



**CONSTRUCTION AND DEVELOPMENT OF
ASHIANA-E-IQBAL, BURKI ROAD, LAHORE ON
PUBLIC PRIVATE PARTNERSHIP (PPP)**

**DEVELOPMENT AGREEMENT
[DRAFT]**



DEVELOPMENT AGREEMENT

This Development Agreement is entered into at Lahore on this [_____] Day of [_____] 2014 by and between:

PUNJAB LAND DEVELOPMENT COMPANY, a company incorporated under the Companies Ordinance, 1984, with its registered office at _____ Lahore, Pakistan (hereinafter referred to as "**Client**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) OF THE FIRST PART;

AND

[_____] existing under the Laws of Pakistan, with its registered office at [*insert registered office address*] (hereinafter referred to as "**Developer**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) OF THE OTHER PART.

The Client and the Developer are hereinafter also individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS:

- A. The Client, in discharge of its functions under its Memorandum of Association and Articles of Association is desirous to provide affordable housing to the citizens of the Province of Punjab. For this purpose, the Client has decided to undertake development of the Project on land measuring 3,1__ Kanals situated at Burki Road, Lahore through Public-Private Partnership (the "**Project**") basis in accordance with the terms and conditions to be set forth in this Development Agreement to be entered into.
- B. The Project is vital to and in the best interest of the health, safety and welfare of the citizens of the Province of Punjab, and is in accordance with the public purposes of the Applicable Laws and other requirements.
- C. The Project shall include construction and development of the Affordable Housing Apartments, Development Works, On-site Infrastructure and Project Facilities and Utilities on the Project Site.
- D. In pursuance of the afore-mentioned, in consonance with Section 7 read with Section 9 of the Punjab Public Private

Partnership Act, 2014 (“**PPP Act of 2014**”), the Client prepared an analysis of feasibility and sustainability of the Project including detailed business case and financial model justifying Project’s financial and economic viability of the Project, initial environmental examination, risk analysis, analysis of the need for Government support, the affordability of the Project, determination of the public private partnership modality, and preparation of bid documents including a draft of this Agreement, to undertake the Project in a public private partnership on a Built Transfer (BT) model, and submitted the same through the PPP Cell to the PPP Steering Committee for approval;

- E. The Steering Committee approved the Proposal on [____*insert date*____], and thereafter the Client invited comparative bids by following the single-stage three envelope procedure prescribed in Sections 16 of the PPP Act of 2014, *inter alia* through advertisements published in two (2) national daily newspapers in the month of [*insert Month*], and by posting the same on the websites of the Client, PPP Cell and the relevant Public Procurement Regulatory Authority, in response to which Request for Proposal for the Project (“**RFP**”) were provided to interested bidders on request;
- F. To provide clarifications to bidders and discuss the terms and conditions of the PPP Agreement, the Client conducted two pre-bid conferences on [____*insert date* ____] and on [____*insert date* ____] before the bid submission date;
- F. In response to the aforesaid advertisements, the Client received [*insert number*] competitive bids on [*insert date*], out of which [*insert number*] parties qualified and were short-listed for evaluation of their bids;
- G. After short-listing, the Client conducted bid evaluation within _____ Days thereafter, in the manner prescribed by the PPP Act of 2014, and announced the result of the bidding on [*insert date*], wherefor the Developer was declared the successful bidder and issued Letter of Award dated _____;
- H. The Developer has shown his capacity and experience in the financing, engineering, development and construction of infrastructure;

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- I. The Client and the Developer have now agreed to execute the Project subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Parties hereby covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and Annexes and used therein shall have the meaning ascribed thereto in the Schedules and Annexes.

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

- 1.1.1 **“Accounting Year”** means the financial year commencing from the first (1st) of July of any Year and ending on the thirtieth (30th) of June of the next Year;
- 1.1.2 **“Affected Party”** shall have the meaning set forth in Article 19;
- 1.1.3 **“AHA Constructed Area”** means the constructed area of an AHA Unit, excluding balconies and common building areas such as staircase, landing, etc.
- 1.1.4 **“Affordable Housing Apartment(s)” or “AHA Unit(s)”** means Affordable Housing Apartments to be constructed on the Project Site by the Developer under this Development Agreement as set forth in Schedule B.
- 1.1.5 **“AHA Site”** means land parcels in the Project Site dedicated for development of housing scheme area in which AHA Units are to be constructed, as described in Schedule A;
- 1.1.6 **“Agreement” or “Development Agreement”** means this Agreement, its Recitals, the Schedules, Annexes hereto and any

amendments thereto made in accordance with the provisions contained in this Agreement;

- 1.1.7 **“Applicable Laws”** means all laws, brought into force and effect by GoP and/or GoPb including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
- 1.1.8 **“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Construction and Development of the Project Assets on the Project Site as applicable during the subsistence of this Agreement;
- 1.1.9 **“Approval”** means the prior written agreement of the Client or the Client’s Representative to a proposed action by the Developer, which shall not be withheld, conditioned or delayed unreasonably. The words “Approve”, “Approved” and other grammatical variations of the word “Approval” shall be construed accordingly;
- 1.1.10 **“Appointed Date”** means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Construction Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;
- 1.1.11 **“Associate” or “Affiliate”** means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies

of such person, whether by operation of law or by contract or otherwise);

1.1.12 **“Base Rate”** means the six Monthly Karachi Inter Bank Offer Rate (KIBOR) which is the average rate, ask side, for the relevant tenor, as published on Reuters page KIBOR or as published by the Financial Markets Association of Pakistan in case the Reuters page is unavailable;

1.1.13 **“Bid”** means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposal in accordance with the provisions thereof;

1.1.14 **“Bid Security”** means the security provided by the bidder to the Client along with the Bid in a sum of **Rs. 50,000,000/- (Rupees Fifty Million only)** in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

1.1.15 **“Change in Law”** means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Pakistani law ;
- (b) the repeal, modification or re-enactment of any existing Pakistani law ;
- (c) the commencement of any Pakistani law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Pakistani law by a judgment of a court which has become final, conclusive and binding, as compared to such interpretation or application by a court prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

1.1.16 **“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder, together with its Associates, in the total Equity to decline below 51% (fifty one per cent) thereof prior to completion of Defect Liability Period thereafter, provided that any material variation (as compared

to the representations made by the Developer during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the selected bidder to the total Equity, if it occurs prior to completion of Construction Period after issuance of the Project Completion Certificate, shall constitute Change in Ownership;

1.1.17 **“Change of Scope of the Project”** shall have the meaning set forth in Article 13;

1.1.18 **“Client Default”** shall have the meaning set forth in Article 21.2;

1.1.19 **“Client’s Representative”** means such person or persons as may be authorised in writing by the Client to act on its behalf under this Agreement as more particularly defined in Article 7.2, and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Client under this Agreement;

1.1.20 **“Commercial Plots”** means the plots on the Project Site to be developed by the Developer for commercial use in accordance with the Master Plan;

1.1.21 **“Conditions Precedent”** shall have the meaning set forth in Article 5;

1.1.22 **“Construction Period”** means the period beginning from the Appointed Date and ending with the issuance of the Project Completion Certificate;

1.1.23 **“Construction and Development of the Project Assets”** or **“Construction of the Project Assets”** or **“Development of the Project Assets”** means the construction, development and completion of all Construction and Development Works included in or constituting the Project Assets, as specified in **Schedules B, C, D,E & F**;

1.1.24 **“Construction and Development Plan”** or **“Construction Plan”** or **“Development Plan”** means the plans for the Construction and Development of the Project Assets, including details such as construction methodology, construction technology, quality assurance procedures, etc., as more particularly described in **Schedule D**;

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- 1.1.25 “**Construction Works**” means all construction works necessary to complete the Project in accordance with this Agreement;
- 1.1.26 “**Contractor**” means the person or persons, as the case may be, with whom the Developer has entered into any of the EPC Contract or any other agreement or a material contract for the construction and development of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Developer;
- 1.1.27 “**Conveyance Deed**” refers to and shall mean the conveyancing deed to be executed by and between the Client and the Developer on the form set out in **Schedule O**, subject to the fulfillment by the Developer of its obligations as contained herein, whereby the title of the Residential, Commercial and Public Building Plots on the Project Site shall be transferred to the Developer in terms of this Agreement;
- 1.1.28 “**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
 - (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
 - (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Developer requires any reasonable action by the Developer that must be approved by the Client through its Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Client or the Independent Engineer to accord their approval;
- 1.1.29 “**Damages**” shall have the meaning set forth in Article 1.2.1 (v);

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- 1.1.30 **“Defect Liability Period”** shall have the meaning set forth in Article 23.1;
- 1.1.31 **“Development Works”** means the planning and execution of infrastructure of the Project such as roads, street lights, water supply and sewerage system, electricity, gas, telecommunications and such like amenities in terms of the LDA-PHS Rules 2014;
- 1.1.32 **“Developer Default”** shall have the meaning set forth in Article 21.1;
- 1.1.33 **“Dispute”** shall have the meaning set forth in Article 27.1;
- 1.1.34 **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 27;
- 1.1.35 **“Document”** or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
- 1.1.36 **“Drawings”** means all of the drawings, designs, calculations and documents to be submitted by the Developer and Approved by the Client for the Construction and Development of the Project Assets to as set forth in Schedule E, and shall include ‘as built’ drawings of the Project Assets;
- 1.1.37 **“Delivery Schedule”** means schedule for delivery of completed AHA Units in habitable condition to the Client as set forth in Annex-IV of Schedule G;
- 1.1.38 **“Engineering, Procurement and Construction Contract”** or **“EPC Contract”** means the engineering, procurement and construction contract or contracts entered into by the Developer with one or more Contractors for, inter alia, engineering and Construction and Development of the Project Assets in accordance with the provisions of this Agreement;
- 1.1.39 **“EPC Contractor”** means the person with whom the Developer has entered into an EPC Contract;
- 1.1.40 **“Encumbrances”** means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or

priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

1.1.41 **“Equity”** means the sum representing the paid up equity share capital of the Developer for meeting the equity component of the Financial Package, and shall for convertible instruments or other such purposes of this Agreement include similar forms of capital, which shall compulsorily convert into equity share capital of the Developer, and any interest-free funds advanced by any shareholder of the Developer for meeting such equity component;

1.1.42 **“Financial Close”** means the fulfillment of all conditions precedent to the availability of initial funds required for Construction and Development of Project Assets as agreed under the Financing Package;

1.1.43 **“Financial Model”** means the financial model indicating the total capital cost of Construction and Development of the Project Assets and revenues therefrom on the basis of which financial viability of the Project has been determined, and includes a description of the assumptions and parameters used for making calculations and projections;

1.1.44 **“Financial Package”** means the package indicating the financial arrangements required for Construction and Development of the Project Assets, as set forth in the Financial Model and agreed by the Client, and includes Equity, all financial assistance specified in the Financing Agreements, if any, and revenues resulting from the Project;

1.1.45 **“Financing Agreements”** means the agreements executed by the Developer in respect of financial arrangements to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made therein;

1.1.46 **“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 19;

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- 1.1.47 “**GoPb**” the Government of Punjab, Pakistan;
- 1.1.48 “**GoP**” the Government of Pakistan;
- 1.1.49 “**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;
- 1.1.50 “**Handover Certificate**” means the Project Milestones Achievement Certificate issued upon completion and transfer of AHA Units and associated On-Site Infrastructure in accordance with Delivery Schedule;
- 1.1.51 “**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 26.3;
- 1.1.52 “**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 26.3;
- 1.1.53 “**Independent Engineer**” shall have the meaning set forth in Article 15;
- 1.1.54 “**Indirect Political Event**” shall have the meaning set forth in Article 19.3;
- 1.1.55 “**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to Article 17, and includes all insurances required to be taken out by the Developer but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;
- 1.1.56 “**Intellectual Property**” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property

rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

1.1.57 **“LDA-PHS Rules 2014”** means the Lahore Development Authority Private Housing Schemes Rules 2014.

1.1.58 **“LoA”** or **“Letter of Award”** means the letter of award referred to in Recital G;

1.1.59 **“Lenders”** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Developer to the extent as permissible in the Agreement;

1.1.60 **“Master Plan”** means land usage allocation of the Project Site for Construction and Development of the Project Assets in the form of a map in graphical form that is supported by written statements of goals and objectives, strategy, financial implications and policies for planning and development for an area and includes a layout plan, structure plan, an outline Construction and Development Plan and a spatial plan in terms of the LDA-PHS Rules 2014 as set forth in Annex-I of Schedule D;

1.1.61 **“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

1.1.62 **“Non-Political Event”** shall have the meaning set forth in Article 19.2;

1.1.63 **“On Site Infrastructure”** means the infrastructure including the embankments, pavements, roads, ramps, drainage works, water supply, lighting facilities, gas, telecommunication electricity lines/poles erected or developed on the Project Site more particularly set forth in Annex-I of Schedule C;

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- 1.1.64 **“Off Site Infrastructure”** means the off-site infrastructure as set forth in Annex-II of Schedule C to be constructed and developed by a Public Sector Entity;
- 1.1.65 **“Plots”** means the Residential, Commercial and Public Building Plots to be transferred to the Developer under the Conveyance Deed in terms of Article 16 as saleable area of the Project Site;
- 1.1.66 **“Plot Transfer Plan”** means transfer schedule for Plots to be transferred to the Developer as set forth in Annex-III of Schedule G
- 1.1.67 **“Performance Security”** shall have the meaning set forth in Article 8;
- 1.1.68 **“Political Event”** shall have the meaning set forth in Article 19.4;
- 1.1.69 **“PPP Act of 2014”** means The Punjab Public Private Partnership Act 2014;
- 1.1.70 **“PPP Cell”** the PPP Cell established in accordance with Section 5 of the PPP Act of 2014;
- 1.1.71 **“Pre-Development Period”** means the period from the signing of the Agreement till the Appointed Date;
- 1.1.72 **“Private Housing Site”** means the land parcels of the Project Site other than the AHA Site dedicated for development of Plots, as described in Schedule A;
- 1.1.73 **“Project”** means the Construction and Development of the Project Assets on the Project Site in accordance with the provisions of this Agreement, and includes all works, construction, building, , development, infrastructure, facilities, utilities and installations relating to or in respect of the Scope of the Project;
- 1.1.74 **“Project Agreements”** means this Agreement, the Financing Agreements, EPC Contract and any other agreements or material contracts that may be entered into by the Developer with any person in connection with matters relating to, arising out of or incidental to the Project;

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- 1.1.75 **“Project Assets”** means all physical and other assets relating to and forming part of the Project Site including
- (a) Affordable Housing Apartments;
 - (b) On Site infrastructure;
 - (c) All Project Facilities and Utilities constructed and developed at the Project Site; and
 - (d) Development Works.
- 1.1.76 **“Project Completion Certificate”** shall have the meaning set forth in Article 12 on form set forth in Annex-I of the Schedule G;
- 1.1.77 **“Project Completion Date”** means the date on which the Project Completion Certificate is issued;
- 1.1.78 **“Project Completion Schedule”** means the progressive Project Milestones set forth in Schedule G for completion of the Construction and Development of the Project Assets on or before the Scheduled Completion Date;
- 1.1.79 **“Project Facilities and Utilities”** means all the facilities and utilities forming part of Project Assets on Project Site, as described in Schedule C;
- 1.1.80 **“Project Site”** means land located at Burki Road, Lahore which shall be handed over by the Client to the Developer pursuant to this Agreement for Construction and Development of the Project Assets as described in Schedule A;
- 1.1.81 **“Project Milestones”** means the project milestones set forth in Schedule G;
- 1.1.82 **“Project Milestones Achievement Certificate”** shall have the meaning set forth in Article 12 on form set forth in Annex-II of the Schedule G;
- 1.1.83 **“Proprietary Rights”** means the rights of the Developer to market, sell, lease, licence and other similar right for commercial exploitation of the Plots under the Applicable Laws;

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- 1.1.84 **“Public Sector Entity”** means GoP, GoPb or any federal, provincial, district or local government, ministry, department, commission, board, body, bureau, agency, authority, instrumentality, Court or other statutory, regulatory, judicial or administrative body, having jurisdiction over the Developer, the Project Site, the RoW, the Works, the Project Assets, but shall not include the Client or the Client’s Representative;
- 1.1.85 **“Public Building Plots”** means the plots on the Project Site to be developed by the Developer in accordance with the Master Plan for Public Buildings such as dispensary, post office, police station, local government office, educational institution, hospital, clinic, mosque, fire station, community centre, clubs and such other public building;
- 1.1.86 **“Project Auditors”** means a reputable firm of chartered accountants acting as the Project Auditors for the Project appointed in accordance with Article 18.2;
- 1.1.87 **“Request for Proposal”** or **“RFP”** shall have the meaning set forth in Recital E;
- 1.1.88 **“Residential Plots”** means the plots on the Private Housing Site to be developed by the Developer for residential use in accordance with the Master Plan;
- 1.1.89 **“Rs.”** or **“Rupees”** or **“Pak Rupees”** means the lawful currency of Pakistan;
- 1.1.90 **“Right of Way”** or **“RoW”** means the constructive possession of the Project Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and development of the Project as applicable in accordance with this Agreement;
- 1.1.91 **“Scheduled Completion Date”** shall have the meaning set forth in Article 11 and Schedule G;
- 1.1.92 **“Scope of the Project”** shall have the meaning set forth in Article 4;
- 1.1.93 **“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, technology, capacity and other requirements for the Project Assets as set forth in Schedule F, and any modifications thereof, or additions thereto

submitted by the Developer to, and expressly approved by, the Client;

1.1.94 “**Steering Committee**” the Committee established under Section 4 of the PPP Act of 2014;

1.1.95 “**Suspension**” shall have the meaning set forth in Article 20.1;

1.1.96 “**Taxes**” means any taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Federal, Provincial or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Public Sector Entity, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

1.1.97 “**Termination**” means the expiry or termination of this Agreement;

1.1.98 “**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

1.1.99 “**Termination Payment**” means the amount payable by the Client to the Developer upon Termination in accordance with the provisions of this Agreement;

1.1.100 “**Tests**” means the tests set forth in Schedule J to determine the completion of Construction of the Project in accordance with the provisions of this Agreement;

1.1.101 “**Total Project Cost**” means the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Model; or
- (b) the actual capital cost of the Project on the Project Completion Date.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (b) references to laws of Pakistan having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
 - (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
 - (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
 - (f) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, drawing, developing, landscaping, provision of bulk services, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
 - (g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;
 - (h) any reference to any period of time shall mean a reference to that according to Pakistan Standard Time;
 - (i) any reference to day shall mean a reference to a calendar day;
 - (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday or public holidays);

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- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
 - (n) the words importing singular shall include plural and vice versa;
 - (o) references to any gender shall include the other and the neutral gender;
 - (p) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (q) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Applicable Laws;
 - (r) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article shall not operate so as to increase liabilities or obligations of the Client hereunder or pursuant hereto in any manner whatsoever;
 - (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
 - (t) the Schedules, Annexes and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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- (u) references to Recitals, Articles, Articles, Sub-Articles, Schedules or Annexes in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Articles, Sub-Articles, Schedules and Annexes of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (w) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the Client shall be provided free of cost and in three copies, and if the Client is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain a copy thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof (rule of proferentem), shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Articles Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, Articles and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually

explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement;
- (b) all other agreements and documents forming part hereof or referred to herein; and
- (c) RFP

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) or (c) above.

1.4.2 Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the Developer

The Developer represents and warrants to the Client that:

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- (a) it is duly organised and validly existing under the laws of Pakistan, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
 - (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
 - (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
 - (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
 - (e) it is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
 - (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
 - (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
 - (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

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- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Public Sector Entity which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
 - (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
 - (k) the selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Client to enter into this Agreement with the Developer pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (l) all its rights and interests in the Project and the Project Assets shall pass to and vest in the Client on the free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Client, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
 - (m) no representation or warranty by it contained herein or in any other document furnished by it to the Client or to any Public Sector Entity in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - (n) all information provided by the Developer in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

2.2 Representations and Warranties of the Client

The Client represents and warrants to the Developer that:

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- (a) it has full power and authority to perform, execute, deliver its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
 - (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
 - (c) it has the financial standing and capacity to perform its obligations under this Agreement;
 - (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
 - (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Public Sector Entity which may result in any material adverse effect on the Client's ability to perform its obligations under this Agreement;
 - (f) it has complied with Applicable Laws in all material respects;
 - (g) it has the right, power and authority to manage and operate the Project up to the Appointed Date; and
 - (h) it has good and valid right to the Project Site, and has power and authority to grant a licence in respect thereto to the Developer.

2.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 3
DISCLAIMER

3.1 Disclaimer

- (a) The Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Project Site (land parcels of AHA Site and Private Housing Site), existing infrastructures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Client or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Client makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Developer confirms that it shall have no claim whatsoever against the Client in this regard.
- (b) The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth herein and hereby acknowledges and agrees that the Client shall not be liable for the same in any manner whatsoever to the Developer, or any person claiming through or under any of them.
- (c) The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 3.1(a) shall not vitiate this Agreement, or render it voidable.
- (d) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 3.1(a) above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Client to give any notice pursuant shall not prejudice the disclaimer of the Client contained in Article 3.1(a) and shall not in any manner shift to the Client any risks assumed by the Developer pursuant to this Agreement.
- (e) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Developer and the

Client shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 4
SCOPE OF THE PROJECT

4.1 Scope of the Project

The scope of the project (the “**Scope of the Project**”) shall mean and include:

- (a) conceptualizing, designing, engineering, financing, procurement, and Construction and Development of the Project Assets in accordance with Applicable Laws, Applicable Permits, as per Good Industry Practice and on terms and conditions of this Agreement and in conformity with Construction and Development Plan and Drawings, the Specifications and Standards and Project Completion Schedule as specified in Schedules B, C, D, E F & G.
- (b) handing over the physical possession of the all Project Assets to the Client upon completion of Construction and Development Works in accordance with Project Completion Schedule as specified in Schedule G; and
- (c) performance and fulfillment of all other obligations of the Developer in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Developer under this Agreement.

ARTICLE 5
CONDITIONS PRECEDENT

5.1 Conditions Precedent

- (a) Save and except as expressly provided in this Agreement or unless the context otherwise requires the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent specified in this Article.

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- (b) The Conditions Precedent required to be satisfied by the Developer during the Pre-Development Period shall be deemed to have been fulfilled when the Developer shall have:
- (i) provided Performance Security to the Client in accordance with Article 8; and
 - (ii) delivered to the Client 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a authorized officer of the Developer, along with 1 (one) soft copy of the Financial Model; and
 - (iii) prepared and submitted to the Client for approval, in accordance with Article 10, and for attachment to this Agreement as Schedules, the Master Plan, Construction and Development Plan, Drawings, Standards and Specifications, Project Completion Schedule and Plot Transfer Plan.
- (c) The Conditions Precedent required to be satisfied by the Client during the Pre-Development Period shall be deemed to have been fulfilled when the Client shall have:
- (i) executed the Development Agreement; and
 - (ii) procured for the Developer the Right of Way to the Project Site in accordance with the provisions of Article 9
- (d) The Developer may, upon fulfilling Conditions Precedents specified in Article 5.1(b), at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Client, by notice require the Client to satisfy any or all of the Conditions Precedent specified in Article 5.1(c) within a period of (45) forty five days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein.
- (e) Each Party may upon receipt of a written request may, in its discretion, waive any of the Conditions Precedent required to be fulfilled by the other Party as specified in this Article. For the avoidance of doubt, the Party granting the waiver may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

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- (f) Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
 - (g) The Parties shall notify each other in writing at least once in two weeks on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

5.2 Damages for delay by the Developer

In the event that (i) the Developer does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 5.1(b) within a period of 60 (sixty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 6 or other breach of this Agreement by the Client, or due to Force Majeure, the Developer shall pay to the Client Damages in an amount calculated at the rate of 0.33% (one third per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent.

ARTICLE 6 OBLIGATIONS OF THE DEVELOPER

6.1 Obligations of the Developer

- (a) Subject to and on the terms and conditions of this Agreement, the Developer shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construct, development and Construction and Development of the Project Assets as applicable and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (b) The Developer shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement. For the sake of clarity and avoidance of doubt, it is agreed between the Parties that the Developer shall be liable for any tax levied on it by any competent authority on the Construction and Development of the Project Assets and/or on the procurement

of the materials and other services involved in the Construction and Development of the Project Assets.

- (c) Subject to the provisions of Articles 6.1(a) and 6.1(b), the Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (d) The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (i) make, or cause to be made, necessary applications to the relevant Public Sector Entities with such particulars and details as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (ii) procure, as required, the appropriate rights, consents, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (iii) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (iv) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement;
 - (v) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (vi) support, cooperate with and facilitate the Client in the execution of the Project in accordance with the provisions of this Agreement; and
 - (vii) handover possession of the Project Assets to the Client upon its completion as per the provisions of this Agreement or its earlier Termination, in accordance with the provisions thereof.

6.2 Obligations relating to Project Agreements

- (a) It is expressly agreed that the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Developer from its obligations or liability hereunder
- (b) The Developer shall submit to the Client the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Client shall have the right but not be obliged to undertake such review and provide its comments, if any, to the Developer within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Developer shall submit to the Client a true copy thereof, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Client and/or its failure to review and/or convey its observations on any document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Client be liable for the same in any manner whatsoever.
- (c) The Developer shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Client if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Client, and in the event that any replacement or amendment is made without such consent, the Developer shall not enforce such replacement or amendment nor permit enforcement thereof against the Client. For the avoidance of doubt, the Client acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Developer.

6.3 Obligations relating to Change in Ownership

- (a) The Developer shall not undertake or permit any Change in Ownership, except with the prior approval of the Client.

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- (b) Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that:
- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Developer; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Developer by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Client, the decision of the Client in this behalf being final, conclusive and binding on the Developer, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Developer without such prior approval of the Client. It is also agreed that the Client shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer from any liability or obligation under this Agreement.

For the purposes of this Article:

- (a) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in Pakistan or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Developer; and
- (b) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in Pakistan or abroad) the Equity of the Developer, not less than half of the directors on the Board of Directors of the Developer or of any company, directly or indirectly whether situate in Pakistan or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Developer shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Developer.

6.4 Employment of trained personnel

The Developer shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

ARTICLE 7 **OBLIGATIONS OF THE CLIENT**

7.1 Obligations of the Client

- (a) The Client shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (b) The Client agrees to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - (i) upon written request from the Developer, procure sanction of the Project in terms of LDA-PHS Rules 2014, provided that the Developer prepares and revises, if necessary, the Master Plan, at its own cost and expense, in accordance with the requirements of the relevant Public Sector Entity;
 - (ii) upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide reasonable support and assistance to the Developer in procuring Applicable Permits required from any Public Sector Entity for execution of the Project;
 - (iii) upon written request from the Developer, provide reasonable assistance to the Developer in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Developer than those generally available to commercial customers receiving substantially equivalent services;
 - (iv) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

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- (iv) support, cooperate with and facilitate the Developer in the execution of the Project in accordance with the provisions of this Agreement; and
 - (v) provide vacant possession of the Project Site free from encroachments to the Developer.

7.2 Client's Representative

- (a) Client shall, within thirty (30) Days from the date of this Agreement, appoint, at its own cost and expense, the Client's Representative, and shall duly notify the same to the Developer in writing. The functions of the Client's Representative shall include the following:
 - (i) coordinate and facilitate on the request of the Developer, services to be provided by the Public Sector Entities;
 - (ii) ensure that all the relevant Approvals are provided within the prescribed time period, and procurement of all the relevant Applicable Permits is facilitated, so that the same are procured within the prescribed time period;
 - (iii) monitor the progress of the Construction and Development of the Project Assets, in addition to the Independent Engineer, so that they are carried out in conformity with the Approved Construction and Development Plan, Drawings, and Good Industry Practice and otherwise in accordance with this Agreement and Applicable Laws;
 - (iv) attend the joint inspection of the Works with respect to issuance of Project Milestones Achievement Certificates, Handover Certificates, and Project Completion Certificate;
 - (v) guide the Developer so that it complies with appropriate Specifications and Standards approved by Client or any other applicable standards, so that the Developer constructs and develops the Project Assets in a good condition in conformity with the terms of this Agreement;

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- (vi) guide and facilitate the Developer so that it complies with the terms of this Agreement;
 - (vii) clarify and resolve with the Developer, any difficulties and disputes arising pursuant to this Agreement and any complaints by or against third parties;
 - (viii) exercise and enforce the rights of the Client pursuant to the terms of this Agreement; and
 - (ix) take any and all steps and actions in discharge of Client's obligations under this Agreement to facilitate the smooth implementation of the Project.
- (b) Except as notified by the Client to the Developer in writing, the Concessionaire shall be entitled to treat any act of the Client's Representative which is authorized by this Agreement as being expressly authorized by the Client, and the Developer shall not be required to determine whether an express authority has in fact been granted to the Client's Representative in that regard.
- (c) Notwithstanding anything to the contrary contained in this Agreement, no action by the Client's Representative may be construed as waiver of any rights and obligations of the Client arising under this Agreement.

ARTICLE 8 PERFORMANCE SECURITY

8.1 Performance Security

- (a) The Developer shall, for the performance of its obligations hereunder during the Construction Period and the Defects Liability Period, provide to the Client no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a AA rated Financial Institution for a sum equivalent to **Rs. 250,000,000/- (Rupees Two Hundred and Fifty Million only)** in the form set forth in Schedule J (the "**Performance Security**"). Until such time the Performance Security is provided by the Developer pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Client shall release the Bid Security to the Developer.

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- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Developer within a period of 60 (Sixty) days from the date of this Agreement, the Client may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

8.2 Appropriation of Performance Security

Upon occurrence of a Developer Default or failure to meet any Condition Precedent, the Client shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Client shall be entitled to terminate this Agreement in accordance with Article 21. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the Client shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 21.

8.3 Release of Performance Security

The Performance Security shall remain in force and effect till the expiry of three months from the date of expiry of Defect Liability Period, however the Performance Security shall not be released if the Developer is in breach of this Agreement. Upon request made by the Developer for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Article, the Client shall release the Performance Security forthwith.

ARTICLE 9
RIGHT OF WAY

9.1 The Project Site

The Project Site of the Project shall comprise the land parcels for AHA Site and Private Housing Site described in **Schedule A** and in respect of which the right of way shall be provided and granted by the Client to the Developer in accordance with this Agreement (the “**Project Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Project Site shall be construed as references to the land required for Construction and Development of the Project Assets as set forth in **Schedule A**.

9.2 Access and Right of Way

- (a) The Client hereby grants to the Developer access to the Project Site for carrying out any surveys, investigations and soil tests that the Developer may deem necessary during the Pre-Development Period, it being expressly agreed and understood that the Client shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Developer on or about the Project Site pursuant hereto in the event of Termination or otherwise.
- (b) In consideration of this Agreement and the covenants and warranties on the part of the Developer herein contained, the Client, in accordance with the terms and conditions set forth herein particularly as set forth in Project Completion Schedule, hereby grants to the Developer site access for Construction and Development of Project Assets, together with singular rights, liberties, privileges, easements and appurtenances whatsoever to the Project Site for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- (c) The access and right of way granted by this Agreement to the Developer shall always be subject to existing rights of way of the Client.
- (d) It is expressly agreed that the access granted hereunder and/or pursuant to this Agreement shall terminate automatically and forthwith, without the need for any action to be taken by the Client to terminate this Agreement for any reason whatsoever.

9.3 Project Site to be free from Encumbrances

Subject to the provisions this Agreement, the Project Site shall be made available by the Client to the Developer pursuant hereto free from all Encumbrances and occupations and without the Developer being required to make any payment to the Client on account of any costs, compensation, expenses and charges for the acquisition and use of Project Site for the duration of the Construction Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances. It is further agreed that the Developer accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

9.4 Protection of Project Site from encroachments

During the term of this Agreement, the Developer shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Developer to place or create any Encumbrance or security interest over all or any part of the Project Site or the Project Assets, or on any rights of the Developer therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

9.5 Access to the Client and the Independent Engineer

The access, right of way, and right to the Project Site granted to the Developer hereunder shall always be subject to the right of access of the Client and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

ARTICLE 10 CONSTRUCTION AND DEVELOPMENT PLAN

10.1 Approval of the Client

- (a) Within a period of 60 (sixty) days from the date of this Agreement the Developer shall prepare and submit three copies each of the Master Plan, Construction and Development Plan, Drawings, Standards and Specifications, Project Completion Schedule and Plot Transfer Plan to the Client for review. The Developer shall ensure that the Documentation is

at least as per the structural, architectural and master planning requirements and standards communicated by the Client;

- (b) By submitting the Documents specified in this Article for review to the Client, the Developer shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and any requirements that may have been communicated by the Client;
- (c) Within 15 (fifteen) days of the receipt of the Documents, the Client and the Independent Engineer shall review the same and convey its observations to the Developer with particular reference to their conformity or otherwise with the Scope of the Project and any requirements that may have been communicated by the Client;
- (d) If the aforesaid observations of the Client and/or the Independent Engineer indicate that the Documents are not in conformity with the Scope of the Project or any requirements that may have been communicated by the Client, such Documents shall be revised by the Developer and resubmitted to the Client and the Independent Engineer for review. The Client and/or the Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Documents;
- (e) No review and/or observation of the Client and/or the Independent Engineer and/or its failure to review and/or convey its observations on any Document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Client be liable for the same in any manner;

ARTICLE 11

CONSTRUCTION AND DEVELOPMENT OF THE PROJECT ASSETS

11.1 General obligations

Prior to commencement of Construction and Development Works, the Developer shall:

- (a) appoint, nominate its representative duly authorised to deal with the Client in respect of all matters under or arising out of or relating to this Agreement;

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- (b) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
 - (c) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

11.2 Execution of the Project

- (a) On or after the Appointed Date, the Developer shall undertake Construction and Development of the Project Assets as specified in Schedule B and in conformity with the Approved Construction and Development Plan, Drawings and Specifications and Standards. The Developer agrees and undertakes that Construction and Development of the Project Assets shall be completed on or before the Scheduled Completion Date.
- (b) The Developer shall construct the Project Assets in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Developer fails to achieve any Project Milestone within a period of 30 (thirty) days from the date set forth for such Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Client, it shall pay Damages to the Client in a sum calculated at the rate of 3% (three per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above.
- (c) Upon achievement of each Project Milestone, the Client shall issue Project Milestone Achievement Certificate in a manner as prescribed in Construction and Development Plan and the Project Completion Schedule for the purposes of transfer of Plots to the Developer in accordance to the Plots Transfer Plan.
- (d) In the event that Construction and Development of the Project Assets are not completed within **180 (one eighty) days** from the Scheduled Completion Date, unless the delay is on account

of reasons solely attributable to the Client or due to Force Majeure, the Client shall be entitled to terminate this Agreement.

11.3 Inspection of Project Site

- (a) During the Construction Period, the Client shall inspect the Project Site at least once in fortnight and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project, Construction and Development Plan and Specifications and Standards. It shall send a copy of the Inspection Report to the Developer within 7 (seven) days of such inspection and upon receipt thereof, the Developer shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Client shall not relieve or absolve the Developer of its obligations and liabilities hereunder in any manner whatsoever.
- (b) Such Inspection Report shall also contain a separate chapter, stating in reasonable detail, the physical progress of the Construction and Development of the Project Assets vis-a-vis the Construction and Development Plan submitted by the Developer, based on the inspection to be carried out by the Client.

11.4 Tests

- (a) For determining that the Construction Works conform to the Construction and Development Plan, Drawings and Specifications and Standards, the Client shall require the Developer to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Developer shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Client and the Independent Engineer. The costs incurred on such tests shall be borne by the Developer.
- (b) In the event that results of any tests conducted under this Article establish any defects or deficiencies in the Construction Works, the Developer shall carry out remedial measures and furnish a report to the Client in this behalf. The Client shall

require the Developer to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Article shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Article shall be undertaken in addition to and independent of the tests that shall be carried out by the Developer for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Developer to the Client forthwith.

11.6 Monthly progress reports

During the Construction Period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish to the Client and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Client.

ARTICLE 12 PROJECT MILESTONES AND COMPLETION OF THE PROJECT

12.1 Tests upon achievement of Project Milestone

- (a) At least 30 (thirty) days prior to the likely achievement of each Project Milestone with respect to construction and development of the Project Assets, the Developer shall notify the Client of its intent to subject the completed Project Assets to Tests. The date and time of each of the Tests shall be determined by the Client in consultation with the Developer. The Developer shall provide such assistance as the Client may reasonably require for conducting the Tests. In the event of the Developer and the Client failing to mutually agree on the dates for conducting the Tests, the Developer shall fix the dates by not less than 10 (ten) days' notice to the Client.
- (b) All Tests shall be conducted in accordance with Schedule I. The Client shall observe, monitor and review the results of the Tests to determine compliance of the completed Project Assets with Construction and Development Plan, Drawings and Specifications and Standards and if it is reasonably anticipated or determined by the Client during the course of any Test that the Project Assets or any part thereof does not meet the

Construction and Development Plan, Drawings and Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Developer shall provide to the Client copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Client may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Assets with Specifications and Standards.

12.2 Project Milestone Achievement Certificate

Upon completion of Construction and Development Works with respect to the Project Assets on each Project Milestone and the Client determining the Tests to be successful, it shall forthwith issue to the Developer a certificate substantially in the form set forth in Schedule G (the “**Project Milestone Achievement Certificate**”).

Provided that the Client shall refuse issuance of the Project Milestone Achievement Certificate in case any work(s) or thing(s) forming part of the Construction and Development of any of the Project Assets is/are outstanding and the decision of the Client in this regard shall be final and binding upon the Developer. Provided further that the Client shall not withhold the Project Milestone Achievement Certificate for reason of any work remaining incomplete if the delay in completion thereof, is attributable to the Client.

12.3 Withholding of Project Milestone Achievement Certificate

If the Client determines that any of the Project Assets or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Developer. If the Client is of the opinion that any of the Project Assets is not in conformity with the Construction and Development Plan and/or Specification and Standards, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Developer of the defects and deficiencies in any of the Project Assets and withhold issuance of the Project Milestone Achievement Certificate. Upon receipt of such notice, the Developer shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

12.4 Tests upon completion of the Construction and Development of the Project Assets

- (a) At least 30 (thirty) days prior to the likely completion of the Construction and Development of the Project Assets, the Developer shall notify the Client of its intent to subject the Project Assets to Tests. The date and time of each of the Tests shall be determined by the Client in consultation with the Developer. The Developer shall provide such assistance as the Client may reasonably require for conducting the Tests. In the event of the Developer and the Client failing to mutually agree on the dates for conducting the Tests, the Developer shall fix the dates by not less than 10 (ten) days' notice to the Client.
- (b) All Tests shall be conducted in accordance with Schedule I. The Client shall observe, monitor and review the results of the Tests to determine compliance of the Project Assets with Construction and Development Plan and Specifications and Standards and if it is reasonably anticipated or determined by the Client during the course of any Test that the Project Assets or any part thereof does not meet the Construction and Development Plan and Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Developer shall provide to the Client copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Client may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Assets with Specifications and Standards.

12.5 Project Completion Certificate

Upon completion of Construction Works with respect to the Project Assets and the Client determining the Tests to be successful, it shall forthwith issue to the Developer a certificate substantially in the form set forth in Schedule G (the "**Project Completion Certificate**").

Provided that the Client shall refuse issuance of the Project Completion Certificate in case any work(s) or thing(s) forming part of the Construction and Development of the Project Assets is/are outstanding and the decision of the Client in this regard shall be final and binding upon the Developer. Provided further that the Client

shall not withhold the Project Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof, is attributable to the Client.

12.6 Withholding of Project Completion Certificate

If the Client determines that the Project Assets or any part thereof does not conform to the provisions of this Agreement and Applicable Laws, it shall forthwith make a report in this behalf and send copies thereof to the Developer. If the Client is of the opinion that any of the Project Assets is not fit and safe for service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Developer of the defects and deficiencies in any of the Project Assets and withhold issuance of the Project Completion Certificate. Upon receipt of such notice, the Developer shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

12.7 Rescheduling of Tests

- (a) If the Client is unable to issue the Project Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.
- (b) Construction and Development of the Project Assets shall be deemed to be complete when the Project Completion Certificate is issued under the provisions of Article 12. Upon the issuance of the Project Completion Certificate, the Developer shall be required to handover possession of the completed Project Assets to the Client thereby divesting all its rights and/or obligation with respect to the completed Project Assets to the Client.

12.8 Failure to complete Project on time

If the Developer does not achieve any of the Project Milestones or the Client and/or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that completion of the construction work is not likely to be achieved by the Scheduled Completion Date, it shall notify the Developer to this effect, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Client in reasonable detail

about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

ARTICLE 13 **CHANGE OF SCOPE**

13.1 Change of Scope

- (a) The Client may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article and the costs (if any) thereof shall be expended by the Developer and reimbursed to it by the Client in accordance with Article 13.3.
- (b) Subject to Applicable Laws, if the Developer determines at any time that a Change of Scope is necessary for providing safer and improved services to the occupants of the Affordable Housing Apartments, it shall by notice in writing require the Client to consider such Change of Scope. The Client shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings thereof in accordance with this Article or inform the Developer in writing of its reasons for not accepting such Change of Scope. Any such Change of Scope shall be made in accordance with the provisions of this Article and the costs shall be borne by the Developer.
- (c) Any works or services which are provided under and in accordance with this Article shall form part of the Project Assets and the provisions of this Agreement shall apply *mutatis mutandis* to such works or development.

13.2 Procedure for Change of Scope

- (a) In the event of the Client determining that a Change of Scope is necessary, it shall issue to the Developer a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- (b) Upon receipt of a Change of Scope Notice, the Developer shall, with due diligence, provide to the Client such information as is

necessary, together with preliminary Documentation in support of:

- (i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (ii) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Client to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Developer in providing such information shall be reimbursed by the Client.
- (c) Upon receipt of information set forth in Article 13.2(a)&(b), if the Client decides to proceed with the Change of Scope, it shall convey its preferred option to the Developer, and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Client shall issue an order (the “**Change of Scope Order**”) requiring the Developer to proceed with the performance thereof. In the event that the Parties are unable to agree, the Client may, by issuing a Change of Scope Order, require the Developer to proceed with the performance thereof pending resolution of the Dispute.
- (d) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Developer under this Article.

13.3 Payment for Change of Scope initiated by the Client

- (a) Within __ (____) days of issuing a Change of Scope Order, the Client shall make an advance payment to the Developer in a sum equal to __% (____ per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, __% (____ per cent) of the cost assessed by the Independent Engineer. The Developer shall, after commencement of work, present to the Client bills for payment in respect of the works in progress or completed works, as the case may be,

supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Client shall disburse to the Developer such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- (b) Notwithstanding anything to the contrary contained in Article 13.3(a), all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Developer, subject to an aggregate ceiling of ___% (___ per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Client in accordance with Article 13.3.(a) For the avoidance of doubt, it is agreed that the aforesaid _____% (_____ per cent) of the Total Project Cost shall, to the extent borne by the Developer, be deemed to form part of the actual capital cost of the Project.

ARTICLE 14 **FINANCIAL CLOSE**

14.1 Financial Close

- (a) The Developer hereby agrees and undertakes that it shall achieve Financial Close within 60 (sixty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Client in a sum calculated at the rate of 0.33% (one third per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Client in procuring satisfaction of the Conditions Precedent specified in Article 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Developer shall be in addition to the Damages, if any, due and payable under the provisions of Article 5.2.

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- (b) The Developer shall, upon occurrence of Financial Close, notify the Client forthwith, and shall have provided to the Client, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a duly authorized officer of the Developer, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof.

14.2 Termination due to failure to achieve Financial Close

- (a) Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 14.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Article 14.2 (a) shall not apply.
- (b) Upon Termination under Article 14.2 (a), the Client shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Client being in default of any of its obligations under Article 5.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Article 5.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Client shall be entitled to encash the Performance Security.

ARTICLE 15 INDEPENDENT ENGINEER

15.1 Appointment of Independent Engineer

The Client shall appoint a consulting engineering firm from a panel of 5 (five) firms or bodies corporate nominated by the Developers in accordance with the selection criteria set forth in **Schedule J**, to be the independent consultant under this Agreement (the

“**Independent Engineer**”). The appointment shall be made no later than 60 (sixty) days from the date of this Agreement and shall be till the expiry of the Defect Liability Period.

15.2 Duties and functions

- (a) The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule K**.
- (b) The Independent Engineer shall submit regular periodic reports (at least once in fortnight) to the Client in respect of its duties and functions set forth in **Schedule K**.
- (c) The Independent Engineer shall be responsible for the ascertaining the physical and financial progress for Project Assets and report the same to the Client in the manner as set forth in **Schedule K** with a copy to the Developer.

15.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Client and subject to the limits set forth in **Schedule K**, one-half of such remuneration, cost and expenses shall be reimbursed by the Developer to the Client within 15 (fifteen) days of receiving a statement of expenditure from the Client.

15.4 Termination of appointment

- (a) The Client may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Article 15.1.
- (b) If the Developer has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Client and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Client shall hold a tripartite meeting with the Developer and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Client and the Developer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution

Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Client shall appoint forthwith another Independent Engineer in accordance with Article 15.1.

15.5 Authorised signatories

The Client shall require the Independent Engineer to designate and notify to the Client and the Developer up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

15.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE - 16

TRANSFER OF RESIDENTIAL, COMMERCIAL AND PUBLIC BUILDING PLOTS TO THE DEVELOPER BY THE CLIENT AND DEVELOPMENT OF HOUSING SCHEME

16.1 Transfer of Plots

- (a) In consideration of the Construction and Development of the Project Assets and subject to and in accordance with the provisions of this Agreement, particularly the Construction and Development Plan, Project Completion Schedule and Plot Transfer Plan, Applicable Laws and Applicable Permits, the Client shall transfer to the Developer Plots excluding Public Building Plots on AHA Site through the execution of Conveyance Deeds.
- (b) Upon transfer of the Plots to the Developer, the Client shall also transfer all Proprietary Rights in respect of the transferred Plots.

16.2 Sale and Marketing of the Plots

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- (a) Notwithstanding anything to the contrary contained in this Agreement but subject to the Conveyance Deed, the Parties expressly agree that, the Developer shall be entitled to commence booking of Plots (transferred to the Developer under the Conveyance Deeds) through a letter of allotment (herein the “**Letter of Allotment**”) and obtaining the requisite approvals from the relevant Public Sector Entity under the Applicable Laws.
 - (b) The Developer, while marketing the transferred Plots shall ensure, and expressly communicate in the draft Letter of Allotment, prior to booking of any Plot the Developer, and not the Client, shall be solely responsible for the timely construction, development, completion, operation and/or maintenance of the Private Housing Site and in the event of any breach by the Developer of its obligations and representation provided to such third parties at the time of booking, the Developer shall on its own account, indemnify such third parties for all losses and damages incurred by such third parties on account of such breach.

16.2 Management and Control of the Private Housing Site

- (a) Upon completion of the Defect Liability Period, the Client shall transfer all Applicable Permits particularly the sanction under LDA-PHS Rules 2014 in the name of the Developer along with the rights of management and control of the Private Housing Site.
- (b) Notwithstanding anything to the contrary contained in this Agreement but subject to the Conveyance Deed, the Parties expressly agree that, the Developer shall have the right to manage and control the Private Housing Site in accordance with the Applicable Laws.
- (c) The Developer undertakes that it shall not, in any manner, use the name or entity of the Client and/or any Public Sector Entity to advertise or display in connection to its own identity, brand equity or business interests in respect to the Private Housing Site.

ARTICLE 17 **INSURANCE**

17.1 Insurance during Construction Period

The Developer shall effect and maintain at its own cost, for the Project Assets as a whole, during the Construction Period and the Defect Liability Period, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Client as a consequence of any act or omission of the Developer during the Construction Period. The Developer shall procure that in each insurance policy, the Client shall be a co-insured.

17.2 Notice to the Client

No later than 15 (fifteen) days prior to commencement of the Construction Period, the Developer shall by notice furnish to the Client, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 15 (fifteen) days of receipt of such notice, the Client may require the Developer to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

17.3 Evidence of Insurance Cover

All insurances obtained by the Developer in accordance with this Article shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Developer shall furnish to the Client, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 30 (thirty) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Developer to the Client.

17.4 Remedy for failure to insure

If the Developer fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Client shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Developer, or in the event of computation of a Termination Payment, treat an amount

equal to the Insurance Cover as deemed to have been received by the Developer.

17.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Developer pursuant to this Article shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Client, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

17.6 Developer's waiver

The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Client and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Developer may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Developer pursuant to this Agreement (other than third party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance.

17.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Developer and it shall, notwithstanding anything to the contrary contained in this Agreement, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Assets.

ARTICLE 18 **ACCOUNTS AND AUDIT**

18.1 Audited accounts

The Developer shall maintain books of accounts recording all its payments and receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income,

expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by Project Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement.

18.2 Appointment of Project Auditors

- (a) The Developer shall appoint as its Project Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in **Schedule M**. All fees and expenses of the Project Auditors shall be borne by the Developer.
- (b) The Developer may terminate the appointment of Project Auditor after a notice of 45 (forty five) days to the Client, subject to the replacement Project Auditors being appointed from the Panel of Chartered Accountants.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the Client shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Project Auditors are required to do, undertake or certify pursuant to this Agreement.

18.3 Certification of claims by Project Auditors

Any claim or document provided by the Developer to the Client in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Project Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

18.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors, as the case may be, and the certification provided by the Project Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Client by recourse to the Dispute Resolution Procedure.

ARTICLE 19 FORCE MAJEURE

19.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in Pakistan of any or all of Non-Political Event, Indirect Political Event and Political Event, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

19.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site);
- (b) strikes or boycotts (other than those involving the Developer, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 22 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 19.3;

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- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Contractor;
 - (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Client;
 - (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
 - (f) any event or circumstances of a nature analogous to any of the foregoing.

19.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or country-wide strikes or industrial action for a continuous period of 22 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Contractor;

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- (e) any Indirect Political Event that causes a Non-Political Event;
or
 - (f) any event or circumstances of a nature analogous to any of the foregoing.

19.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Public Sector Entity:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of this Agreement;
- (b) compulsory acquisition in national interest or expropriation of any Project Site or rights of the Developer or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

19.5 Duty to report Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

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- (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (c) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 19.5 (a) & (b) and such other information as the other Party may reasonably request the Affected Party to provide.

19.6 Allocation of costs arising out of Force Majeure

- (a) Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (b) Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

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- (i) upon occurrence of a Non-Political Event or Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (ii) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Client to the Developer.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

- (c) Save and except as expressly provided in this Article, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

19.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 90 (ninety) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Agreement, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

19.8 Termination Payment for Force Majeure Event

- (a) If Termination is on account of a Non-Political Event or Indirect Political Event, the Developer shall not be entitled for any Termination Payment.

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- (b) If Termination is on account of a Political Event, the Client shall make a Termination Payment to the Developer in an amount that would be payable under Article 21.5 as if it were a Client Default.

19.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

19.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 20 **SUSPENSION OF DEVELOPER'S RIGHTS**

20.1 Suspension upon Developer Default

Upon occurrence of a Developer Default prior to issuance of the Project Completion Certificate, the Client shall be entitled, without prejudice to its other rights and remedies under this Agreement

including its rights of Termination hereunder, to exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Client to the Developer and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Developer, the Client shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

20.2 The Client to act on behalf of Developer

- (a) During the period of Suspension, the Client shall, on behalf of the Developer, operate and maintain the Project under and in accordance with this Agreement. Developer shall be obligated to reimburse the Client any costs incurred by the Client for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified herein.
- (b) During the period of Suspension hereunder, all rights and liabilities vested in the Developer in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Client for discharging the obligations of the Developer under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Developer and the Developer undertakes to indemnify the Client for all costs incurred during such period. The Developer hereby licences and sub-licences respectively, the Client or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licenced to the Developer with respect to the Project and its design, engineering, construction, operation and maintenance as applicable, and which is used or created by the Developer in performing its obligations under the Agreement.

20.3 Revocation of Suspension

- (a) In the event that the Client shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Client may, in its discretion, revoke the

Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

- (b) Upon the Developer having cured the Developer Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Client shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement.

20.4 Termination

- (a) At any time during the period of Suspension under this Article, the Developer may by notice require the Client to revoke the Suspension and issue a Termination Notice. The Client shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 21.
- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Client upon occurrence of a Developer Default.

ARTICLE 21 **TERMINATION**

21.1 Termination for Developer Default

- (a) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Developer shall be deemed to be in default of this Agreement (the “**Developer Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Client or due to Force Majeure. The defaults referred to herein shall include:
- (i) has been paying Damages but has not been able to fulfill all the Condition Precedent in terms of Article 5 within the Cure period of 28 days.

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- (ii) the Performance Security has been encashed and appropriated and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
 - (iii) subsequent to the replenishment or furnishing of fresh Performance Security, the Developer fails to cure, within a Cure Period of 90 (ninety) days, the Developer Default for which whole or part of the Performance Security was appropriated;
 - (iv) the Developer does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 120 (one hundred and twenty) days;
 - (v) the Developer abandons or manifests intention to abandon the construction of the Project without the prior written consent of the Client;
 - (vi) Project Completion Date does not occur within the period specified in Schedule G;
 - (viii) a breach of any of the Project Agreements by the Developer has caused a Material Adverse Effect;
 - (ix) the Developer creates any Encumbrance in breach of this Agreement;
 - (x) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - (xi) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Developer under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Developer, and such transfer causes a Material Adverse Effect;
 - (xii) an execution levied on any of the assets of the Developer has caused a Material Adverse Effect;
 - (xiii) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for

the whole or material part of its assets that has a material bearing on the Project;

- (xiv) the Developer has made any change/alteration in any manner in its constitution and/or construction by way of amalgamation, reconstruction or reconstitution without prior Approval of the Client;
- (xv) the Developer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted, in a manner that would cause, in the reasonable opinion of the Client, a Material Adverse Effect;
- (xvi) a resolution for winding up of the Developer is passed, or any petition for winding up of the Developer is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Developer is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Developer are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Developer under this Agreement and the Project Agreements; and provided that:
 - A. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - B. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Developer as at the Appointed Date; and
 - C. each of the Project Agreements remains in full force and effect;

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- (xvii) any representation or warranty of the Developer herein contained which is, as of the date hereof, found to be materially false or the Developer is at any time hereafter found to be in breach thereof;
 - (xviii) the Developer submits to the Client any statement, notice or other document, in written or electronic form, which has a material effect on the Client's rights, obligations or interests and which is false in material particulars;
 - (xix) the Developer has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
 - (xx) the Developer commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Client.
- (b) Without prejudice to any other rights or remedies which the Client may have under this Agreement, upon occurrence of a Developer Default, the Client shall be entitled to terminate this Agreement by issuing a Termination Notice to the Developer; provided that before issuing the Termination Notice, the Client shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Developer to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

21.2 Termination for Client Default

- (a) In the event that any of the defaults specified below shall have occurred, and the Client fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Client shall be deemed to be in default of this Agreement (the "**Client Default**") unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure. The defaults referred to herein shall include:
- (i) the Client commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Developer;

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- (iii) the Client repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
 - (b) Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of Client Default, the Developer shall be entitled to terminate this Agreement by issuing a Termination Notice to the Client; provided that before issuing the Termination Notice, the Developer shall by a notice inform the Client of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Client to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

21.3 Other rights and obligations of the Client

Upon Termination for any reason whatsoever, the Client shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project Site;
- (c) be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Project Site or any part of the Project;
- (d) require the Developer to comply with the Divestment Requirements set forth in Article 33.1; and

21.4 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

21.5 Termination Payment

- (a) Upon Termination on account of Client Default, during the Construction Period, the Client shall pay to the Developer, by way of Termination Payment, an amount equal to the full amount of fair value of the Project Assets that has been not yet been compensated through transfer of Plots, as assessed jointly by the Independent Engineer and Project Auditor.
- (b) Termination Payment shall become due and payable to the Developer within 60 (sixty) days of a demand being made by the Developer to the Client with the necessary particulars. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Client of its payment obligations in respect thereof hereunder.
- (c) The Termination Payment under this Article 21 shall constitute a full and final settlement of all claims of the Developer on account of Termination of this Agreement for any reason whatsoever and that the Developer or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- (d) No Termination Payment shall be due or payable on account of a Developer Default.

ARTICLE 22 CONSEQUENCES OF TERMINATION

22.1 Upon Termination, the Developer shall comply with and conform to the following requirements:

- (a) notify to the Client forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Assets and utilities, free and clear of all Encumbrances;
- (c) cure all Project Assets, including the building, structures and equipment, of all defects and deficiencies; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;

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- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance as applicable, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings. For the avoidance of doubt, the Developer represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project as applicable and shall be assigned to the Client free of any encumbrance;
 - (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - (f) execute such Documents and other writings as the Client may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Client, absolutely unto the Client or its nominee; and
 - (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, free from all Encumbrances, absolutely unto the Client or to its nominee.

22.2 Subject to the exercise by the Client of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Developer, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

22.3 The Developer shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Developer in the Project in favour of the Client upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Developer in connection with such divestment shall be borne by the Client. In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure shall apply.

ARTICLE 23
DEFECTS LIABILITY

23.1 Defect Liability Period

With respect to the Project Assets, the Developer shall be responsible for all defects and deficiencies for a period of 2 (two) years from the date of issuance of Handover Certificate or Project Completion Certificate or Termination, whichever is earlier (“**Defect Liability Period**” or “**DLP**”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Client in the Project Assets during the aforesaid period. In the event that the Developer fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Client, it shall be entitled to get the same repaired or rectified at the Developer’s risk and cost. All costs incurred by the Client hereunder shall be reimbursed by the Developer to the Client within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Client shall be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Developer’s risk and cost in accordance with the provisions of this Article.

ARTICLE -24
ASSIGNMENT AND CHARGES

24.1 Restrictions on assignment and charges by the Developer

- (a) This Agreement, or any of the rights and obligations under this Agreement, shall not be assigned by the Developer to any person, save and except with the prior consent in writing of the Client, which consent the Client shall be entitled to decline without assigning any reason.
- (b) The Developer shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Developer is a party except with prior consent in writing of the Client, which consent the Client shall be entitled to decline without assigning any reason.

24.2 Assignment by the Client

Notwithstanding anything to the contrary contained in this Agreement, in case of Developer Default, the Client may, after giving

60 (sixty) days' notice to the Developer, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Client, capable of fulfilling all of the Client's then outstanding obligations under this Agreement.

ARTICLE-25
CHANGE IN LAW

25.1 Increase in costs

During the Construction Period, if as a result of Change in Law, the Developer suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. _____ in any Accounting Year, the Developer may so notify the Client and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Developer, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement. Dispute such claim of the Developer, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article shall be restricted to changes in law directly affecting the Developer's costs of performing its obligations under this Agreement during the Construction Period.

25.2 Reduction in costs

If as a result of Change in Law, the Developer benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. _____ in any Accounting Year, the Client may so notify the Developer and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Client, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Client may by notice require the Developer to

pay an amount that would place the Developer in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Developer shall pay the amount specified therein to the Client; provided that if the Developer shall dispute such claim of the Client, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article shall be restricted to changes in law directly affecting the Developer's costs of performing its obligations under this Agreement during the Construction Period.

ARTICLE 26

LIABILITY AND INDEMNITY

26.1 General indemnity

- (a) The Developer will indemnify, defend, save and hold harmless the Client and its officers, servants, agents, Public Sector Entities and Government owned and/or controlled entities/enterprises, (the "**Client Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Developer of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Developer to any User or from any negligence of the Developer under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of Client Indemnified Persons.

- (b) The Client will indemnify, defend, save and hold harmless the Developer against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Client in the land comprised in the Project Site, and/or (ii) breach by the Client of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Developer of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations

under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Developer, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Developer.

26.2 Indemnity by the Developer

- (a) The Developer shall fully indemnify, hold harmless and defend the Client and Client Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (i) failure of the Developer to comply with Applicable Laws and Applicable Permits;
 - (ii) payment of taxes required to be made by the Developer in respect of the income or other taxes of the Developer's contractors, suppliers and representatives; or
 - (iii) non-payment of amounts due as a result of materials or services furnished to the Developer or any of its contractors which are payable by the Developer or any of its contractors.
- (b) Without limiting the generality of the provisions of this Article, the Developer shall fully indemnify, hold harmless and defend Client Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which Client Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Developer's Contractors in performing the Developer's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Developer shall promptly make every reasonable effort to

secure for the Client a licence, at no cost to the Client, authorising continued use of the infringing work. If the Developer is unable to secure such licence within a reasonable time, the Developer shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

26.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

26.4 Defence of claims

- (a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the

Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

- (b) If the Indemnifying Party has exercised its rights herein, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

26.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

26.6 Survival on Termination

The provisions of this Article shall survive Termination.

ARTICLE 27 **DISPUTE RESOLUTION**

27.1 Dispute resolution

- (a) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 27.2.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

27.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in

arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to _____ within _____ days for amicable settlement, and upon such reference, the said persons shall meet no later than 15 (fifteen) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 15 (fifteen) day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 27.3.

27.3 Arbitration

- (a) Any Dispute which is not resolved amicably by conciliation, as provided in Article 27.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Article 27.3(b). Such arbitration shall be held in accordance with the Arbitration Act, 1940 (the “**Act of 1940**”). The venue of such arbitration shall be Lahore, and the language of arbitration proceedings shall be English.
- (b) There shall be a panel of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Act of 1940.
- (c) The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 27 shall be final and binding on the Parties as from the date it is made, and the Developer and the Client agree and undertake to carry out such Award without delay.
- (d) The Developer and the Client agree that an Award may be enforced against the Developer and/or the Client, as the case may be, and their respective assets wherever situated.
- (e) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 28
MISCELLANEOUS

28.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Pakistan, and the courts at Lahore shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

28.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

28.3 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at

a rate equal to 3% (three per cent) above the Base Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

28.4 Waiver

- (a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

28.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Client of any Project Agreement, Document or Drawing submitted by the Developer nor any observation or inspection of the construction, operation or maintenance as the case may be of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Developer from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Client shall not be liable to the Developer by reason of any review, comment, approval, observation or inspection referred to in Article 28.5(a) above.

28.6 Exclusion of implied warranties, etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

28.7 Survival

- (a) Termination shall:
- (i) not relieve the Developer or the Client, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
 - (ii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.
- (b) All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

28.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Developer arising from the Request for Proposal, as the case may be, shall be deemed to form part of this Agreement and treated as such.

28.9 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the

Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

28.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

28.11 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

28.12 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

28.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Developer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Developer may from time to time designate by notice to the Client; provided that notices or other communications to be given to an address outside _____ may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Developer may from time to time designate by notice to the Client;

- (b) in the case of the Client, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the _____ of the Client with a copy delivered to the Client's Representative or such other person as the Client may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in Lahore it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

28.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

28.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

EXECUTED

**For and on behalf of
Punjab Land Development Company (The Client)**

.....
Signature

By:
Designation:

EXECUTED

For and on behalf of

_____ (The Developer)

.....
Signature

By:

Designation:

In the presence of witness:

In the presence of witness:

Signature
.....

Signature

SCHEDULE A

Project Site

Land Detail: _____ Kanals _____ Marlas _____ Square Feet

Description in Revenue Records: _____

AHA Site

Land Detail: _____ Kanals _____ Marlas _____ Square Feet

Description in Revenue Records: _____

Private Housing Site

Land Detail: _____ Kanals _____ Marlas _____ Square Feet

Description in Revenue Records: _____

Land parcels of Project Site, AHA Site and Private Housing Site are described in **Annex -I** of this **Schedule A**.

Annex -I
(SCHEDULE A)

SCHEDULE B

CONSTRUCTION AND DEVELOPMENT OF PROJECT ASSETS

1. Affordable Housing Apartments

- 1.1 The construction of the Affordable Housing Apartments would include the construction of ____ nos. of one-bedroom apartments of AHA Constructed Area ____ square feet, ____ nos. of two-bedroom apartments of AHA Constructed Area ____ square feet, and ____ nos. of two-bedroom apartments of AHA Constructed Area ____ square feet in G+3 type of residential building. The descriptions, Drawings and overall configuration of the AHA Units are described in detail as **Annex - I, II & III** of this Schedule B. The development of these apartments would be undertaken as per the Construction and Development Plan, Drawings and Specifications and Standards set forth in **Schedule D**.
- 1.2 The total number of AHA Units to be constructed and developed shall be ____ **apartments** in G+3 residential building. The proposed AHA Units at Project Site shall be divided between a total of ____ buildings.

**ANNEXURE- I
(SCHEDULE-B)
TYPES OF AHA UNITS TO BE CONSTRUCTED**

**ANNEXURE - II
(SCHEDULE-B)
SUMMARY OF BUILT UP AREAS COMPRISING THE AHA UNITS**

**ANNEXURE - III
(SCHEDULE-B)
DRAWINGS & DESIGNS FOR AHA UNITS**

Detailed architectural & structural drawings, layouts and designs for the AHA Units will be provided to Developer separately in form of CD, preferably in Word, CAD or PDF Format. This CD shall comprise the Annexure III of this Schedule B.

SCHEDULE - C

PROJECT FACILITIES, UTILITIES

The Developer shall provide the Project Facilities, Utilities for the Project in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties hereto agree that the Project Facilities, Utilities and Public Building Plots as provided in this Schedule C shall be required to be developed by the Developer forming part of the Construction and Development of Project Assets.

Annex-I
On-site Infrastructure

Annex-II
Off-site Infrastructure

SCHEDULE - D

CONSTRUCTION AND DEVELOPMENT PLAN

SCHEDULE E

Drawings

SCHEDULE - F
TECHNICAL SPECIFICATIONS AND STANDARDS

The Developer shall construct the Project Assets strictly in accordance with the Specifications and Standards set forth in this Schedule F.

Subject to the provisions of this Schedule F, the construction of the Project Assets shall comply with Specifications and Standards laid down in the technical specifications covered by each Annexure shall be as listed below:

Annex - I :	General Technical Specifications
Annex - II :	Technical Specifications for Water Supply Scheme
Annex - III :	Technical Specifications for the Sewerage System
Annex - IV:	Technical Specifications for G.I pipes and valves.
Annex - V :	Technical Specifications for CP and Sanitary fittings.
Annex - VI :	Technical Specifications for CPVC pipes and fittings.
Annex - VII :	Technical Specifications for Internal Sewerage and Sanitary System
Annex - VIII :	Technical Specifications of Electrical System
Annex- IX :	Technical specifications for Landscape
Annex - X :	Technical Specifications of Roads

SCHEDULE G

PROJECT COMPLETION SCHEDULE

During Construction Period, the Developer shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”).

2. Project Milestone-I

- 2.1 Project Milestone-I shall occur on the date falling on the ____ (_____) day from the Appointed Date (“**Project Milestone-I**”).
- 2.2 Upon occurrence of Project Milestone-I, the Developer shall have expended not less than ____% (____ **per cent**) of the total capital cost of Project Assets as set forth in the Financial Package and completed construction of:
- a. _____
 - b. _____
 - c. _____
 - d. _____

3. Project Milestone - II

- 2.1 Project Milestone-I shall occur on the date falling on the ____ (_____) day from the Appointed Date (“**Project Milestone-II**”).
- 2.2 Upon occurrence of Project Milestone-II, the Developer shall have expended not less than ____% (____ **per cent**) of the total capital cost of Project Assets as set forth in the Financial Package and completed construction of:
- a. _____
 - b. _____
 - c. _____
 - d. _____

4. Project Milestone-III

-
- 2.1 Project Milestone-I shall occur on the date falling on the _____ (_____) day from the Appointed Date (“**Project Milestone-III**”).
- 2.2 Upon occurrence of Project Milestone-III, the Developer shall have expended not less than _____% (_____ **per cent**) of the total capital cost of Project Assets as set forth in the Financial Package and completed construction of:
- a. _____
 - b. _____
 - c. _____
 - d. _____

5. Scheduled Completion Date

- 5.1 The Scheduled Completion Date shall occur on the _____ (_____) day from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Developer shall have completed Construction and Development of the Project Assets in accordance with this Agreement.

6. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

ANNEX-I
(SCHEDULE G)

COMPLETION CERTIFICATE

1

ANNEX-II
(SCHEDULE G)

PROJECT MILESTONE ACHIEVEMENT CERTIFICATE

ANNEX-III
(SCHEDULE G)

PLOT TRANSFER PLAN

ANNEX-IV
(SCHEDULE G)

DELIVERY SCHEDULE

SCHEDULE K
PERFORMANCE SECURITY

Punjab Land Development Company

WHEREAS:

- (A) _____ (the “Developer”) and **PUNJAB LAND DEVELOPMENT COMPANY** (the “Client”) have entered into a Development Agreement dated _____ (the “Development Agreement”) whereby the Client has agreed to the Developer _____ on Public-Private Partnership (the “PPP”) basis in accordance with the terms and conditions to be set forth in the Development Agreement to be entered into.
- (B) The Agreement requires the Developer to furnish a Performance Security to the Client in a sum of **Rs. _____ (Rupees _____ only)** (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, till the expiry of three months from the date of expiry of Defect Liability Period (as defined in the Agreement).
- (C) We, _____ (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Developer’s obligations during the Construction Period and till the expiry of three months from the date of expiry of Defect Liability Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Client, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Developer, such sum or sums upto an aggregate sum of the Guarantee Amount as the Client shall claim, without the

Client being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Client, under the hand of an Officer not below the grade of BPS-18 or such person / officer authorized by the Client that the Developer has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Client shall be the sole judge as to whether the Developer is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the Client and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer for any reason whatsoever.
3. In order to give effect to this Guarantee, the Client shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Developer and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Client to proceed against the Developer before presenting to the Bank its demand under this Guarantee.
5. The Client shall have the liberty, authority , rights without affecting in any manner the financial liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Developer contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Client against the Developer, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Client, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Client of the liberty with reference to the matters aforesaid or by reason of time being given to the Developer or any other forbearance, indulgence, act or omission on the part of the Client or of any other matter

or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Client in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Developer under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Client on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Client under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after 3 (three) months from the day when the Developer has served the Defects Liability Period of 3 years and provided the Developer is not in breach of this Agreement. Upon request made by the Developer for release of the Performance Security along-with the particulars required hereunder, duly certified by a statutory auditor of the Developer, the Client shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Client in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Client that the envelope was so posted shall be conclusive.

-
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [five] year or until it is released earlier by the Client pursuant to the provisions of the Agreement.

Signed and sealed this ____ day of ____, 2014 at _____.

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

SCHEDULE J

Tests

SCHEDULE K

Selection of Independent Engineer

TOR for Independent Engineer

SCHEDULE M

Selection of Auditors

Schedule - N
Master Plan of Project Site

SCHEDULE O

Conveyance Deed for Plots

This Conveyance Deed is entered into on this the on this [_____] Day of [_____] 2014 by and between:

PUNJAB LAND DEVELOPMENT COMPANY, a company incorporated under the Companies Ordinance, 1984, with its registered office at _____ Lahore, Pakistan ("**Client**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) OF THE FIRST PART;

AND

[_____]existing under the Laws of Pakistan, with its registered office at [*insert registered office address*] ("**Developer**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) OF THE OTHER PART.

The Client and the Developer are hereinafter also individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS

- A. The Client and the Developer have executed the Development Agreement dated [__insert __], for construction and development of the Project Assets in accordance with the terms and conditions thereof.
- B. For the purposes of and in accordance with the provisions of the Development Agreement, the Client _____ transfer land parcels measuring _____ (Housing Scheme) to the Developer, on the terms and conditions set out herein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Conveyance Deed and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1.1 Definitions

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

“**Effective Date**” shall mean the _____.

“**Development Agreement**” shall mean the agreement dated [insert] entered into between the Client and the Developer.

“**Parties**” shall have the meaning ascribed to the term in the preamble to this Conveyance Deed.

“**Party**” shall have the meaning ascribed to the term in the preamble to this Conveyance Deed.

“**Land**” shall have the meaning ascribed to the term in Article 2.1 hereof;

1.2 The words and expressions beginning with or in capital letters used in this Conveyance Deed and not defined herein and defined in the Development Agreement shall, unless repugnant to the context, have the meaning respectively assigned to them in the Development Agreement.

1.3 Interpretation

In this Conveyance Deed, unless the context otherwise requires, the interpretation rules as mentioned in Article 1.2 of the Development Agreement shall apply. In case of any inconsistency between the provisions of this Conveyance Deed and the provisions of the Development Agreement, the provision of Development Agreement shall prevail. All the terms and conditions of the Development Agreement shall apply mutatis mutandis to this Conveyance Deed.

2. Transfer of the Land

2.1 As a part of and in consideration of entering into the Development Agreement, and the covenants and warranties on the part of the Developer therein and herein, the Client, in accordance with the terms and conditions set forth herein, hereby, transfer to the Developer all the Proprietary Rights in respect of the Land which is described, delineated and shown in **Schedule A** hereto, on an “**as is where is**” basis commencing from the Effective Date:

2.2 The Developer shall enjoy all rights in the Land presently vested in the

-
- Client including the rents and profits accruing therefrom without any interruption, claims, demands or disturbance whatsoever from the Client or any other person or persons claiming through or under a title from him.
- 2.3 The Client hereby represents and warrants that the Land has been transferred unto the Developer free from all Encumbrances, claims, demands, attachments, and charges of any nature whatsoever till Effective Date.
- 2.4 The Client hereby agrees and undertakes, unconditionally and at all times hereafter, at request of the Developer, to do and execute, or cause to be done and executed, all such lawful acts, deeds and things whatsoever for furtherance and perfection of the transfer of the Land unto the Developer or his nominees and placing him or his nominees in possession of the Land according to the true intent and meaning of this Conveyance Deed.
- 2.5 The Client hereby represents and warrants that he has the capacity and is entitled and authorized under the law to enter into this Conveyance Deed and all deeds, receipts or agreements arising thereby and agree to keep the Developer indemnified from any and all claims, charges, losses, damages costs etc. All bills, fees, costs, duties, taxes, charges, claims, penalties etc. or other dues in relation to government, federal, provincial and local or other municipal authorities etc. pertaining to the Land till the date of execution of this Conveyance Deed shall be the responsibility and will be borne by the Client. Any such governmental claims, charges, demands, etc. pertaining to a period after the date of execution of this Conveyance Deed shall be to the sole account of the Developer.
- 2.6 The Developer on the basis of this Conveyance Deed shall be entitled to get its name submitted in record of all relevant government departments.
- 2.1.2 The Client undertakes to execute, sign and/or obtain and hand over to the Developer all other documents and papers pertaining to the transfer of the Land as the Developer may reasonably request in order to ensure that title in the Land can fully and completely be transferred to the Developer or his nominee's name and assuring to the Developer all rights title and interest in or to the Land.
- 2.1.3 All expenses relating to this Conveyance Deed including but not limited to stamp duty and transfer fee shall be borne by the Developer. The Parties shall otherwise bear their own costs and taxes.

2.1.4 The Client doth hereby confirm that he has handed over to and placed the Developer in possession of the Land hereby granted, conveyed, transferred and assigned unto the Developer

2.1.5 The Developer hereby expressly covenants and agrees that, the Developer shall only use the Land strictly in accordance with the terms and conditions of the Development Agreement.

3. Dispute resolution

3.1 In case of any Dispute between the Parties as regards the provisions of this Conveyance Deed or as regards to the interpretation thereof, the same shall be resolved in the manner as provided in the Development Agreement.

4. Amendment

4.1 No variation, waiver, amendment or modification of any of the terms of this Conveyance Deed shall be valid unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Conveyance Deed as of the day, month and year first above written.

Signed for and on behalf of the Client	Signed for and on behalf of the Developer
 <hr/>	 <hr/>
Name:	Name:
Designation:	Designation:

Witnesses:

 <hr/>	 <hr/>
Name:	Name: