**BUILDING AGREEMENT BETWEEN THE PURCHASER AND VENDORS FOR THE CONSTRUCTION OF THE BUILDINGS ON TURNKEY BASIS**

THIS MEMORANDUM OF AGREEMENT made at………….on this………….day of…………. 20………….between AB Co Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at………….(hereinafter referred to as "the Purchaser" which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the ONE PART and M/s XY Constructions, a partnership firm duly registered under the Partnership Act, 1932 and having its registered office at………….hereinafter referred to as "the builders" which expression shall, unless it be repugnant to the context or meaning thereof be deemed to mean and include every partner for the time or the said firm the survivors or the legal representatives, executors or administrators of the last survivor) of the OTHER PART.

WHEREAS the builders are absolutely seized and possessed or otherwise well and sufficiently entitled to the piece or parcel of land admeasuring about………….sq. meters, situate, lying and being at.....…are particularly described in the First Schedule hereunder written and have agreed to sell to the purchaser vide agreement for sale dated .....................

AND WHEREAS the purchaser is desirous of constructing residential flats for its executives on the land agreed to be sold by the builders, more particularly described in the First Schedule hereunder written and hereinafter referred to as "the said project".

AND WHEREAS the builders have agreed to execute the said project on a turnkey basis, on the terms and conditions as are hereinafter set out for a total amount calculated at the rate of Rs......per sq. meter of the built up area of the flats, which the said amount, is hereinafter referred to as "the contract amount".

NOW, THEREFORE, THESE PRESENTS WITNESS AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

(1) In consideration of the contract amount agreed to be paid by the purchaser, subject to the terms and conditions and in the manner set forth in Schedule of Payments described in Second Schedule, the builders shall execute and complete the said project in accordance with the terms, specifications and amenities set out in Annexure I hereunder written.

(2) M/s ……………….Architects, shall be the architect for the said project, who will prepare all the necessary site plans and designs in relation to the said project and supervise the said project in accordance with the terms, specifications and amenities and render all services for completing the said project and obtain all the necessary occupation certificates and completion certificates from the concerned authorities for the said project and the builders will pay professional fees of the architect without any extra cost to the purchaser.

(3) M/s…………………will be the RCC Consultants for the project and the builders will pay their professional fees without any extra cost to the purchaser.

(4) The builders will get the site plans for the said project prepared by the architects and necessary RCC designs by RCC Consultants in consultation with and subject to the final approval of the purchaser and get the site plans approved by the Municipal Corporation at their own cost:

Provided that during the execution of the said project the purchaser may require the builders to make such changes or alterations in the said plans to suit its requirements, and on such requirements, the builders shall get the said alterations or changes duly approved by the Municipal Corporation of or such other authority at their own cost and execute the said alterations or changes within the aforesaid contract amount subject however that if such alterations or changes increase or decrease in the quantities or the amenities or variation in the specifications set out in Annexure I hereunder, the purchaser shall pay or recover from the builders for such difference at

such rates as may be mutually agreed upon.

(5) The contract amount will be derived at the rate of Rs ………… sq. meter of the built up area of the completed project. The "built up area" shall mean the plinth area of all the floors, balconies, and the otlas with roof as shown in the approved plans measured form their respective outer perimeters. The stair case and lift wells with their common passages and landings measured from plaster to plaster will be excluded from the calculation of built up area. The areas of the pump room, lifts, suction tanks, over head tanks, watchman's cabins, stilts, terrace, stair case, mumty and the architectural projections shall not be taken as built up area. It is expressly agreed by and between the parties hereto that the contract amount shall be inclusive of the cost of the following works:

(i) Preparation of site plans, architectural, structural and service drawings and obtaining permission for the same from the Municipal Corporation………... or any other local authority.

(ii) Civil works.

(iii) Plumbing and sanitary works inside and outside the buildings.

(iv) Obtaining the municipal water connection from the municipal corporation and all internal and external water Supply.

(v) Drainage works including sewage water disposal arrangements including septic tanks if required.

(vi) Electrical works inside the flats and in the compound, lighting and laying of cables from electric sub station to the buildings, installation of meters, main switches including the obtaining of electrical connection from the electric supply undertaking.

(vii) Construction of pump house, underground and overhead tanks and installation of electrically operated water pumps.

(viii) Compound wall with gates and watchman's hut.

(ix) Fees of the architects and RCC consultants.

(x) Wages for labour, cost of technical supervision for execution of the construction work and all other incidental expenses relating to the execution of the said project.

(xi) All other items of work and amenities as per the Second Schedule.

The said rate shall be firm and shall not be varied under any circumstances whatsoever.

(6) The builders shall complete the said project in accordance with this agreement, to the satisfaction of the purchaser on or before the expiry of………..months from the date of execution of these presents:

Provided however that if in the opinion of the architect, the project be delayed by force majeure or by reason of any exceptionally inclement weather or by reason of civil commotion, local combination of workmen or strike or lock out affecting any of the building, trade or any reason which is beyond the control of the builders, due to which work cannot be completed in time, the architects may with the previous consent of the purchaser grant a reasonable extension of time for completion of the project.

(7) If the builders fail to complete the said project within the period or the extended period as stipulated in the foregoing provision, the builders will at the option of the purchaser, but without prejudice to the other rights under law of the purchaser and the other provisions herein pay liquidated damages at the rate of Rs. 500 per day (subject to a maximurn of 2% of the total contract amount payable by the purchaser under this Agreement) for the period between the said stipulated time for completion of the said project. The builders specifically authorise the purchaser to deduct such liquidated damages, if any, from any instalment of payment becoming due and payable to the builders in terms of this agreement.

(8) The purchaser shall be entitled to appoint its own engineer, who is referred to herein as "Purchaser's Engineer" to watch the progress of the work and inspect the material and workmanship used in the construction work and such other duties as may be entrusted to him by the purchaser. The said Purchaser's Engineer shall be entitled to issue written instructions, details, directions and explanations to the builders relating to following:

(i) Variation and/or modification of the design, quality or quantity of works or the addition, omissions or substitution of any work.

(ii) Removal of any sub standard material that does not comply with the specifications from the site and to bring the proper material in substitution.

(iii) Removal and/or re-execution of any work executed by the builders.

(iv) Dismissal of any person employed by the builders from the work.

(v) Opening up of any works covered up for inspection.

(vi) Discrepancy in the drawings between the schedule of quantities and/or drawings and/or specifications.

(vii) Amending and making good of any defects.

The builders shall comply and carry out the purchaser's engineer instructions.

 

(9) The builders shall complete the said project with the material of best quality and in the most substantial and workmen like manner and to the satisfaction of the architect and Purchaser's Engineer and shall comply with and abide by the true intent and manner of description, specifications, terms and conditions hereto annexed.

(10) The contractors shall procure all the materials required for the construction of the buildings including cement and steel. However, the purchaser shall co operate with the builders by making necessary applications to the concerned authorities for allotment of controlled commodities like cement, steel, if so required, by the builders.

(11) The purchaser shall pay to the builders from time to time by installments in accordance with the Schedule of Payments stipulated in Schedule 11 written hereunder, subject, however, to retention of the money as stipulated in clause 12 hereinabove. The builders shall submit their bills duly certified by the Architects for payment. The amount of each bill will be paid by the purchaser within a period of………..days from the date of receipt of the certified bill in the office of the purchaser. If the amount of any bill is not paid to the builders within a period of……..days for whatsoever reason, the builders shall be entitled to charge interest at the rate of twelve per cent per annum from the date of expiry of the said period.

(12) Any variation required by the architect or Purchaser's Engineers and agreed to by the Architect and executed by the contractors, shall be measured and valued by the Architect. The valuation of varied work will be made on the basis of the prices of similar work executed under similar conditions by the contractors with the employer. If the work of similar nature executed under similar conditions is not available, the reasonable price will be paid. However, for fixing the reasonable price, the contractors shall submit the vouchers specifying the time spent upon the work, the material used and such other information as may be required by the architect, to the architect. The contractors shall also be compensated for any loss/expenses incurred by them due to variation in the work.

(13) The contractors shall not, without written consent of the purchaser, assign this contract. However, the contractors may appoint such contractors for completion of specified jobs.

(14) The purchaser shall deduct a sum equivalent to ………% of each bill submitted by the builders as and by way of retention money, which shall be held by the purchaser as security for the due performance by the builders their obligations hereunder in respect of the completion of the project and also to rectify any defects as may be found or detected during the period of twelve calendar months from the date of handing over the said buildings complete in all respects. The builders hereby agree and undertake that they will rectify, at their own cost, all such defects within a period of one month from the date the same are notified by the purchaser. If the builders tail to rectify the defects pointed out or decline to cure such defects as pointed out by the purchaser within one month from the date of reporting to the builders, the purchaser shall be entitled to have such defects cured by such other contractor as it may deem fit at the cost and risk of the builders and utilise the retention money or such other sums as may be found payable to the builders pursuant to this agreement and pay the balance, if any, after the expiry of the defects liability period mentioned above. In case the said retention money being inadequate to meet such costs, charges and expenses incurred by the purchaser for curing the defects in the construction, the builders shall make the payment to the purchasers within……………days of a demand in writing made by the purchasers.

(15) The builders shall procure the occupation certificates from Municipal Corporation of to enable the purchasers to occupy and use the buildings on completion of the work. The purchaser's engineer shall certify in writing that the work has been virtually completed and defects liability period shall commence from the date of such certificate.

(16) If the builders have received payment of any unfixed materials intended for and/or placed on or adjacent to the work, such materials shall become the property of the purchaser and such materials shall not be removed except for use upon the works, without the written permission of the purchaser's engineer.

(17) The builders shall be responsible for the materials lying on the site and work in progress, until they are handed over to the purchaser in a good condition on the completion of the works. If any fittings or fixtures are damaged and pointed out by the purchaser or its engineer at the time of taking possession of the buildings on their completion, the builders shall replace such fittings or fixtures.

(18) The builders shall insure the works immediately on the commencement of the project and keep the same insured until the buildings complete in all respects and fit for occupation are handed over to the purchaser, against loss or damage by flood, earthquake, fire, cyclone, etc. in the joint name of the purchaser and the builders for the full amount of the contract. The builders shall deposit the policy and receipts for the premium with the purchaser within one week from the commencement of the works. If the builders fail to insure the works, the purchaser may so insure the works and may deduct the premium paid from any moneys due or payable to the builders without prejudice to the other rights of the purchasers in respect of such default.

(19) If an order for compulsory winding up is made against the builders or if the builder company pass an effective resolution for winding up voluntarily or subject to the supervision of the court and the official liquidator has been appointed in such acts of winding up as the case may be or if the builders shall suffer execution or other process of court attaching property to be issued against the builders or shall suffer any payment under this agreement to be attached by or on behalf of any of the creditors of the builders; or shall assign or sublet this agreement without the consent in writing of the purchaser first hand and obtained, or shall charge, encumber this agreement or any payments due or which may become due to the builders hereunder; or if the architects shall certify in writing to the purchaser that the builders have abandoned the agreement or have failed to commence the works or have suspended the progress of works for fourteen days without any lawful excuse or have failed to proceed with the works with such due diligence and failed to make Such due progress as would enable the works to be completed within the stipulated time or have failed to remove the materials from the site or pull down and replace work for seven days after receiving from the architects written notice that the said material or work is defective or not according to specifications or have neglected or failed persistently to observe and perform all or any of the acts, matters or things by this agreement to be observed and performed by the builders for seven days after written notice shall be given to the builders requiring them to observe or perform the same, then the purchaser may determine the contract after giving seven days notice in writing to the builders. However, on such termination of the contract, the powers of the architect or the obligations and liabilities of the builders shall not be affected and shall continue in force as fully as if the contract had not been so determined. And the purchaser by its servants or agents may enter upon and take possession of the works and all materials, tools, scaffoldings, sheds, machinery, etc. lying upon the site or the adjoining lands or roads and use the same as their own property or may employ the same in carrying out and completing the works by employing any other contractor or other person or persons and 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 the works or using the materials and tools for the works. The architect shall ascertain and certify in writing the amount due or payable to or by the purchaser for the value of the materials and the tools so taken possession of by the purchaser and the expenses or loss which the purchaser has been put to in procuring the works to be completed and the amount which shall be so certified, shall be paid by the purchaser to the builders or by the builders to the purchaser, as the case may be, and the architect's certificate shall be final and conclusive between the parties.

(20) The builders shall be liable and indemnify and keep the purchaser saved, defended and harmless against any claims, demands, actions or proceedings for any injury to person, animals or things which may arise from the operation or neglect of the builders or their employees, sub contractors or their employees, whether such injury or damage arises from carelessness, accident or other cause whatsoever in any way connected with the carrying out of construction

to these presents.

(21) If after the agreement, the purchaser for any reasons whatsoever does not require the whole or any part of the works to be carried out, it shall give notice in writing to the builders and thereupon the builders shall not be entitled to the contract amount proportionate to the works so abandoned and to any compensation or otherwise whatsoever on account of any profit which they might have made from the execution of the said project.

(22) In case any dispute or difference arises between the parties, whether in respect of specifications, designs, drawings and instructions mentioned in these presents, as to the quality of material used or the quality of workmanship or any delay in payment made by the purchaser in accordance with these presents, or in respect of alterations suggested by the purchaser or architect or extra work required to be done or executed or in respect of measurements of work done or payment of the work done or not done or otherwise concerning the work or the execution, or failure to execute the same, whether arising during the progress of the work or after abandonment thereof shall be referred to arbitration and final award of a single arbitrator, if the parties thereto agree in writing, (failing which to two arbitrators one to be appointed by by each party) on a reference made to him by any of the parties by notice in writing, a copy whereof shall be sent to the other party. The said notice shall specify the matters which are in dispute or difference and such matters only and no others will be referred to arbitration. The arbitrators shall appoint third arbitrator who shall act as Presiding Arbitrator . The parties shall produce before the arbitrator or arbitrators all books, deeds, papers, accounts, vouchers, site plans, drawings, and documents within their possession or control, which the arbitrator, arbitrators or umpire as the case may be, may require and call for in this or their judgment relating to the matters referred to arbitrators. If any party neglects or refuses to attend on the reference, without having shown to the said arbitrator or arbitrators, what the latter shall consider good and sufficient cause for not attending, the arbitrator or arbitrators shall be at liberty to proceed ex parte. If during the arbitration proceeding, any arbitrator dies or becomes unable to act or refuses to act, the party who had nominated him, shall appoint another arbitrator to fill up vacancy within one week of such event. If no arbitrator is appointed in his place, the remaining arbitrator shall become the sole arbitrator and shall adjudicate upon the disputes referred to arbitration. The arbitrator or arbitrators, as the case may be, shall record proceedings in Hindi, a carbon copy whereof shall be furnished to each party free of cost. The parties shall provide necessary secretarial assistance to the arbitrator or arbitrators . The proceedings of the arbitration shall be held in the……….the rent whereof shall be borne by the parties equally. The arbitrator or arbitrators as the case may be, shall be entitled to consult any expert, after previous notice to the parties, the cost whereof shall be borne by the parties equally. The arbitrator or arbitrators as the case may be, shall give his or their award within four months from the date of entering upon the reference or such further extended time as may be decided by them, with the consent of the parties. The cost of and incidental to the reference and award shall be at the discretion of the arbitrator or arbitrators as the case may be, who may determine by whom and in what manner the same shall be borne and paid. This reference to arbitration shall be deemed to be a submission to arbitration within the meaning of Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The award of the arbitrator or arbitrators as the case may be, shall be final, conclusive and binding and the parties shall not challenge the same on any ground except fraud, collusion or an error apparent on the face of the award. The parties agree that arbitration under this clause is a condition precedent before any suit for the enforcement of any right under these presents can be brought in any court. If any question,

dispute or difference is referred to arbitration, the builders shall not delay or stop the work but shall proceed with the works with all due diligence and the builders shall not be relieved from their obligations unless the architect gives a certificate of completion of the work.

(23) The purchaser shall have a right to cause a technical examination of the works and the final bill of the builders including all supporting vouchers, abstracts, etc., to be made at the time of payment of the final bill. If as a result of this examination or otherwise, any sum is found to have been overpaid or over certified, it shall be lawful for the purchaser to recover the sum from the builders.

(24) The builders shall deliver all the plans, detailed drawings and specifications to the purchaser after the completion of the said works or etc. to otherwise terminated under these presents.

(25) This agreement shall be executed in duplicate, the original shall be retained by the purchaser and the duplicate by the builders.

IN WITNESS WHEREOF the purchaser has caused its common seal to be affixed hereunto and a duplicate hereof and the builders have signed these presents and a duplicate thereof on the day and year first hereinabove written.

WITNESSES 1 The common seal of AB Co Ltd the within named

 purchaser was hereunto affixed pursuant to the

 resolution passed by the Board of Directors at the meeting held on………………. directors, who have signed these presents in token thereof

 2. Signed and delivered by M/s XY Constructions, the within named Builders by its partners