SBM bank

# ESCROW ACCOUNT AGREEMENT

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This Escrow Account Agreement (**"Agreement"**) made at _____on this _____, _____

BY AND BETWEEN

**SBM Bank (India) Limited** a company incorporated in India under the provisions of Companies Act 2013 and a Banking company incorporated in India under the Banking Regulations Act 1949 and who is licensed to carry on its business of banking by the Reserve Bank of India bearing CIN U65999MH2017FLC293229 having its Registered Office at **101, Raheja Centre, 1st Floor Free Press Journal Marg, Nariman Point, Mumbai 400021** (hereinafter referred to as **"the Bank or the Lender"** which expression shall unless be repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **FIRST PART.**

**AND**

**SBM Bank (India) Limited** a company incorporated in India under the provisions of Companies Act 2013 and a Banking company incorporated in India under the Banking Regulations Act 1949 and who is licensed to carry on its business of banking by the Reserve Bank of India bearing CIN U65999MH2017FLC293229 having its Registered Office at **101, Raheja Centre, 1st Floor Free Press Journal Marg, Nariman Point, Mumbai 400021** (hereinafter referred to as **"the Escrow Agent"** which expression shall unless be repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **SECOND PART.**

**AND**

_____ incorporated under the provisions of _____and having its registered office at _____(hereafter referred to as **"Borrower"** which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns),

Bank, Escrow Agent and Borrower shall hereinafter be collectively referred to as the **"Parties"** and individually be referred to as the **"Party"**.

**WHEREAS:**

a. The Borrower has entered into Loan Agreement dated _____ with the Bank (hereinafter referred to as the **"Loan Agreement"**) for availing a loan amount aggregating to Rs. _____(**"Loan/Facility"**) for the purposes and on the terms as mentioned in the Loan Agreement.

b. One of the terms on which the Lender has agreed to grant Loan to the Borrower is that the Borrower shall open the Escrow Account (define below) with the Escrow Agent for depositing the receivables as described in Schedule I (**"Receivables"**) owing to the Borrower from the Property as described in Schedule I hereto (**"Property"**); and to secure and facilitate repayments of the outstanding amounts of Loan to the Bank together with interest, additional interest, costs, expenses and other charges due and payable by the Borrower to the Bank (**"Secured Obligations"**). The Borrower has agreed to appoint the Escrow Agent to establish the Escrow Account and deal with and facilitate in operation of the Escrow Account in the manner as provided herein below.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES IT IS AGREED BY THE PARTIES AS FOLLOWS:**

## 1. DEFINITION AND INTERPRETATION

### A. Definition:

Unless otherwise defined in this agreement, capitalised terms in this Agreement shall have the meaning given to them in the Loan Agreement or any other Loan Documents.

### B. Interpretation

In this Agreement, unless the context otherwise requires:

a) Words in the singular shall include words in the plural and words in the plural shall include the singular;

b) The headings and sub-headings used in this Agreement are inserted only for reference to the provisions hereof and shall not affect the construction of such provisions;

c) References to an Article, Section, Clause or Schedule herein shall be a reference to an Article, Section, Clause or Schedule of this Agreement;

d) References to word "includes" or "including" are to be construed without limitation;

e) References to a "party" to this Agreement or a Person shall include their respective successors, assigns or transferees (to the extent assignment or transfer is permitted under this Agreement);

f) All references to agreements, documents or other instruments shall (subject to all relevant approvals) be a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

g) Reference to any law, statute or rules shall include references to such law, statute or rules as the same may after the Agreement be amended, supplemented or re-enacted from time to time;

h) A reference to a "party" is to a party to this Agreement and a reference to the "parties" is, unless the context otherwise requires, a reference to the parties to this Agreement;

i) Headings and the use of bold typeface are for ease of reference only and shall not affect the meaning or interpretation of the provisions of this Agreement;

j) The words "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision;

k) Any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise shall be made by the Escrow Agent, at its discretion. In the event of a disagreement between the Escrow Agent and the Borrower over the question of "materiality", the view of the Escrow Agent shall be final; and

l) When any number of days is prescribed in any document, the same shall be reckoned exclusive of the first and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding day which is a Business Day.

m) If there is any conflict between the terms of this Agreement and the standard terms and conditions of the Escrow Agent, in relation to opening and operation of Escrow Account (as have been provided by the Escrow Agent to the Borrower and the Bank simultaneously with execution of this Agreement), those of this Agreement shall prevail.

## 2. APPOINTMENT OF ESCROW AGENT

2.1 The Borrower and the Bank do hereby nominate, appoint and constitute the Escrow Agent to act as their agent in connection with the Loan Agreement for the purposes and in accordance with the terms and provisions set forth herein.

2.2 The Escrow Agent hereby accepts its appointment as the escrow agent and agrees to act as such and to accept all monies to be delivered to or held by the Escrow Agent for the benefit of the Bank, pursuant to the terms and conditions of this Agreement only. The Escrow Agent shall hold and safeguard the Escrow Account, during the term of this Agreement and shall hold all cash in the Escrow Account as the agent and act for the interest and benefit of the Lender as per the request/instruction of the Bank. For purposes of the Escrow Agreement, Section 20 of Indian Trust Act, 1882 shall not apply.

2.3 The rights of the Lender in the monies held in Escrow Account are set forth in their entirety in this Escrow Agreement.

## 3. ESTABLISHMENT OF ESCROW ACCOUNT

3.1 The Borrower confirms and undertakes that an irrevocable escrow account bearing Account No. _____designated as "_____" with the Escrow Agent at its branch located at _____ _____in form and manner satisfactory to the Lender ("**Escrow Account**") has been opened, and it shall be maintained at all times until termination of this Escrow Agreement by the Bank and/or discharge of the respective rights and obligations of the parties to the Loan Agreement, as per written confirmation given by Bank to the Escrow Agent.

3.2 All such amounts remaining in the Escrow Account shall constitute a part of the security until applied towards payment due to any of the Borrower's obligations to the Lender, under the Loan Agreement hereto. The Escrow Account and any interest accrued therein (if applicable) shall be held in trust or/ and on behalf of the Borrower as provided herein, subject to the security interest in the Escrow Account created in favour of the Bank. For purposes of this Escrow Agreement, the Section 20 of Indian Trust Act, 1882 shall not apply.

## 4. DEPOSIT INTO AND WITHDRAWALS FROM THE ESCROW ACCOUNT

### 4.1 Deposits into the Escrow Account

4.1.1 Upon receipt of a drawdown notice from the Borrower by the Lender, the Lender shall disburse such amounts under the Loan as per the drawdown notice issued by the Borrower.

4.1.2 The Borrower undertakes that until the discharge of all the Secured Obligations, it shall deposit and shall ensure that all and any of the Receivables arising from the Property are deposited in the Escrow Account.

4.1.3 In this regard, the Borrower shall issue necessary irrevocable instructions to its lessors on the Property ("**Lessors**") to deposit all the Receivables towards sale/rent/lease of unit excluding taxes/levies/legal/society/maintenance charges in the Property into the Escrow Account owed or payable or to be owed or payable by the Lessors to the Borrower for the Property from whatever source. The Borrower agrees that it shall in no event act in any manner as may adversely affect the inflow of monies into the Escrow Account.

4.1.4 The Borrower further agrees, represents and warrants that the Borrower shall receive all the Receivables excluding taxes/levies/legal/society maintenance charges with respect to Property in the Escrow Account and in no other account of the Borrower or any other Person.

4.1.5 Any deposits made into the Escrow Account under this Agreement shall be irrevocable to the extent of outstanding dues of the Bank in accordance with the Loan Agreement and all interests, income earned or realized on amounts on deposit in the Escrow Account shall be retained accordingly and shall be treated for all purposes of this Escrow Agreement as part of the Escrow Account.

### 4.2 Withdrawals from the Escrow Account

4.2.1 The Bank hereby accords upfront irrevocable instructions to the Escrow Agent to transfer, on a daily basis, the Receivables available in the Escrow Account, to the account of the Bank being Account no._____ held with _____ Bank, _____ branch. The Bank shall utilize the Receivables in the following manner and priority (and the Bank shall issue appropriate instructions to the Escrow Agent in this regard):

(i) Firstly, in the event that any EMI or any other payment is due (scheduled in respect of the Loan, for meeting the said payments);

(ii) Secondly, towards repayment of balance principal amounts if requested by the borrower in respect of the Loan;

(iii) Thirdly, the balance after the above payments shall be transferred to Borrower's designated account no_____ maintained with _____Bank having IFSC Code _____ on following conditions namely a) provided the Loan account is not in default b) written request from the Borrower is made c) there is no event of default or potential event of default under any Facility Document has occurred;

(iv) In case EMI is overdue then the Receivables available in the Escrow Account will be utilized in the following manner:

a) Firstly, towards the additional interest payable on the EMI overdue;
b) Secondly, towards any charges including legal charges applicable on the loan;
c) Thirdly towards the Interest component of the EMI amount overdue
d) Fourthly towards the principal component of EMI amount overdue

4.2.2 The Bank shall be entitled to allocate funds from the Escrow Account in the priority provided above at such frequency as the Bank deems fit.

4.2.3 The Borrower acknowledges and agrees that the manner in which the monies available in the Escrow Account shall be utilised, as captured above, is subject to monitoring by the Bank and the Bank shall be entitled to, at its sole discretion, change the manner or priority of utilisation at any time during the tenure of the Loan.

4.2.4 In the event that the Borrower has to deduct any tax at source ("**TDS**") from payments to be made to the Bank, the Borrower shall inform the Bank of the same, and subject to the Bank being satisfied regarding the validity of the same, the Bank shall request the Escrow Agent to transfer the amounts comprising the TDS, from the amounts made available to meet the Interest payments in the Escrow Account, to the Borrower for the purposes of enabling it to make payment of the TDS to the relevant revenue authorities.

4.2.5 Subject to applicable law, the Borrower shall deposit and/or cause to be deposited in the Escrow Account all amounts realized on account of enforcement of the security interest in accordance with the terms of the Loan Agreement and the other applicable Loan Documents executed in relation to the Loan and caused to be made available by the Borrower or any other security provider in relation to the Loan.

**5. RIGHTS AND OBLIGATIONS OF THE PARTIES**

5.1 The Borrower hereby agrees and undertakes:

(i) To continue to maintain the Escrow Account so long as the Secured Obligations are outstanding under the Loan Agreement.

(ii) To issue instructions to the intended Lessors of the units in the Property to deposit the entire amount due from them to the Borrower directly into the Escrow Account.

(iii) To deposit all the Receivables accruing and arising out of the Property received by the Borrower directly into the Escrow Account.

(iv) That the Borrower shall not deposit the Receivables in any account other than the Escrow Account so long as the Secured Obligations are outstanding.

(v) That the Bank shall have a lien upon all the monies deposited in the Escrow Account, from time to time.

(vi) That Bank shall have a first and exclusive charge over the Escrow Account and all the monies lying to the credit of the Escrow Account duly securing the Secured Obligations and for this purpose any deposit which may be made into the Escrow Account at any time in the future shall be deemed to have been automatically charged in favor of the Bank and the Escrow Agent shall act in accordance with the instructions hereunder and/or otherwise given by the Bank and the Borrower undertakes to execute such instruments and do all such actions that are required to create and perfect the Bank's charge over the Escrow Account.

(vii) That the Borrower shall not create any charge, lien or any encumbrance whatsoever, in favour of any person on the amount lying to the credit of the Escrow Account, without the prior written consent of the Bank, save and except for the charge created over the Escrow Account and the monies lying to the credit thereof from time to time, by the Borrower in favour of the Bank in terms of the Loan Agreement and the other Loan Documents.

(viii) That the Borrower shall not do or cause to be done any acts, deed or things which may prejudicially affect the interest of the Bank and/or the Escrow Agent.

(ix) That the Bank shall have full authority to monitor all transactions of the Escrow Account including conducting of audits.

5.2 The Escrow Agent hereby agrees and undertakes as under:

(i) That subject to the availability of funds the Escrow Agent shall make payments to the Bank out of the funds lying in the Escrow Account for the period starting from 1st day of the month till the last day of the month in accordance with the repayment schedule agreed upon between the Borrower and the Bank in the Loan Agreement enclosed in this agreement more particularly Part C of Schedule 1. The Escrow Agent will remit the amount through NEFT/RTGS on or before last day of every month.

(ii) That any balance lying at any point of time in the Escrow Account with Escrow Agent for the period starting from 1st day of the month till last day of the month shall be utilized for making next month repayment of the EMI thereon in accordance with the repayment schedule agreed upon between the Borrower and the Bank as described in the Part C of Schedule -1 herein That upon occurrence of an Event of Default and subsequent failure of the Borrower to rectify such default within the time period stipulated under the Loan Agreement, if any the entire amount lying and the amount deposited from time to time to the credit of the Escrow Account shall be paid to the Bank without any demur, protest or cavil of any nature and upon mere intimation of the occurrence of the event of default by the Lender. The Escrow Agent shall not contest the decision of the Bank about the existence or non-existence of an Event of Default.

(iii) That the Escrow Agent shall furnish statements in respect of the Escrow Account to the Lender and the Borrower at monthly/weekly/daily intervals as may be required by the Bank.

(iv) That the Escrow Agent shall abide by any instruction(s) issued by the Bank to the Escrow Agent in respect of the Escrow Account, without any further reference to the Borrower.

(v) The Borrower and the Bank hereby agree to provide the Escrow Agent with the agreed repayment schedule, as given in the Loan Agreement and inform the Escrow Agent of any variation/ revision made in the repayment schedule form time to time.

5.3 The Borrower hereby irrevocably authorizes the Escrow Agent to pay and to transfer the funds to the Bank from the Escrow Account as per the written instructions of the Bank from time to time in accordance with the Loan Agreement and other Loan Documents without any reference to the Borrower.

**6. REPRESENTATIONS AND WARRANTIES:**

6.1 The Borrower hereby represents and warrants that:

i) The Borrower has all the requisite legal power and authority to execute this Escrow Agreement and to carry out the terms, conditions and provisions, hereof.

ii) This Escrow Agreement constitutes valid, legal and binding obligations on the Borrower enforceable in accordance with the terms hereof.

iii) There are no action, suits or proceedings pending or, to the Borrower's knowledge, threatened against or affecting the Borrower before any court or administrative body or default under any other arrangement or instrument to which it is a party or by which it or its property may be bound which has, in the opinion of the Bank, have any adverse impact on the obligations of the Borrower under this Agreement.

iv) The Escrow Agent warrants with the Bank and the Borrower that the Escrow Agent is licensed under the Banking Regulations Act, 1949 and validly existing under the laws of India and has all requisite legal powers, authority and resources to enter into this Escrow Agreement and to perform its duties and obligations thereunder.

v) Each of this Escrow Agreement and the Loan Agreement constitutes the valid, legal and binding obligations of the Borrower enforceable in accordance with terms of the Escrow Agreement and the Loan Agreement respectively.

vi) There are no action, suit or proceedings pending or threatened, against or affecting the Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely or/ and materially the ability of the Escrow Agent to perform its duties and obligations under this Escrow Agreement.

**7. INDEMNITY**

7.1 The Borrower hereby agrees to indemnify and keep indemnified and hold harmless the Escrow Agent and/or the Bank from and against any and all claims and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, the operation of the Escrow Account pursuant to the terms and conditions contemplated by this Escrow Agreement other than where such losses have been occasioned due to the gross negligence, willful misconduct or fraud of the Escrow Agent.

7.2 The Borrower hereby agrees that the Escrow Agent and/or the Bank shall have no liability towards the Borrower for any loss or damage that the Borrower may claim to have suffered or incurred, either directly or indirectly, by reason of this Escrow Agreement or any transaction contemplated by the provisions hereof, unless occasioned by the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labour difficulties or other causes beyond the Escrow Agent's reasonable control or for indirect, special or consequential damages.

**8. MISCELLANEOUS**

8.1 The Borrower agrees to pay or reimburse all expenses of the Escrow Agent (including expenses for legal services of any kind in respect of, or incidental to, the enforcement of any of the provisions of this Escrow Agreement or in connection with any stamp duty or tax required to be paid by the Bank under this Escrow Agreement or any other deed/instrument necessary to be executed/entered or with respect to amendment, waiver or consent relating to this Escrow Agreement.

8.2 All the notices and other communications required under this Escrow Agreement shall be in writing and:

a) If delivered personally or by courier or if sent by registered mail, be deemed given upon delivery at their respective address provided for this purpose in Schedule II, submitted by the respective Parties to the Escrow Agent or if to the Escrow Agent at the address provided for delivery of notices in Schedule II; and

b) If sent by facsimile transmission, be deemed given on receipt of a confirmation but when sent to the facsmile number as provided against the respective Party in Schedule II (marked to the attention of the person named therein) or if to the Escrow Agent to the facsimile number as provided against the Escrow Agent in Schedule II (marked to the attention of the person named therein).

The Escrow Agent may rely upon any notice or certificate believed by it to have been signed by any of the authorized signatories of a concerned Party as particularly set out in this Agreement submitted by the Parties to the Escrow Agent, and the Escrow Agent shall not be bound in any such case to call for further evidence or be responsible for any losses, liabilities, costs, damages, expenses or inconvenience that may be occasioned by its failure to do so.

8.3 Each notice or other communication under this Agreement shall be in English. Any party may by a written notice of 7 (seven) days address to all the Parties to change the address to which such notices and communications are to be delivered or mailed.

8.4 Any other documents required to be delivered under this Agreement shall be either in English or be accompanied by a certified translation into English and, in that case, the English translation shall prevail unless the document is a statutory or other official document.

8.5 This Escrow Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns, but the Borrower shall not be entitled to assign or delegate any of its rights, duties or obligations hereunder without first obtaining the prior written consent of the Bank and the Escrow Agent.

8.6 This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

8.9 Any act to be done by the Escrow Agent shall be done only on a business day, during banking business hours, at _____and in the event that any day on which the Escrow Agent is required to do an act under the terms of this Escrow Agreement, is not a business day, then the Escrow Agent shall do those acts on the next succeeding business day.

8.10 Nothing contained herein shall prevent the Escrow Agent from carrying on any business with, or rendering any professional advice in any capacity to the other parties to this Agreement.

8.11 The Borrower has further requested the Escrow Agent and the Escrow Agent has agreed to act as follows:

8.11.1 That the Escrow Agent shall send the statements pertaining to the Escrow Account directly to the Bank at such frequency as the Bank may require at his discretion.

8.11.2 That the Bank, shall have right to cause the Escrow Agent to freeze the Escrow Account at any time without the Borrower’s confirmation and on the receipt of instructions of the Bank, the Escrow Agent shall freeze the Escrow Account or otherwise transfer entire credit balance under the Escrow Account in the account of the Bank, without obtaining any further instruction/s from the Borrower.

8.11.3 That the Escrow Agent shall unconditionally abide by instruction/s that the Bank may give to the Escrow Agent in connection with the said Escrow Account without any reference to the Borrower.

8.11.4 That the Escrow Agent shall permit withdrawal or debit of any amount by the Borrower from the Escrow Account only after receiving a written consent from the Bank.

8.12 The Borrower further requests the Escrow Agent not to close the Escrow Account unless a written instruction from Lender is received.

8.13 The duties of the Escrow Agent are as expressly set out in this Escrow Agreement and no further implied duties or obligations shall be cast on the Escrow Agent or read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall not be deemed to be aware of or bound by the provisions of the any other agreement/arrangement between the Bank and the Borrower, save and except provisions ofthis Escrow Agreement.

8.14 This Escrow Agreement is intended solely for the benefit of the Bank, the Borrower, Escrow Agent and no other person shall have any rights thereunder.

8.15 The Escrow Agent shall be responsible to operate the Escrow Account in accordance with the provisions of this Escrow Agreement only and on the instructions from the Bank to transfer amounts from the said Escrow Account and there is no obligation on part of the Escrow Agent to ensure payments are made by the Borrower in the Escrow Account or to transfer monies from any other accounts other than the said Escrow Account.

8.16 The Escrow Agent shall not be liable if it acts on any instructions, which are unclear and/or ambiguous, and it shall not be liable and responsible for the same. Without prejudice to the above, if any instructions are unclear and/or ambiguous, the Escrow Agent may refer back to the Party issuing the instructions for clarification and may not, in its absolute discretion and without any liability on its part, act upon the instructions until any ambiguity or conflict has been resolved to its satisfaction.

**9. TERMINATION**

9.1 This Escrow Agreement cannot be terminated by the Borrower under any circumstances during the tenure of the Loan and/or till any amount due thereunder is outstanding and/or the entire Loan availed from the Lender along with accrued interest, additional interest, costs, expenses and charges has been liquidated completely to the satisfaction of the Lender;

9.2 Subject to the preceding clause, this Agreement shall automatically stand terminated on the date the Bank discharges the Borrower under the Loan Agreement upon repayment of the entire Secured Obligations to the satisfaction of the Lender and the Lender shall release its lien on the Escrow Account under written advice to the Borrower and thereafter the funds remaining in the Escrow Account shall be transferred to the account nominated by the Borrower.

**10.RESIGNATION AND REMOVAL**

10.1 The Escrow Agent may resign from its appointment as an Escrow Agent, subject to the Escrow Agent giving 30(Thirty) business days prior notice in writing to the other Parties. The Escrow Agent shall deal with the Escrow Account in accordance with the provisions of this Agreement and continue to be bound by the terms and conditions hereof until a successor escrow agent is appointed.

10.2 The Borrower will within 30(Thirty)Business Days of receipt of the Escrow Agent's resignation notice, nominate and inform the Bank in writing of a replacement of the Escrow Agent (together with details of the account to which the amounts lying with the Escrow Agent will be transferred). Provided that if no suitable substitute escrow bank is found within a period of 30 (Thirty) Business Days, the Escrow Agent shall continue to act as such until a substitute is found. The Escrow Agent shall not be obligated to continue for a further period as an Escrow Agent if the same is beyond the powers of the Escrow Agent due to the regulatory orders or orders of any court, tribunal etc. In such a situation the Escrow Agent shall forthwith transfer the funds lying in the Escrow Account to such other bank account as maybe directed jointly by the Borrower and the Bank.

10.3 The resignation/removal of the Escrow Agent and any appointment of the successor escrow agent shall only become effective when the successor escrow agent notifies all the Parties that it accepts its appointment. On giving the notification, the successor escrow agent shall succeed to the position of the Escrow Agent in this Escrow Agreement by a deed of accession and the term Escrow Agent in this Escrow Agreement shall thereafter mean the successor escrow agent.

10.4 The Escrow Agent may be removed by the Bank by giving 7 (Seven) Business Days' notice to the Escrow Agent.

10.5 If the Escrow Agent resigns or is removed in accordance with this Escrow Agreement, then the Bank shall be entitled to appoint a successor escrow agent.

10.6 If the Escrow Agent resigns, or is replaced, pursuant to this Escrow Agreement, such agent shall do all reasonable acts for the transfer of the funds lying in the Escrow Account to the successor escrow agent in accordance with clause 10.3 herein above.

10.7 The Escrow Agent shall in no manner be liable or responsible for any disputes or claims amongst the Parties to this Escrow Agreement for any reason, even if the Escrow Agent is made a party thereto, except in case of negligence, fraud and misconduct on part of Escrow Agent. Accordingly, the Parties to this Agreement expressly agree and undertake that, at all times, during the subsistence and after cessation of its obligations under this agreement, the Escrow Agent shall not be liable or responsible or be a party to any litigation/arbitration or bear any costs of litigation/arbitration proceedings.

10.8 The Borrower will pay to the Escrow Agent any fees due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent will reasonably incur in connection with the transfer of the Escrow Account to the replacement Escrow Agent.

**11.GOVERNING LAW**

This Escrow Agreement shall be governed and interpreted by, and construed in accordance with the laws of the Republic of India. The Parties agree that the courts in [Mumbai] shall have jurisdiction with respect to all matters contained in this Escrow Agreement.

**12.SEVERABILITY & PARTIAL INVALIDITY**

12.1 All the provisions of this Escrow Agreement shall be subject to the provisions of applicable laws. If any condition, Section, Article, Clause or provision of this Escrow Agreement not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Escrow Agreement shall not be affected thereby.

12.2 If at any time any provision of this Escrow Agreement becomes illegal, invalid or unenforceable in any respect, neither the legality nor the validity or enforceability of the remaining provisions of this Escrow Agreement shall in any way be affected or impaired thereby and those which becomes illegal, invalid or unenforceable, shall be modified to the extent the same becomes legal, valid and enforceable.

**13. AMENDMENTS**

This Agreement and the Schedules hereto constitutes a complete statement of the terms of this Escrow Agreement between the Parties hereto on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

**14. RELIANCE BY THE ESCROW AGENT**

The Escrow Agent shall be entitled to rely upon any order, judgment, decree, ruling, award or decision of arbitrators or any regulatory bodies contemplated in any other document between the Parties and as a means to resolve disputes, certification, demand, notice or other written instrument delivered to it under this Escrow Agreement without being required to determine the authenticity or the correctness of any fact, finding or other statement stated therein or the validity thereof or the propriety or validity of the service thereof unless the other Parties to this Escrow Agreement applies and/or obtains or stay or injunction on the operation of the order, judgment, decree, ruling, award or decision. The Escrow Agent may act in reliance upon any notice or other instruction or direction or signature it believes to be genuine and as available in its records and may assume that any person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions of this Escrow Agreement has been duly authorised to do so as long as they are not inconsistent with any prior instructions or materials submitted to the Escrow Agent in relation to the operation and maintenance of Escrow Account.

**15. ASSIGNMENT**

15.1 The Borrower shall not be entitled to assign or transfer any of its rights, benefits and obligations under the Loan and/or this Escrow Agreement and/or Loan Documents.

15.2 The Borrower agrees that notwithstanding anything to the contrary contained in any documents executed under / in relation to this Escrow Agreement or the Loan, the Lender shall have the right to assign and / or transfer and / or novate and / or otherwise securitise its / their rights or obligations under the Loan / this Escrow Agreement and / or the Loan Documents whether with or without recourse to the Bank, to one or more scheduled commercial banks or financial institution or any other person, firm, association of persons, company, entity, trust or any association whether located / placed in India, without any reference or notice to the Borrower.

15.3 The Escrow Agent may assign, transfer, novate or otherwise dispose of all or any of their rights, benefits or obligations under this Agreement, with the prior written consent of the Bank.

**16. SURVIVAL**

Termination of this Agreement shall not relieve the Borrower of any obligations hereunder which expressly or by implication survive termination hereof.

**17. FORCE MAJEURE**

The Escrow Agent shall not be held liable for any failure to perform its obligations hereunder, or for any delay in the performance thereof, due to causes beyond its control, including but not limited to industrial disputes of whatever nature, acts of God, public enemy, acts of government, failure of telecommunication, natural disaster, fire, floods, war, explosions or earthquakes, or any other cause beyond it’s reasonable control.

**18. WAIVERS**

The provisions of this Escrow Agreement may be waived only with the prior written consent of the party giving such waiver, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Escrow Agreement shall affect the validity, binding effect or enforceability of this Escrow Agreement or be deemed to be an implied waiver of any provision of this Escrow Agreement. The failure of any party hereto to insist on performance of any of the terms or conditions of this Escrow Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the parties hereto with respect thereto shall continue in full force and effect.

**19. HEADINGS AND ITS INTERPRETATION**

The headings in this Escrow Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Escrow Agreement. The Parties hereto have participated jointly in the negotiation and drafting of this Escrow Agreement. In the event an ambiguity or question of intent or interpretation arises, this Escrow Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any of the provisions of this Escrow Agreement.

**20. LIABILITY OF THE ESCROW AGENT**

20.1 The Escrow Agent shall not be liable to any person or entity for any loss, liability, claim, action, damages or expenses arising out of or in connection with anything done or omitted to be done by it pursuant to and in accordance with the provisions of this Escrow Agreement save as are caused by its own gross negligence or willful misconduct.

20.2 The liability, if any, of the Escrow Agent under this Escrow Agreement shall be as per order of the competent court/ authority.

20.3 Notwithstanding the foregoing, under no circumstances will the Escrow Agent be liable to any party whether in contract, tort or otherwise, for any consequential loss (including, but not limited to, loss of business, goodwill, opportunity or profit) even if advised of the possibility of such loss or damage.

**21. CORPORATE REORGANIZATION OF ESCROW AGENT**

Any corporation into which any of the Escrow Agent in its individual capacity may be merged or converted or with which it may be consolidated or any corporation resulting from any merger conversion or consolidation to which the Escrow Agent in its individual capacity shall be a party or any corporation to which substantially all the corporate trust business of the Escrow Agent in its individual capacity may be transferred, shall be the Escrow agent under this Escrow Agreement without further act.

## SCHEDULE I

## PART A
## DESCRIPTION OF PROPERTY

**PART – B**

**DETAILS OF THE RECEIVABLES**

RECEIVABLES shall mean all present and future cash flows of the Borrower, and any other cash inflows of the Borrower, including the entire sale proceeds, consideration, fees, rent, lease rentals, license fees and/or any other receivables received/to be received by the Borrower pursuant to, inter alia, any agreement(s), contract(s) for/of sale, transfer, lease, rent and/or assignment of units in the Property (or any portion thereof) as the case maybe, all revenues, income and other amounts (including without limitation, any cash benefits and cash subsidies) owing to, receivable and/or received by, the Borrower from the Lessors. Provided however, the term "Receivables" shall not include taxes/levies/ legal/society/maintenance charges.

**Part-C**

**Repayment Schedule**

**SCHEDULE II**

**NOTICES**

| | |
|---|---|
| **Details of Authorised Signatory of the Bank** | |
| **Details of the Authorised Signatory of the Borrower** | |
| **Details of the Authorised Signatory of the Escrow Agent** | |

**IN WITNESS WHEREOF** the parties hereto have here unto set and subscribed their respective hands and seals/stamps the day and year first herein above written.

Signed and delivered by the ]
Within named Borrower ]

through its authorized signatory ]
Mr. /Ms. _____ ]

SIGNED AND DELIVERED ]
by the within named Lender ]
**SBM Bank (India) Limited** ]
through its duly authorized official ]
Mr. /Ms._____ ]

SIGNED AND DELIVERED ]
by the within named Escrow Agent ]
**SBM Bank (India) Limited** ]
through its duly authorized signatory, ]
Mr. /Ms. _____ ]

**Regd. Office :**

101, Raheja Centre, 1st Floor, Free Press Journal Marg, Nariman Point, Mumbai - 400 021, India.

**Tel.** : +91 22 4302 8888 | **Fax** : +91 22 2284 2966 | www.sbmbank.co.in