

payment of P.F., E.S.I. etc., maintenance of records of labourers etc. and all the responsibilities in this regard shall be that of the Developer and the Owners shall be kept protected and harmless against any action, if taken, against the Owners for non compliance or violation of the said requirements.

8.6 **UTILITIES:** The Developer shall at its own costs and expenses be entitled to utilize the existing available and/or modify or alter or apply for and obtain new connections of water, electricity, power, drainage, sewerage and/or other utilities inputs and facilities (whether temporary or permanent) from all State or Central Government Authorities and statutory or other bodies required for the construction and use of the proposed Project.

8.6.1 **COMMON AREAS AND INSTALLATIONS:** The Developer shall identify the Common Areas and Installations in the Project Land meant jointly or individually for the Building Complex and/or the Project Land as a whole and also for all or some of the Transferees and/or Transferable Areas. The Developer shall be entitled to:-

8.6.1.1 Allow or permit only phasewise and/or provisional and/or partial use of any of the Common Areas and Installations until completion of construction of the Project or until such earlier time as the Developer may deem fit and proper;

8.6.1.2 Provide for separate entrances and other Common Areas and Installations for different groups of Transferees.

8.7 **AREAS:** The carpet area shall be as per applicable Real Estate Laws and shall be provided by the Developer and the built-up and super built-up area in respect of all the Units and other Transferable Areas in the Project shall be such as be determined by the Developer.

8.8 **MANAGEMENT, CONTROL & AUTHORITY:** With effect from the date of execution of this Agreement, the Developer shall have exclusive and unobstructed right to administer the Project. The Owners hereby agree and confirm that the Developer shall have all the authority to carry out the planning and development of the Project including the following:-

8.8.1 to set up site office, put up the hoardings/boards, bring cut brochures and commence the preparatory works for Transfer of the proposed Project at the Developer's cost.

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- 8.8.2 to display the board/hoardings of its group companies at the Project Land and the Building Complex.
- 8.8.3 To apply for and obtain all permissions, approvals and clearances from any Appropriate Authority for all or any of the purposes connected with the planning or development or Transfer of the Building Complex from the Government or any other person.
- 8.8.4 To represent the Owners before all Appropriate Authorities and Government and also all electricity, water, drainage, sewerage, technology driven and other service providers.
- 8.8.5 To pay various fees, costs and charges to the concerned authorities as may be necessary for the purpose of carrying out the development work on the Project Land and to claim refund of such deposits so paid and to give valid and effectual receipts in connection with the refund of such deposits in its own name or in the name of the Owners or in the joint names, as may be required.
- 8.8.6 To obtain necessary partial and/or full Completion/Occupancy Certificate from the Kolkata Municipal Corporation.
- 8.9 **NAME:** The name of the Project shall be such as the Developer and the Owners may mutually decide.
- 8.10 **CO-OPERATION:** For all or any of the purposes contained hereinabove and required by the Developer, the Owners shall render all assistance and co-operation to the Developer and sign execute submit and deliver at the costs and expenses of the Developer all plans, specifications, undertakings, declarations, papers, documents and authorities as may be lawfully or reasonably required by the Developer from time to time promptly and without any delay, failing which the time periods for construction by the Developer shall stand automatically extended by the periods of delay on the part of the Owners.
- 8.11 **TIME & COSTS FOR PLANNING AND CONSTRUCTION:**
- 8.12 **TIME:** Subject to the First Owners not being in default in compliance of its obligations hereunder and subject to Force Majeure, the Developer shall :
- 8.12.1 Cause sanction of building plans to be sanctioned within 12 months from the date of execution of this agreement.



- 8.12.2 Cause to be completed the construction of the Project as sanctioned within 60 (sixty) months from the date of sanction of Building Plans and issuance of Approvals from Pollution Control Board.
- 8.13 There shall be an extended period of ~~6~~(six) months beyond the time stipulations mentioned above.
- 8.14 In addition to the above it is expressly agreed and provided that in case of there being any dispute or litigation or claim pertaining to the Ownership or title of the Project Land, then until resolution of such dispute or litigation or claim by the Owners, the time for compliance of its obligations by the Developer shall not be counted and ipso facto stand added to the time granted to the Developer. This shall be without prejudice to the other rights and remedies of the Developer hereunder.
- 8.15 **COMPLETION OF CONSTRUCTION:** The construction of New Buildings shall be deemed to have been completed on the issuance of Completion Certificate in respect thereof by the Kolkata Municipal Corporation.
- 8.15.1 It is clarified that the elevation works and decoration and beautification works, landscaping works, pavements, permanent connections relating to the common amenities may be continued and carried out after Completion of Construction. Such works, however, must be completed within a period of 3 months from the date of issuance of Completion Certificate by the Kolkata Municipal Corporation.
- 8.16 **COSTS AND EXPENSES:** Except as provided under clause 7.3.3 and unless otherwise expressly mentioned, all fees costs and charges payable for sanction, modification, alteration and/or revision of Building Plans and obtaining Approvals connected therewith and all costs of construction and development of the Building Complex at the Project Land shall be borne and paid by the Developer.
- 8.17 **ADDITIONAL/FURTHER CONSTRUCTION:** Upon sanction of the Building Plans, the Developer shall, if so and as is thereafter possible/permissible to be caused to be sanctioned and constructed, be entitled to apply for sanction of additional/further constructions (including any incremental parking space) beyond those sanctioned under the Building Plans and beyond those on account of Green Building/ Metro Corridor. In case such additional area is sanctioned, the same shall form part of the Transferable Areas. The sanction fee and cost of sanction of the same shall be borne and paid by the Owners and the Developer in the Agreed Ratio and the costs of construction of


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this additional area shall be borne and paid by the Developer and the time taken due to Additional/further construction shall be added to the time stipulated for sanction and construction hereunder.

9 TRANSFER AND MANNER:

9.1 **TRANSFER:** The Transfer of all Transferable Areas in the Project (save as provided in Clause 11 hereto) shall be under the control and management of the Developer. The parties shall Transfer the Transferable Areas to the Transferees selected by the Developer wherein the proportionate shares in the land attributable to the concerned Transferable Areas shall be Transferred or agreed to be Transferred by the Owners in the manner hereinafter provided and the constructed areas and all other rights, title or interest shall be Transferred or agreed to be so done by the Developer and the Owners collectively in the manner hereinafter provided.

9.2 **MANNER OF TRANSFER:** The parties agree to the following terms and conditions in respect of the Transfer:-

9.2.1 **Rate and Price for Transfer:** The rates at which the Developer shall take booking for Transfer of the Transferable Areas shall be such as finalized by the parties by mutual consent of the Developer and the First Owners' Named Representatives in writing before the commencement of bookings in the Project and any downward revision of the same by the Developer shall require the prior written consent of the First Owners' Named Representatives which consent shall not be unreasonably withheld. After the sanction of the Building Plans the parties shall record in writing the said rates of booking finalized between them.

9.2.2 **Publicity:** The Developer shall have exclusive rights in respect of the advertisement and signages to be placed at the Project Land and the Building Complex. The Developer shall be entitled to advertise for Transfer of the Project in all media. The Developer shall negotiate and settle the costs and other terms with marketing and publicity agents and use its brands and logo that of Sugam Group and Diamond Group in publicity materials and media. One brand and logo of the First Owners that may be provided by them shall be printed in the brochures and in all places where the logos of the Developer are placed in any signages of the Project which is displayed/appears.


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- 9.2.3 **Marketing Agents:** The marketing of the Project shall be done by the Developer directly or through Marketing Agents, brokers, sub-brokers and other agents selected, appointed or discontinued by the Developer.
- 9.2.4 **Bookings and Allotments:** The Developer shall accept bookings and make allotments, in respect of any Unit, Parking Space or other Transferable Areas in favour of any Transferees and to cancel revoke or withdraw the same if the situation so warrants according to the Developer at the agreed rates and prices.
- 9.2.5 **Signature to Agreements and Deeds:** The agreements and final Transfer deeds or deeds relating to Transfer of the Units, Parking Spaces and other Transferable Areas shall be executed by the authorized signatory of both the Owners and the Developer. The Owners shall also by power of attorney to be executed in pursuance hereof authorize the Developer or its nominee to sign the agreement for sale, sale deed and other documents of Transfer on behalf of the Owners. The sale deeds shall be executed in favour of any Transferee only upon receiving the entire consideration payable by such Transferee.
- 9.2.6 **Approval of drafts:** The draft format of such agreements and final Transfer deeds shall be sent by the Developer to the Owners' Named Representative for their approval and the Owners shall approve the same within 2 weeks of receiving the draft.
- 9.2.7 The Developer shall deliver possession of the Transferable Areas (except Residual Areas of the Owners) directly to the Transferees thereof.
- 9.3 **ADVOCATES:** All documents of transfer or otherwise shall be such as be drafted by the Advocates as appointed by the Developer.
- 9.4 **MARKETING COSTS:** The Developer shall decide the marketing strategy and all costs and expenses of marketing and publicity, brokerage, commission and like other amounts relating to Transfers shall be borne and paid by the Developer.
- 9.5 **INTEREST ETC. TO TRANSFEREES ETC.:** If any liability, interest, damage or compensation is payable to any Transferee or other person relating to the Project, otherwise than due to delay or default on the part of the Developer or the Owners in compliance of their respective obligations towards them in accordance with the agreements to be entered with the Transferees, the same

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shall be payable by the parties in the Agreed Ratio. In case any liability, interest, damage or compensation is payable to any Transferee or other person relating to the Project, owing to delay or default on the part of the First Owners in compliance of its obligations towards them in accordance with the agreements to be entered with the Transferees, the same shall be payable by the First Owners exclusively. In case any liability, interest, damage or compensation is payable to any Transferee or other person relating to the Project, owing to delay or default on the part of the Second Owners in compliance of its obligations towards them in accordance with the agreements to be entered with the Transferees, the same shall be payable by the Second Owners exclusively. In case any liability, interest, damage or compensation is payable to any Transferee or other person relating to the Project, owing to delay or default on the part of the Developer in compliance of its obligations towards them in accordance with the agreements to be entered with the Transferees, the same shall be payable by the Developer exclusively.

- 9.6 **LOANS BY TRANSFEREES:** The Transferees shall be entitled to take housing loans for the purpose of acquiring specific Units and Transferable Areas from banks, institutions and entities granting such loans. The Owners and the Developer shall render necessary assistance and sign and deliver such documents, papers, consents etc. as be required in this regard by such banks, institutions and entities Provided That there is no monetary liability for repayment of such loans or interest upon them or any of them nor any charge or lien on the Project/Project Land except the Unit and appurtenances under Transfer and save those occasioned due to cancellation of the agreement with the Transferee.
- 9.7 **FINANCE AND MORTGAGE:** The Owners hereby agree and permit the Developer to obtain loans and finance for development of the Building Complex at the Project Land from any Banks and/or the Financial Institutions (namely Bajaj Finance, LIC Housing Finance Corporation, Tata Capital, Aditya Birla) and/or Recognized Foreign Direct Investors by mortgaging and charging the Developer's Allocation and the Project Land without however creating any financial obligation upon the Owners and without creating any charge or lien on the Owners Realization Share. All interest and other amounts applicable to such loans and finances shall be exclusively to the account of Developer. The Owners' Allocation shall not be mortgaged or charged or affected in any manner whatsoever by reason of the aforesaid. The Developer agrees to keep indemnified the Owners against any claim, liability or loss whatsoever relating to Project Finance/Project Finance Liability. The loan obtained by the Developer shall be used by the Developer only for the purpose of this Project

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and not for any other Project or other business and shall apply the Developer's Allocation for repayment of the Project Finance till the same is fully repaid in accordance with the terms agreed with the Lenders/Financers.

10 REALIZATIONS, EXTRAS AND DEPOSITS AND DISTRIBUTION AND SECURITY DEPOSIT:

10.1 The Owners shall be entitled to its share of the Realizations as per the Agreed Ratio and the Developer shall be entitled to (a) its share of the Realizations as per the Agreed Ratio and (b) the entirety of all Extras and Deposits.

10.2 **MODUS OF DISTRIBUTION:** The Developer shall be entitled to receive the Realizations (including booking amounts, earnest money, part payments, consideration), Pass Through Charges, Extras & Deposits and other amounts on any account receivable from the Transferees and other persons in respect of the Project. All Extras & Deposits shall be taken separately by the Developer in the name of the Developer alone. All Realizations and Pass Through Charges shall be deposited in a specified joint bank account operable by the authorized signatory of the Developer and the First Owners' Named Representative (**Special Account**). There shall be standing irrevocable instructions to the bank holding the Special Account about transfer of the funds therein to the respective bank accounts of the Owners and the Developer as follows:-

10.2.1 The entire Pass Through Charges shall be transferred to a specified joint bank account of the Developer for the Developer to comply with the formalities.

10.2.2 After disbursal of the amount in connection with the Pass Through Charges as per **Clause 10.2.1** above, the balance amount lying in the Special Account shall be transferred amongst the First Owners, the Second Owners and the Developer in the Agreed Ratio, to their respective specified bank accounts in respect of all Transfers.

10.2.3 It is clarified that the distribution as per **Clause 10.2.2** shall be subject to the provisions of the laws for the time being in force including the Real Estate Laws.

10.3 **EXTRAS AND DEPOSITS** All Extras and Deposits as per the **FOURTH SCHEDULE** hereto that may be agreed to be charged by the Developer directly from any Transferee shall be taken and deposited by the Developer separately in its separate bank accounts. The quantum of Extras and Deposits to be charged by the Developer shall be fixed mutually by the Developer and the First

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Owners' Named Representative. The residue remaining with the Developer on account of Deposits shall, upon formation of the Association in respect of the Project, be handed over to such Association by the Developer after adjusting the dues and arrears receivable by the Developer.

- 10.4 **ACKNOWLEDGMENTS:** The Developer shall be and is hereby authorized to issue receipts on behalf of itself and the Owners for the amounts so received which shall fully bind both the Owners and the Developer.
- 10.5 **ACCOUNTS:** The Developer shall maintain proper separate accounts pertaining to all the transactions relating to Transfer of the Project and the Extras, Deposits and other amounts received by the Developer in connection therewith.
- 10.6 **QUARTERLY REPORTS:** The Developer shall send to the Owners quarterly reports pertaining to Transfer of Transferable Areas by the Developer.
- 10.7 **ERRORS AND OMISSIONS:** All payments made by the parties to each other shall be subject to any errors or omissions and the consequent accounting and settlement when detected.
- 10.8 **RECORDS AND INSPECTION:** The records of Transfer of the Project shall be kept at the place of business of the Developer. For the purpose of accounting and settlement, the parties shall, if so required by the Developer or found necessary, make all necessary entries and adjustments in their respective books of accounts in respect of their respective shares arising from the Transfer of the Project.
- 10.9 **FINAL ACCOUNTS:** After fulfillment of this Agreement or at such time as the parties mutually agree, the final accounts pertaining to the entire period of continuance of this Agreement shall be made and finalized by the parties.
- 10.10 **ACCEPTANCE OF ACCOUNTS:** The accounts as on any given date shall be deemed to be final and accepted (save for any errors or omissions on the face of the record) if no objection from any party is received in respect thereon within **45 (forty-five) days** of such given date.
- 10.11 **ADDITIONAL BANK ACCOUNTS:** In case the Developer so requires, one or more additional bank accounts may be opened in the same or any other bank for which the signatory on behalf of all the Owners shall sign and submit necessary documents and provide all necessary co-operation.


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- 10.12 **FINALITY OF MODUS OF DISTRIBUTION:** The modus of distribution mentioned above shall not be challenged or disputed by the Owners or the Developer without the prior mutual written consent of the Developer and the First Owners' Named Representative and in case the same is required to be changed, the principles contained in **Clause 10.2** shall be implemented in any alternative modus mutually agreed to by and between the parties hereto.
- 10.13 **OWNERS' LIABILITIES TOWARDS EXTRAS AND DEPOSITS:** The Owners shall not be liable to make any contribution on account of Extras and Deposits in respect of the Transferable Areas that are agreed to be sold/transferred in as much as the same would be collected from the Transferees thereof. The Owners shall however pay the Extras and Deposits in respect of unsold and/or separate areas identified and allocated to the Owners and payment for the same shall be made at the same rates as the Transferees have paid the same.
- 10.14 **SECURITY DEPOSIT :**The Developer shall pay to the First Owners a sum of Rs. 10 (ten) lakh and to the Second Owners a sum of Rs. 10 (ten) lakhs as security deposit (hereinafter referred to as "the **Security Deposit**") and the same is being paid at or before the execution hereof (the receipt whereof the First Owners and Second Owners do hereby as also by the receipt and memo hereunder written admit and acknowledge).
- 10.14.1 The Security Deposit shall ordinarily be interest free.
- 10.15 **REFUND OF SECURITY DEPOSIT:** The Owners shall refund the Security Deposit respectively received by them simultaneously with demarcation of Contingent Residual Areas, if any or within 15 days of the Developer obtaining Completion Certificate in respect of the New Building, whichever is later. In case the Owners or any of them fail to refund the Security Deposit respectively received by them, the defaulting Owners shall bear and pay interest @15% per annum.
- 11 CONTINGENT RESIDUAL AREAS (if any):**
- 11.1 In case upon expiry of **6 (six) months** from the date of Completion of Construction of the Building Complex, there be or remain unsold Transferable Areas (for which no agreement is entered with any Transferee), the parties may, upon notice in writing given by either party to the other requiring separate allocation and within **15 (fifteen) days** of delivery of such notice, by mutual consent of the Developer and the Owners' Named Representatives divide and

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allocate separate areas in the Project and the following terms and conditions shall apply in connection therewith:-

- 11.1.1 The First Owners, the Second Owners and the Developer would be allocated and be entitled to identified units or portions of the Residual Areas as per a ratio of **24.698:28.222:47.08** i.e. **24.698%** to the First Owners, **28.222%** to the Second Owners and **47.08%** to the Developer.
- 11.1.2 The location of the respective identified areas of the parties comprised in the Residual Areas shall be identified on *paripassu* basis and the areas so identified for the First Owners shall belong to the First Owners together with the appurtenant Shares in Land and Common Areas and Installations and the areas so identified for the Second Owners shall belong to the Second Owners together with the appurtenant Shares in Land and Common Areas and Installations and the areas so identified for the Developer shall belong to the Developer jointly together with the appurtenant Shares in Land and Common Areas and Installations.
- 11.1.3 All other areas agreed to be transferred or transferred prior to separate identification shall continue to be transferred jointly by the Owners and the Developer on the terms and conditions mentioned in this Agreement.
- 11.1.4 In case, while demarcating and identifying the respective allocations of the parties as aforesaid, it is found that the areas in any of the Transferable Areas cannot be allocated exactly, then the party receiving less area shall be paid by the party receiving more area a mutually agreed monetary compensation therefor based on valuation thereof.
- 11.1.5 The Developer shall deliver the identified separate Owners' Allocation to the Owners and retain the Developer's Allocation for its own use or the use of its Transferees thereof. Unless the Owners take possession within **30(thirty) days** upon receiving the Notice from the Developer to take possession as aforesaid, they shall be deemed to have taken possession of such notified areas on expiry of such notice period of **15 (fifteen) days**.
- 11.1.6 The brokerage in respect of Transfer of the respective allocations of the parties as aforesaid shall be payable by the respective allottee parties.
- 11.2 **Transfer of the Residual Areas:** The Owners and the Developer shall be entitled to deal with and dispose of their respective separately Identified allocation forming part of the Residual Areas to such persons and at such

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price/consideration as they may respectively deem fit and proper **Provided However That:-**

11.2.1.1 Neither party shall make any commitment or enter upon any term which is or may be repugnant to or contrary to those contained or otherwise affects or prejudices the scope of the respective rights and obligations of the parties hereto herein.

11.3 Save as aforesaid all other terms and conditions of this Agreement shall apply *mutatis mutandis*.

12 COMMON PURPOSES AND MAINTENANCE IN-CHARGE:

12.1 **COMMON PURPOSES:** Each of the Owners and the Developer and all Transferees of their respective allocations shall be bound and obliged to pay the amounts and outgoings and comply with the rules, regulations, restrictions and conditions as may be framed by the Developer and adopted for or relating to the Common Purposes of managing, maintaining, administering, up-keep and security of the Project and in particular the Common Areas and Installations in consultation with the Owners. Furthermore, while dealing with and/or entering into any agreements and other documents of transfer of their respective allocations or any part thereof, the Owners and the Developer shall respectively necessarily incorporate all rules, regulations restrictions and conditions framed by the Developer in consultation with the Owners as aforesaid.

12.2 **MAINTENANCE IN-CHARGE:** The Developer shall upon Completion of Construction of the Project form one or more Maintenance Company and/or Association for the Common Purposes and till then, the Developer or its nominee shall be in charge for the Common Purposes. It is expressly agreed and understood that so long as the Developer or its nominee be the Maintenance In-charge, the Owners and/or their nominees or transferees shall not hold it liable or responsible for rendering any accounts or explanation of any expenses incurred. Further the Developer shall not be bound to continue with such responsibility of administration of the Common Purposes beyond **6 (six) months** from the Completion of Construction of the Building Complex.

12.3 Until formation of the Association and handover of the charge of the Common Purposes or any aspect thereof to the Association, the Developer shall be free to appoint different agencies or organizations for any activities relating to Common Purposes at such consideration and on such terms and conditions as the Developer may deem fit and proper in consultation with the Owners. All

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charges of such agencies and organizations shall be part of the Common Expenses.

- 12.4 Notwithstanding any formation of Association or handover of charge to it, neither the Association nor the members thereof or any Transferee shall be entitled to frame any rule or regulation or decide any condition which may affect any right or privilege of the parties hereto.

13 COVENANTS BY THE OWNERS :

- 13.1 The Owners doth hereby covenant with the Developer as follows:-

13.1.1 That with effect from the date of execution hereof, the Owners shall neither deal with, transfer, let out or create any Encumbrance in respect of the Project Land or any part thereof or any development to be made thereat save only to the extent permitted expressly hereunder.

13.1.2 That the First Owners shall not be entitled to assign this Agreement or any part thereof as from the date hereof without the prior consent in writing of the Second Owners and Developer, which consent shall not be unreasonably withheld, refused or delayed. Only Mr. Hariram Garg or Mr. Sunil Garg (or their respective family members) shall always be Director/s and jointly have majority control of the board of directors of the companies being the First Owners.

13.1.3 That the Second Owners shall not be entitled to assign this Agreement or any part thereof as from the date hereof without the prior consent in writing of the First Owners, which consent shall not be unreasonably withheld, refused or delayed. Only Mr. Ashok Saraf or Mr. Vivek Kumar Kajaria (or their respective family members) shall always be Director/s and jointly have majority control of the board of directors of the companies being the Second Owners.

13.1.4 That the Owners shall implement the terms and conditions of this Agreement strictly without any violation and shall adhere to the stipulations of time limits without any delays or defaults and not do or permit any act or omission contrary to the terms and conditions of this Agreement in any manner.

13.1.5 That the Owners shall not cause any interference or hindrance in the sanction/modification/addition/alteration of Building Plans in terms hereof, construction and development at the Project Land by the

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Developer and/or Transfer of the Developer's Allocation, and not to do any act deed or thing whereby any right of the Developer hereunder may be affected.

13.1.6 That the Owners have not at any time done or executed or knowingly suffered or been party or privy to any act, deed, matter or thing, including grant of right of easement, whereby the Project Land or any part thereof can or may be impeached, encumbered or affected in title or would in any way impair, hinder and/or restrict the development transfer and other activities envisaged under this Agreement.

13.1.7 That for all or any of the purposes contained in this Agreement, the Owners shall render all assistance and co-operation to the Developer and sign execute submit and deliver at the costs and expenses of the Developer all plans, specifications, undertakings, declarations, papers, documents and authorities as may be lawfully or reasonably required by the Developer from time to time.

13.1.8 The acts of the respective Owners' Named Representatives in all matters referred to herein shall bind the respective Owners, except that no notice of termination or revocation of this Agreement or the Power of Attorney can be issued by the Owners' Named Representative. Mr. Sunil Garg representing the First Owners may be changed by an instruction in writing given by all the First Owners to the Developer. Mr. Ashok Saraf representing the Second Owners may be changed by an instruction in writing given by all the Second Owners to the Developer.

13.2 **COVENANTS BY THE DEVELOPER:** The Developer doth hereby covenant with the Owners as follows:-

13.2.1 That the Developer doth hereby agree and covenant with the Owners not to do any act deed or thing whereby any right or obligation of the Owners hereunder may be affected or the Owners are prevented from making or proceeding with the compliance of the obligations of the Owners hereunder.

13.2.2 That the Developer shall implement the terms and conditions of this Agreement strictly without any violation and shall adhere to the stipulations of time limits without any delays or defaults and shall not do or permit any act or omission contrary to the terms and conditions of this Agreement in any manner.

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13.2.3 That the Developer shall not be entitled to assign this Agreement or any part thereof as from the date hereof without the prior consent in writing of the First Owners' Named Representative. However the obligations of the Developer hereunder shall not be affected thereby.

13.3 GST AND TDS ETC.:

13.3.1 The parties shall respectively discharge statutory compliances in respect of TDS (Tax Deducted at Source) or Income Tax related compliances as well as GST (Goods and Service Tax) in respect of their respective rights, benefits and obligations under or arising out of this agreement. As for the Transferable Areas other than the Residual Areas, the Developer shall be solely responsible for the compliances of collection and deposit of GST. If there be any statutory requirement which obliges the Owners to register or pay, then the Owners shall comply with same.

13.3.2 Save as paid or payable by the Transferees, the Owners will bear the GST or any other tax and imposition levied by the State Government, Central Government or any other authority or body or applicable under any law for the time being in force pertaining to the Owners' Realization Share and 52.92% share in unsold areas on the date of issuance of Completion Certificate and the shares of the Owners in the Contingent Residual Areas if and as applicable. Similarly, save as paid by the Transferees, the Developer will bear the GST or any other tax and imposition levied by the State Government, Central Government or any other authority or body or applicable under any law for the time being in force pertaining to the Developer's Realization Share and 47.08% share in unsold areas on the date of issuance of Completion Certificate and the shares of the Developer in the Contingent Residual Areas, if and as applicable.

14 FORCE MAJEURE: Notwithstanding anything elsewhere to the contrary contained in this Agreement, neither of the parties hereto shall be considered to be in default in performance of their respective obligations or be liable for any obligation hereunder to the extent that the performance of the relative obligations are prevented by the existence of the Force Majeure and time for performance shall remain suspended during the duration of the Force Majeure. "Force Majeure" shall mean any event or combination of events or circumstances beyond the control of a Party, which cannot be prevented or caused to be prevented, and which materially and adversely affects a Party's ability to perform obligations under this Agreement including (a) Acts of God

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i.e. fire, draught, flood, earthquake, storm, lightning, epidemics and other natural disasters; (b) Explosions or accidents, air crashes; (c) General strikes and/or lock-outs, civil disturbances, curfew etc.; (d) Civil commotion, insurgency, war or enemy action or terrorist action; (e) Change in Law, Rules and Regulations, injunctions, prohibitions, or stay granted by court of law, Arbitrator, Government; (f) Non functioning of any existing or new Appropriate Authorities due to any reason whatsoever and (g) any other event or circumstance which is beyond the control of the parties.

15 POWERS OF ATTORNEY:

- 15.1 The Owners shall with the execution of this Agreement execute and/or register one or more Powers of Attorney in favour of the Developer and/or the Developer' nominated persons being namely Mr. Ashok Saraf, Mr. Vivek Kumar Kajaria, Mr. Suhel Saraf, and/or Mr. Suyash Saraf or such other person as may be nominated from time to time granting all necessary powers and authorities required by the Developer to effectuate and implement this Agreement
- 15.2 If any further powers or authorities be required by the Developer at any time for or relating to the purposes mentioned herein, the Owners shall grant the same to the Developer and/or its nominees at the latter's costs and expenses.
- 15.3 **AUTHORITY AND ADDITIONAL POWERS:** It is understood that to facilitate the Project, various acts deeds matters and things not herein specified may be required to be done by the Developer for which the Developer may need the authority of the Owners for making or signing of various applications and other documents relating to which specific provisions may not have been mentioned herein. The Owners hereby undertake to do all such acts deeds matters and things as may be reasonably required by the Developer to be done in the matter and the Owners shall execute any such additional Power of Attorney and/or authorisation as may be reasonably required by the Developer for the purpose and the Owners also undertake to sign and execute all such additional applications and other documents as the case may be on the written request made by the Developer.
- 15.4 The said power or powers of attorney to be so granted by the Owners to the Developer and/or its nominee/s shall form an integral part of this Agreement and the Owners shall not be entitled to modify or alter the same without the prior written consent of the Developer.

16 OTHER TERMS AND CONDITIONS:

Handwritten signatures: Ashok Saraf, Vivek Kumar Kajaria, Suhel Saraf, Suyash Saraf

- 16.1 **APPORTIONMENT AMONGST OWNERS:** Unless otherwise expressly mentioned, any amounts receivable or payable by the Owners hereunder shall be done amongst the First Owners and the Second Owners in the proportion of **46.667:53.333** and within the First Owners and the Second Owners they shall receive the same in the percentage as mentioned in the **SIXTH SCHEDULE** hereto. However the liabilities of the First Owners shall be joint and delay or failure of one amongst them shall be delay or failure of all the First Owners and the liabilities of the Second Owners shall be joint and delay or failure of one amongst them shall be delay or failure of all of the Second Owners.
- 16.2 **PROPERTY TAXES AND OUTGOINGS:** Till the date of execution of this Agreement, all taxes and outgoings on account of municipal/property tax, land tax and other outgoings on the Project Land shall be borne and paid by the First Owners and those arising for the period thereafter shall be borne and paid by the Developer Provided That such liability of the parties shall from time to time progressively cease in respect of the portions for which Transferees become liable upon Completion of Construction.
- 16.3 **INDEMNITY BY OWNERS :** At all times hereafter the Owners hereto shall indemnify and agree to keep the Developer, saved, harmless and indemnified in respect of all actions, proceedings, liabilities, fines, penalties or other consequences suffered or incurred by the Developer and arising due to any representation of the Owners being found to be false or misleading and also due to act, omission, default, breach, accident, negligence, non-compliance or violation of any kind or nature, whether statutory or contractual or under civil or criminal laws in relation to the terms and conditions hereof by the Owners.
- 16.4 **INDEMNITY BY DEVELOPER:** At all times hereafter the Developer hereto shall indemnify and agree to keep the Owners, saved, harmless and indemnified in respect of all actions, proceedings, liabilities, fines, penalties or other consequences suffered or incurred by the Owners and arising due to any representation of the Developer being found to be false or misleading and also due to act, omission, default, breach, accident, negligence, non-compliance or violation of any kind or nature, whether statutory or contractual or under civil or criminal laws in relation to the terms and conditions hereof by the Developer.
- 16.5 **NO PARTNERSHIP OR AOP:** The Owners and the Developer have entered into this Agreement purely as a contract and nothing contained herein shall be deemed to be or construed as a partnership between the Parties in any manner nor shall the Parties constitute an Association of Persons (AOP).

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- 16.6 **NOT A PRESENT TRANSFER:** Nothing in this Agreement is intended to or shall be construed as a transfer of possession of the Project Land at present in favour of the Developer.
- 16.7 **WAIVERS:** Failure or delay by either Party to enforce any rights under this Agreement shall not amount to an implied waiver of any such rights nor shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision. A waiver on any occasion shall not be deemed to be waiver of the same or any other breach or non-fulfilment on a future occasion.
- 16.8 **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and revokes and supersedes all previous discussions, correspondence and agreements between the Parties, written oral or implied.
- 16.9 **PART UNENFORCEABILITY:** If any provision of this Agreement or the application thereof to any circumstance shall be found by any court or administrative body of competent jurisdiction to be invalid, void or unenforceable to any extent, such invalidity or unenforceability shall not affect the other provisions of this Agreement and the remainder of this Agreement and the application of such provision to circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties agree, in the circumstances referred above, to use all reasonable endeavors to substitute any invalid or unenforceable provision with a valid or enforceable provision, which achieves, to the greatest extent possible, the same effect as would have been achieved by the invalid or unenforceable provision.
- 16.10 **MODIFICATIONS:** No amendment or modification of this Agreement or any part hereof shall be valid and effective unless it is by an instrument in writing executed by the Owners and the Developer.
- 16.11 **EXECUTION IN DUPLICATE:** This Agreement is being executed in Duplicate, one counterpart each whereof shall be retained by the First Owners and the Developer (the original registered version to be retained by the Developer) and each copy whereof shall be deemed to be the original.
- 17 **DEFAULTS AND CONSEQUENCES:**
- 17.1 **DEFAULTS OF OWNERS :** In case the First Owners and/or the Second Owners fail and/or neglect to make out a marketable title to the Project Land or any part thereof or in case the First Owners and/or the Second Owners fail to

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comply with any of their obligations mentioned in this Agreement in the manner or within the period stipulated therefor, the Developer shall give a notice, in writing, to the defaulting Owners giving time of **30 days** to remedy the default or breach and in case the defaulting Owners fail to remedy the same within such **30 days**, the Owners shall be liable to pay interest @ **12 %** per annum on the Security Deposit and all other amounts for the time being paid or incurred by the Developer on the Project for the period of delay and without affecting the obligation to pay interest as above, the Developer shall be entitled to take any one or more of the following recourses in any priority or order as the Developer shall deem fit and proper:-

- 17.1.1 To itself try and attempt the compliance of the obligation under default, at the cost and expense of the First Owners and/or the Second Owners (as the case may be) and by paying such amounts and in such manner and on such terms and conditions as the Developer may deem fit and proper and without being liable to the Owners for the result of such attempt. The period taken for such attempt or the compliance pursuant to such attempt shall automatically be added to the Time for Construction granted to the Developer under clause 8.12.2 hereto.
- 17.1.2 To exclude the portion or portions as may be the subject matter of such default from being part of the Project Land and to continue the Project in the balance portion. In case of any such exclusion, the Project Land shall be varied accordingly.
- 17.1.3 To sue the Owners for specific performance of the contract.
- 17.1.4 To cancel the contract envisaged herein in respect of whole or part of the Project Land and in such event the consequences of Cancellation as envisaged in **Clause 17.4** shall be followed.
- 17.2 Notwithstanding anything contrary contained in this Agreement, it is expressly agreed and understood by and between the Parties that in the cases where the First Owners have fulfilled their obligations under the terms of this Agreement and the Second Owners commit any default or breach or delay of any of the terms contained in this Agreement, in such event the Developer shall not be entitled to take any benefit or advantage or seek extension of time on the ground that the Second Owners have failed to fulfill their obligations.
- 17.3 **EFFECTS OF THE DEVELOPER CARRYING OUT THE OBLIGATIONS OF THE OWNERS:** In case the Developer attempting the compliance of the obligation of the First Owners and/or the Second Owners


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under default, the amounts, costs and expenses paid or incurred by the Developer together with interest @ 12 % per annum thereof shall be the liability of the concerned Owners exclusively. The amount and interest shall be adjustable firstly out of the share of Realizations receivable by the concerned Owners and the parties shall instruct the Bankers for necessary adjustment of the same and any residue shall be adjustable against the Contingent Residual Areas of the concerned Owners.

17.4 **CONSEQUENCES OF CANCELLATION:** In case the Developer cancels this Agreement, then notwithstanding anything elsewhere to the contrary contained in this Agreement the following consequences shall apply:

17.4.1 Any cancellation affecting part of the Project Land shall not affect the continuance of this Agreement in respect of the remaining parts of the Project Land.

17.4.2 Any Realization received by either party from the Transferees and required to be refunded owing to cancellation, shall be refunded by the recipient parties respectively and they each shall respectively be liable for any other claims of the Transferees.

17.4.3 The entire Security Deposit shall immediately and in any event within **14 days** of being demanded by the Developer, become refundable by the Owners to the Developer without any interest and all other amounts on any account paid or incurred by the Developer on the Project Land including on its planning or development or otherwise together with all interest, compensation and damages payable by the Owners in terms of this agreement, shall immediately and in any event within **14 days** of being demanded by the Developer, become payable by the Owners to the Developer.

17.4.4 Nothing contained in the last preceding sub-clauses shall affect the other rights and remedies of the Developer.

17.5 **DEFAULTS BY THE DEVELOPER:** In case the Owners comply with and/or are ready and willing to carry out their obligations as stated herein and the Developer fails and/or neglects to construct the Project within the stipulated period including grace period then the Developer shall pay to the Owners a sum of **Rs. 11,00,000/- per month** as pre-determined compensation Provided That if the Developer has by then made progress in the construction work then the compensation amount shall be reduced pro-rata for the progress made until then and to be decided by arbitration. Without prejudice to its right to receive such

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pre-determined compensation, the First Owners shall be entitled to take over the unfinished works in the Project and to complete the same at the costs and expenses of the Developer together with pre-determined damages liquidated at 10% (ten percent) of such costs and expenses incurred for completing the unfinished works in which event the liability to pay monthly pre-determined compensation as above shall cease. The benefits of all sanctions, licenses, permissions, clearances and certificates in respect of the works taken over by the Owners shall stand assigned in favour of the First Owners without any cost. In case of such takeover by the First Owners, all Realizations only of the Developer in respect of the Project so taken over accruing from the date of take over shall be exclusively received by the First Owners and after adjusting (i) the said costs and expenses incurred by the First Owners for completing the unfinished works out of the Developer's entitlement in such Realizations and (ii) the pre-determined liquidated damages, the balance amount of the Developer's entitlement (if any) shall be paid the Developer. Upon completion of the works and accounting of the same, if it is found that the costs of construction with the said liquidated damages exceed the Developer's share of the Realization, the Developer shall pay the deficit to the First Owners, including adjustment out of the unrefunded Security Deposit; and if the same are less than the Developer's share of the Realization, the surplus Realization shall be forthwith paid by the First Owners to the Developer. In case the First Owners have to borrow funds for completing such unfinished work, then the interest payable to the lender shall also be treated as costs of construction but the First Owners shall not be entitled to damage of 10% on such interest amount, it being clarified that the Realizations shall be firstly applied for repayment of the borrowings to keep the interest component in check.

- 17.6 **UNILATERAL CANCELLATION:** Neither party hereto can unilaterally cancel or rescind this Agreement at any time unless such party is entitled to do so by express terms of this Agreement contained elsewhere herein upon default of the other party.
- 17.7 **CHOICE OF REMEDIES:** It is clarified that the exercise of any one or more remedy by any party shall not be or constitute a bar for the exercise of any other remedy by the concerned party at any time. Furthermore, the liability of the Owners or the Developer to pay interest at the rate and in terms of the other clauses of this Agreement shall continue for the entire duration until payment/repayment of the respective entire dues irrespective of the exercise of the other remedies by the other party and without affecting the other liabilities of the defaulting party hereunder.


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- 18 **NOTICES:** All notices to be served hereunder by any of the parties on the other shall be deemed to have been served on the 4th day from the date of despatch of such notice by prepaid registered post with acknowledgement due at the address of the other party mentioned hereinabove or hereafter notified in writing and irrespective of any change of address or return of the cover sent by registered speed post without the same being served. None of the parties shall be entitled to raise any objection as to service of the notice deemed to have been served as aforesaid.
- 19 **ARBITRATION:** All disputes and differences between the parties hereto regarding the constructions or interpretation of any of the terms and conditions herein contained or touching these presents and/or the Project Land or determination of any liability shall be referred to arbitration and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any other statutory modification or enactment for the time being in force. In connection with the said arbitration, the parties have agreed and declared as follows:
- 19.3.1 The Arbitration Tribunal shall have summary powers and will be entitled to lay down their own procedure.
- 19.3.2 The Arbitration Tribunal will be at liberty to give interim orders and/or directions.
- 19.3.3 The parties agree to abide by all their directions and/or awards
- 20 **JURISDICTION:** Only the Calcutta High Court and those having territorial jurisdiction over the Project Land shall have the jurisdiction to entertain try and determine all actions and proceedings between the parties hereto relating to or arising out of or under this Agreement or connected therewith including the arbitration as provided hereinabove.

SECTION-IV # SCHEDULES

THE FIRST SCHEDULE ABOVE REFERRED TO:

(PROJECT LAND)

ALL THAT messuages tenements hereditaments structures out-houses sheds and premises together with the piece and parcel of land thereunto belonging whereon or on part whereof the same are erected and built containing an area of 5 Bighas 7 Cottahs 15 Chittacks more or less situate lying at and being Premises No. 7 Convent Road, Police Station Entally, Kolkata- 700014 (formed upon amalgamation of earlier

W. S. B. *U. B. R.* *S. B.* *R. B.*

premises Nos. 7 Convent Road and 21 Canal Street) within Ward No. 55 of Kolkata Municipal Corporation, in the District of South 24 Parganas and delineated in the plan annexed hereto duly bordered thereon in "RED" and butted and bounded as follows:-

ON THE **NORTH** : Partly by Road and partly by 20 Canal Street;

ON THE **SOUTH** : Partly by Convent Road and partly by Road and thereafter 6A Convent Road;

ON THE **EAST** : Partly by 20 Canal Street and partly by Canal Street;

ON THE **WEST** : By Road and thereafter partly by 6A Convent Road.

OR HOWSOEVER OTHERWISE the same now are or is or heretofore were or was situated butted bounded called known numbered described or distinguished. Be it mentioned that the total area of the rooms and structures, sheds on the Project Land is 31,658 Square feet more or less out of which the constructed area of the (i) buildings comprising of Ground Floor and First Floor is 16867 square feet and 6877 square feet respectively, (ii) Tin Shed is 7798 square feet more or less and (iii) R T Shed is 116 Square feet.

THE SECOND SCHEDULE ABOVE REFERRED TO:

(COMMON AREAS AND INSTALLATIONS)

- i. The staircases, lifts, staircase lobbies, lift lobbies, ground floor lobbies, fire escapes and common entrances and exits of the building/s.
- ii. The roof/terraces, parks, play areas, etc
- iii. Installations of central services such as electricity, gas, water and sanitation, sewage treatment plant (STP), air-conditioning and incinerating system, water conservation and renewable energy;
- iv. The sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- v. All common facilities as provided in the said project at the said premises.
- vi. All facilities and amenities as may be provided by the in the Club/Recreation Centre including the gymnasium, banquet hall, library, indoor games, etc.
- vii. Swimming Pool

Wise *AK* *Ry* *Sh* *and* *V* *By*

- viii. Overhead and underground water reservoirs
- ix. Sewage Treatment Plant (STP)
- x. Lift machine rooms
- xi. Landscaped areas
- xii. Transformers and CESC Utility Areas
- xiii. Fire fighting system
- xiv. Facility Managers' Office, Association Room, Store Rooms, Security Guards Change Room, common toilets – all on the Ground Floor
- xv. Driveways and pathways (not being areas earmarked by the Developer as car parking spaces).

THE THIRD SCHEDULE ABOVE REFERRED TO:

SPECIFICATIONS

Specification of construction & Fittings and Fixtures to be provided in the proposed Unit/ Flat.

1. Super Structure:
RCC Frames/ formwork Structure with pile foundation
2. Wall Finish:
 - i. Plaster of Paris (POP) / Putty/ Gypsum Plaster finish
 - ii. Exterior-Weather Proof Paint
3. Flooring:
Vitrified tiles in the bed rooms, living/ dining room
4. Kitchen:
 - i. Granite Platform with honed edges
 - ii. Stainless Steel Sink
 - iii. Dado of Ceramic tiles upto 3ft above the kitchen counter
 - iv. Exhaust Point
 - v. Flooring- Anti Skid Ceramic Tiles

well ab. [Signature] Rg [Signature] sent Any

5. Toilet:

- i. Flooring- Anti Skid Ceramic Tiles
- ii. Toilet Walls- Standard Ceramic tiles on the walls up to ceiling/ false ceiling (if applicable)
- iii. Sanitary ware of Parryware /Hindware or equivalent make
- iv. CP fittings of Jaquar/EssEss/Hindware or equivalent make
- v. Electrical point for Geyser & Exhaust Fan
- vi. Plumbing provision for Hot/Cold Water line

6. Doors & Windows:

- i. Door Frame-made of seasoned and treated wood
- ii. Main Door- Polished Solid core flush doors.
- iii. Main Door Fittings: Godrej or similar make night latch & Eyepiece
- iv. Internal Doors: Flush doors with stainless steel fittings
- v. Windows: Fully glazed anodized aluminum / UPVC windows

7. Electricals:

- i. Concealed Copper wiring of reputed brands
- ii. Telephone wiring in Living or Dining Area
- iii. Electricals Points in all bedrooms, living/Dining, Kitchen, Toilets
- iv. AC points in living/ dining and all the Bedrooms
- v. Modular switches of reputed brands
- vi. Lifts of reputed brands like Otis/Kone or similar

8. Generator:

- i. Provision for standby supply in every Unit (at extra cost)
- ii. Power Back-up for common area facilities and flats

9. Common Lighting

- i. Overhead Illumination for compound and pathway lighting
- ii. Necessary Illumination in all lobbies, staircases & common areas

10. Common Areas

- i. Well developed common lobbies
- ii. Equipments and connectivity for Intercom facility in each apartment

11. Security Features

Infrastructure for 24x7 Security Surveillance.

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12. Cable Connection:

- i. Wiring for DTH cable provider to be fixed by Developer.
- ii. Connection to be taken individually by flat owners (at own cost)

THE FOURTH SCHEDULE ABOVE REFERRED TO:**EXTRAS AND DEPOSITS****(Extras)**

1. The Developer shall charge the Transferees the following amounts as Extras:
 - (a) Proportionate share of the costs charges and expenses for procuring transformer, electricity connection for the Project
 - (b) Costs, charges, expenses for common generator and its accessories and providing for supply of power therefrom to the Units during power failure
 - (c) Costs, charges, expenses for the Club facility
 - (d) Costs, charges, expenses for providing Air-Conditioning facility in the Units (if applicable)
 - (e) Costs, charges, expenses for providing Gas Bank facility in the Units (if applicable)
 - (f) Nomination/Transfer Charges (if Applicable) for intermediate nominations/transfers by Transferees prior to completion of sale in their favour.
 - (g) Charges payable to the concerned authority of the Kolkata Municipal Corporation under Rule 26 of The Kolkata Municipal Corporation Building Rules, 2009 (if applicable)
 - (h) Costs and charges for Mutation and Apportionment of the Units in the records of the Kolkata Municipal Corporation
 - (i) Cost, charges and expenses for formation of Association
 - (j) Towards the fees and/or legal charges of the Advocates for preparation of Agreements and the Sale Deeds

- 1.1 The Developer shall also charge the Transferees the following amounts
 - (a) Proportionate share of any costs charges and expenses for setting up or providing any additional or extra common area or installation in variation and/or addition to those hereinabove written.


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