

#### ARTICLE XIV - DEVELOPMENT

14.1 For the purpose of development of the said property the Developer has agreed :

- i) To appoint the professional team for undertaking development of the said Premises.
- ii) The Developer shall take all necessary action to enforce the due, proper and prompt performance and discharge by the other parties of their respective obligations under the building contract, any sub contracts or agreements with the Developer and the appointments of the members of its Professional Team and the Developer shall itself diligently observe and perform its obligations under the same.
- iii) The Developer has used and shall continue to use all reasonable skill and care in relation to the development, to the co-ordination management and supervision of the Building Contractor/other Contractors and the Professional Team, to selection and preparation of all necessary performance specifications and requirements and to design of the new building and/or buildings for the purposes for which is to be used or specific.
- iv) The approved plans have been and will be prepared competently and professionally so as to provide for a building free from any design defect and fit for the purpose for which it is to be used,
- v) The Developer shall commence and proceed diligently to execute and complete the development:
  - a) in a good and workman like manner with good quality of materials of its several kinds free from any latent or inherent defect (whether of design, workmanship or materials)
  - b) in accordance with the Approved Plans, Planning Permissions and all other permissions which may be granted for the development, the consents, any relevant statutory requirement and building regulations, the requirements of any statutory or other competent authority and the provisions of this agreement.

- vi) The Developer shall use its best endeavors to cause the Development to be practically in accordance with the provisions of this Agreement.

#### **ARTICLE XV - CONSTRUCTION AND COMPLETION**

- 15.1 Unless prevented by circumstances under the force majeure as hereinafter appearing the said New Building and/or Buildings shall be constructed, erected and completed within a period of 42 (forty two) months from the date of sanction of the said Plan with a Grace Period of 6 (six) months (hereinafter referred to as the **COMPLETION DATE**). Time being essence of the Agreement.
- 15.2 In addition to the above, the Developer shall not be treated in breach of the performance of obligations if the Developer is prevented from proceeding with the work of construction by the circumstances under Force Majeure as hereinafter stated.
- 15.3 The Developer shall be authorized in the name of the owners in so far as is necessary to apply for and obtain building materials for the construction of the building and to similarly apply for and obtain temporary and permanent connection of water, electricity, power, drainage, and/or gas to the New Building and other inputs and facilities required for the construction or for better use and enjoyment of the new building for which purpose the Owners shall execute in favour of the Developer or its nominee or nominees a General Power of Attorney as shall be needed and/or required by the Developer from time to time.
- 15.4 The Developer shall at its own costs and expenses and without creating any financial and other liability on the owners construct and complete the New Building and various units and/or apartments therein in accordance with the sanctioned building plan and any amendment thereto or modification thereof made or caused to be made by the Developer.
- 15.5 All costs, charges and expenses including Architect's fees accruing due after the execution of this Agreement shall be paid borne and discharged by the Developer and the Owners shall bear no responsibility in this context.

- 15.6 The Developer hereby undertakes to keep the Owners and IHFL indemnified against all third party claims and actions, proceedings arising out of any sort of act or omission of the Developer and its agents, suppliers or contractors engaged in or relating to the construction of the said new Building and/or buildings.
- 15.7 The Developer hereby undertakes to keep the owners indemnified against all actions, suits, costs, proceedings and claims that may arise out of the Developer's action with regard to the development of the said Properties and/or in the matter of construction of the said new building and/or for any defect therein.
- 15.8 If any accident or mishap takes place during construction until completion of the new building whether due to negligence or otherwise of the Developer or any person appointed by it, the same shall be on account of the Developer and the Owner shall be fully absolved of any liability or claims thereof or therefrom.
- 15.9 The Developer has further agreed to complete the said Housing Project comprising of bare flats as per high end market price with all modern amenities and recreational facilities and with such materials and/or specifications (details whereof will appear from the **SECOND SCHEDULE** hereunder written)
- 15.10 In the event of any default on the part of the Developer in completing the said Housing Project within the Completion Date as aforesaid, (unless prevented by circumstances beyond its control as enumerated in Article XX, then and in that event the Developer shall be liable to compensate the Owners in a sum of Rs. 7.50 lacs per month or a part thereof until such time the said building is completed.

#### **ARTICLE XVI - SPACE ALLOCATION**

- 16.1 In consideration of the Owners having agreed to grant the exclusive right of development in respect of the said Premises the Owners shall jointly be entitled to ALL THAT the 65.50% of the total constructed area forming part of the development to comprise of various flats units apartments constructed

spaces servants quarters and car parking spaces which includes the top floor of the new building **AND TOGETHER WITH** the undivided proportionate share in all common parts, portions, areas, facilities and amenities and car parking spaces comprised in the said housing complex and **TOGETHER WITH** the undivided proportionate share in the land underneath the said building appurtenant thereto (hereinafter referred to as the **OWNER'S ALLOCATION**) and the Developer shall be entitled to retain for itself the balance of the total constructed area i.e. **34.50%** of to comprise of various flats units apartments constructed spaces and car parking spaces **AND TOGETHER WITH** the undivided proportionate share in all common parts, portions, areas, facilities and amenities and car parking spaces comprised in the said housing complex and **TOGETHER WITH** the undivided proportionate share in the land underneath the said building appurtenant thereto (hereinafter referred to as the **DEVELOPER'S ALLOCATION**).

- 16.2 Within seven days from the date of sanction of the Plan by the authorities concerned the Owners and the Developer shall identify their respective allocations and the same shall be recorded in an Agreement to be executed by the parties hereto and such allocation shall be done in a rationale and equitable manner.
- 16.3 Each of the parties shall be entitled to enter into agreement for sale of their respective allocations independently of each other for which no further consent of the other party shall be necessary and/or required it being however expressly agreed and understood that the Owners at or before entering into agreements for sale and transfer will obtain consent of IHFL.
- 16.4 Each of the parties hereby covenant and assure the other that in the event of any party being required to be a confirming party in any agreement and/or deed of conveyance it shall willingly execute such document as a confirming party.
- 16.5 The Developer shall be liable to make payment of all statutory dues and levies while undertaking construction of the new building and/or buildings in terms of this agreement PROVIDED HOWEVER the Owners and the Developer shall be liable to make payment of any amount which may have to be paid upon sale and transfer of the flats units apartments constructed spaces and car parking spaces forming part of their respective allocations.

- 16.6 The said new building shall be deemed to have been completed if certified so by the Architect for the time being irrespective of Certificate of Occupation being issued by Kolkata Municipal Corporation.
- 16.7 In the event of any of the flats units apartments servants quarters constructed spaces and car parking spaces forming part of the Owners Allocation being vested in the Developer consequent to non refund of the said TSD or additional payment to IHFL, for and on behalf of owners and Dune Leasing or any part thereof of on account of Additional Payment and/or on account of Service Tax and/or other statutory payment then and in that event the Owners shall cease to have any right over and in respect thereof and the same shall vest in the Developer without any further act deed or thing.
- 16.8 Within ten days from the date of notice of completion being given by the Developer to the Owners (hereinafter referred to as the **COMPLETION NOTICE**) the Owners and/or any persons claiming through or under them shall be entitled to take over notional possession (hereinafter referred to as the **POSSESSION DATE**) and on and from the Possession Date the Owners and/or the persons claiming through or under them shall be liable and agrees to make payment of the proportionate share of municipal rates taxes and other outgoings including maintenance charges **IT BEING EXPRESSLY AGREED AND MADE CLEAR** that the Owners and all persons claiming through or under them shall be entitled to take physical possession of the various flats units apartments constructed spaces and car parking space of the Owners Allocation only after necessary Completion Certificate has been granted by Kolkata Municipal Corporation.
- 16.9 **MARKETING** - The parties hereto from time to time discuss the price at which the parties shall sell and transfer the various flats, units, apartments, constructed spaces and car parking spaces forming part of their respective allocations with the intent and object of maintaining healthy relations and in order to avoid competition. However, such discussions shall have no binding effect on each other.

16.10 For the purpose of promoting the sale and transfer the various flats, apartments, units constructed spaces and car parking spaces forming part of the development, the Developer shall make all efforts for the marketing thereof and in that regard shall incur such legitimate expenses on account of advertising expenses, brochure charges, and other incidental expenses in connection therewith (hereinafter referred to as the **MARKETING EXPENSES**) which shall be shared between the Owners and the Developer in proportion to their respective allocations.

#### **ARTICLE XVII – DOCUMENTATION**

17.1 The parties hereto shall jointly appoint a common Advocate and/or Solicitor for the purpose of undertaking drafting and finalisation of the agreements for sale and/or deeds of conveyance with the intent and object that there is uniformity in the documents to be executed in favour of the intending purchasers

#### **ARTICLE XVIII – CONTRIBUTION OF CHARGES – DEPOSITS AND ADVANCES**

18.1 **CHARGES** – All agreements which are to be entered into for sale and transfer of the various flats, units, apartments, constructed spaces and car parking spaces in the said housing project whether forming part of the Owner's Allocation or the Developer's Allocation shall provide for making payment of the following amounts and in the event of the Owners entering into agreement for sale they shall receive the under mentioned amount and make payment thereof to the Developer and the Developer in its turn shall receive such amounts from their intending purchasers in respect of the Developer's Allocation :

- i) proportionate share of CESC Transformer charges/HT Services.
- ii) proportionate share of Generator connection to the flat.
- iii) proportionate share on account of the Club and other recreational facilities to be provided for in the said housing complex for the benefit of the flat owners.

- v) Any amount which may become payable in accordance with Rule 25 of KMC Act for flats.
  - vi) Such charges as may be determined for formation of the Holding Organisation and/or Association of Flat owners.
  - vii) By way of maintenance charges estimated for one year
- 18.2 In addition to the above each of the Intending Purchasers in terms of the agreements to be entered into with them shall also be liable to keep in deposit and/or make payment by way of advances the proportionate share of municipal rates taxes and other outgoings estimated for one year or until such time mutation is effected in the name of the Intending Purchaser.
- 18.3 For the aforesaid charges are indicative and the parties hereto from time to time may mutually agree and/or decide to impose such further charges which are to be recovered and/or paid by the Intending purchasers from time to time to the Developer.
- 18.4 SINKING FUND – In addition to the above and in order to maintain decency of the said new building to be constructed at the said Premises and also for the purpose of making provision for any amount which may have to be incurred by way of capital expenditure each of the intending purchasers shall be liable to pay and/or to keep in deposit such amount which may be required to be paid as and by way of Sinking Fund and the amount to be paid on account of such Sinking Fund shall be mutually decided by the Owners and the Developer.
- 18.5 As and when the Owners enter into any agreement for sale and transfer of the flats, units, apartments, constructed spaces and car parking spaces forming part of the Owner's Allocation they shall obtain and/or insist upon payment of the aforesaid amount as stated in Clause 18.2 and 18.4, to be paid by the intending purchasers and shall make over the same to the Developer who in its turn after adjusting and appropriating the amount due and payable shall make over the balance to the Holding Organisation upon its formation.

**ARTICLE XIX – MAINTENANCE OF THE COMMON PARTS AND  
PORTIONS FORMING PART OF THE SAID PROJECT**

19.1 The Developer shall be entitled to frame necessary rules and regulations for the purpose of regulating the user of the various units of the said project and each of the persons intending to and/or acquiring a unit/space in the said project shall be liable and agrees to observe such rules and regulations as shall be framed from time to time and shall also be liable to contribute the proportionate share on account of the maintenance charges to the maintenance company till such time the Holding Organisation is formed.

**ARTICLE XX - FORCE MAJEURE**

20.1 The Developer shall not be regarded in breach of any of the terms and conditions herein contained and on the part of the Developer to be performed and observed if it is prevented by any of the conditions herein below :

- i. Fire
- ii. Natural calamity
- iii. Tempest
- iv. Local problem and/or local disturbance.
- v. Any prohibitory order from the court, Kolkata Municipal Corporation and other authorities not caused due to the omission and / or commission on the part of the developer
- vi. Any other unavoidable circumstance beyond the control of the Developer but not occasioned by any inaction on the part of the Developer and/or its agents or any act deed or thing which may be done by the Developer and/or its Agents

20.2 The Developer shall intimate to the Owner's representative in case of development works stopped due to any condition under Force Majeure which may affect the completion date of the project.

20.3 This Article XX shall not cause and defer the payment schedule being agreed herein, more particularly in Article XI, by the Owners and in case of default, by the Developer.



#### **ARTICLE XXI - HOLDING ORGANISATION**

- 21.1 After completion of the said Project or so soon thereafter the Developer shall cause a Society/Syndicate/Association/Company to be formed for the purpose of taking over of the common parts and portions and also for the purpose of rendition of the common services and each of the persons acquiring a unit/space in the said new building and/or project shall be bound to become a member of such Holding Organisation.
- 21.2 In the event of the control of the common parts and portions and the obligation of rendition of common services being entrusted by the Developer to any Facility Management Company (hereinafter referred to as the MANAGEMENT COMPANY) each of the persons acquiring a unit/space in the said new building and/or project shall be liable and unconditionally agrees to make payment of the proportionate share of the maintenance charges to such Management Company without raising any objection whatsoever or howsoever.

#### **ARTICLE XXII – OWNERS' OBLIGATIONS**

- 22.1 The Owners have agreed to make payment of the loan amount due and payable to IHFL, in terms of the Article XI contained herein above, as their primary obligation, and have further agreed as follows:
- i) To co-operate with the Developer in all respect for development of the said Properties in terms of this agreement
  - ii) To execute all deeds, documents and Instruments as may be necessary and/or required from time to time
  - iii) For the purpose of obtaining all permissions approvals and/or sanctions to sign and execute all deeds, documents and Instruments as may be necessary and/or required to enable the Developer to undertake construction of the New Building and/or Buildings in accordance with the said Plan.

- 1) The Owners will grant a General Power of Attorney in favour of the Developer or its nominee and/or nominees to enable the Developer to.
  - a) Obtain sanction of the plan
  - b) Obtain all permissions approvals sanctions and/or consents as may be necessary and/or required including permission from the Fire Department, Police and other authorities
  - c) To appoint Architect, Engineers, Contractors and other Agents
  - d) Do all acts deeds and things for the purpose of giving effect to this agreement
  - e) To execute the Deed of conveyance in respect of the Developer's Allocation in respect of the undivided proportionate share in the land attributable to the saleable flats, units in favour of the Intending Purchases acquiring flats, units, apartments, constructed spaces and car parking spaces forming part of the DEVELOPER'S ALLOCATION SUBJECT HOWEVER to what is hereinafter appearing

**IT IS BEING EXPRESSLY AGREED AND DECLARED** that by virtue of the said Power of Attorney the Developer shall not be entitled to use or permit to be used any of the flats, units, apartments, constructed spaces and car parking spaces forming part of the new building until such time the Owner's Allocation is delivered to the Owners nor shall be liable to foist any liability on the Owners on the strength of such power of attorney and shall keep the owners and each one of them saved harmless and fully indemnified from and against all costs charges claims actions suits and proceedings.

#### **ARTICLE XXIII- DEVELOPER'S INDEMNITY**

- 23.1 Subject to what is hereinafter stated, time for performance of the obligations *on the part of the Developer shall always remain as the essence of the contract.*
- 23.2 The Developer hereby undertakes to keep IHFL and the Owners and each one of them indemnified against all third party claims and actions arising out of any sort of act or omission of the Developer in or relating to the construction of the said Building.