**AGREEMENT BETWEEN OWNER AND BUILDER**

This Agreement is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_[[Effective Date]] (the ‘’Effective Date’’) at \_\_\_\_\_\_\_.

**BETWEEN:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name], (An “Individual”, “Company”, "Corporation", "Limited Liability Partnership", "Proprietorship Firm"), with its principal place of business located at\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “Owner”) through its Authorised signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 OF THE FIRST PART

**AND:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (An “Individual”, “Company”, "Corporation", "Limited Liability Partnership", "Proprietorship Firm"), with its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as “Builder”), through its Authorised signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 OF THE SECOND PART

**WHEREAS** the first party is The Owner of piece of land bearing \_\_\_\_\_\_ [[Plot No.]] situated at \_\_\_\_\_\_\_\_\_ [[Address]] (hereinafter referred to as the "said plot of land") and is desirous of getting a house constructed on the said plot of land.

**WHEREAS** the first party has appointed \_\_\_\_\_\_\_\_ [[name]] as the architect and the said architect has prepared the plans, drawings and elevations of the said intended house and the specification of the works to be done and of the materials.

**AND WHEREAS** the Second party is a builder and is having vast experience in construction of big buildings and has agreed to construct the house on the said plot of land.

1. **RELATIONSHIP OF THE PARTIES- INDEPENDENT**
	1. The Parties agree that the Parties shall be considered independent partners and not agents or employees of the other Party. Neither Party shall have authority to make any statements, representations nor may commitments of any kind, nor to take any action which shall be binding on the other Party, except as be expressly provided for herein or authorized in writing.
2. **DUTIES AND OBLIGATIONS OF THE BUILDER**
	1. The builders will construct the building on the said plot of land in conformity with the plans, drawings, specifications and elevations as prepared by the Architect which has been annexed hereto and marked as Annexure A, with the material of best quality and in the most substantial and workman like manner and to the satisfaction of the architect.
	2. The builders hereby undertake to commence the construction within fifteen days of execution of these presents and complete the construction on or before the expiry of \_\_\_\_\_\_ [[Time period]] from the date of execution of these presents in accordance with the plans duly approved and sanctioned by the Municipal Corporation of \_\_\_\_\_\_ [[Place]] and specifications and conditions as are set out in Annexure A hereunder written.
	3. The builders shall also be responsible for any damage to buildings, whether immediately adjacent or otherwise and any damage to roads, streets, foot-paths, bridges or ways as well as all damages caused to the buildings, and work forming the subject to this contract by frost, rain, wind or other inclemency of weather;
	4. The builders shall be bound to appoint an engineer competent to receive instructions from the architect from time to time, on behalf of the builders at all reasonable hours and all directions given to him by the architect shall be deemed to have been given to the builders.
3. **DUTIES, OBLIGATIONS AND RIGHT OF THE OWNER**
	1. The owner shall allow free ingress to and egress from the premises to the builder’s servants, employees, sub-contractors and all other persons, who are necessary in connection with the carrying out of the works under the agreement.
	2. Notwithstanding anything contained hereinabove, it shall always be open to the employer to exclude from the scope of the services to be rendered by the architects under these presents the supervision and execution part of the project and reduce the scale of fees, in which case the terms, conditions, scale of fees, etc. shall be as detailed in the Annexure hereto.
	3. The owner or his representatives shall be entitled to inspect the progress of the construction work and materials used for the construction and they shall be entitled to point out to the architect any defects in the construction work, quality of workmanship or materials d used when such defective work is in progress or being executed or such material is brought on site. If the architect will be satisfied about the objections raised, the said architect shall certify the same in writing and direct the builders to rectify at their own cost the defect in the said construction work or remove such defective materials and the same shall be rectified or removed by the builders as directed.
4. **MANDATORY OBLIGATIONS OF THE PARTIES.**
	1. A sum equivalent to \_\_\_\_\_ [[%]] per cent of the total contract amount payable by the owner under this agreement shall be retained by the owner as retention money, which shall be paid after a period of \_\_\_\_\_\_ [[No. of months]] from the date of handing over the said bungalow complete in all respects and fit for occupation.
	2. The builders shall undertake to rectify all such defects as may be found or detected during the period of \_\_\_\_\_\_\_ [[no. of months]].
	3. If the builders fail to rectify the defects pointed out or decline to cure such defects as pointed by the owner within \_\_\_\_ [[No. of days]] from the date of reporting to the builders, the owner shall be entitled to have such defect secured by such other agencies as it may deem fit at the entire cost and risk of the builders and utilise the retention money;
	4. Provided further that in the event of the said retention money being inadequate to meet such costs, charges and expenses incurred by the owner for curing the defects in the construction, the builders shall within \_\_\_\_\_ [[No. of days]] of a demand in writing made by the owner make good the defect, failing which the builders shall be liable to pay the same together with the interest at \_\_\_\_\_ % per annum
	5. The employer or the builder shall not assign, sublet or transfer their interest in this agreement without the written consent of the other.
	6. This agreement shall be executed in duplicate, the original shall be retained by the owner and the duplicate by the builders.
5. **CONSTRUCTION COST**
	1. The construction cost shall not exceed \_\_\_\_\_\_ [[Amount in Rs.]] per square meter and should conform to the norms of market. The construction cost shall not include:-

(a) cost of land;

(b) architects fees;

(c) any services relating to fitting or fixtures not designed by the architects; and

(d) soil testing fees.

1. **FEES**

The owner will pay to the builders

* 1. A sum of \_\_\_\_\_\_\_\_ [[Total Amount in Rs.]] out of which the owner shall pay to the builders weekly such sum as may be sufficient to defray the expenses incurred by the builders in respect of materials used in the works, checked and certified by the architect,
	2. \_\_\_\_\_\_\_\_ [[Amount in Rs.]] on the certificate by the architect that the work up to first floor has been completed,
	3. The further sum of \_\_\_\_\_\_\_\_\_\_ [[Amount in Rs.]] on the certificate by the architect that the work up to second floor has been completed, and;
	4. The balance shall be paid on the certificate by the architect that the said works have been completed in all respects according to the agreement and the builders have at their own expenses removed and cleared all scaffolding, fencing, unused materials and rubbish from the premises and made and prepared the bungalow fit for use and habitation and immediate occupation.
1. **LIMITATION OF LIABILITY**
	1. If the builders fail to complete the said work within the period as stipulated in the foregoing provision, the builders shall, at the option of the owner but without prejudice to the other rights under law of the owner and other provisions herein, pay liquidated damages calculated at the rate of \_\_\_\_\_\_\_ [[Amount in Rs]] per day (but subject to a maximum of \_\_\_\_\_\_\_\_\_ % of the total contract amount payable by the owner under this agreement) for the period between the said stipulated time for completion of the works.
	2. The builders shall indemnify the owner in respect of all claims, damages or expenses payable in consequence to any injury to any employee, workman, nominee, invitee while in or upon the said premises.
	3. If the builders
		1. Abandon the contract or fail to commence the work or suspend the progress of the work for \_\_\_\_ [[No. of days]] without any lawful excuse under these conditions, or
		2. Fail to proceed with the works with such due diligence and fail to make such due progress as would enable the works to be completed within the time agreed upon, or;
		3. Fail to remove materials from the site or to pull down and replace work for \_\_\_\_\_\_ [[No. of days]] after receiving from the architect written notice that the said materials or the works were defective and rejected by the said architect or neglect or fail persistently to observe and perform all or any of the acts, materials or things required by this contract to be observed and performed by the owner for seven days after written notice shall have given to the builders requiring them to observe or perform the same and the architect certifies in writing to the owner to the said effect, then and in any of the said cases the owner may, notwithstanding any previous waiver, after giving seven days’ notice through the said architect in writing to the builders terminate the licence in favour of the builders ,and;
		4. In so far as it relates to the completion of the remaining construction work, but without thereby affecting the powers of the architect, or the obligations and liabilities of the builders, the whole of which shall continue in force as fully as if this Agreement had not been so determined, and;
		5. The owner by his servants or agents may enter upon and take possession of the work, tools, scaffolding, sheds, machinery, power, utensils and materials lying upon the premises or in the adjoining lands or roads and use the same as its own property or may employ the same by means of its own servants and workmen in carrying on and completing the work or by employing any other contractor or other person to complete the works and
		6. The builders shall not in any way interrupt or do any act, matter or thing to prevent or hinder such other contractor or other person or persons employed for completing and finishing the works or using the material and plant for the works.
2. **REPRESENTATIONS AND WARRANTIES**

Each party hereby represents and warrants to that:

* 1. Each party has all required capacity and corporate authorization to enter into this Agreement and be bound by the obligations provided hereunder;
1. **NOTICE**
	1. Any notice provided for or permitted in this Agreement shall be in writing and will be deemed to have been given \_\_\_\_\_ [[Minimum number of Days after Mail: Number]] days after having been mailed, postage pre-paid, by certified or registered mail or by recognized overnight delivery services, except in the case of a postal or other strike affecting the service used whereupon notice will be deemed to have been given \_\_\_\_\_\_ [[Minimum number of Days for Service of Notice: Number]]days after normal service resumes.
	2. Addressing and delivery is to be made as follows:
		1. If to: Owner

Owner Name\_\_\_\_\_\_\_\_

Owner Address\_\_\_\_\_\_\_\_

* + 1. If to: the Builder

Builder Name\_\_\_\_\_\_\_

Builder Address\_\_\_\_\_\_\_\_\_

* 1. The parties may communicate other addresses where notice must be sent to from time to time. Such communication shall be in writing and shall have the effect of replacing the address. No change of address effected under this section shall in any way affect the operation of any term, other than the delivery address, in this Agreement.
1. **TERMINATION**
	1. Either party may terminate this agreement at any time by giving a written notice of \_\_\_\_\_\_\_ [[no. of days/months]] to the other party stating lawful reasons.
	2. If the Builder close their business or die or become incapacitated from acting as such Builder’s, then the Agreement shall stand terminated.
2. **EFFECT OF TERMINATION.**

Upon termination of the agreement, the following shall occur:

* 1. When the said works are terminated in the manner as stipulated in the provision, the architect shall give a notice in writing to the builders to remove their surplus materials and plant, and should the builders fail to as so within a period of seven days, after receipt thereof by them, the owner may sell the same by public auction and give credit to the builders for the net amount realized.
	2. The architect shall thereafter ascertain and certify in writing, what (if anything) shall be due or payable to or by the owner, for the value of the said building and materials so taken possession of by the owner and the expense or loss which the owner shall have been put to in procuring the work to be completed and the amount, if any, owing to the builders and the amount which shall be so certified shall thereupon be paid by the owner to the builders or by the builders to the owner, as the case may be, and the certificate of the architect shall be final and conclusive between the parties.
1. **DISPUTES AND RESOLUTIONS**
	1. **ARBITRATION:**
		1. In the event of any dispute, difference or controversy arising between the Owner and Builders in the performance, interpretation, implementation or application of this agreement, the parties will first attempt to resolve their differences mutually but failing mutual settlement dispute, difference or controversy arising, either Party may request that such disputes be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (“ the Act of 1996”) and the rules made there under, as amended from time to time.
		2. The Seat of Arbitration will be in \_\_\_\_\_\_ [[Place]] and all Arbitration proceedings will be conducted in \_\_\_\_\_\_\_\_\_ [[Place]].
	2. All disputes, actions and proceedings shall be subject to the jurisdiction of the Courts in \_\_\_\_\_\_\_ [[Name of the place]].

IN WITNESS WHEREOF the parties hereto have subscribed their respective hands hereto and on a duplicate hereof on the day and year hereinabove first mentioned

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| --- | --- |
|  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (First Party) |  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Second Party) |

Signed and Witnessed in the presence of:

1. Name of the Witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of the Witness\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Name of the Witness\_\_\_\_\_\_\_\_\_\_\_

Address of the Witness\_\_\_\_\_\_\_\_\_\_