGATIONS OF THE SECOND PARTY IN RELATION TO THE SUB-LEASE DEED

- 8.1 Notwithstanding anything to the contrary contained anywhere in this **Agreement**, the **Second Party** shall bear all expenses in respect of execution of sub-lease deed(s) including the stamp duty and registration charges.
- 8.2 Notwithstanding anything to the contrary contained anywhere in this **Agreement**, the **Second Party** shall alone be liable to pay all rates, taxes, charges applicable at present or which may be levied in future by **Lessor (TEA)** or any local or other authority / Central or State Government in respect of the **Subject Land** and activities related to it or for services rendered thereto. For the redressal of any loss or damage or inconvenience which the third party or its assignees may suffer due to the non-payment or delayed payment of such taxes, rates or charges, the said third party can only proceed against the **Second Party** and not against the **First Party**.



- 8.3 The **Second Party** along with its sub-lessees / transferees, if any, shall be liable to pay to the **Lessor (TEA)**, rent of the **Subject Land** for the entire period of the sub-lease at the rate of Rs. 100.00 (Rupees one hundred) per hectare per year (various sub-lessees / transferees paying pro-rata rent for the portion of the land held by them). The said rent shall be paid in advance every year without having to issue any demand notice, therefore, either from the **Lessor (TEA)** or from the **First Party**.
- 8.4 The **Second Party** / sub-lessee / end users shall take independent connections in its/his name at its/his cost for water supply / drainage / sewerage etc. on payment of required charges to local authority for construction purpose and later on for regular use. The **Second Party** / sub-lessees / end users shall also take in its/his own name and at its/his cost, temporary electric / power connection for construction purpose and later on for regular supply on payment of required charges to the U.P. Power Corporation office in NOIDA or from such other authority as may be responsible for giving such electric / power connection.
- 8.5 The **Second Party** / sub-lessee / licensee shall make such arrangements as are necessary for maintenance of the building(s) and common services situated on the **Subject Land** and if the buildings are not maintained properly, the Chief Executive Officer or any officer authorised by Chief Executive Officer of the **Lessor (TEA)** will have the power to get the maintenance done through the authority and recover the amount so spent from the **Second Party**/sub-lessee/licensee. The **Second Party**/sub-lessee/licensee will be individually liable for payment of the maintenance amount related to its property. No objection on the amount spent on maintenance of the building by the **Lessor (TEA)** shall be entertained and the decision of the **Lessor (TEA)** shall be final and binding on the **Second Party** / sub-lessee / licensee.
- 8.6 Any building constructed on any portion of **Subject Land** may be sub-let, by the **Second Party**/sub-lessee subject to the terms and conditions as laid down in the bye laws from time to time. The sub-lessee/end users shall follow the statutory laws / bye-laws, Master Plan, Building regulation and directions framed under U.P. Industrial Area Development Act 1976 for the land use and also shall be bound by all covenants and condition contained herein and be answerable in all respect thereof. It shall be the duty and absolute liability of the **Second Party** to ensure that no part of the **Subject Land** or building thereon is



put to any non-conforming use or to any user that transgresses any environmental protection laws or any development laws or any law or regulations imposed by local, state and other authorities and the **Second Party** shall always keep the **First Party** indemnified against any loss, damage or claim arising on this score.

8.7 **Second Party** shall keep the **Lessor (TEA)** and the **First Party** indemnified against any claims for damages which may be caused to any property belonging to the **Lessor (TEA)** / **First Party** / others in consequence of the execution of the works on the **Subject Land** and also against claims for damages arising from the actions of the **Second Party** or his workmen or representatives which:

- a) Injures or destroys any building or part thereof or other structure contiguous or adjacent to the **Subject Land**.
- b) Keeps the foundation, tunnels or other pits on the **Subject Land** open or exposed to weather causing any injury to contiguous or adjacent building.
- c) Digs any pit near the foundation of any building thereby causing any injury or damages to such building.

The damages shall be assessed by the **Lessor (TEA)** whose decision, as to the extent of injury or damages or the amount payable, shall be final and binding on the **Second Party**.

8.8 The **Second Party**/sub-lessee/tenant/licensee shall not display or exhibit any picture posters, statues, other articles which are repugnant to the morals or are indecent or immoral. The **Second Party**/sub-lessee/tenant/licensee shall also not display or exhibit any advertisement or placard in any part of the exterior wall of the building, which shall be constructed over the **Subject Land**, except at places specified for the purpose by the Authority.

9.0 EXTERNAL / INTERNAL DEVELOPMENT

9.1 In terms of the Concession Agreement between **TEA** and the **First Party**, external development including electric supply, water supply, drainage arrangements etc. in relation to land which are already developed in



NOIDA is the obligation of **TEA** within a reasonable period of handing over of such land to the **First Party**. The **First Party** shall pursue the matter with **TEA**, on best effort basis, to have the said external development carried out at the earliest. The **First Party** shall not be liable for any compensation and/or damage in case the said external development is not carried out or delayed by **TEA**. Further, in case any payment is required to be made to **TEA** or any other relevant authority for the said external development, the **Second Party** shall be liable to pay the same in addition to the consideration for the **Subject Land**.

9.2 The **First Party** may enter into separate agreement(s) with other parties in respect of other part(s) of the **Demised Land**. The **Second Party** and all such other parties with whom the **First Party** may enter into agreement(s) for the **Demised Land**, shall be responsible for carrying out internal development works at their own cost.

9.3 It may be necessary for the **Second Party** and the other parties with whom the **First Party** may enter into agreement(s) in respect of the **Demised Land**, to plan and execute certain common facilities / services for utilisation of external development as may be carried out by **TEA**. In case the **Second Party** and the other parties with whom the **First Party** may enter into agreement(s) are not able to amicably decide the aforesaid issues among themselves, the **First Party** with due consideration of the views of the **Second Party** shall give decisions on such issues which will be final and binding on the **Second Party**.

10.0 COVENANTS / WARRANTIES OF THE FIRST PARTY

The **First Party** covenants and warrants that:

10.1 It is in legal possession of the said **Demised Land** and has unfettered right to sub-lease the whole or any part of the **Demised Land** without requiring any consent or approval of the **Lessor (TEA)** or any other relevant authority and has full right and authority to execute this Agreement.



- 10.2 Subject to the receipt of all payments due under the provisions of this **Agreement**, the **First Party** shall execute the sub-lease deed of the **Subject Land** in favour of the **Second Party** or its nominee(s) in accordance with Clause 7.2.
- 10.3 It has not entered into any similar agreement, understanding or arrangement with any third parties except the **Second Party** for the sub-lease of the **Subject Land**.
- 10.4 It has neither done nor been a party to any act whereby its rights and title to the said land may in any manner be impaired or whereby it may be prevented from transferring the said land in favour of the **Second Party**.
- 10.5 No notice of acquisition, requisition or attachment has been received or served upon the **First Party** in respect of the said land or any part thereof.
- 10.6 On execution of the sub-lease, the **Second Party** shall enjoy quiet and peaceful possession of the **Subject Land** without disturbance by it or its successors in interest.
- 10.7 While executing the Lease Deed of the **Demised Land** which includes the **Subject Land** also, **Lessor (TEA)** has warranted that "the **Demised Land** is free from all encumbrances, claims, disputes, encroachments, occupations, litigations, injunctions, mortgages, charges, pledges, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations. **TEA** has also warranted that if any compensation remains outstanding and payable in respect of the **Demised Land**, the same shall be paid and settled directly by **TEA** without in any way affecting the **First Party's** enjoyment of the **Demised Land**".



11.0 COVENANTS / WARRANTIES OF THE SECOND PARTY

The **Second Party** covenants and warrants that:

- 11.1 It shall fulfil all its obligations and liabilities stipulated in Clause 8.0 supra and at any other place in this **Agreement** and that any sub-lease or agreement with the third parties regarding the Subject Land or the superstructure thereon shall not absolve the **Second Party** from its obligations and liabilities in Clause 8.0 supra and at any other place in this **Agreement** and the third parties shall have no claims whatsoever against the **First Party**.
- 11.2 It shall follow all laws and bye-laws, rules, building regulation and direction of **Lessor (TEA)** and the local municipal or other authority now existing or hereinafter to exist, so far as the same relate to the immovable properties and so far as they affect the health, safety, convenience of other inhabitant of the place.
- 11.3 It will ensure land use of the **Subject Land** as per applicable master plan and other regulations of local authorities and laws, regulations of the State / Central Government etc.,
- 11.4 It indemnifies and agrees to keep the **First Party** indemnified against any loss, injury or damage which the **First Party** shall suffer due to any act or omission on the part of the **Second Party** or its employees, servants, agents, contractors, etc in respect of or in relation to this **Agreement**.
- 11.5 It will permit the members, officers and subordinates of the **Lessor (TEA)** and workmen and other persons employed by the **Lessor (TEA)** at all reasonable time of the day with 7 days prior notice in writing to enter into and upon the **Subject Land** and building to be erected thereupon in order to inspect the **Subject Land** and carry on necessary works and the **Second Party** will give notice of the provision of this sub-clause to its sub-lessee(s) / leave and licensee(s), if any.



- 11.6 It will ensure that no environmental protection or heritage protection law is directly or indirectly violated by any non-conforming user.
- 11.7 It will ensure prompt and timely remittance of the dues of the **First Party**.

12.0 RIGHTS TO MINES & MINERALS

- 12.1 The **Lessor (TEA)** has full rights and title to all mines and minerals, coals, gold washing, earth oils and quarries in and under the **Subject Land** or any part thereof and to do all acts and things, which may be reasonably necessary or expedient for the purpose of searching, removing and enjoying the same, without affecting the **Second Party's** / sub-lessee(s) / licensee(s) right to peaceful possession and enjoyment.

13.0 TERMINATION OF THE AGREEMENT

- 13.1 This **Agreement** shall stand terminated automatically without any act or deed on the occurrence of any of the following:
- a) The **Second Party** defaults in making the payment as per the provisions of this **Agreement**.
 - b) The **Second Party** commits material breach of terms and conditions of this **Agreement**.

14.0 CONSEQUENCES OF TERMINATION

- 14.1 On termination of this **Agreement**:

- a) **First Party** shall:
 - either
 - i) execute sub-lease of a part of the **Subject Land** in favour of the **Second Party** in consideration of the amount paid by the **Second Party** to the **First Party** less the value of land for which sub-lease(s) as may have been executed by the **First Party** in favour of **Second Party** or its nominees. The area and location etc. of said part of the **Subject Land** shall be decided by the **First Party** whose decision shall be final and



binding on the **Second Party** and shall be outside the purview of Arbitration referred to in Clause 16 hereinafter.

or

- ii) refund the amount paid by the **Second Party** to the **First Party**, less the value of land for which sub-lease(s) as may have been executed by the **First Party** in favour of **Second Party** or its nominees, to the **Second Party** within a period of 6 (six) months from the date of termination.
- b) **Second Party** shall have no rights whatsoever on the **Subject Land** except in respect of the part of the **Subject Land** for which sub-lease(s) are executed by the **First Party** in favour of the **Second Party**.
- c) **Second Party** shall neither be entitled for any payment / compensation from the **First Party** on any account including development or any other work it might have carried out in the **Subject Land** nor shall have any right on it.

15.0 MISCELLANEOUS

- 15.1 The **First Party** shall not be responsible for any direct or indirect /consequential loss which may be caused to the **Second Party** or to its transferees or assignees or nominees on account of the termination of this **Agreement** or for any other reason whatsoever.
- 15.2 The **First Party** shall not be responsible for any expenditure incurred by the **Second Party** in contemplation or in furtherance of this **Agreement**.
- 15.3 Any relaxation or indulgence granted by the **First Party** to the **Second Party** under this **Agreement** shall not in any way prejudice the legal rights of the **First Party**.
- 15.4 No modification or amendment of this **Agreement** and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by both Parties.



15.5 None of the provisions of this **Agreement** shall be deemed to constitute a partnership between the **Parties** hereto and no **Party** shall have any authority to bind other **Party** otherwise than under this **Agreement** or shall be deemed to be the agent of the other in any way.

16.0 DISPUTE RESOLUTION AND ARBITRATION

16.1 Amicable Resolution

16.1.1 Save where expressly stated to the contrary in this **Agreement**, any dispute, difference or controversy of whatever nature, howsoever arising under, out of or in relation to this **Agreement**, between the **Parties** and so notified in writing by either **Party** to the other (the "**Dispute**") in the first instance shall be attempted to be resolved amicably.

16.1.2 Subject to what is stated in Clauses 7.1 and 14.1, any dispute which is not resolved as provided in sub-clause 16.1.1 above shall be decided by reference to arbitration by three Arbitrators in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.

Each **Party** shall appoint one Arbitrator and the third Arbitrator, who will preside, shall be nominated by the said two Arbitrators.

16.1.3 The Arbitration proceedings shall be conducted in English Language only. The venue of arbitration shall be New Delhi. The Arbitrators shall give reasoned award.

16.1.4 The proceedings shall be concluded and an award passed within 3 (three) months of commencement of the arbitration and all awards including any interim awards shall be final and binding on the **Parties**.

16.1.5 The rights and obligations of the **Parties** under this **Agreement** shall remain in full force and effect pending the Award in any arbitration proceedings hereunder.



17.0 INTERPRETATIONS

17.1 In this **Agreement**, unless the context otherwise requires:

- a) Headings and underlining are for convenience only and do not affect the interpretation of this **Agreement**.
- b) Words importing the singular include the plural and vice versa.
- c) An expression importing a natural person includes any Company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental authority or agency.
- d) Terms defined in this **Agreement** by reference to any other agreement, document or instrument shall have the meanings respectively assigned to them in such agreement, document or instrument, whether or not such agreement document or instrument is then in effect.
- e) All legal rights and obligations hereunder shall be determined in accordance with the laws of India. Any reference to any statute or rule shall be deemed to be a reference to such statute or rule as it may be amended or substituted from time to time.

18.0 NOTICES

18.1 The **First Party** and the **Second Party** hereby agree that all notices hereunder to any **Party** hereto shall be delivered personally or sent by registered mail with acknowledgement due or by facsimile to such **Party** at the address set forth below or such other address as may hereafter be designated in writing by such **Party** to the other **Party**. Notices delivered personally shall be deemed to have been received on the date of receipt; notices sent by registered mail shall be deemed to have been received on the tenth day following mailing; and notices sent by facsimile shall be deemed to have been received one (1) business day after transmission provided (i) receipt is verbally confirmed



and (ii) an original copy is mailed promptly within five (5) business days thereafter:

(a) Notices to the **First Party**, to:

Jaiprakash Associates Limited
JA House, 63, Basant Lok, Vasant Vihar,
New Delhi - 110 057.

Attention : **Shri. Manoj Gaur, Managing Director**

Fax No.: 011-26145389

Tel. No.: 011-26141540

(b) Notices to the **Second Party** to:

Jaypee Hotels Ltd.
Hotel Vasant Continental
Vasant Vihar, New Delhi – 110 057

Attention: **Shri. S.G. Awasthi, Managing Director**

Fax No.: 011 - 26145959

Tel. No.: 011 – 26148800. 26141177

19.0 This **Agreement** constitutes the entire understanding between the Parties with respect to the subject matter herein and ~~supersedes and~~ cancels any prior oral or written **Agreement**, representation, understanding, arrangement, communication or expression of intent relating to the subject matter of this **Agreement**.

20.0 This **Agreement** shall be subject to the exclusive jurisdiction of the courts at New Delhi.




IN WITNESS WHEREOF the Parties hereto have set and subscribed their respective hands at New Delhi on the day and the year first hereinbefore written.


For and on behalf of
JAIPRAKASH ASSOCIATES LTD.


(MANOJ GAUR)
MANAGING DIRECTOR



Witness:

1. 
(SHAILENDRA GUPTA)
3034, Sec 23,
HUDA, Gurgaon,
Haryana

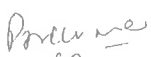
2. 
(N.C. Talwar)
196, Munirka Vihar,
New Delhi 110067


For and on behalf of
JAYPEE HOTELS LTD.


(S.G. AWASTHI)
MANAGING DIRECTOR



Witness:

1. 
(P. N. CHHABRA)
7 Dakshin Marg,
DLF Phase II
Gurgaon -

2. 
J.K. Sharma
A-47 B, R.S. Park Estate
Delhi- 110051