

MODEL ESCROW AGREEMENT

THIS AGREEMENT is for the establishment and operation of an Escrow account is made on this theday ofbetween the Secretary, Municipality (Hereinafter referred to as 'The Borrower').

AND

The Managing Director, Kerala Urban & Rural Development Finance Corporation Ltd. (KURDFC), a Public Limited Company established by the Govt. of Kerala incorporated under the provisions of Companies Act, 1956 and existing company under the provisions of the Companies Act, 2013 having its registered office at 5th Floor, Trans Towers, Vazhuthacaud, Thiruvananthapuram – 695 014 in the State of Kerala (hereinafter referred to as 'The Corporation').

AND

.....Bank, constituted under
.....
.....(hereinafter referred to as 'The Escrow Agent').

AND WHEREAS, 'The Borrower' and 'The Corporation' have entered into Loan Agreements datedwhereunder 'The Corporation' has agreed to advance loan of Rs.....(Rupees Ten crore only) for Construction of Market Complex projects in the State of Kerala ("Scheme" or "Project") on the terms and conditions contained in the said Loan Agreement, being Annexure to this Agreement.

AND WHEREAS, 'The Borrower' and 'The Corporation' hereby agree to the appointment of the Bank as 'The Escrow Agent' to hold and administer the monies deposited in the Escrow Account established in pursuant to this agreement and the 'Escrow Agent' hereby accepts its appointment as such and agrees to operate the Escrow Account

No..... on the terms and conditions contained in this agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

DEFINITIONS

A. "Contract" means the agreements dated entered into between 'The Borrower' and 'The Corporation' for the purpose of construction of

B. 'Escrow account' No..... shall mean and include the account to be opened by THE SECRETARY, MUNICIPALITY with the 'Escrow Agent' pursuant to the Contract entered into between "The Borrower" and "The Corporation" .

C. 'Escrow amount' means the amount received by 'The Borrower' through the transactions of the Loan Agreement dated and any other income received by 'The Borrower' under any contracts and deposited in the 'Escrow Account'.

D. 'The Agreement' means and includes the agreement, the Annexures and amendments thereto made from time to time and all related documents connected with the transactions contemplated herein.

1. ESCROW AGENT AND ACCOUNT

1. Subject to the terms and conditions of this Escrow Agreement, 'The Borrower' and "The Corporation" hereby appoint the 'The Account Bank' as their 'The Escrow Agent'.

2. 'The Escrow Agent' shall hold the escrow amounts in a separate account opened for the purpose until the release thereof as specified in Loan Agreement dated....., subject to the terms and conditions of this agreement and utilise the escrow amounts in

the manner specified herein. Details of the Escrow Account No..... are as provided in Annexure II.

2. OPERATIONS IN THE ESCROW ACCOUNT

1. The escrow account shall be operated in tune with the instructions defined in Annexure III.

2. 'The Escrow Agent' may rely upon any notice or certificate received by it to have been signed by any of the authorized signatories of 'The Corporation'/ 'The Borrower' as mentioned in Annexure III, and the 'The Escrow Agent' shall not be bound in any such case to call for further evidence or be responsible for any losses, liabilities, costs, damages, expenses or inconvenience that may be occasioned by its failure to do so.

3. 'The Escrow Agent' shall disclose to the Parties any information relating to the Account including the credit balances and the transactions done from time to time therein, if so requested by any Party.

3. TERMS AND CONDITIONS

1. This agreement constitutes the legal, valid and binding obligations of the Parties, enforceable against the Parties in accordance with applicable law.

2. 'The Borrower' shall ensure that sufficient funds are available in the Escrow Account for meeting the payments in the manner stipulated in this agreement, on the respective payment due dates along with interest as may be specified.

3. 'The Escrow Agent' shall not be obliged to make available any sum which the Parties are expecting to receive from the escrow account until clear funds are credited into and available in the Account.

4. 'The Escrow Agent' shall not be required to hand over the escrow amount to any one otherwise than as stipulated in this agreement.

5. 'The Escrow Agent' shall have the absolute and exclusive authority to suspend any withdrawals from the Escrow Account, at any time without notice to 'The Borrower' if it considers that the same is necessary to protect the best interest of 'The Escrow Agent' and transfer at any time the whole or any part of the balances/ future deposits in the Escrow Account to the specified accounts of 'The Corporation' without reference to the 'The Borrower' notwithstanding any other instructions given by the 'The Borrower' in respect of the escrow amounts.

6. 'The Escrow Agent' shall maintain records of all receipts into the escrow account and transfers made from the escrow account from time to time for the purpose mentioned in the agreement, which shall be made available to 'The Corporation'/'The Borrower' upon their request or on a periodical basis as mutually agreed upon by the parties.

7. Notwithstanding anything contained herein, 'The Escrow Agent' may refrain from taking any action which in its opinion, would or might contravene any law in any relevant jurisdiction, and do all such things in its opinion to comply with all applicable law. 'The Escrow Agent' shall not be obliged to make any transfer from the Account if so directed by any Government Authority.

4.REPRESENTATIONS AND WARRANTIES

1. Each of the Parties agrees, represents and warrants that:

- i) The Parties have the requisite power, authority and legal right to agree to these terms and have taken all necessary actions required for the validity, enforceability and performance of their respective obligations / duties in terms hereof:

- ii) The entry into and performance by the Parties of its obligations / duties under this agreement and any other document related hereto does not and will not violate, in any respect :
 - (a) any law, regulation, judgment, decree or order of any legislative, executive, judicial, quasi – judicial or regulatory authority (hereinafter referred to as “Government Authority”) having jurisdiction or control over the Parties ;
 - (b) the organizational documents of the Parties; or
 - (c) any document, contract or other undertaking to which any of the Parties is a party or which is binding on the either of them or any of its assets;
- iii) All consents, licenses, approvals or authorizations of or declarations or registrations or filings with any Government Authority and the payment of all stamp and other transaction related duties, taxes and fees in India and elsewhere, required to make the arrangements contemplated herein, legal, valid and enforceable have been obtained or made and are in full force and effect and shall continue to remain in full force and effect till the arrangements are terminated in accordance with the terms hereof.

2. Each of the Parties other than ‘The Escrow Agent’ further represents and agrees that:

- i) The role of ‘The Escrow Agent’ shall be limited to such functions as expressly laid out herein or required by the written instructions of the Parties (or such of them as may properly provide the instructions in terms hereof) in accordance with the terms hereof;
- ii) ‘The Escrow Agent’ shall not be liable for any claims arising against the Parties and /or ‘The Escrow Agent’, in relation to any duties, actions or obligations performed and / rights or powers exercised by ‘The Escrow Agent’ in terms hereof. The Parties shall defend, indemnify and

hold harmless 'The Escrow Agent' in any claim arising against 'The Escrow Agent' ;

- iii) The parties will not in any manner, by themselves or by any agent or representative or consultants appointed by them, voluntarily or involuntarily, portray or represent 'The Escrow Agent' as a party to any such document entered into or understood to have entered into between the Parties;
- iv) The Parties can conduct business with the 'Escrow Agent' in the normal course of the 'Escrow Agent's' business. 'The Escrow Agent' is under no obligation to disclose any details of such transactions to any of the Parties whatsoever.
- v) The Parties agree that 'The Escrow Agent' shall not be liable to any of them for any loss or damage that any of them may suffer or incur either directly or indirectly as a result of the transactions contemplated herein.

3. Each of the Parties shall, at any time and from time to time upon the request of the other Parties and / 'The Escrow Agent', promptly and duly, do or permit to be done all such acts and execute and deliver or permit the execution and delivery of any and all such instruments and documents as the other Parties and / 'The Escrow Agent', as the case may be, may consider necessary for the purpose of the Parties obtaining the full benefit of this agreement. To the extent that they are not in conflict with this agreement, the Parties shall be bound by the terms and conditions set out in the other instruments and documents executed by any of them in terms hereof.

4. No charge, security, interest or other encumbrance shall be created over the 'Escrow Account' till the obligations of 'The Corporation' under the Contract with 'The Borrower' is fully satisfied.

5.FEES

- i) 'The Borrower' agrees that they shall pay, on demand, all the usual and customary service charges, transfer fees, account maintenance, account acceptance, statement, investigation, fund transfer and any other charges as levied by 'The Escrow Agent' as mutually agreed and such other out of pocket expenses as are claimed by 'The Escrow Agent', including any Account Opening Fee and Annual Fee (collectively, the "Fees") in connection with the Account.
- ii) The Fees agreed upon by the parties to be payable by the Parties to 'The Escrow agent' are as provided in Annexure IV.

It is clarified that these charges are over and above the customary bank charges for services including but not limited to issuance of pay order and demand draft.

- iii) In the event the Parties fail to make the timely payment to 'The Escrow Agent' of any Fee, 'The Escrow Agent' may withdraw, at any time and from time to time, such amounts from the 'Escrow Account', as is necessary, for the payment of the Fees due and payable to 'The Escrow Agent', in terms hereof. The Parties agree that 'The Escrow Agent' shall not be required to give any notice to any of the Parties before exercising this power.

6. EFFECTIVE TENURE

This agreement shall remain in effect upto a period of 10 years from this day. As per the terms of the contract entered into between the 'The Corporation' and 'The Borrower' the repayment of the loan availed by 'The Borrower' from 'The Corporation' is to be made within a period of 10 years in monthly/quarterly instalments. If for any reason, the terms of the contract between 'The Corporation' and 'The Borrower' are varied/revised/amended or in the event of the liability towards 'The Corporation' not being discharged, 'The

Escrow Agent' shall agree to the extension of the term of this agreement at the request of the parties.

7. TERMINATION

1. This agreement shall, subject to the rights of 'The Escrow Agent' to retire, remain in full force and effect until 'The Borrower' issues an unconditional written notice to 'The Escrow Agent' directing 'The Escrow Agent' to close the Account.

Provided that, 'The Corporation' may also issue an unconditional written notice to 'The Escrow Agent' directing it to close the escrow account. However such notice shall not be effective on 'The Escrow Agent', unless (a) the 'The Borrower' has sent their written consent for the same to 'The Escrow Agent' or (b) one month has elapsed from the date of the 'The Corporation' giving notice to close the 'The Escrow Account' and 'The Escrow Agent' has not received any instruction / notice in writing from 'The Borrower' directing it not to close 'The Escrow account'.

The notice as above should clearly specify the manner of application of any monies lying in 'The Escrow Account' upon closure of 'The Escrow Account' and such monies shall be applied accordingly.

2. 'The Escrow Agent' may retire at any time provided that the 'The Escrow Agent' shall have given one month's notice in writing to the Parties in that behalf. The Parties shall, within the Notice Period, appoint any other person to perform the functions of the 'The Escrow Agent', failing which 'The Escrow Agent' shall be entitled to appoint any other person to perform such functions. 'The Escrow Agent' shall not incur any liabilities whatsoever on account of or pursuant to such appointment and retirement.

8. CONFIDENTIALITY

The Parties will at all times maintain confidentiality regarding the contents of these presents and they shall not make any

announcement to the public or to any third party regarding the arrangements contemplated herein without the prior written consent of 'The Escrow Agent'. 'The Escrow Agent' shall be free to disclose the contents of this agreement and all information in relation to the Parties to its affiliates and subsidiaries and for the promotion of its business and if required with any Government Authority.

9. INDEMNITY

The Parties shall from time to time, on demand by 'The Escrow Agent', indemnify 'The Escrow Agent' against any and all suits, costs, claims, counterclaims, actions, losses, damages, expenses (including, without limitation, Attorney's fees and Court costs) which 'The Escrow Agent' may suffer / incur:

a. in acting in its capacity as 'The Escrow Agent' hereunder, including any claims for any taxes, payable by any of the Parties, which are made on 'The Escrow Agent' and / or any costs or expenses charged to it by any persons engaged by it in connection with the transactions herein;

b. as a consequence of 'The Escrow Agent' relying upon any certificate, notice or communication signed by, or with the authority of a Party; and

c. in acting upon the provisions of Annexure III or any instructions received by it from 'The Borrower' in terms hereof.

The indemnities contained in this clause shall survive the termination of the arrangement with 'The Escrow Agent', whether the same occurs pursuant to clause of this Agreement.

10. NOTICES

All the notices and other communications required under this agreement shall be in writing and:

- (i) if delivered personally or by courier or if sent by registered mail, be deemed given upon delivery at the address provided against the Parties hereunder; and
- (ii) if sent by facsimile transmission, be deemed given on receipt of a confirmation but when sent to the facsimile number as provided against the address of the Parties hereunder (marked to the attention of the person named therein).

Address of Parties

- 1. 'The Corporation'- The Kerala Urban and Rural Development Finance Corporation Ltd. (in short KURDFC) represented by The Managing Director, KURDFC LTD, 5th Floor, Trans Towers, Vazhuthacaud, Thiruvananthapuram 695014 ,Ph-0471 2321856
- 2. 'The Borrower'- The Secretary, Municipality
- 3. 'The Escrow Agent'- Bank Branch

Any Party may, from time to time, change its address for the purpose of notices to that Party by giving a notice to 'The Escrow Agent' and the other Parties specifying a new address, but no such notice will be deemed to have been given until it is actually received by the other Parties to this Agreement.

11. GOVERNING LAW AND JURISDICTION

- 1. This Agreement, terms and conditions hereof, the transactions contemplated herein and the rights and obligations of the Parties and 'The Escrow Agent' are governed by, and shall be construed in accordance with the Laws of India.
- 2. The Parties irrevocably agree that any legal action or proceedings arising out of this agreement and in relation to the transactions contemplated herein and the rights and obligations of the Parties and 'The Escrow Agent', may be brought in the Courts at

Thiruvananthapuram, Kerala, in India and irrevocably submits itself to the jurisdiction of that court.

12. MISCELLANEOUS

1. DISCLAIMER

The Parties other than 'The Escrow Agent' agree that 'The Escrow Agent' shall not be liable to any person for acting in good faith in the performance of its duties herein contained. 'The Escrow Agent' shall not be bound to act in any manner not expressly provided herein. The Parties agree that 'The Escrow Agent' shall not be liable to any of them for any loss or damage that any of them may suffer or incur either directly or indirectly as a result of the transactions contemplated herein.

2. NO LIABILITY

The Parties agree that notwithstanding anything contained in this Agreement, the aggregate liability of 'The Escrow Agent' to the Parties or any of them, for any action done, or omitted to be done under or pursuant to this Agreement or for any breach of any covenant or in tort, shall at all times be limited to the fees actually received by 'The Escrow Agent' within the previous twelve (12) months, for the services rendered by it herein. Provided however that 'The Escrow Agent' shall not be liable for any indirect or consequential loss or damage, or special or punitive or exemplary damages, or loss of profit, business, revenue, goodwill or anticipated savings to the Parties. 'The Escrow Agent' shall also not be liable for any liability, losses, damages, costs, expenses, (including legal fees, court fees and professional fees), suits and claims that are finally judicially determined to have resulted primarily from the negligence or infringing action of any of the Parties or any other person.

3. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law such provision will be severable and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof and the remaining provisions of this

Agreement shall remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

4. EXCLUSIVITY

This Agreement, the terms and conditions and the transactions contemplated herein shall be binding upon and tenure to the benefit of each Party hereto and 'The Escrow Agent' and their successors and assigns. The Agreement shall not confer upon any person other than the Parties hereto the benefit of any rights or remedies hereunder.

5. INCONSISTENCY

In case there is any inconsistency between any of the provisions of this agreement and any other mandate, instructions, writings, letters and documents, the provisions of this Agreement shall prevail. The Parties acknowledge and confirm that all prior negotiations, representations, understandings, writings and statements of any nature as to the matters set out herein are hereby superseded in their entirety by this Agreement.

6. TITLES

The clauses, titles or options contained in this Agreement are inserted as a matter of convenience and for reference purpose only, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

7. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original but all of which together shall constitutes one and the same instrument.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribe their respective hands the day and year first hereinabove written.

IN WITNESS WHEREOF, 'The Borrower' caused these presents, the duplicate and triplicate thereof executed under its Common Seal and signature of the 'The Borrower', 'The Corporation' and 'The Escrow Agent' have caused their Authorized Representatives to execute these presents and the duplicate and triplicate thereof on the date first herein above written.

Signed and sealed by
 Shri.....
 Secretary, Municipality

(Signature)

Signed by
 Shri. _____
 Chief Manager
 for and on behalf of the
 Bank,
 Branch
 being its Authorized
 Representative

(Signature)

Signed and sealed by
 Shri.....
 Managing Director, for and on behalf of
 the Kerala Urban & Rural Development
 Finance Corporation Ltd.,
 being its Authorized Representative

(Signature)

**Annexure – II
 Details of the Escrow Account**

| | | |
|----|--------------|-------------------------------------|
| 1. | Account Name | THE SECRETARY MUNICIPALITY |
| 2. | Account Type | ESCROW CURRENT ACCOUNT |
| 3. | Account No. | |

**Annexure – III
Operating Instructions related to the Escrow Account**

| | | Name | Designation |
|---|--|---------|--|
| 1 | Authorized signatories of the Beneficiary who will operate the account | | THE SECRETARY MUNICIPALITY |
| . | | | Repayment period of 10 years in monthly instalments. |
| 2 | Notice Period of sending notices | 15 days | |

**Annexure – IV
Schedule of Fees to be paid to the ‘The Escrow Agent’**

Part A

Annual Fees – NIL of amount routed through ‘Escrow Account’ subject to a minimum of Rs. NIL/-

Part B

Account Opening Fee - NIL

Signature and Stamp:

‘The Corporation’ - The Kerala Urban and Rural Development Finance Corporation’ Ltd.

‘The Borrower’ - The Municipality

‘THE ESCROW AGENT’ – Bank, branch

| | | |
|--|--|---|
| 1. Secretary,..... Director Municipality | 2. Manager Bank Branch | 3. Managing KURDFC Thiruvananthapuram |
|--|--|---|

