

# M. T. MISKITA & Co.

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## Supplementary Certificate of Title

Re: 'K-4' of Avenue 'K' being part of Larger Land admeasuring 8,79,581 Square Meters at Village Dongare, also known as "Village Narangi" Taluka Vasai, District Thane.

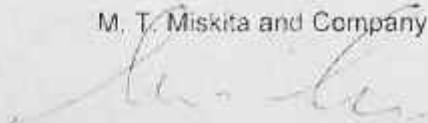
We refer to our Certificate of Title dated 26<sup>th</sup> December, 2012 relating to Avenue 'K-4' and, in particular, to paragraphs no. 10 and 12 thereof.

We have been informed by our clients Messrs. Evershine Developers and Enigma Constructions Private Limited, the Co-owners of Avenue 'K-4' that the Special Leave Petition filed in the Supreme Court of India and other proceedings referred to in the said paragraphs 10 & 12 of our Certificate of Title have been withdrawn by Mausmi SA Investments LLC pursuant to the amicable settlement arrived at between all the parties thereto.

In our opinion, based on our investigation and the declarations/writings executed by PLDC, the letter dated 8<sup>th</sup> December, 2012, addressed by Evershine to us, the title of Evershine to F.S.I. of 2,55,364.60 square feet (built-up area) and the Demarcated Portion One is clear and marketable and free from all encumbrances subject to sub-clause 8(b) of our Certificate of Title and Avenue 'K' being unsubdivided. Messrs. Sri Dutt Constructions, the Developers are entitled in exercise of the rights and powers contained in the Development Agreement dated 2<sup>nd</sup> November, 2012, to construct the Building No. 4 with five wings on the Demarcated Portion One of Avenue 'K' and to sell the flats, shops and other premises to prospective purchasers on an ownership basis under the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 and to receive the sale and other proceeds from such Purchasers on their own account and for their own benefit.

Mumbai, Dated this 27<sup>th</sup> day of December, 2013

M. T. Miskita and Company



Partner

M. M. MISKITA  
VIREN MISKITA

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Certificate of Title

Re: K-4 of Avenue 'K' being part of Larger Land admeasuring 8,79,581 Square Meters at Village Dongare, also known as 'Village Narangi' Taluka Vasai, District Thane.

We have in accordance with the instructions of our clients **Messrs. Evershine Developers** a partnership firm registered under the Indian Partnership Act, 1932, having its place of business at Veena Beena Shopping Centre, Second Floor Guru Nanak Road, Bandra (West), Mumbai 400 050 and **Enigma Constructions Private Limited** a company incorporated under the Companies Act, 1956 having its registered office at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai 400 069 (hereinafter respectively referred to as "**Evershine**" and "**Enigma**" and collectively referred to as the "**Co-owners**") investigated their title to the Larger Land admeasuring 8,79,581 Square Meters situate at Village Dongare, within the Registration Sub-District of Vasai, District Thane more particularly described in the First Schedule hereunder written (hereinafter referred to as the "**Larger Land**") and had earlier investigated the title of **Messrs. Palghar Land Development Corporation ("PLDC")** to the Larger Land, inter alia, taking searches since the year 1971 at the Office of the Sub-Registrar of Assurances at Vasai, Virar and Nala Sopara publishing the usual Public Notices in the local newspapers and perusing the photocopies of several title deeds, the Search Reports and Record of Rights. PLDC also made appropriate Declarations on their title to the Larger Land. We give below a brief devolution of title of the Co-owners to the Larger Land.

1. The Larger Land was acquired by PLDC under several Deeds of Conveyance executed by the Original Owners in favour of PLDC and duly registered with the Sub-Registrar of Assurances at Vasai. The Larger Land was pursuant to such Deeds of Conveyance transferred to the name of PLDC in the Record of Rights. The said Deeds of Conveyance were executed after certain permissions were obtained for the transfer and development of the Larger Land including the Order No. Revenue/K-1/T-9/ANAP/ASR-11/2004 dated 27<sup>th</sup> February, 2004 passed by the Collector, Thane for conversion of the Larger Land to Non-agricultural use.
  
2. Evershine became seized and possessed of or otherwise well and sufficiently entitled to the Larger Land by virtue of the 5 (Five) Deeds of Conveyance namely, the Deed of Conveyance dated 9<sup>th</sup> August, 2005 (as rectified by the duly registered Deeds of Rectification dated 8<sup>th</sup> February, 2006 and 11<sup>th</sup> May 2009), the Deed of Conveyance dated 8<sup>th</sup> February, 2006, the Deed of Conveyance dated 21<sup>st</sup> August, 2006, the Deed of Conveyance dated 27<sup>th</sup> February 2007 and, the final Deed of Conveyance dated 11<sup>th</sup> May, 2007 made by and between PLDC as Vendors of the First Part, the Erstwhile Partners of PLDC as Confirming Parties of the Second Part and Evershine as Purchaser of the Third Part all duly adjudicated under the Bombay Stamp Act 1958 and registered with the Sub-Registrar of Assurances at Vasai. The Larger Land was transferred first to the name of PLDC and thereafter to Evershine's name in the Record of Rights. Extracts from Index II of the Deeds of Conveyance have been obtained.

- 3 Pursuant to the Group Housing Scheme evolved for development and construction of buildings on the **Larger Land**, a Lay-Out Plan and Building Proposal were submitted to the City Industrial Development Corporation of Maharashtra Ltd. ("CIDCO") through Messrs Shah Gattani Consultants, Architects and Consultants, (the "**Project Architects**") CIDCO issued its Commencement Certificate No. CIDCO/VVSR/CC/BP-3519/W/2615 dated 2<sup>nd</sup> December, 2005 in respect of the hereinbefore recited Lay-out Plan and Building Proposal, for construction of buildings on the non-reserved portions of the **Larger Land** (hereinafter referred to as the "**2005 Commencement Certificate**") Certain portions of the Larger Land have been reserved under the Development Plan approved for the Virar - Vasai Sub-Region for D.P. Roads and D.P. Reservations as reflected in the sanctioned Lay-out Plan
  
- 4 Based on the Environmental Clearance Certificate bearing No. 21-544/2006-1A-III dated 13<sup>th</sup> March, 2007 of the Union Ministry of Environment and Forests, Government of India, for the development of the Larger Land in accordance with Environment Impact Assessment Notification S O (E) dated 27<sup>th</sup> January, 1994 read with the Amendment notified on 7<sup>th</sup> July, 2004 vide Notification S. C. 801(E), Evershine through the Project Architect submitted to CIDCO a revised Lay-out Plan-cum-Building Proposal, which was sanctioned vide various Commencement Certificates dated 29<sup>th</sup> January, 2008 issued by CIDCO ("**2008 Commencement Certificate**")

5. By a Joint Venture Agreement dated the 20<sup>th</sup> March, 2009 ("J. V. Agreement") executed by the Co-owners and registered with the Sub-Registrar of Assurances at Vasai under Serial No. 1996 of 2009, Evershine and Enigma agreed to jointly develop the Larger Land and pursuant to the J V Agreement and the consideration mentioned therein Evershine conveyed to Enigma its one-half undivided share in the Larger Land by the Deed of Conveyance dated 20<sup>th</sup> March, 2009 duly registered with the Sub-registrar of Assurances at Vasai under Serial No. 1995 of 2009 ("Deed of Conveyance").
6. The Larger Land being un-subdivided, has been notionally sub-divided into Residential Sector, Retail Sector and Commercial Sector and the Residential Sector has been further notionally divided into 15 (fifteen) or more Avenues.
7. The Vasai-Virar City Municipal Corporation has issued further Commencement Certificate No. VVCMC/TP/AM/VP-0453/084/2011-12 dated 13<sup>th</sup> September, 2011 ("2011 Commencement Certificate") as modified by the Commencement Certificate No. VVCMC/TP/AM/VP-0453/296/2011-12 dated 31<sup>st</sup> March, 2012 ("2012 Commencement Certificate") based on the Revised Building Proposals submitted through the Project Architect in accordance with which the Residential Buildings will be constructed on the Residential Sector.
- 8(a) As envisaged under the J V Agreement, the Co-owners have by an Agreement dated 13<sup>th</sup> October 2012, made by and between Evershine of the One Part and Enigma of the Other Part and registered with the Sub-Registrar of Assurances at Vasai-Virar City Municipal under Serial

no. Vasai - 2/9924 of 2012, on 15<sup>th</sup> October, 2012 (the "Modification Agreement"), jointly and mutually agreed to the division/distribution of the FSI of 29,39,133.77 square feet (built-up area) between themselves in equal shares to the intent and effect that Evershine will be absolutely and exclusively entitled to deal with or dispose of and/or to exploit separately 14,69,566.88 square feet (built-up area) comprised in the said Built-up FSI as per details set out in Part I of the Second Schedule thereunder written ("Evershine's FSI") and Enigma shall be absolutely and exclusively entitled to deal with or dispose of and/or to exploit separately 14,69,566.88 square feet (built-up area) comprised in the said Built-up FSI as per details set out in Part II of the Second Schedule thereunder written ("Enigma's FSI"), in the construction of Residential Buildings on demarcated portions of the two Avenues 'K' and 'L' in accordance with 2011 Commencement Certificate as modified by the 2012 Commencement Certificate.

- 8(b) Evershine and Enigma have further agreed and acknowledged as recorded in the Modification Agreement that Enigma shall, at the request of Evershine, be liable to execute along with Evershine transferable and assignable leases in perpetuity at a nominal annual rent of Re. 1/- in favour of the Co-operative societies to be formed of purchasers of flats, shops and other premises in the Residential Buildings to be constructed on its aforesaid demarcated portions of Avenues 'K' and 'L'.
- 8(c) Evershine or their assign or nominees has become entitled to construct buildings Nos. 'K-3', 'K-4', 'L-3', 'L-4' (part), 'L-5' and 'L-6' on demarcated portions of Avenues 'K' and 'L' through utilization of Evershine's FSI that is, FSI of 14,69,566.88 square meters (built-up

area) in accordance with 2011 Commencement Certificate as modified by the 2012 Commencement Certificate, Building No. 4 with five wings each wing comprising of ground and fourteen upper floors with shops on the ground floor on a demarcated portion of Avenue 'K' through utilization of FSI of 2,55,364.60 square feet (built-up area) hereinafter referred to as "Demarcated Portion One" more particularly described in the Third Schedule hereunder written being a part of Avenue 'K' more particularly described in the Second Schedule hereunder written.

9. By a Development Agreement dated 2<sup>nd</sup> day of November, 2012, made by and between Evershine as Owner of the One Part and Messrs. Sri Dutt Constructions, a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of business at 535, Fifth Floor, Panchratna, Opera House, Mumbai 400 004, hereinafter referred to as the "Developer" of the Other Part registered in the Office of the Sub-Registrar at Vasai-II under Serial no. 10694 of 2012 ("Development Agreement"), and as modified by the Deed of Rectification dated 18<sup>th</sup> December, 2012, Evershine granted irrevocable development rights to the Developer in respect of F.S.I. of 2,55,364.60 square feet (built-up area) to be utilised by the Developer in the construction of Building No. 4 with five wings each wing comprising of ground and fourteen upper floors with shops on the ground floor on Demarcated Portion One with right to sell shops, flats and other premises on an 'ownership basis' under the Maharashtra Ownership Flats Act, 1963 and to form a co-operative housing society of purchasers of flats and shops in the building under the Maharashtra Co-operative Societies Act, 1960 in whose favour Evershine and Engima shall execute a transferable, assignable Lease in perpetuity

(999 years) at a nominal lease rent of Re. 1/- (Rupee One Only) of the Demarcated Portion One and the Building No. 4 thereon. Pursuant to the Development Agreement Evershine has delivered irrevocable vacant and peaceful possession of the Demarcated Portion One to the Developer on terms and conditions mentioned in the Development Agreement.

10. Mausmi SA Investments LLC ("Mausmi") holding 20% Equity Shares of Keystone Realtors Pvt. Ltd. ("Keystone") has filed in the Supreme Court of India a Special Leave Petition ("SLP") against the Order dated 6<sup>th</sup> November, 2012 of the Bombay High Court dismissing Mausmi's Appeal No. (L) No. 47 of 2012 ("Mausmi's Appeal") which is pending admission. The Supreme Court has in the meantime passed an Order dated 8<sup>th</sup> November, 2012 directing Enigma to sell its available FSI of the Virar Property after giving notice to Mausmi. Neither was Evershine made a party to the SLP referred to below or the said Appeal, nor any injunction or other order has been passed against Evershine in any of the proceedings referred to herein. However, Mausmi had filed an Application No. 56 of 2012 against Keystone, Enigma and Evershine for setting aside the Modification Agreement on which no order was passed by the High Court in view of the dismissal of Mausmi's Appeal. We have obtained the Opinion dated 22<sup>nd</sup> November, 2012 of Counsel Navin Vimadala who after referring to the Petition filed by Mausmi before the Company Law Board ("CLB") under Sections 397 and 398 of the Companies Act, 1956 against Keystone, Enigma and Ors. (which was dismissed and gave rise to Mausmi's Appeal) has opined that Evershine would be free to deal with the FSI/portion of land falling to its share under the said Deed of Modification in such manner as



Evershine would deem fit and proper and receive the consideration/proceeds for themselves without being required to obtain any Consent either of Enigma or Keystone. Mr. Vimadalal appeared for Evershine before the CLB and the High Court.

11. We have caused to be taken searches at the office of the Sub-Registrar of Assurances at Vasai, Virar and Nallasopara and have not found any transactions vitiating the title of Avenue 'K'. Avenue 'K' was originally mortgaged along with Avenues 'G', 'H', 'J' and 'M' under an Indenture of Mortgage dated 15<sup>th</sup> June, 2011 executed in favour of Messrs Housing Development Financial Corporation Limited ("HDFCL"). The FSI of 2,55,364 square feet in respect of which development rights have been granted to the Developers to be utilized on Demarcated Portion One of Avenue 'K' has been released from the mortgage debt payable under the Mortgage Deed, by HDFCL's letter dated December 7, 2012 addressed to the Co-owners. Evershine has by their letter dated December 8, 2012, inter alia, also confirmed that neither they nor Enigma have created any mortgage, third party rights, or other encumbrance on the said Avenue 'K' as also that apart from the said legal proceedings referred to in clause 10 above there are no other proceedings or order of injunction or attachment affecting Avenue 'K' or the F.S.I. to be utilized in the construction of Building No. 4 on Demarcated Portion One.
12. In our opinion based on our investigation, the declarations/writings executed by PLDC, the letter dated 8<sup>th</sup> December, 2012, addressed by Evershine to us and the Opinion of Mr. Vimadalal, Senior Advocate, the title of Evershine to F.S.I. of 2,55,364.60 square feet (built-up area) and

(16)

the Demarcated Portion One is clear and marketable and free from all encumbrances subject to sub-clause 8(b) and Avenue 'K' being unsubdivided. The Developers are entitled in exercise the rights and powers contained in the Development Agreement to construct the Residential Building on the Demarcated Portion One of Avenue K and to sell the flats, shops and other premises to prospective purchasers on ownership basis and to receive the sale and other proceeds from such Purchasers for their own benefit.

THE FIRST SCHEDULE ABOVE REFERRED TO  
(DESCRIPTION OF THE LARGER LAND)

ALL THAT PIECE AND PARCEL of non-agricultural vacant Land bearing New Survey Nos. 5, 5B, 5D, 5F, and 5G as per latest Record of Rights admeasuring in the aggregating 8,79,581 square meters situate, lying and being at Village Dongare (Dongar Pada) also known as "Village Narangi" within the Registration Sub-District of Vasai, District - Thane.

THE SECOND SCHEDULE ABOVE REFERRED TO  
(Avenue "K")

Avenue 'K' is shown delineated by a red colored boundary line on the Plan annexed to the Development Agreement and is a part of the Larger Land more particularly described in the First Schedule herein.

**THE THIRD SCHEDULE ABOVE REFERRED TO**  
**("Designated Portion One")**

The designated portion of Avenue 'K' on which Building No. 4 will be constructed by the Developer through utilization of FSI of 2,55,364.60 square feet (built-up area) being a part of Avenue 'K' more particularly described in the Second Schedule herein.

Dated this 26<sup>th</sup> day of December, 2012.

M. T. Miskita and Company

  
Partner