

## AGREEMENT

1. Date: \_\_\_\_\_

2. Place: Kolkata

3. Parties:

3.1 Sri Jayanta Chowdhury, son of Late Rai Sudhindra Nath Chowdhury, residing at 200A, S.P. Mukherjee Road, Kolkata-700 026, Post Office Kalighat, Police Station Tollygunge [PAN ACNPC6461G]

3.2 Sri Sudipto Chowdhury, son of Late Soumendra Nath Chowdhury, residing at 200A, S.P. Mukherjee Road, Kolkata-700 026, Post Office Kalighat, Police Station Tollygunge [PAN ABXPC3311J]

3.3 Smt. Purna Chowdhury, daughter of Late Debendra Nath Bhattacharjee and wife of Late Soumendra Nath Chowdhury, residing at 200A, S.P. Mukherjee Road, Kolkata-700 026, Post Office Kalighat, Police Station Tollygunge [PAN AGPPC 8438F]  
(collectively Owners, includes successor-in-interest and assigns)

The Owners being represented by their power of attorney-holders, namely (1) Dipanjan Bhattacharjee, son of Late Lokenath Bhattacharjee, of 84, B. T. Road, Kolkata-700090, Post Office Noapara, Police Station Baranagar [PAN AIKPB3840P] and (2) Manish Kakramia, son of Devi Prasad Kakramia, of Flat 3B, 3rd Floor, Palacio Building, 6 Queens Park, Kolkata-700019, Post Office and Police Station Ballygunge [PAN AFXPK4182R]

And

3.4 Prakriti Eminent Heights LLP, a Limited Liability Partnership firm incorporated under the Limited Liability Partnership Act 2008 (LLPIN AAC5806), having its registered office at Onex Square, 5<sup>th</sup> Floor, 75, Shakespeare Sarani, Kolkata-700017,

Post Office Circus Avenue, Police Station Beniapukur (PAN AARFP2144F), being represented by its designated partners, namely, (1) Dipanjan Bhattacharjee, son of Late Loknath Bhattacharjee, of 84, B. T. Road, Kolkata-700090, Post Office Noapara, Police Station Baranagar [PAN AIKPB3840P] and (2) Manish Kakrania, son of Devi Prasad Kakrania, of Flat 3B, 3rd Floor, Palacio Building, 6 Queens Park, Kolkata-700019, Post Office and Police Station Ballygunge [PAN AFXPK4182R] (Developer, includes successor-in-interest and assigns)

And

3.5 \_\_\_\_\_, son of \_\_\_\_\_, residing at \_\_\_\_\_  
\_\_\_\_\_  
[PAN \_\_\_\_\_]  
(Buyer, includes successors-in-interest)

Owners and Developer collectively Sellers

Owners, Developer and Buyer referred to as such or as Party and collectively Parties.

NOW THIS AGREEMENT WITNESSES, RECORDS, GOVERNS AND BINDS THE CONTRACTUAL RELATIONSHIP BETWEEN THE PARTIES AS FOLLOWS:

4. Subject Matter of Agreement:

4.1 Transfer of Said Flat And Appurtenances: Terms and conditions for transfer of:

4.1.1 Said Flat: Residential Unit No. \_\_\_\_\_, \_\_\_\_\_ floor, having a built-up area approximately \_\_\_\_\_ (\_\_\_\_\_) square feet, super built-up area approximately \_\_\_\_\_ (\_\_\_\_\_) square feet and carpet area approximately \_\_\_\_\_ (\_\_\_\_\_)

square feet and exclusive balcony or exclusive verandah area measuring about.....square feet and exclusive terrace area measuring about.....square feet described in Part-I of the 2<sup>nd</sup> Schedule below (Said Flat), in the proposed building named *Orex Privy* (Said Building), at Municipal Premises No. 200A, Shyama Prasad Mukherjee Road, Kolkata-700027, Police Station Tollygunge, Post Office Kalighat, within Ward No. 88 of the Kolkata Municipal Corporation, described in Part-I of the 1<sup>st</sup> Schedule below (Said Premises).

- 4.1.2 **Land Share:** Undivided, impartible, proportionate and variable share in the land comprised in the Said Premises, as is attributable to the Said Flat (Land Share). The Land Share is/shall be derived by taking into consideration the proportion which the built-up area of the Said Flat bears to the total built-up area of the Said Building.
- 4.1.3 **Parking Space:** The right to park \_\_\_\_ (\_\_\_\_\_) medium sized car in the Car Parking Space in the ground floor, described in Part-II of the 2<sup>nd</sup> Schedule below (Parking Space).
- 4.1.4 **Share In Common Portions:** Undivided, impartible, proportionate and variable share and/or interest in the common areas, amenities and facilities of the Said Building as is attributable to the Said Flat (Share In Common Portions), the said common areas, amenities and facilities being described in the 3<sup>rd</sup> Schedule below (collectively Common Portions).

The Said Flat, the Land Share, the Parking Space and the Share In Common Portions, collectively described in Part-III of the 2<sup>nd</sup> Schedule below (collectively Said Flat And Appurtenances).

## 5. Background:

- 5.1 **Ownership and Title of Sellers:** The Sellers have represented to the Buyer that by virtue of the events and in the circumstances mentioned in Part-II of the 1<sup>st</sup> Schedule below (Devolution Of Title), the Sellers became and is the absolute and undisputed owners of the Said Premises, free from all encumbrances and the Sellers are in peaceful possession thereof.

- 5.2 **Development Agreement:** With the intention of developing and commercially exploiting the Said Premises by constructing the Said Building thereon and selling the flats, and other covered and open spaces therein (Flats/Units), the Owners have entered into a development agreement dated 18<sup>th</sup> April, 2017, registered in the Office of the A.D.S.R. Alipore, in Book No. I, CD Volume No. 1605-2017, at Pages 55010 to 55071, being Deed No. 160502117 for the year 2017 (Development Agreement) with the Developer, who is a well-known developer, to develop the Said Premises. In terms of the Development Agreement, the Developer has become entitled to sell and transfer the Flats/Units, right to Parking Spaces and other saleable spaces in the Said Building, with right to transfer or otherwise deal with the same in any manner the Developer deems appropriate, on Revenue Sharing basis.
- 5.3 **Power of Attorney:** By a Power of Attorney dated 26<sup>th</sup> April, 2017, registered in the Office of the Additional District Sub-Registrar, Alipore, in Book No. I, CD Volume No. 1605-2017, at Pages 66329 to 66361, being Deed No. 160502554 for the year 2017, the Owners have appointed the Developer as its lawful attorney and empowered the Developer to do all acts, things and deeds in relation to develop the entire land by constructing the Said Building and to sell the Flats/Units and various saleable areas comprised in the Said Building on Revenue Sharing basis and to execute conveyance on their behalf.
- 5.4 **Sanctioned Plan:** The Developer, with the approval of the Owners, has prepared and got a building plan sanctioned by the KMC vide Building Permit No. 2016080038 dated 6<sup>th</sup> September, 2016 for construction of the Said Building (Sanctioned Plan, which includes all sanctioned/permissible vertical extensions and modifications made thereto, if any, from time to time) in the name of the Owners for constructing the Said Building named as "Onex Privy", thereon and sale of various flats and other covered and open spaces therein (collectively Flats/Units).
- 5.5 **Scheme:** The Developer (acting on behalf of itself and the Owners) formulated a scheme for sale of the Flats and other spaces in the Said Building to prospective buyers (Transferees), as mentioned in Clause 6.1.1 below.
- 5.6 **Registration under the Act:** The Developer has registered/applied for registration of the Project under the provision of the West Bengal Housing Industry Regulation Act, 2017 (Act) with the Regulatory Authority at Kolkata vide Application No. \_\_\_\_\_/Registration Certificate No. \_\_\_\_\_ dated \_\_\_\_\_.
- 5.7 **Application and Allotment:** The Buyer has applied to the Developer for purchase of the Said Flat And Appurtenances vide Application No. \_\_\_\_\_ dated \_\_\_\_\_ and the Developer has allotted the same to the Buyer conditional upon the Buyer entering into this Agreement.
- 5.8 **Agreement to Record:** Pursuant to the aforesaid application made by the Buyer and the allotment made by the Developer, this Agreement is being entered into between

the Parties for recording the conclusive and comprehensive terms and conditions (superseding all previous documents and understandings) for sale of the Said Flat And Appurtenances to the Buyer.

**6. Conditions Precedent:**

**6.1 Acceptance of Conditions Precedent:** The Parties have accepted and agreed that the following are and shall be the conditions precedent to this Agreement:

**6.1.1 Understanding of Scheme by Buyer:** The undertaking and covenant of the Buyer that the Buyer has understood and accepted the under mentioned scheme of development:

(a) **Development of Said Premises:** The Developer intends to develop the entirety of the Said Premises in due course and the Buyer hereby accepts the same and shall not, under any circumstances, raise any objection or hindrance thereto.

(b) **Sanctioned Plans Independent:** In pursuance of such intention, the Sanctioned Plan of the Said Building has presently been sanctioned by KMC.

(c) **Common Portions and Saleable Area Subject to Change:** The Common Portions and the saleable area comprised within the Said Building shall always be and remain subject to change and modification, as be deemed fit and necessary by the Architect and the Buyer consents shall be taken for the same. The Buyer has understood the fact that there may be requirements of modifications in Common Portions leading to change in Saleable Area which would have to be got sanctioned by the Developer under the applicable laws to which the Buyer shall be deemed to have given their unconditional consent for all such modifications/changes so long as such changes do not prejudicially affect the flat/unit allotted to the Buyer and/or agreed to be sold to the Buyer under this Agreement.

**6.1.2 Financial and Other Capacity of Buyer:** The undertaking of the Buyer to the Owners and the Developer that the Buyer has the financial and other resources to meet and comply with all financial and other obligations under this Agreement, punctually.

**6.1.3 Satisfaction of Buyer:** The undertaking of the Buyer to the Owners and the Developer that the Buyer is acquainted with, fully aware of and is thoroughly satisfied about the title of the Owners, right and entitlement of the Developer in the Said Premises and/or the Said Building, the Sanctioned Plan, all the background papers, the right of the Owners and the Developer to enter into this Agreement, the scheme of development described above and the extent of the rights being granted in favour of the Buyer and the negative covenants mentioned above and elsewhere in this

Agreement and the Buyer hereby accepts the same and shall not raise any objection with regard thereto.

- 6.1.4 **Measurement:** The mutual agreement and acceptance by and between the Parties that on completion of construction if the measurement of the Said Flat increases/decreases from that mentioned in this Agreement [the increase being determined by Raj Agarwal & Associates of 2<sup>nd</sup> Floor, 8B, Royd Street, Kolkata-700016 (Architect)], such increase/decrease shall be accepted by the Buyer as final and binding. The Total Price (defined in Clause 8.1 below) shall increase/decrease on the basis of such final measurement. The Developer shall refund the excess money paid by the Buyer within 45 (forty five) days with annual interest at the prescribed rate.
- 6.1.5 **Parking Space Allotment:** Acceptance by the Buyer that the Parking Space allotted to the Buyer may be relocated upon completion of construction of the Common Portions. The mutual agreement by and between the Parties that (1) the Parking Space agreed to be taken by the Buyer can only be used for parking of a medium sized motor car of the Buyer and not for any other purposes and (2) the Buyer will have only right to park in the Parking Space and shall not raise any dispute with regard to the allotment and usage of the same. The Buyer hereby accepts the above and shall not raise any objection with regard thereto.
- 6.1.6 **Rights Confined to Said Flat And Appurtenances:** The undertaking of the Buyer to the Owners and the Developer that the right, title and interest of the Buyer is confined only to the Said Flat And Appurtenances and the Developer is entitled to deal with and dispose off all other portions of the Said Premises and the Said Building to third parties at the sole discretion of the Developer, which the Buyer hereby accepts and to which the Buyer, under no circumstances, shall be entitled to raise any objection.
- 6.1.7 **Covenants:** The mutual agreement and acceptance by and between the Parties that (1) the covenants of the Buyer (Buyer's Covenants) including those mentioned in Clause 10 and its various Sub Clauses below shall perpetually run with the land (2) the Buyer's Covenants and the covenants of the Owners and the Developer (Owners' And Developer's Covenants) (collectively Covenants) shall bind them and their successors-in-title and/or interest and (3) this Agreement is based on the undertaking that the Buyer's Covenants and the Owners' and Developer's Covenants shall be strictly performed by the Buyer, the Owners and the Developer, respectively.
- 6.1.8 **Common Portions Subject to Change:** In addition to the provisions of Clause 6.1.1 (e) above, the mutual agreement by and between the Parties that although the Common Portions are described in the 3<sup>rd</sup> Schedule below, the said descriptions are only indicative and are not intended to bind the Developer in any manner. The Developer shall, if recommended by the Architect may be entitled to modify or improvise upon the Common Portions and the Buyer consents for the same shall be taken accordingly for such modification or improvisation.

6.1.9 **Usage:** The areas, if any, as located within the Project, shall be earmarked for purposes such as parking spaces and services including but not limited to electric sub-station, transformer, DG set rooms, underground water tanks, Pump rooms, maintenance and service rooms, firefighting pumps and equipment's etc. and other permitted uses as per Sanctioned Plan. The Buyer shall not be permitted to use the services areas and the parking spaces, in any manner whatsoever, other than those earmarked and reserved for such particular purposes.

7. **Commencement and Validity:**

7.1 **Date of Commencement:** This Agreement has commenced and shall be deemed to have commenced on and with effect from the date of booking of the Said Flat And Appurtenances.

7.2 **Validity:** This Agreement shall remain in force till such time the Said Flat And Appurtenances is completed and possession thereof is delivered to the Buyer, unless terminated in the manner mentioned in this Agreement.

8. **Total Price, Payment and Extras:**

8.1 **Total Price:** The consideration to be paid by the Buyer in respect of the Said Flat And Appurtenances is morefully mentioned in Part I of the 6<sup>th</sup> Schedule below (collectively 'Total Price'), to be paid in full to the Developer and the apportionment of the Total Price between the Owners and the Developer shall be according to the provisions of the Development Agreement, which the Parties confirm and accept. The Total Price has been fixed by mutual consent and hence it shall not be open to question by any Party provided however the Total Price does not include the Extras (defined in Clause 8.3 below).

8.2 **Payment of Total Price:** The Total Price shall be paid by the Buyer in installments mentioned in Part II of the 6<sup>th</sup> Schedule below, time being the essence of contract. The Buyer agrees and covenants not to claim any right or possession over and in respect of the Said Flat And Appurtenances till such time the Buyer has paid the entirety of the Total Price and the Extras and all other amounts agreed to be paid or deposited under this Agreement. All payments made by negotiable instruments, shall be made payable at Kolkata and favouring PRAKRITI EMINENT HEIGHTS LLP or such name as may be notified. The Buyer authorizes the Developer to adjust and appropriate all payments made by the Buyer under any head(s) of dues against lawful

outstanding of the Buyer against the Said Flat And Appurtenances, if any, in Buyer's name and the Buyer undertakes not to object/demand/direct the Developer to adjust Buyer's payments in any other manner.

- 8.3 **Notice for Payment:** On happening of each event mentioned in Sl. No. 3 to 11 of Chart mentioned in Part II of the 6<sup>th</sup> Schedule below, as applicable, the Developer shall give written notice (by email, to the Email ID supplied by the Buyer in the Application Form) to the Buyer (Payment Notice), quantifying the amount payable by the Buyer. Within 15 (fifteen) days of the date of the Payment Notice, the Buyer shall (unconditionally, without demur and without raising any dispute about service/receipt of the Payment Notice), pay the amount quantified in the Payment Notice, failing which the Buyer shall be deemed to be in default and the consequences mentioned in Clause 11.1 shall follow. The Buyer covenants that the Buyer shall regularly and punctually make payment of the installments of the Total Price in the manner mentioned in the applicable Chart below and this Agreement is and shall be deemed to be sufficient notice to the Buyer about the obligation to make payment. Timely payment of the Total Price and the Extras and Deposits shall be the essence of the contract.
- 8.4 **Extras:** In addition to the Total Price, the Buyer shall also pay to the Developer, as and when demanded by the Developer, the following amounts (collectively Extras), proportionately or wholly (as the case may be) towards:
- 8.4.1 **Increase Due to Circumstances Of Force Majeure:** any increase and/or escalation in cost of construction due to Circumstances Of Force Majeure (defined in Clause 15.1 below).
- 8.4.2 **Special Amenities/Facilities:** providing any special amenities/facilities in the Common Portions (save and except those described in the 3<sup>rd</sup> Schedule below) and improved specifications of construction of the Said Flat and/or the Said Building over and above the specifications described in the 4<sup>th</sup> Schedule below (Specifications).
- 8.4.3 **Betterment Fees:** betterment or other levies that may be charged/imposed by any government authorities or statutory bodies on the Said Premises or the Said Flat And Appurtenances or its transfer in terms hereof.
- 8.4.4 **Transfer Charges/Sale Permission Charges of KMC:** charges towards transfer and/or sale permission as may be levied by KMC.
- 8.4.5 **Taxes:** Service Tax, Works Contract Tax, Value Added Tax, GST or any other tax and imposition levied by the State Government, Central Government or any other authority or body on the Developer and the Owners, from time to time, proportionately, if levied as a whole on the Said Building and wholly, if levied specifically on the Said Flat And Appurtenances.



- 8.4.6 **Electricity:** costs, expenses, Security deposits and charges for providing CEESC electricity meter in the Said Flat on actuals plus Service tax/GST, whichever is applicable.
- 8.4.7 **Generator:** stand-by power supply to the Said Flat from diesel generators, @ Rs. 25,000/- (Rupees twenty five thousand) per 1 (one) KVA. [Minimum mandatory generator load for 3 BHK flat is 4 KVA and for 4 BHK flat is 6 KVA].
- 8.4.8 **Advance Common Expenses/Maintenance Charges:** Interest free advance for proportionate share of the common expenses/maintenance charges described in the 5<sup>th</sup> Schedule below (Common Expenses/Maintenance Charges) @ Rs.5/- (Rupees five only) + Service Tax per square feet per month, for a period of 12 (twelve) months, from the Date Of Possession Notice (defined in Clause 9.6.1 below) (Advance Common Expenses/Maintenance Charges). The Advance Common Expenses/Maintenance Charges shall (1) be utilized for meeting the Common Expenses/Maintenance Charges for the said limited period of 12 (twelve) months only, (2) be a fixed payment after paying which the Buyer shall have no further obligation to pay any other amount towards Common Expenses/Maintenance Charges for the said period of 12 (twelve) months, (3) be utilized by the Developer to meet all expenses towards Common Expenses/Maintenance Charges, without obligation of any accounting and (4) be handed over by the Developer to the Association, if the Association becomes operational before expiry of the said period of 12 (twelve) months provided however the Developer shall handover only the proportionate balance remaining of the Advance Common Expenses/Maintenance Charges to the Association. It is clarified that (1) the Said Building may be maintained through the Facility Manager (defined in Clause 9.9 below), in which event all payments shall be made by the Buyer to the Facility Manager, after the said period of 12 (twelve) months or earlier if the Association is formed, and (2) the supervision of maintenance of the Said Building shall be handed over by the Developer to a body of flat owners of the Said Building, which may be a syndicate, committee, body corporate, company or association under the West Bengal Apartment Ownership Act, 1972 (Association), as soon as be practicable, so that the Association may deal directly with the Facility Manager.
- 8.4.9 **Formation of Association:** costs and expenses for formation of the Association shall be Rs.10,000/- (Rupees ten thousand only).
- 8.4.10 **Legal Fees:** fees of the Advocate (Legal Advisor), who have drawn this Agreement and shall draw all further documents. The fee shall be Rs.50,000/- (Rupees fifty thousand only) out of which 50% (fifty percent) has to be paid at the time of agreement and the balance 50% (fifty percent) at the

time of conveyance. The fees and costs shall be paid to the Developer, who shall do all accounting with the Legal Advisor.

- 8.4.11 **Stamp Duty and Registration Costs:** Stamp duty, registration fees for registration and all other fees and charges, if any, as applicable and conveyed by the Developer for registration shall be paid and borne by the Buyer 15 (fifteen) days prior to the date of registration.
- 8.4.12 **Home Automation Charges:** costs and expenses for installation of the home automation charges, at actuals.
- 8.4.13 **Sinking Fund Deposit:** A sum of Rs. \_\_\_\_\_/- (Rupees one lac twenty nine thousand and nine hundred) [being calculated @ Rs.60/- (Rupees sixty) per square feet, on the super built-up area of the Said Flat], towards deposit for Sinking Fund.
- 8.4.14 **Municipal Tax Deposit:** A sum of Rs. \_\_\_\_\_/- (Rupees one lac twenty nine thousand and nine hundred) [being calculated @ Rs.5/- (Rupees five) per square feet per month, on the super built-up area of the Said Flat], for a period of 12 (twelve) months, from the Date Of Possession Notice, towards deposit for Municipal Tax Deposit.
- 8.4.15 **Rule 25 Charge:** A sum of Rs. \_\_\_\_\_/- (Rupees sixty four thousand nine hundred and fifty) [being calculated @ Rs.30/- (Rupees thirty) per square feet, on the super built-up area of the Said Flat], or actual charges, whichever is higher.
- 8.4.16 **Maintenance Deposits:** Interest free Deposit on account of maintenance charges calculated @ Rs.5/- (Rupees five only) per square feet per month on the super built-up area of the Said Flat, for a period of 12 (twelve) months, from the Date Of Possession Notice. In case of cancellation of this Agreement by the Developer for the reasons mentioned in Clause 11.1 of this Agreement, the amount of Service Tax, if any, paid by the Buyer shall stand forfeited.

## 9. Construction, Completion of Sale and Facility Manager:

- 9.1 **Construction by Developer:** The Developer shall construct, complete and finish the Said Flat And Appurtenances in accordance with the Sanctioned Plan or as may be recommended by the Architect, as per the Specifications described in the 4<sup>th</sup> Schedule below.

- 9.2 **Quality, Workmanship and Acceptance of Variations etc.:** The decision of the Architect regarding quality and workmanship shall be acceptable by the Parties. The Buyer consents to such variations, modifications or alterations, as may be recommended by the Architect, will be obtained accordingly.
- 9.3 **No Hindrance:** The Buyer shall not do any act, deed or thing whereby the construction of the Said Flat And Appurtenances and/or the Said Building is in any way hindered or impeded. The Buyer hereby accepts the above and shall not raise any objection with regard thereto.
- 9.4 **Basic Duty of Buyer:** The Buyer shall make all payments and perform all obligations as stipulated in this Agreement and the Buyer shall not in any way commit breach of the terms and conditions herein contained.
- 9.5 **Completion Time:** Construction, finishing and making the Said Flat habitable and the Parking Space, usable, shall be done by the Developer within 36 (thirty six) months from the date of commencement of the construction, i.e. 30.6.2020 (**Completion Date**) provided however the Completion Date may be extended by a period of 6 (six) months (**Extended Period**) at the option of the Developer. The Developer shall neither incur any liability nor be held liable for claim of any amount by the Buyer, if the Developer is unable to deliver possession of the Said Flat within the Completion Date and/or the Extended Period due to Circumstances Of Force Majeure (defined in Clause 15.1 below) or for or on account of (1) delay on the part of the Buyer in making any payment and (2) any other reasonable cause (for what is a reasonable cause, the decision of the Architect shall be final and conclusive) whereby the Developer is prevented from completing the Said Flat And Appurtenances or any portion thereof. In no event shall the Buyer be entitled to claim any amount from the Developer on account of consequential losses and damages and otherwise if the Said Flat And Appurtenances is not completed within the Completion Date and/or the Extended Period.
- 9.6 **Possession of Said Flat and Parking Space:** The Said Building is under construction and upon finishing and making the Said Flat habitable and the Parking Space, usable, the Developer shall hand over possession of the same to the Buyer. With regard to possession, it is clarified as follows:
- 9.6.1 **All Payments Before Possession:** Before receiving possession of the Said Flat And Appurtenances, the Buyer shall pay to the Developer all amounts due and payable

towards the Total Price and Extras and the Buyer shall not claim possession of the Said Flat And Appurtenances till the Total Price and the Extras are paid in full.

- 9.6.2 **Possession Notice and Date Of Possession:** The Developer, upon obtaining the occupancy certificate from KMC shall serve a notice on the Buyer (**Possession Notice**) calling upon the Buyer to take possession. Within 60 (sixty) days from the date of the Possession Notice, the Buyer shall be bound to take over physical possession of the Said Flat and the Parking Space, after fulfilling all obligations under this Agreement, including payment of all amounts due to the Developer under this Agreement, failing which it shall be deemed that the Buyer has taken possession from the date of the Possession Notice (date of actual or deemed possession, **Date Of Possession**) and it shall be deemed that the Buyer is in possession and liable for all Rates & Taxes and Common Expenses/Maintenance Charges, from the Date Of Possession) and in addition, all statutory taxes and penalties shall also be borne and paid by the Buyer. In case the deeming provision comes into force, the Buyer confirms that the Buyer shall not claim to be in physical possession of the Said Flat And Appurtenances (such as Common Expenses/Maintenance Charge and KMC Tax), and physical possession of the Said Flat And Appurtenances shall be received by the Buyer only upon clearing all dues and performing all obligations under this Agreement.
- 9.6.3 **Meaning of Completion:** After giving the Possession Notice to the Buyer, the Said Flat shall be deemed to have been completed in all respect (in bare condition and as per the Specifications mentioned in the 4<sup>th</sup> Schedule below, along with ready and complete common areas with all amenities and facilities of the Project.
- 9.6.4 **Complete Satisfaction on Possession:** On the Date Of Possession, the Buyer shall be deemed to be completely satisfied with all aspects of the Said Flat And Appurtenances, including the measurement of the Said Flat.
- 9.6.5 **Commencement of Outgoings:** From the Date Of Possession, all outgoings in respect of the Said Flat And Appurtenances, including Municipal tax, surcharge, land revenue, levies, cess, etc. (collectively Rates & Taxes) as be tentatively decided by the Developer and proportionate share of Common Expenses/Maintenance Charges, shall become payable by the Buyer. It is clarified that the Common Expenses/Maintenance Charges do not include the Rates & Taxes.
- 9.7 **Developer's Obligations:** Subject to the Buyer making payment of the Total Price and the Extras in the manner stipulated in this Agreement, the Developer hereby agrees:
- 9.7.1 **Construction of Said Flat:** to construct, finish and make the Said Flat habitable and the Parking Space, usable and transfer the Said Flat And Appurtenances to the Buyer.

- 9.7.2 **Construction According to Specifications:** subject to the other provisions of this Agreement, to construct and finish the Said Flat and the Parking Space, in accordance with the Sanctioned Plans and Specifications.
- 9.7.3 **Insurance:** To obtain and pay the applicable premium and charges for all such insurances as may be notified by the appropriate authorities including but not limited to insurance in respect of title of the Said Premises and Said Building as a part of the project (which insurance will be taken by the Developer pursuant to and in terms of the representation of the Owner as mentioned in Clause 5.1 above) as also construction of the project.
- 9.8 **Completion of Sale:** The sale of the Said Flat And Appurtenances shall be completed by execution and registration of conveyance in favour of the Buyer provided the Buyer tenders in time all amounts required for the same as mentioned above. The Legal Advisor shall draft the standard conveyance and only such standard conveyance shall be used. The Buyer shall be bound to take conveyance of the Said Flat And Appurtenances within 3 (three) months from the Date Of Possession. The Developer shall hand over the photocopy of occupancy certificate of the Project to the Buyer at the time of conveyance of the same.
- 9.9 **Facility Manager:** The Developer shall arrange for maintenance and management of specified services with regard to the Common Portions of the Said Building either itself or through a professional facility management organization (Facility Manager). In this regard, it is clarified that (1) the Facility Manager shall operate, manage and render specified day to day services with regard to the Common Portions, (2) the Facility Manager shall levy and collect the Common Expenses/Maintenance Charges, (3) the Buyer shall be bound to pay the Common Expenses/Maintenance Charges to the Facility Manager, (4) the Facility Manager will not be required to render any accounts for the Common Expenses/Maintenance Charges to the Buyer and it shall be deemed that the Facility Manager is rendering the specified services to the Buyer for commercial consideration, (5) the ownership of the Common Portions (subject to the terms of this Agreement) shall vest in all the co-owners of the Said Building through the Association and the Facility Manager shall merely be the service provider for rendition of specified services with regard to the Common Portions and (6) the Facility Manager may be replaced by the consent of 80% (eighty percent) or more of the co-owners of the Said Building.
- 9.10 **Handover of Documents:** After obtaining the completion certificate of the Project and handing over physical possession of the Said Flat to the Buyer, it shall be the responsibility of the Developer to hand over the necessary title related documents and plans, including common areas, to the Association.

- 9.11 **Compensation:** The Developer shall compensate the Buyer in case of any loss caused to him due to defective title of the Said Premises, on which the Project is being developed or has been developed, in the manner as provided under the Act and the claim for interest and compensation under this provision shall not be barred by limitation provided under any law for the time being in force.
10. **Covenants:**
- 10.1 **Buyer's Covenants:** The Buyer covenants with the Developer and admits and accepts that:
- 10.1.1 **Buyer Aware of and Satisfied with Common Portions and Specifications:** The Buyer, upon full satisfaction and with complete knowledge of the Common Portions, Specifications and all other ancillary matters, is entering into this Agreement. The Buyer has examined and is acquainted with the Said Building to the extent already constructed and has agreed that the Buyer shall neither have nor shall claim any right over any portion of the Said Building and the Said Premises save and except the Said Flat And Appurtenances.
- 10.1.2 **Buyer to Mutate and Pay Rates & Taxes:** The Buyer shall (1) pay the Rates & Taxes (proportionately for the Said Building and wholly for the Said Flat And Appurtenances, from the Date Of Possession and until the Said Flat And Appurtenances is separately assessed in the name of the Buyer) and (2) have mutation of the Said Flat And Appurtenances completed at the earliest. If the Buyer delays in paying the Rates & Taxes, the Buyer shall pay compound interest @ 2% (two percent) per month or part thereof, compoundable monthly, from the date of default till the date of payment.
- 10.1.3 **Buyer to Pay for Common Expenses/Maintenance Charges:** Subject to the provisions above, the Buyer shall pay the Common Expenses/Maintenance Charges on the basis of the bills to be raised by the Facility Manager, such bills being conclusive proof of the liability of the Buyer in respect thereof. The Buyer further admits and accepts that the Buyer shall not claim any deduction or abatement in the bills relating to Common Expenses/Maintenance Charges.
- 10.1.4 **Buyer to Pay Interest for Delay and/or Default:** In the event the Buyer delays or defaults in paying any bill raised by the Facility Manager beyond 7 (seven) days of presentation thereof, the Buyer shall pay compound interest @ 2% (two percent) per month or part thereof, compoundable monthly, from the date of default till the date of payment, to the Facility Manager, such interest running till such payment is made. The Buyer also admits and accepts that in the event such bills remain outstanding for

more than 2 (two) months, all common services shall be discontinued to the Buyer and the Buyer shall be disallowed from using the Common Portions.

- 10.1.5 **Developer's Right for Due Amounts:** The Developer shall have legal right for recovery of all amounts due and payable by the Buyer to the Developer over the Said Flat And Appurtenances.
- 10.1.6 **No Obstruction by Buyer to Further Construction:** The Developer shall be entitled to construct further sanctioned floors on and above the top roof of the Said Building and/or car parks and/or to make other constructions elsewhere in the Said Premises after obtaining necessary statutory permissions and consent of the Buyer. The Buyer has understood the fact that there may be requirements of further constructions which would have to be got sanctioned by the Developer under the applicable laws to which the Buyer shall be deemed to have given their unconditional consent for all such further constructions so long as such further constructions do not prejudicially affect the flat/unit allotted to the Buyer and/or agreed to be sold to the Buyer under this Agreement.
- 10.1.7 **Variable Nature of Land Share and Share In Common Portions:** The Buyer fully comprehends and accepts that (1) the Land Share and the Share In Common Portions is a notional proportion that the Said Flat bears to the currently proposed area of the Said Building, (2) if the area of the Said Building is increased/recomputed by the Developer, the Buyer shall not question any variation (including diminution) of the Land Share and the Share In Common Portions, (3) the Buyer shall not demand any reduction/refund of the Total Price on ground of or by reason of any variation of the Land Share and the Share In Common Portions and (4) the Land Share and the Share In Common Portions are not divisible and partible and the Buyer shall accepts (without demur) the proportionate share with regard to various matters, as be determined by the Developer, in its absolute discretion. The Buyer has understood the fact that there may be requirements of modifications/changes which may result in variation of the Land Share and Share In Common Portions to which the Buyer shall be deemed to have given their unconditional consent for all such modifications/changes so long as such changes do not prejudicially affect the flat/unit allotted to the Buyer and/or agreed to be sold to the Buyer under this Agreement.
- 10.1.8 **Buyer to Participate in Formation of Association:** The Buyer admits and accepts that the Buyer and other buyers of Flats in the Said Building shall form the Association and the Buyer shall become a member thereof. The Buyer shall bears and pays the proportionate costs of formation and the expenses of the Association and shall pay for, acquire and hold membership with voting rights and in this regard the Buyer shall sign, executes and delivers necessary applications and all other papers, declarations and documents as may be required. Upon formation of the Association, the residue

then remaining of the Advance Common Expenses/Maintenance Charges and the Common Expenses/Maintenance Deposit paid by the Buyer (after adjustment of all amounts then remaining due and payable) shall be transferred by the Sellers to the Association. The deposits shall thereafter be held by the Association in the account of the Buyer. Till formation of the Association, the Facility Manager shall look after the maintenance of the Common Portions of the Said Building and the Said Premises.

**10.1.9 Obligations of Buyer:** On and from the Date Of Possession, the Buyer shall:

- (a) **Co-operate in Management and Maintenance:** co-operate in the management and maintenance of the Said Building and the Said Premises by the Developer/ the Facility Manager/ the Association (upon formation).
- (b) **Observing Rules:** observe the rules framed from time to time by the Developer/ the Facility Manager/ the Association (upon formation) for the beneficial common enjoyment of the Said Building and the Said Premises.
- (c) **Paying Electricity Charges:** pay for electricity and other utilities consumed in or relating to the Said Flat And Appurtenances and the Common Portions from the Date of Possession.
- (d) **Meter and Cabling:** be obliged to draw the electric lines/wires, television cables, broadband data cables and telephone cables to the Said Flat only through the ducts and pipes provided therefor, ensuring that no inconvenience is caused to the Developer or to the other co-owners of the Said Building. The main electric meter shall be installed only at the common meter space in the Said Building. The Buyer shall under no circumstances be entitled to affix, draw or string wires, cables or pipes from, to or through any part or portion of the Said Building, the Said Premises and outside walls of the Said Building save in the manner indicated by the Developer/ the Facility Manager/ the Association (upon formation). The main electric meter shall be installed only at the common meter space in the Said Premises. The Developer shall endeavor to provide DTH connection with cabling but set top boxes shall have to be purchased by the Buyer.
- (e) **Residential Use:** use the Said Flat for residential purpose only. Under no circumstances shall the Buyer use or allows the Said Flat to be used for commercial, industrial or other non-residential purposes. The Buyer shall also not use the Said Flat as a religious establishment, guest house, serviced apartment, mess, chummary, hotel, restaurant, nursing home, club, school, boarding house or other public gathering place.



- (f) **Maintenance of Said Flat:** repair, clean and maintain water, light, power sewage, telephone, air conditioners, sanitary installations, doors, windows, glass panes, etc. inside the Said Flat at the cost of Buyer.
- (g) **Use of Common Toilets:** ensure that the domestic help/service providers visiting the Said Flat use only the common toilets and while so using, keep the common toilets clean and dry.
- (h) **Use of Spittoons/Dustbins:** use the spittoons/dustbins located at various places.
- (i) **No Alteration:** not alter, modify or in any manner change the (1) elevation and exterior colour scheme of the Said Building and (2) design and/or the colour scheme of the windows, grills and the main door of the Said Flat, without the permission in writing of the Developer/ the Facility Manager/ the Association (upon formation). In the event the Buyer makes the said alterations/changes, the Buyer shall compensate the Developer/ the Facility Manager/ the Association (upon formation), as the case may be, as estimated by the Developer/ the Facility Manager/ the Association (upon formation) for restoring it to its original state.
- (j) **No Structural Alteration And Prohibited Installations:** not alter, modify or in any manner change the structure or any civil construction in the Said Flat And Appurtenances or the Common Portions or the Said Building. The Buyer shall not install any dish-antenna on the balcony and/or windows of the Said Building and/or on any external part of the Said Building and/or the roof thereof. The Buyer shall not install grills on the railings of the balcony and/or outside the windows, in any form or manner. Grills may only be installed by the Buyer on the inner side of the doors and windows of the Said Flat. The Buyer shall further install such type of air-conditioners (window or split) and at such places, as be specified and prescribed by the Developer, it being clearly understood by the Buyer that no out-door units of split air-conditioners will be installed on the external walls of the Said Building and no window air-conditioners will be installed by cutting open any wall. If split air-conditioners are specified and prescribed to be installed, the Buyer shall install the out-door unit of the same either inside the Buyer's own balcony or on common ledge provided for the same, in which case the out-door unit will be installed only on such ledge and at no other place. The Buyer shall also not install any collapsible gate on the main door/entrance of the Said Flat. The Buyer accepts that the aforesaid covenants regarding grills, air-conditioners, collapsible gates etc. are for maintaining uniformity and aesthetic beauty of the Said Building, which is beneficial to all.
- (k) **No Sub-Division:** not sub-divide the Said Flat And Appurtenances and the Common Portions, under any circumstances.

- (l) **No Changing Name:** not change/alter/modify the names of the Said Building from those mentioned in this Agreement.
- (m) **No Nuisance and Disturbance:** not use the Said Flat or the Parking Space, if any or permit the same to be used in such manner or commit any act, which may in any manner cause nuisance or annoyance to other occupants of the Said Building and/or the neighboring properties and not make or permit to be made any disturbance or do or permit anything to be done that will interfere with the rights, comforts or convenience of other occupants.
- (n) **No Storage in Common Portions:** not store or cause to be stored and not place or cause to be placed any goods, articles or things in the Common Portions.
- (o) **No Obstruction to the Developer/ the Facility Manager/ the Association:** not obstruct the Developer/ the Facility Manager/ the Association (upon formation) in their acts relating to the Common Portions and not obstruct the Developer in constructing on other portions of the Said Building and/or the Said Premises and selling or granting rights to any person on any part of the Said Building/the Said Premises (excepting the Said Flat and the Parking Space).
- (p) **No Obstruction of Common Portions:** not obstruct pathways and passages or use the same for any purpose other than for ingress to and egress from the Said Flat and the Parking Space.
- (q) **No Violating Rules:** not violate any of the rules and/or regulations laid down by the Developer/ the Facility Manager/ the Association (upon formation) for use of the Common Portions.
- (r) **No Throwing Refuse:** not throw or accumulate or cause to be thrown or accumulated any dust, rubbish or other refuse in the Common Portions save at the places indicated therefor.
- (s) **No Injurious Activities:** not carry on or cause to be carried on any obnoxious or injurious activity in or through the Said Flat, the Parking Space or the Common Portions.
- (t) **No Storing Hazardous Articles:** not keep or store any offensive, combustible, obnoxious, hazardous or dangerous articles in the Said Flat and the Parking Space.
- (u) **No Signage:** not put up or affix any sign board, name plate or other things or other similar articles in the Common Portions or outside walls of the Said Flat /Said Building save at the place or places provided therefor provided that

this shall not prevent the Buyer from displaying a standardized name plate outside the main door of the Said Flat.

- (v) **No Floor Damage:** not keep any heavy articles or things, which are likely to damage the floors or operate any machine save usual home appliances.
- (w) **No Installing Generator:** not install or keep or run any generator in the Said Flat and the Parking Space.
- (x) **No Use of Machinery:** not install or operate any machinery or equipment except household appliances.
- (y) **No Misuse of Water:** not misuse or permit to be misused the water supply to the Said Flat.
- (z) **No Damages to Common Portions:** not damage the Common Portions in any manner and if such damage is caused by the Buyer and/or family members, invitees or servants of the Buyer, the Buyer shall compensate for the same.
- (aa) **No Hanging Clothes:** not hang or cause to be hung clothes from the balconies of the Said Flat.
- (bb) **No Smoking in Public Place:** not smoke in public places of the Said Building and the Buyer and his/her/its guests shall not throw empty cigarette cartons, cigarette butts and matchboxes in open spaces but shall dispose them off in dustbins after ensuring that the fire is fully smothered/extinguished.
- (ab) **No Plucking Flowers:** not pluck flowers or stems.
- (ac) **No Littering:** not throw or allow to be thrown litter in the Said Building.
- (ad) **No Trespassing:** not trespass or allow to be trespassed over lawns and green plants within the Said Building.
- (ae) **No Overloading Lifts:** not overload the passenger lifts and move goods only through the staircase of the Said Building.
- (af) **No Use of Lifts in Case of Fire:** not use the lifts in case of fire.
- (ag) **No Covering of Common Portions, Specified Facilities etc.:** not cover the Common Portions or the Specified Facilities, fire exits and balconies/terraces (if any) of the Said Flat.
- (ah) **Unrestricted Access for Repair:** not restrict access to Developer/Association in case of providing necessary maintenance services of flats, common areas,

parking spaces or any part thereof, after due notice and during the normal working hours, unless the circumstances warrant otherwise, with a view to set right any defect.

- (ai) **Distribution of Electric Load:** plan and distribute the electrical load in conformity with the electrical systems installed by the Developer and thereafter the Association. The Buyer shall be responsible for any loss or damages arising out of breach of any of the aforesaid conditions.

**10.1.10 Notification Regarding Letting:** If the Buyer let out or sells the Said Flat And Appurtenances or portion thereof, the Buyer shall immediately notify the Facility Manager/Association (upon formation) of the tenant's/transferee's address and telephone number.

**10.1.11 Roof Rights:** A demarcated portion of the top roof of the Said Building shall remain common to all Transferees of the Said Building (Common Roof) and all common installations such as water tank and lift machine room shall be situated in the Common Roof and the balance of the top roof of the Said Building shall comprise of game court area, kids' play area and swimming pool. However, the Developer shall always have the right of further construction on the entirety of the top roof and the Buyer specifically agrees not to do any act which prevents or hinders such construction. After such construction, the roof above such construction shall again have a Common Roof for common use of all Transferees of the Said Building.

**10.2 Sellers's Covenants:** The Sellers covenants with the Buyer and admits and accepts that:

**10.2.1 Completion of Transfer:** The transfer of the Said Flat And Appurtenances shall be completed by the Sellers by executing conveyance in favour of the Buyer.

**10.2.2 No Creation of Encumbrance:** The Sellers shall not create any charge, mortgage or lien and/or shall not sell, transfer, convey and/or enter into any agreement with any person other than the Buyer in respect of the Said Flat And Appurtenances, subject to the Buyer fulfilling all terms, conditions and obligations of this Agreement.

**10.2.3 Documentation for Loan:** The Sellers shall provide to the Buyer all available documents so that the Buyer may get loan from Banks and Financial Institutions.

**10.2.4 Independent Project:** The Developer confirms that the Project is an independent, self-contained Project covering the Said Premises underneath the building and is not

a part of any other project or zone and shall not form a part of and/or linked/combined with any other project in its vicinity or otherwise except for the purpose of integration of infrastructure for the benefit of the Buyer. It is clarified that Project's facilities and amenities shall be available only for use and enjoyment of the intending buyers of the Project.

10.2.5 **Failure in Payment of outgoings by Developer:** The Developer agrees to pay all outgoings before transferring the physical possession of the Said Flat And Appurtenances to the Buyer/Association, which it has collected from the Buyer, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project). If the Developer fails to pay all or any of the outgoings collected by it from the Buyer or any liability, mortgage loan and interest thereon before transferring the apartment to the Buyer, the Developer agrees to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person.

10.3 **Savings and Exceptions:** The Owners have joined this Agreement only to confirm their willingness to convey the Land Share attributable to the Said Flat. Nothing contained herein shall affect the mutual rights and obligations of the Owners and the Developer against each other under the Development Agreement notwithstanding any inconsistency or contradiction hereunder.

11. **Termination and its Effect:**

11.1 **Breach/Cancellation by Buyer:** In the event the Buyer (1) cancels the booking after payment of the booking amount and before entering into the flat sale agreement then the Developer shall be entitled to forfeit the booking amount, or (2) fails to make timely payment of the Total Price and the Extras after entering into the flat sale agreement, or (2) fails to perform the obligations on the part of the Buyer to be performed in terms of this Agreement, or (3) neglects to perform any of the Buyer's Covenant, or (4) otherwise cancels, rescinds, terminates or determines this Agreement on any ground whatsoever except breach of Sellers's Covenants, this

Agreement shall, at the option of the Developer, stand cancelled and/or rescinded, upon which the Developer shall within 3 (three) months from the date of cancellation refund to the Buyer all payments received till that date, without any interest, after deducting 10% (ten percent) of the Total Price. Payments, if any, made by the Buyer for up-gradation shall be non-refundable. In the event the Developer condones the delay of any payment due under this Agreement, the Buyer shall be liable to pay interest @ 12% (twelve percent) per annum for the period of delay (computed from the date the payment became due till the date of payment) on all amounts due and outstanding. However, such right of condonation is exclusively vested in the Developer and the Developer shall have absolute liberty to cancel or not to cancel and the Buyer shall not be entitled to claim condonation as a matter of right.

- 11.2 **Breach by Developer:** Without prejudice to the provisions of Clause 9.5 above, in the event the Developer fails and/or neglects to deliver possession of the Said Flat And Appurtenances within the Extended Period, this Agreement shall, at the option of the Buyer, stand cancelled and/or rescinded, upon which the Developer shall refund to the Buyer all payments received till that date, with interest calculated @ 12% (twelve percent) per annum. Provided that where if the Buyer do not intend to withdraw from the Project, the Developer shall pay the Buyer interest at the rate prescribed in the Rules for every month of delay, till the handing over of the possession of the Said Flat which shall be paid by the Developer to the Buyer within 45 (forty five) days of it becoming due.
- 11.3 **Effect:** Upon termination of this Agreement due to any of the circumstances mentioned in Clauses 11.1 and 11.2 above, the Buyer shall not be entitled to claim any right, title, interest or charge (either equitable or otherwise) over and in respect of the Said Flat And Appurtenances and/or the Said Building or any part or portion thereof, in any manner whatsoever. The effect of such termination shall be binding and conclusive on the Parties.
12. **Taxes:**
- 12.1 **Obligation Regarding Taxes:** In the event of the Sellers being made liable for payment of any tax (excepting Income Tax), duty, levy or any other liability under any statute or law for the time being in force or enforced in future (such as Service Tax, Works Contract Tax, Value Added Tax or any other tax and imposition levied by the State Government, Central Government or any other authority or body) or if the Sellers is advised by its consultant that the Sellers are liable or shall be made liable for payment of any such tax, duty, levy or other liability on account of the Sellers having agreed to perform the obligations under this Agreement or having entered into this Agreement, then and in that event, the Buyer shall be liable to pay all such tax, duty,

levy or other liability and hereby indemnifies and agrees to keep the Sellers indemnified against all actions, suits, proceedings, costs, charges and expenses in respect thereof. The taxes, duties, levies or other liabilities so imposed or estimated by the Sellers' consultant shall be paid by the Buyer at or before the Date Of Possession. Any liability on account of this arising after the Date Of Possession shall also be payable by the Buyer to the Sellers.

**13. Representations And Warranties Of the Developer:**

The Developer hereby represents and warrants to the Buyer as follows:

- (i) The Owners have absolute, clear and marketable title with respect to the Said Premises; the requisite authority and rights to carry out development upon the Said Premises and absolute, actual, physical and legal possession of the Said Premises for the Project.
- (ii) The Developer has lawful rights and requisite approvals from the competent Authorities to carry out development of the Project.
- (iii) There are no encumbrances upon the Said Premises or the Project.
- (iv) There are no litigations pending before any Court of law or Authority with respect to the Said Premises, Project or the Said Flat.
- (v) All approvals, licenses and permits issued by the competent authorities with respect to the Project, Said Premises and Said Flat are valid and subsisting and have been obtained by following due process of law. Further, the Developer has been and shall, at all times, remain to be in compliance with all applicable laws in relation to the Project, Said Premises, Said Building and Said Flat and Common Areas till the date of handing over of the Project to the Association.
- (vi) The Developer has the right to enter into this Agreement and has not committed or omitted to perform any act or thing, whereby the right, title and interest of the Buyer created herein, may prejudicially be affected.
- (vii) The Developer has not entered into any agreement for sale and/or any other agreement/arrangement with any person or party with respect to the Said Premises including the Project and the Said Flat which will, in any manner, affect the rights of Buyer under this Agreement.
- (viii) The Developer confirms that the Developer is not restricted in any manner whatsoever from selling the Said Flat to the Buyer in the manner contemplated in this Agreement.

- (ix) At the time of execution of the deed of conveyance the Developer shall handover lawful, vacant, peaceful, physical possession of the Said Flat to the Buyer and the Common Areas to the Association, once the same being formed and registered.
- (x) The Said Premises is not the subject matter of any HUF and that no part thereof is owned by any minor and/or no minor has any right, title and claim over the Said Premises.
- (xi) The Developer has duly paid and shall continue to pay and discharge all governmental dues, rates, charges and taxes and other monies, levies, impositions, premiums, damages and/or penalties and other outgoings, whatsoever, payable with respect to the Project to the competent Authorities till the completion certificate has been issued and irrespective of possession of Flats, Said Building, as the case may be, along with Common Areas (equipped with all the specifications, amenities and facilities) has been handed over to the intending Buyers and the Association.
- (xii) No notice from the Government or any other local body or authority or any legislative enactment, government ordinance, order, notification (including any notice for acquisition or requisition of the said property) has been received by or served upon the Developer in respect of the Said Premises and/or the Project.

#### 14. Defects:

- 14.1 **Decision of Architect Final:** If any genuine/major structural defect or any other defect in workmanship and quality in the Said Flat And Appurtenances is claimed by the Buyer, the matter shall be considered and the Developer shall, at its own costs, remove the defects, within 30 days, provided such defects are brought to the notice of the Developer by the Buyer, within 5 (five) year from the Date of Possession. The Buyer, upon expiry of the aforesaid defects liability period, shall have no claim against the Developer in respect of any defect in the Said Flat And Appurtenances under any circumstances.

It is clarified that the above said responsibility of the Developer shall not cover defects, damage or malfunction resulting from (i) misuse (ii) unauthorized modifications or repairs done by the Buyer or its nominee/agent (iii) cases of force majeure (iv) failure to maintain the amenities/equipments (v) accident and (vi) negligent use. Warranty for all consumables or equipments used such as generators, lifts, fittings and fixtures, will be as provided by the respective manufacturers on their standard terms. It is agreed and recorded that the intending buyers of Flats should also pay maintenance charges for maintenance of the Project and its facilities and amenities during the period of first five years and thereafter. In case of non-payment



of maintenance charges by the intending buyers and their being discontinuation of proper maintenance in that event the Developer should not be held as default on its part under this clause.

15. Force Majeure:

15.1 Circumstances Of Force Majeure: The Developer shall not be held responsible for any consequences or liabilities if the Developer is prevented from meeting the obligations under this Agreement by reason of contingencies caused by neither of the Parties and unforeseen occurrences such as (1) acts of God, (2) acts of Nature, (3) acts of War, (4) fire, (5) insurrection, (6) terrorist action, (7) civil unrest, (8) riots, (9) flood, (10) earthquake, (11) drought, (12) cyclone, (13) any other calamity caused by nature affecting the regular development of the Project and (14) any rule or notification of the Government or any other public authority or any act of Government such as change in legislation or enactment of new law, restrictive Governmental laws or regulations (collectively Circumstances Of Force Majeure).

15.2 No Default: The Developer shall not be deemed to have defaulted in the performance of the Developer's contractual obligations whilst the performance thereof is prevented by Circumstances Of Force Majeure and the time limits laid down in this Agreement for the performance of obligations shall be extended accordingly upon occurrence of any event constituting Circumstances Of Force Majeure.

The Buyer agrees and confirms that, in the event it becomes impossible for the Developer to implement the Project due to Circumstances Of Force Majeure conditions, then this allotment shall stand terminated and the Developer shall refund to the Buyer the entire amount received by the Developer from the allotment within 45 (forty five) days from that date. The Developer shall intimate the Buyer about such termination at least 30 (thirty) days prior to such termination. After refund of the money paid by the Buyer, the Buyer agrees that the Buyer shall not have any rights, claims etc. against the Developer and that the Developer shall be released and discharged from all its obligations and liabilities under this Agreement.

15.3 Events of Defaults And Consequences:

15.3.1 Subject to the Force Majeure clause, the Developer shall be considered under a condition of Default, in the following events:

- (i) Developer fails to provide ready to move in possession of the Said Flat to the Buyer within the time period specified herein or fails to complete the Project within the stipulated time disclosed at the time of registration of the Project with the Authority. For the purpose of this paragraph 'ready to move in possession' shall mean that the Said Flat shall be in a habitable condition which is complete in all respects including the provision of all specifications, amenities and facilities, as agreed to between the Parties, and for which occupation certificate and/or completion certificate, as the case may be, has been issued by the competent authority.
- (ii) Discontinuance of the Developer's business as a developer on account of suspension or revocation of its registration under the provisions of the Act or the rules or regulations made thereunder.

15.3.2 In case of Default by Developer under the conditions listed above, Buyer is entitled to the following:

- (i) Stop making further payments to Developer as demanded by the Developer. If the Buyer stops making payments the Developer shall correct the situation by completing the construction milestones and only thereafter the Buyer be required to make the next payment without any interest; or
- (ii) The Buyer shall have the option of terminating the Agreement in which case the Developer shall be liable to refund the entire money paid by the Buyer under any head whatsoever towards the purchase of the Said Flat, along with interest at the rate prescribed in the Rules within forty-five days of receiving the termination notice subject to the Buyer shall prior to receipt of refund on the above account from the Developer, at Buyer's own costs and expenses, execute all necessary cancellation related documents required by the Developer;
- (iii) Provided that where an Buyer does not intend to withdraw from the Project or terminate the Agreement, the Buyer shall be paid, by the Developer, interest at the rate prescribed in the Rules, for every month of delay till the handing over of the possession of the Said Flat, which shall be paid by the Developer to the Buyer within forty-five days of it becoming due.

15.3.3 The Buyer shall be considered under a condition of Default, on the occurrence of the following events:

- (i) In case the Buyer fails to make payments for consecutive demands made by the Developer as per the Payment Schedule, mentioned in Part II of the 6<sup>th</sup> Schedule below, despite having been issued notice in that regard the Buyer shall be liable to pay interest to the Developer on the unpaid amount at the rate prescribed in the Rules;
- (ii) In case of Default by Buyer under the condition listed above continues for a period beyond two/three consecutive months after notice from the Developer in this regard, the Developer upon 30 days written notice may cancel the allotment of the Said Flat in favour of the Buyer and refund the money paid to the Developer by the Buyer by deducting the booking amount and the interest, liabilities and this Agreement shall thereupon stand terminated.

16. Miscellaneous:

16.1 Indian Law: This Agreement shall be subject to Indian Laws.

16.2 One Transaction: This Agreement relates to the transaction recorded and contemplated herein and no other transaction.

16.3 Confidentiality and Non-Disclosure: The Parties shall keep confidential all non-public information and/or documents concerning the transaction recorded herein, unless compelled to disclose such information and/or documents by judicial or administrative process.

16.4 Partial Invalidity: If any provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other circumstances shall not be

affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. When any provision is so held to be invalid, illegal or unenforceable, the Parties hereto undertake to use their best efforts to reach a mutually acceptable alternative to give effect to such provision in a manner which is not invalid, illegal or unenforceable. In the event any of the terms and conditions of this Agreement are set-aside or declared unreasonable by any Court of Law or if the Parties take the plea of frustration of contract, the entire Agreement shall not be void and shall continue to subsist to the extent of the remaining terms and conditions and bind the Parties.

- 16.5 **No Claim of Un-Enforceability:** This Agreement is being entered into by the Parties out of free will and without any duress or coercion. Hence, none of the Parties shall have the right to claim un-enforceability of this Agreement.
- 16.6 **Right of Possession:** The right of possession of the Buyer in respect of the Said Flat And Appurtenances shall arise only upon the Buyer fulfillings all obligations as are contained in this Agreement.
- 16.7 **Nomination by Buyer with Consent:** The Buyer admits and accepts that before the execution and registration of conveyance deed of the Said Flat And Appurtenances, the Buyer will be entitled to nominate, assign and/or transfer the Buyer's right, title, interest and obligations under this Agreement on payment of 2% (two percent) of the Total Price plus Service Tax, if any, as nomination charge to the Developer subject to the covenant by the nominee that the nominee will strictly adhere to the terms of this Agreement and subject also to the following conditions:
- (a) **Buyer to Make Due Payments:** The Buyer shall make payment of all dues in terms of this Agreement, up to the time of nomination.
  - (b) **Lock-in-Period:** The Buyer cannot sells and/or nominates the Said Flat And Appurtenances to and in favour of any third person before the expiry of a period of 24 (twenty four) months from the date of this Agreement.
  - (c) **Written Permission of Developer:** The Buyer shall obtain prior written permission of the Developer and the Buyer and the nominee shall be bound to enter into a tripartite agreement with the Sellers.
  - (d) **Nomination in Favour of Mother or Father or Spouse or Child of the Buyer:** The Buyer admits and accepts that the Buyer shall not nominates or assigns the right under this Agreement save in the manner indicated above. In case of assignment/nomination in favour of mother or father or spouse or child of the Buyer, no transfer charge/nomination fees shall be payable. It is clarified that inclusion of a new joint Buyer or change of a joint Buyer shall be treated as a transfer unless such joint Buyer is a mother or father or spouse or child of the original Buyer. Any nomination/transfer/made in contravention/violation of conditions mentioned herein, shall be void ab-initio.

- (e) **Additional Legal Fee:** The Buyer shall pay an additional legal fee of Rs.20,000/- (Rupees twenty thousand) to the Legal Advisor towards the tripartite Nomination Agreement.
- 16.8 **Entire Agreement:** This Agreement constitutes the entire understanding between the Parties and supercedes the terms and conditions whatever agreed between the Parties prior to execution of this Agreement but does not include or supercede any document contemporaneously entered into between the Parties.
- 16.9 **Amendments/Modifications:** No amendments or modifications of this Agreement or any part hereof shall be valid and effective unless it is by an instrument in writing executed by all the Parties.
- 16.10 **Reservation of Rights:** No forbearance, indulgence, relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision.
- 16.11 **Waiver:** Any term or condition of this Agreement may be waived at any time by the Party who is entitled to the benefit thereof. Such waiver must be in writing and must be executed by the Party or an authorized agent of the Party. A waiver on one occasion will not be deemed to be waiver on a future occasion. Omission or delay on the part of either Party to require due and punctual performance of any obligation by the other Party shall not constitute a waiver of such obligation and it shall not in any manner constitute a continuing waiver and/or as a waiver of other breaches of the same or other obligations hereunder or as a waiver of any right or remedy that the Party may otherwise have in law or in equity.
- 16.12 **Severability:** If any provision of this Agreement shall be determined to be void or unenforceable under the Act or the Rules and Regulations made thereunder or under other applicable laws, such provisions of the Agreement shall be deemed amended or deleted in so far as reasonably inconsistent with the purpose of this Agreement and to the extent necessary to conform to Act or the Rules and Regulations made thereunder or the applicable law, as the case may be, and the remaining provisions of

this Agreement shall remain valid and enforceable as applicable at the time of execution of this Agreement.

16.13 **Further Assurances:** Both Parties agree that they shall execute, acknowledge and deliver to the other such instruments and take such other actions, in additions to the instruments and actions specifically provided for herein, as may be reasonably required in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

16.14 **No Agency:** The Parties are entering into this Agreement on principal-to-principal basis and nothing contained herein shall make the Parties agents of each other.

## 17. Association and Rules

17.1 **Rules of Use:** The Said Flat And Appurtenances shall be held by the Buyer subject to such rules and regulations as may be made applicable by the Association from time to time.

17.2 **Restrictions:** The Buyer agrees that the Buyer shall use the Said Flat And Appurtenances subject to all restrictions as may be imposed by the Association.

## 18. Notice:

18.1 **Mode of Service:** Notices under this Agreement shall be served by messenger or by registered post/speed post with acknowledgment due at the above mentioned addresses of the Parties, unless the addresses are changed by prior intimation in writing. Such service shall be deemed to have been effected (1) on the date of delivery, if sent by messenger and (2) on the 4<sup>th</sup> day of handing over of the cover to the postal authorities, if sent by registered post/speed post, irrespective of refusal to

accept service by the Parties. The Developer shall give notice on behalf of the Owners.

18.2 **Joint Buyer:** That in case there are joint buyers all communications shall be sent by the Developer to the buyer whose name appears first and at the address given by him/her/it which shall for all intents and purposes to consider as properly served on all the buyers.

19. **Alternative Dispute Resolution:**

19.1 **Disputes:** Disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (excepting disputes which are to be expressly referred to and resolved by the Architect) (collectively **Disputes**) shall be referred to the Arbitral Tribunal described in Clause 18.1.1 below and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, with modifications made from time to time. In this regard, the Parties irrevocably agree that:

19.1.1 **Constitution of Arbitral Tribunal:** The Arbitral Tribunal shall consist of 1 (one) arbitrator, who shall be an Advocate, to be nominated by Mr. Inuran Karim, Advocate, of 3rd floor, 11, Old Post Office Street, Kolkata-700001.

19.1.2 **Place:** The place of arbitration shall be Kolkata only.

19.1.3 **Language:** The language of the arbitration shall be English.

19.1.4 **Binding Effect:** The Arbitral Tribunal shall have summary powers and be entitled to give interim awards/directions regarding the Disputes and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly available under the law. The interim/final award of the Arbitral Tribunal shall be binding on the Parties.

19.2 **No Legal Proceeding without Recourse to Arbitration:** The Parties shall not commence legal proceedings or have any receiver appointed over the Said Flat And Appurtenances and/or the Said Building/Said Premises without first referring the matter to arbitration and till the Arbitral Tribunal has given its direction/award.

20. **Jurisdiction:**

20.1 **District Court and High Court:** In connection with the aforesaid arbitration proceeding, only the District Judge, South 24 Parganas and the High Court at Calcutta shall have jurisdiction to entertain and try all actions and proceedings.

21. **Rules of Interpretation:**

21.1 **Act:** means the West Bengal Housing Industry Regulation Act, 2017 (West Ben. Act XLI of 2017).

21.2 **Rules:** means the West Bengal Housing Industry Regulation Rules, 2018 made under the West Bengal Housing Industry Regulation Act, 2017.

21.3 **Regulations:** means the Regulations made under the West Bengal Housing Industry Regulation Act, 2017.

21.4 **Number and Gender:** Words denoting the singular number include, where the context permits and requires, the plural number and vice-versa. Words denoting any gender include the other genders.

21.5 **Headings:** The headings in this Agreement are inserted for convenience only and shall be ignored in construing the provisions of this Agreement.



- 21.6 **Schedules and Plans:** Schedules and Plans appended to this Agreement form a part of this Agreement and shall always be taken into consideration for interpreting the complete understanding between the Parties. Any reference to a Schedule or Plan is a reference to a Schedule or Plan to this Agreement.
- 21.7 **Definitions:** In this Agreement, words have been defined by putting them within brackets and printing them in bold. Where a word or phrase is defined, other parts of speech or grammatical forms of that word or phrase shall have corresponding meaning.
- 21.8 **Documents:** A reference to a document includes an amendment or supplement or replacement or novation of that document.
- 21.9 **Successors:** A reference to a Party includes that Party's successors and permitted assigns.
- 21.10 **Statutes:** Any reference to a statute, statutory provision or subordinate legislation shall include its amendment, modification, consolidation, re-enactment or replacement as enforced from time to time, whether before or after the date of this Agreement.

**1<sup>st</sup> Schedule  
Part-I  
(Said Premises)**

Land with structures measuring about 21 (twenty one) *cottah* 9 (nine) *chittack* and 5 (five) square feet situate, lying at and being Municipal Premises No. 200A, Shyama Prosad Mukherjee Road, within the Municipal limits of Kolkata, Police Station Tollygunge, Sub-Registry Alipore, within Ward No. 88 of the Kolkata Municipal Corporation and butted and bounded as follows:

<b>On The North</b>	:	By Tipu Sultan Road
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<b>On The East</b>	:	By Shyama Prosad Mukherjee Road
<b>On The South</b>	:	By the said passage forming part of the Said Premises and thereafter by Premises No. 200X, S.P. Mukherjee Road
<b>On the West</b>	:	By Premises No. 59/2A, Protapaditya Road

**Part-II**  
(Devolution Of Title)

1. A two-storied building and land appurtenant thereto admeasuring about 21 Cottahs 9 Chittacks and 5 Square feet forming part of the Municipal Premises No. 200A, Shyama Prosad Mukherjee Road, within the Municipal limits of Kolkata, Police Station Tollygunge, Sub-Registry Alipore, was owned by Late Mayabai Devi, wife of Rai Jatindra Nath Chowdhury (Settlor) and Late Rai Sudhindra Nath Chowdhury, her son in equal proportion. The Said Premises is more fully and particularly described in the Part I of the 1<sup>st</sup> Schedule above.
2. The said Settlor, by a Bengali deed of settlement dated September 5, 1958 and registered in the office of the Sub-Registrar, Alipore in Book I, Volume 138, Pages 129 to 135, being No.7796 for the year 1958 (Deed of Settlement) created a trust and settled the properties mentioned in the Schedule 'Ka' to 'Ga' of the said Deed of Settlement including the Said Premises for the benefit of her grandsons being, Soumendra Nath Chowdhury (since deceased), Kalyan Chowdhury (since deceased) and Jayanta Chowdhury, the three sons of her said son, Rai Sudhindra Nath Chowdhury. The Settlor also appointed her said son, Rai Sudhindra Nath Chowdhury as trustee of the said trust.
3. By the Deed of Settlement, the Settlor had provided that on the death of the Settlor, the said trustee may at any time thereafter in his absolute discretion divide and distribute the properties mentioned in the schedule therein amongst the beneficiaries namely the said three grandsons of the Settlor in equal shares to be held and enjoyed by them as absolute property of each of them.

4. The said Settlor died on May 9, 1976.
5. The said Kalyan Chowdhury, one of the beneficiaries under the Deed of Settlement died unmarried and intestate on November 13, 1970 leaving behind him, the trustee being his father as his sole heir. The said Kalyan Chowdhury's mother having predeceased him on or about April 13, 1964, on his demise his undivided share or interest as a beneficiary under the Deed of Settlement vested in the trustee as his sole heir. Thus, the trustee in his capacity as the heir of Kalyan Chowdhury became entitled to another 1/3<sup>rd</sup> share of the properties comprised in the schedule of the Deed of Settlement.
6. The said Soumendra Nath Chowdhury, one of the beneficiaries under the Deed of Settlement also died intestate on July 10, 1979 leaving behind his widow, said Smt. Purna Chowdhury and his only son, Sudiptendra Nath Chowdhury also known as Sudipto Chowdhury as his only legal heirs surviving and being seized and possessed (inter alia) of his beneficial undivided share or interest under Deed of Settlement in the properties mentioned in the schedule to the Deed of Settlement.
7. Thus the heirs and legal representatives of said Late Soumendra Nath Chowdhury being Smt. Purna Chowdhury and his only son said Sudiptendra Nath Chowdhury also known as Sudipto Chowdhury, have become vested with the undivided beneficial interest of their late husband and father respectively, i.e. said Soumendra Nath Chowdhury in the properties mentioned in the schedule of the Deed of Settlement.
8. In exercise of the power vested in the trustee under the Deed of Settlement and all other powers enabling him to do so, the trustee had decided to bring an end to the trust created by the Settlor by transferring to each group of beneficiaries the properties mentioned in the schedule of the Deed of Settlement and with a view, to distribute the properties and fund in three parcels, each part whereof was intended to be transferred to the beneficiaries as hereinbefore mentioned, separately to be held by them in lieu of their respective shares as the absolute property of them, free of any trust or obligations created by the Deed of Settlement hereinbefore mentioned.
9. By way of a Deed of Transfer dated March 30, 1981 and registered in the Office of the Registrar of Assurances, Calcutta in Book I, Volume 139, Pages 25 to 34, being No.2764 for the year 1981, the trustee transferred unto Jayanti Chowdhury undivided 1/3<sup>rd</sup> portion of Late Mayabati Devi's share in the Said Premises which amounted to undivided 1/6th share of the Said Premises.
10. By way of a Deed of Transfer dated March 30, 1981 and registered in the Office of the Registrar of Assurances, Calcutta in Book I, Volume 152, Pages 48 to 56, being No.2763 for the year 1981, the trustee transferred unto Smt. Purna Chowdhury and Sudipto Chowdhury undivided 1/3<sup>rd</sup> portion of Late Mayabati Devi's share in the Said Premises which amounted to undivided 1/6th share of the Said Premises.

11. By way of an unregistered Deed of Transfer dated March 30, 1981, Rai Sudhindranath Chowdhury in his capacity as the trustee transferred unto himself (as a beneficiary) undivided 1/3<sup>rd</sup> portion of Late Mayabati Devi's share in the Said Premises which amounted to undivided 1/6<sup>th</sup> share of the Said Premises. He thus became the owner of 2/3<sup>rd</sup> undivided share of the Said Premises.
12. It has been a term of the transfer mentioned above that each of the beneficiary out of their separate estate and/or out of the estate now transferred to them as absolute estate will meet and pay all liabilities in respect of the properties transferred to each of them namely, the municipal rates and taxes, income-tax, wealth-tax and various other outgoings connected with the estate as the same cannot be immediately discharged and satisfied and would have to be so done on determination of such liability and demand in respect of them.
13. Thus, in the manner mentioned hereinabove, Smt. Purna Chowdhury and Sri Sudipto Chowdhury jointly became the owners, inter alia of 1/6<sup>th</sup> undivided share of the Said Premises. Sri Jayanta Chowdhury became the owner of undivided 1/6<sup>th</sup> share of the Said Premises. Rai Sudhindra Nath Chowdhury (since deceased) became owner of undivided 2/3<sup>rd</sup> share of the Said Premises.
14. Late Rai Sudhindra Nath Chowdhury had duly made and executed his last Will and testament in Bengali language and character on June 9, 1964 at his place of residence at 200A, Shyama Prasad Mukherjee Road, Kolkata - 700 026.
15. The said Late Rai Sudhindra Nath Chowdhury had, by the said Will, appointed his eldest son Rai Soumendra Nath Chowdhury as the sole executor thereof, who has since died in July 10, 1979 without having proved the said Will.
16. Rai Sudhindra Nath Chowdhury, being a Hindu governed by Dayabhaga School of Hindu Law died testate on February 27, 1989. The following persons are his heirs and successors on whom the estate of the deceased would have devolved in case of intestacy under the Hindu Succession Act, 1956.

Sl. No.	Name	Relation	Address
(i)	Rai Soumendra Nath Chowdhury (died intestate leaving behind him surviving: Wife-Smt. Purna Chowdhury Son-Sudipto Chowdhury)	Son  Daughter-in-law Grand-son	200A, S.P. Mukherjee Road, Kolkata- 26  -Do- -Do-
(ii)	Rai Kalyan Chowdhury (died unmarried intestate)	Son	-Do-
(iii)	Rai Jayanta Chowdhury	Son	-Do-
(iv)	Smt. Subhira Banerjee	Married daughter	1/13, Surya Nagar,

			N.S.C. Bose Road, Kolkata - 700 010.
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17. Sri Sudipto Chowdhury filed an application for grant of Letters of Administration in respect of the estate of Rai Sudhindra Nath Chowdhury, being P.L.A. No. 151 of 2005 before the Hon'ble High Court at Calcutta by virtue of the last Will and testament dated June 9, 1964 of Late Rai Sudhindra Nath Chowdhury.
18. Of the above named legal heirs of Late Rai Sudhindra Nath Chowdhury, his youngest son Jayanta Chowdhury and his daughter-in-law, Smt. Purna Chowdhury, have consented to the Letters of Administration being granted to Sri Sudipto Chowdhury, son of Late Rai Soumendra Nath Chowdhury.
19. There were two attesting witnesses who signed the Will of the said deceased. However, both of them had already died. The execution of the said Will and testament dated June 9, 1964 was proved by the declaration made by Smt. Purna Chowdhury, the daughter-in-law of the deceased, being the attending witness of the said Will, at the foot of the petition for grant of Letters of Administration who was present at the time of execution of the said Will and testament by the said deceased above named on June 9, 1964.
20. A caveat in the said P.L.A. No. 151 of 2005 was filed by Smt. Subhra Banerjee, married daughter of Rai Sudhindra Nath Chowdhury residing at 1/13, Surya Nagar, N.S.C. Bose Road, Kolkata - 700 010. An Affidavit in support of caveat was also filed by the said Smt. Subhra Banerjee.
21. Due to indifferent health, the said Smt. Subhra Banerjee did not want to proceed further with the legal dispute with her kith and kin. Under such circumstances, parties to P.L.A. No. 151 of 2005 intended to settle the dispute among themselves in accordance with the terms and conditions mentioned in the terms of settlement dated January 21, 2013 ("Terms of Settlement") wherein it had been agreed between the Owners and Smt. Subhra Banerjee inter alia that Smt. Subhra Banerjee shall relinquish all her claims and interest in the estate of Rai Sudhindra Nath Chowdhury and that the Owners shall jointly become the absolute owners of the same.
22. In terms of such mutual arrangement between the Owners and Smt. Subhra Banerjee, the Terms of Settlement was filed in the ongoing proceedings of P.L.A. No. 151 of 2005 and the Owners and Smt. Subhra Banerjee filed an application before the Hon'ble High Court at Calcutta to grant a Letters of Administration and record the compromise in the said P.L.A. No. 151 of 2005 recording withdrawal of the caveat and the affidavit filed by Smt. Subhra Banerjee in the said matter.
23. The Hon'ble High Court at Calcutta, on June 25, 2014 was pleased to grant Letters of Administration in the goods of Late Rai Sudhindra Nath Chowdhury to Sri Sudipto Chowdhury in terms of the last Will and testament of Late Rai Sudhindra Nath

Chowdhury, deceased dated June 9, 1964 and P.L.A. No. 151 of 2005 was accordingly disposed of.

24. In terms of the said Will of Rai Sudhindra Nath Chowdhury, his three sons being Soumendra Nath Chowdhury (since deceased), Kalyan Chowdhury (since deceased) and Jayanta Chowdhury were entitled to receive inter alia his share in the Said Premises in equal shares. As mentioned above, Kalyan Chowdhury had died intestate prior to the death of Late Rai Sudhindra Nath Chowdhury without leaving behind any legal heir and Soumendra Nath Chowdhury had also pre deceased Late Rai Sudhindra Nath Chowdhury leaving behind his legal heirs, Purna Chowdhury (wife) and Sudipto Chowdhury (son). Thus as per the provisions contained in the said last Will and testament dated June 9, 1964 of Late Rai Sudhindra Nath Chowdhury, his undivided  $\frac{2}{3}$ <sup>rd</sup> share in the Said Premises was divided in the following manner:
- (i) Purna Chowdhury and Sudipto Chowdhury jointly became entitled to  $\frac{1}{2}$  (one half) of Rai Sudhindra Nath Chowdhury's undivided  $\frac{2}{3}$ <sup>rd</sup> (two third) share in the Said Premises i.e. undivided  $\frac{1}{3}$ <sup>rd</sup> (one third) share in the Said Premises; and
  - (ii) Jayanta Chowdhury became entitled to the remaining  $\frac{1}{2}$  (one half) of Rai Sudhindra Nath Chowdhury's undivided  $\frac{2}{3}$ <sup>rd</sup> (two third) share in the Said Premises i.e. undivided  $\frac{1}{3}$ <sup>rd</sup> (one third) share in the Said Premises.
25. Thus, in view of the above, the Owners have jointly become absolute owners of the Said Premises in the ration given hereunder:
- (i) Jayanta Chowdhury: owner of undivided  $\frac{1}{2}$  or 50% share in the Said Premises;
  - (ii) Purna Chowdhury and Sudipto Chowdhury: jointly owner of undivided  $\frac{1}{2}$  or 50% share in the Said Premises.
26. The Owners have duly recorded and mutated their names in the records of the Kolkata Municipal Corporation and is presently assessed as Assessee No: 110881800366.
27. In the circumstances, the Owners have become the absolute owners of the Said Premises, free from all encumbrances whatsoever.

2<sup>nd</sup> Schedule  
Part-I  
(Said Flat)

Residential Unit No. \_\_\_\_\_, \_\_\_\_\_ floor, having a built-up area approximately \_\_\_\_\_ (\_\_\_\_\_) square feet, super built-up area approximately \_\_\_\_\_ (\_\_\_\_\_) square feet and carpet area approximately \_\_\_\_\_ (\_\_\_\_\_) square feet, together with exclusive balcony or exclusive verandah area measuring about \_\_\_\_\_ (\_\_\_\_\_) square feet and exclusive terrace area measuring about \_\_\_\_\_ (\_\_\_\_\_) square feet comprised in the Said Building named *Onex Privy*, delineated on the Plan annexed hereto and bordered in colour Red thereon.

Part-II  
(Parking Space)

The right to park \_\_\_ (\_\_\_\_) medium sized car in the car parking space in the ground floor.

Part-III  
(Said Flat And Appurtenances)  
*[Subject Matter of Sale]*

The Said Flat, being the flat described in Part-I of the 2<sup>nd</sup> Schedule above.

The right to park in the Parking Space, being the Parking Space described in Part-II of the 2<sup>nd</sup> Schedule above.

The Land Share, being undivided, impartible, proportionate and variable share and/or interest in the land comprised in Said Premises described in Part-I of the 1<sup>st</sup> Schedule above, as is attributable to the Said Flat.

The Share In Common Portions, being undivided, impartible, proportionate and variable share and/or interest in the Common Portions described in the 3<sup>rd</sup> Schedule below, as is attributable to the Said Flat, subject to the terms and conditions of this Agreement.

**3<sup>rd</sup> Schedule  
(Common Portions)**

Common Portions as are common between the co-owners of the Said Building:

- Open and/or covered paths and passages inside the Said Building.
- Boundary wall around the periphery of the Said Premises and decorative gates for ingress and egress to and from the Said Premises.
- Lobby at the ground level of the Said Building
- Lobbies on all floors and staircase(s) of the Said Building
- Space for community hall.
- Swimming Pool on roof top.
- Well-equipped indoor gymnasium.
- Landscaped area, if any.
- Staircases
- Lift(s) and lift lobbies
- Lift(s) and allied machineries in the Said Building.
- Fire Escapes
- Common entrance and exit of the Said Building
- The common basements, terraces, parks, play areas, open parking areas
- The premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel.
- Installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating.
- Water supply system for supply of water.
- Main sewer, drainage and sewerage pits and evacuation pipes in the Said Building.
- Pumps and motors for water supply system for the Said Building and Common Portions.
- Wiring and accessories for lighting of Common Portions of the Said Building.
- Lighting arrangement at the entrance gate and passages within the Said Building.
- Installation relating to sub-station and common transformer for the Said Building.
- Intercom facility in each Flat connected to the main gate.
- Common fire fighting equipment for the Said Building as directed by the Director of West Bengal Fire Services.
- Other areas and/or installations and/or equipment as are provided in the Said Building for common use and enjoyment.



**4<sup>th</sup> Schedule  
(Specifications)**

Internal Specifications & Structure	<ul style="list-style-type: none"> <li>• Earthquake resistant structure</li> <li>• Environmental friendly construction</li> </ul>
Rooms	<ul style="list-style-type: none"> <li>• Floor-International Design Vitrified titles</li> <li>• Master bedroom - Laminated wooden flooring</li> <li>• Wall and Ceiling - POP finish</li> </ul>
Doors & Windows	<ul style="list-style-type: none"> <li>• Entrance Door - Laminated Flush door shutter moulded shutter</li> <li>• Internal Doors - Wooden door frames with flush door shutter</li> <li>• Windows - Power coated aluminium sliding windows</li> </ul>
Kitchen	<ul style="list-style-type: none"> <li>• Wall - Tiles upto two feet above counter</li> <li>• Floor - Anti skid tiles</li> <li>• Counter - Polished granite counter top with Stainless steel sink</li> <li>• Fittings - CP fittings of Jaquar or equivalent</li> </ul>
Toilets:	<ul style="list-style-type: none"> <li>• Walls - Designer tiles upto door height</li> <li>• Floor - Anti-skid ceramic tiles</li> <li>• Sanitary and CP Fittings - Superior quality CP fittings of Jaquar or equivalent and chromium plated sanitary wares with wash basin and water closet</li> </ul>
Electricals	<ul style="list-style-type: none"> <li>• Switches - Modular switches of reputed brand with copper wiring</li> <li>• AC Points - AC points in Living/Dining and all rooms</li> <li>• Electricals Points - Concealed wiring with adequate electrical points and switches</li> <li>• TV and telephone points - Living and all rooms</li> </ul>
Elevators	<ul style="list-style-type: none"> <li>• Hi-speed Elevators</li> <li>• Generator back-up systems (On chargeable basis)</li> </ul>

Intercom System	<ul style="list-style-type: none"> <li>• CCTV Surveillance system for all common areas</li> <li>• Modern fire-fighting and alarm system (as per Government regulations)</li> </ul>
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**5<sup>th</sup> Schedule  
(Common Expenses/Maintenance Charges)**

1. **Association:** Establishment and all other capital and operational expenses of the Association.
2. **Common Utilities:** All charges and deposits for supply, operation and maintenance of common utilities.
3. **Electricity:** All charges for the electricity consumed for the operation of the common machinery and equipment.
4. **Litigation:** All litigation expenses incurred for the common purposes and relating to common use and enjoyment of the Common Portions.
5. **Maintenance:** All costs for maintaining, operating, replacing, repairing, white-washing, painting, decorating, re-decorating, re-building, re-constructing, lighting and renovating the Common Portions at the Said Building, including the exterior or interior (but not inside any Flat) walls of the Said Premises.
6. **Operational:** All expenses for running and operating all machinery, equipments and installations comprised in the Common Portions at the Said Building, including lifts, generator, changeover switches, CCTV (if any), EPABX (if any), pumps and other common installations including, their license fees, taxes and other levies (if any) and expenses ancillary or incidental thereto and the lights of the Common Portions at the Said Building level.
7. **Rates and Taxes:** Municipal Tax, surcharge, Multistoried Building Tax, Water Tax and other levies in respect of the Said Building save those separately assessed on the Buyer.
8. **Staff:** The salaries of and all other expenses on the staff to be employed for the common purposes, viz. manager, caretaker, clerks, security personnel, liftmen, sweepers, plumbers, electricians etc. including their perquisites, bonus and other emoluments and benefits.

**6<sup>th</sup> Schedule**

**Part-I**

**(Total Price)**

The consideration for sale of the Said Flat and Appurtenances based on the carpet area is Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) [Total Price]. Break-up and description is morefully described in Part II herein below.

Provided that in case there is any change/modification in the taxes, the subsequent amount payable by the Buyer to the Developer shall be increased/reduced, based on such change/modification.

Provided further that if there is any increase in the taxes, after the expiry of the scheduled Completion Date of the Project, which shall include the Extended Period, if any, the same shall not be charged from the Buyer.

**Part-II**

(Break-Up of Total Price)

**Part-III**

(Payment Schedule)

The Total Price shall be paid by the Buyer in the following manner:

SL	Payment Time	Amount
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SL	Payment Time	Amount
1	On Booking	Rs.5,00,000/-
2	On Flat Sale Agreement	15% of Total Price less booking amount
3	On commencement of piling work	10% of Total Price
4	On Ground Floor Slab Casting	10% of Total Price
5	On 3 <sup>rd</sup> Floor Slab Casting	10% of Total Price
6	On 6 <sup>th</sup> Floor Slab Casting	10% of Total Price
7	On 10 <sup>th</sup> Floor Slab Casting	10% of Total Price
8	On 15 <sup>th</sup> Floor Slab Casting	10% of Total Price
9	On 18 <sup>th</sup> Floor Slab Casting	5% of Total Price
10	On Brickwork of the Said Flat	10% of Total Price
11	On Possession of Said Flat	10% of Total Price

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- 21. Execution and Delivery:
- 21.1 In Witness Whereof the Parties have executed and delivered this Agreement on the date mentioned above.

(Being Represented by Constituted Power of Attorney Holders of Owners)

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[Owners]

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[Developer]

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[Buyer]

Witnesses:

Signature _____	Signature _____
Name _____	Name _____
Father's Name _____	Father's Name _____
Address _____	Address _____
_____	_____