**TERMS REGARDING REFUND OF BANK GUARANTEE TO BE SUBMITTED ALONG WITH EOI DATED 10.08.020**

Prospective Resolution Applicants (PRA) shall pay a refundable process participation deposit EMD of INR 50 lakhs (Rupees fifty lakhs only) along with the application for EOI by way of Bank Guarantee/RTGS in favour of Indirapuram Habitat Centre Private Limited, which will be refundable to all the PRAs as under-:

1. Within 10 days from the date of issuance of provisional list of Prospective Resolution Applicants in the matter, if the name of PRA is not there in the provisional list.
2. Within 10 days from the last date of submission of Resolution Plan in the matter, if PRA not filed resolution plan.
3. Within 10 days from the date of rejection of the resolution plan by Committee of Creditors (CoC) in the matter.

The above is subject to the decision of the Committee of Creditors in the matter.

**FORMAT OF BANK GUARANTEE**

(*To be on non-judicial stamp paper of appropriate stamp duty value relevant to place of execution*)

To

Name of the Bank Guarantee issuing Bank

Address

WHEREAS

1. [*Insert name of the Prospective Resolution Applicant*/PRA][[1]](#footnote-2) incorporated in [India]/ [*insert name of country where guarantor is incorporated*][[2]](#footnote-3) under the [Companies Act, [1956/2013]]/ [*insert name of legislation under which the entity is incorporated*] with corporate identity number [●], whose registered office is at [*insert address*] (“**Prospective Resolution Applicant**”) is required to provide a non-interest bearing, unconditional and irrevocable bank guarantee for an amount equal to INR50,00,000(Indian Rupees FiftyLakhs) in accordance with the terms of the invitation for expression of interest dated 10.08.2020(“**Invitation for Expression of Interest**”/ “**IEOI**”) issued by the Resolution Professional seeking submission of expression of interest (“**EOI**”) from interested and eligible PRA’s for submission of resolution plan for Indirapuram Habitat Centre Private Limited (IHCPL).
2. This bank guarantee is required to be issued in favor of the **ICICI Bank, Ghaziabad, Shakti Khand-II Branch, Krishna Apra D Mall, Shakti Khand-II, Indirapuram, Ghaziabad, Uttar Pradesh-201014** (hereinafter, “Beneficiary” for an on behalf of the Committee of Creditors of Indirapuram Habitat Centre Private Limited)*,* pursuant to the terms of the IEOI.
3. We, [*insert name of the bank*] having our registered office at [*insert address*] (“**Bank**”) at the request of the Prospective Resolution Applicant do hereby undertake to pay to the Beneficiary at [●] an amount not exceeding INR 50,00,000(Indian Rupees Fifty Lakhs) to secure the obligations of the Prospective Resolution Applicant under the IEOI on demand from the Beneficiary on terms and conditions herein contained.
   * + 1. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee (“**Guarantee**”) on behalf of the [*Insert name of the Prospective Resolution Applicant*] for an amount not exceeding INR 50,00,000(Indian Rupees Fifty Lakhs).
       2. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation, caveat, protest or recourse, immediately upon receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of INR 50,00,000(Indian Rupees FiftyLakhs).

This Guarantee shall be valid and binding on the Bank up to 10.12.2020and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between the Resolution Applicant and the Beneficiary or the Resolution Professional for Indirapuram Habitat Centre Private Limited. Provided however that the Beneficiary will be entitled to invoke this Guarantee at any time until 10.12.2020and also within 30 days of its expiry i.e. by 09.01.2021 and also in case wherein the PRA provided any false information or record in the EOI in accordance with the provisions of Regulation 36A (7)(f) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

* + - 1. If any further extension of this guarantee is required by the Beneficiary and/or the Resolution Professional of Indirapuram Habitat Centre Private Limited, the same shall be extended to such required period on receiving instructions from [*Insert name of the Prospective Resolution Applicant*] unconditionally.
      2. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence that such payment is due and the Bank shall not require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above-mentioned address of the Bank, in order to make the said payment to the Beneficiary.
      3. The Bank shall make payment hereunder notwithstanding any objection by [*Insert name of the Prospective Resolution Applicant*] and / or any other person or any dispute (s) raised by the [*insert name of the ProspectiveResolution Applicant*] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank’s liability under this present is absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against Beneficiary or the Resolution Professional for Indirapuram Habitat Centre Private Limited.
      4. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Delhi shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
      5. This Guarantee shall be continuing guarantee and shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
      6. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Prospective Resolution Applicant, to make any claim against or any demand on the Prospective Resolution Applicant or to give any notice to the Prospective Resolution Applicant or to exercise, levy or enforce any distress, diligence or other process against the Prospective Resolution Applicant. The Bank unequivocally waives any such right or defense in this regard.
      7. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty to undertake the following, without Bank’s consent and without affecting in any manner the Bank’s obligations under this Guarantee, from time to time:
         1. Vary and/or modify and/or cancel any of the terms of the IEOI or terms of request for resolution plan (hereinafter, “**RFRP”**) issued to the Prospective Resolution Applicant;
         2. Extend and/or postpone the time of performance of the obligations of the Prospective Resolution Applicant under the IEOI or the RFRP; or
         3. Forbear or enforce any rights exercisable by the Beneficiary against the Prospective Resolution Applicant under the terms of the IEOI or the RFRP.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the Prospective Resolution Applicant or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

* + - 1. The Guarantor agrees that the Beneficiary at its option shall be entitled to enforce this Guarantee against the Guarantor, as a principal debtor in the first instance without proceeding at the first instance against the Prospective Resolution Applicant.The Beneficiary shall be entitled to assign this Guarantee to any person subject to receipt of prior written consent from the Guarantor. This Guarantee shall not be assigned or transferred by the Guarantor.
      2. Our liability under this Guarantee is restricted to INR 50,00,000 (Indian Rupees Fifty Lakhs) and it shall remain in force until10.12.2020. The Beneficiary on its own or for avoidance of doubt through the Resolution Professional for Indirapuram Habitat Centre Private Limited shall be entitled to invoke this Guarantee up to 30 (thirty) days from its’ expiry as defined above in Point 2.
      3. No action, event or condition which by any applicable law should operate to discharge the Guarantor from liability during the currency of this Guarantee, shall have any effect and the Guarantor hereby waives any right it may have to apply such law, so that in all respects its liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ……………... day of ……………………… at …………………….

Witness:

1. ……………………………………. Signature

Name and Address. Name:

2. ………………………………….. Designation with Bank Stamp

Name and Address

Attorney as per power of attorney No …………………

For:

……………………………………………. [Insert Name of the Bank]

Banker’s Stamp and Full Address:

Dated this ………………… day of …………… 20…...

Notes:

* The Stamp paper should be in the name of the Bank who is issuing the Bank Guarantee.

1. *In case of consortium, Bank Guarantee to be issued by Lead partner as authorized by the members of the consortium.* [↑](#footnote-ref-2)
2. *In case of PRA being a foreign entity* [↑](#footnote-ref-3)