

**Without Prejudice**

Draft for Discussion

**Note: Cross referencing of clauses, Annexures and numbering/sequencing of clauses with be done after discussion and finalization of clauses.**

**Final Draft NCP 6.6.2023**

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT (“this Agreement”)** made and entered into at Mumbai this \_\_\_\_\_ day of \_\_\_\_\_ 2023 BETWEEN: -

**I. NUTAN AYOJAN NAGAR CO-OPERATIVE HOUSING SOCIETY LIMITED**, a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (Maharashtra Act XXIV of 1961) under Registration No. BOM/HSG/PR/7486 of 1981 dated \_\_\_\_\_, and having its registered office at Liberty Garden Cross Road No. 4, Malad (West), Mumbai – 400 064, hereinafter referred to as “**the Society**” (which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include the Society, the Members for time being and from time to time and their respective heirs, executors, administrators and assigns and also the successors and assigns of the Society) of the **FIRST PART**,

**AND**

**II.** The following Members of the Society:-

having their addresses at the flats shown against their respective names in the building, Liberty Garden Cross Road No. 4, Malad (West), Mumbai – 400 064, hereinafter collectively referred to as the “**Executing Members**” (which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective heirs, executors, administrators, successors and permitted assigns) of the **SECOND PART**,

**AND**

**III. ARKADE DEVELOPERS PVT. LTD.**, a Company registered under the provisions of the Companies Act, 1956, having its registered office at 2<sup>nd</sup> Floor, Arkade House, Next to Children’s Academy, Ashok Nagar, Kandivali East, Mumbai- 400 101 hereinafter referred to as “**the Developer**” (which expression shall unless it be repugnant to the context or meaning thereof, deem to mean and include its successors) of the **THIRD PART**.

**Without Prejudice**

Draft for Discussion

**WHEREAS:**

- A. The Society is absolutely seized and possessed of all those pieces and parcels of land bearing Survey No. 479/1 corresponding to CTS No. 225 admeasuring 6598.70 sq.mtrs., Survey No. 478 corresponding to CTS No. 223/4 admeasuring 139.20 sq.mtrs. and Survey No. 478/1 corresponding to CTS No. 224/A admeasuring 121 sq.mtrs. aggregating to total 6858.90 sq.mtrs. of Village Malad (South), Taluka Borivali, Mumbai Suburban District (hereinafter referred to as the said "**Land**") together with 8 (Eight) buildings/structures of the Society situated at Liberty Garden, Cross Road No.4, Malad West, Mumbai- 400 064 (hereinafter referred to as the said "**Structures**"). The said Land and the said Structures are hereinafter collectively referred to as "**the said Property**" which is more particularly described in the **SCHEDULE** hereunder written and delineated by red color boundary lines on the plan hereto annexed and marked as **Annexure "I"**.
- B. Since the Society did not have a formal Deed of Conveyance executed and duly registered in its favour in respect of the said Property, therefore, on 23<sup>rd</sup> March 2023, the Society applied for unilateral deemed conveyance in its favour by filing an Application under Section 11 (3) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963, before the Competent Authority i.e. District Deputy Registrar Co-operative Societies, Mumbai City-4 at Dadar (West), Mumbai- 400 028 ("**the said Application for deemed conveyance**").
- C. By an Order dated \_\_\_\_\_ passed in the said Application for deemed conveyance, the Competent Authority allowed the said Application for deemed conveyance by granting Order-cum-entitlement Certificate. Pursuant to which, by and under an Indenture of a Unilateral Deemed Conveyance dated \_\_\_\_\_ duly registered with the office of the Sub-Registrar of Assurances at \_\_\_\_\_ under Sr. No. \_\_\_\_\_ of \_\_\_\_\_, executed by \_\_\_\_\_ (therein referred to as "                    " of the First Part"), AND \_\_\_\_\_ (therein referred to as "                    " of the Second Part"), \_\_\_\_\_, the said Land is duly granted, transferred, conveyed, and assured in favour of the Society, in the manner as set out therein. Hereto annexed and marked as **Annexure-"II"** is a copy of Index II of the said Indenture of Unilateral Deemed Conveyance.
- D. The Property stands in the name of the Society in the City Survey Records and the Property Register Card. Annexed hereto and marked as **Annexure "III"** are copies of Property Register Cards in respect of the Land.

**Without Prejudice**

Draft for Discussion

- E. The said Structures thus comprises of total Eight building and having 11 wings having total 192 Flats and 6 shops, which are occupied by the various members of the Society. A detailed list of all the Members of the Society, shares held by them, flats occupied by them and the carpet area of their respective flats are set out in the **Annexure "III-1"** hereunder written which areas have been accepted by the Parties hereto to be the existing carpet area.
- F. Under the Development Control & Promotion Regulations for Greater Mumbai, 2034 (hereinafter referred to as "**D.C.P.R.**") presently applicable, it is possible to construct additional area on the said Land by utilizing primary/base FSI of the Land ("FSI"), premium paid FSI ("Premium FSI"), FSI by way of Transferrable Development Rights being slum/RG/layout FSI ("TDR" or "TRD-FSI"), fungible compensatory area ("Fungible FSI"), incentive FSI under Reg. 33(7)(B) ("Incentive FSI") etc.
- G. The said Structures were constructed approximately 45 (Forty Five) years ago and thus being very old, it requires extensive repairs. Therefore, considering the cost for the purpose of repairs and maintenance, the Society considers it desirable to demolish the same and reconstruct new building/s by utilizing the plot FSI, TDR-FSI, Premium FSI, Fungible FSI, Incentive FSI arising out of the said Land plus areas permissible by MCGM for staircases, lifts, liftwells, lobbies, passages, amenity areas or any such areas with or without payment of premiums.
- H. The Society followed the procedure set out in the Circular dated 3<sup>rd</sup> January 2009 and modified as per Circular dated 4<sup>th</sup> July 2019, by way of directive under Section 79(A) of Maharashtra Co-Operative Societies Act 1960 laying down guidelines to be followed by co-operative societies undertaking redevelopment projects and invited proposals for redevelopment of its Property from various builders/developers. After scrutinizing the offers received from various builders/developers, the Society in its Special General Body Meeting held on 29<sup>th</sup> January 2023 in the presence of the Competent Officer appointed by the Deputy/Assistant Registrar of Co-Operative Societies, appointed the Developer herein for the purpose of redevelopment. Annexed hereto and collectively marked **Annexure "IV"** are extracts of the relevant Minutes/Resolutions pertaining to redevelopment project passed at the meetings of the General Body of the Society. The Deputy/Assistant Registrar of Co-Operative Societies, by his letter dated 8<sup>th</sup> February 2023 confirmed the appointment of the Developer by the Society for its redevelopment project. A copy of the letter dated 8<sup>th</sup> February 2023 issued by the Deputy Registrar of Co-Operative Societies is annexed hereto and marked as **Annexure "V"**.

**Without Prejudice**

Draft for Discussion

- I. This Agreement embodying all terms for Re-Development agreed between the Parties and the Power of Attorney for purposes of Re-Development to be executed in favour of the Developer by the Society, were drafted and settled over several meetings between the Society and the Developer and their respective Advocates.
- J. The Society has, at its Special General Body Meeting held on \_\_\_\_\_, duly passed resolutions approving the drafts of this Agreement and the Power of Attorney to facilitate re-development, and authorized the execution thereof by any three Managing Committee Members on behalf of the Society. This Agreement having been approved at the Special General Body Meeting of the Society held on \_\_\_\_\_, the Parties hereto are accordingly executing this Agreement.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED, DECLARED AND CONFIRMED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**1. Definitions & Interpretation-**

**Definitions-** In this Agreement, unless the context otherwise requires the following words and phrases shall have the following meaning: -

**“this Agreement”** shall mean this Development Agreement and all attached schedules and annexures and all instruments supplemental to or in amendment or confirmation of this Agreement entered into by the Parties in writing including any writings signed contemporaneously with this Agreement;

**“Amenity Open Space”** shall mean means 5% of total plot area/Land which will be required to be handed over to MCGM as Amenity Open Space in the Re-development of the said Property of the Society, as per DCPR, 2034.

**“Appointed Date”** shall mean the date on which the Society will give vacant possession of all the Flats and structures occupied by the Members of the Society thereby give vacant possession of the said Property to the Developer for the purpose of Redevelopment.

**“Common Amenities” “Specifications”** shall mean the common amenities and specifications to be provided in the New Building/s which are listed in **Annexure ‘VII’** hereto;

**“Defects Liability Period”** shall mean a period of 60 months from the date of receipt of the Occupation Certificate in respect of the New Building/s.

## **Without Prejudice**

Draft for Discussion

**“Development Potential”** shall mean a maximum area that can be constructed upto the date of the Full Occupation Certificate in respect of the New Building/s by utilizing the primary FSI of the Plot, the TDR FSI, Premium FSI, fungible FSI, incentive FSI arising out of Regulation 33(7) (B) of DCPR 2034, FSI based on road width not exceeding 2.97 FSI.

**“Free-Sale Premises/Developer’s Premises”** shall mean all other flats in the New Building/s (besides the Members’ New Units, which are available to the Developer to sell/ deal with as the Developer deem fit but subject to the terms of this Agreement.

**“Members’ Amenities”** shall mean the amenities agreed between the Parties to be provided by the Developer in the Members’ New Units in the said New Building/s as listed in **Annexure “VI”** hereto. Annexure “VI” further categorises Members’ amenities as (i) amenities to be provided in Members’ residential flats and (ii) amenities to be provided in Members’ commercial premises, in accordance with which the Developer shall provide the same.

**“Members’ New Units”** means the 192 residential flats and 6 commercial premises to be constructed for and allotted to 198 Members in the New Building/s as provided in **Annexure “VIII”** annexed hereto, in lieu of the Members’ Existing Flats/ commercial premises.

**“Minimum Development Potential”** shall mean FSI (with TDR and Fungible FSI) required to construct the Members’ New Units and the Security Premises.

**“New Building/s”** means the building/s that the Developer shall construct on the Plot as part of the Re-development project and which shall contain the Members’ New Units and the Free-Sale Premises.

**“Notice-to-Vacate”** shall mean the written notice to be issued by the Developer to the Society (after the Developer having complied with its obligations as per clause 17 hereof), calling for the Members to vacate their respective premises in the Existing Buildings/Structures and handover to the Developer vacant possession thereof by the Specified Date (being 30 days from the date of such notice) for the purpose of redevelopment.

**“Pre-intimation of OC”** shall mean the intimation in writing by the Developer to the Society as to the tentative/estimated date of receipt of Occupation Certificate of New Building, which intimation will be issued at least 30 days prior to such tentative/ estimated date of the receipt of Occupation Certificate.

**“Possession Notice”** shall mean written notice to be issued by the Developer to the Society (after Members’ New Units with all the amenities there in are com-

## **Without Prejudice**

Draft for Discussion

pleted in all respects) on completion of the New Building/s with Full/Part Occupation Certificate, calling upon the Members to take possession of their respective New Units within 7 days from the receipt of this notice.

**“Project”** shall mean and include the Re-development of the Property by the Developer in the manner provided in this Agreement.

**“Re-development”** shall mean and include the development and re-development of the said Property by demolition of the Existing Structures and by constructing the New Building/s and all other structures on the said Land and also the exercise of re-development rights by the Developer by utilisation of the Development Potential.

**“RERA Carpet Area in the Members’ New Units”** for the purpose of this Agreement shall mean RERA carpet area as defined under RERA i.e. net useable floor area of an apartment excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area but includes the area covered by the internal partition walls of the Members’ New Units.

**“RERA” “MAHA-RERA”** shall mean the Real Estate (Regulation and Development Act) 2016, and any statutory modification or amendment or thereof. **“MAHA-RERA”** shall mean all rules passed by the Maharashtra Real Estate Regulatory Authority including all notifications/orders/ circulars passed and any statutory modification or amendment or thereof;

**“Specified Date”** shall mean the date mentioned by the Developer in the Notice-to-Vacate, by which date all of the Members’ Existing Flats and the entire Property, duly vacated, should be handed over to the Developer for the purposes of Re-Development. Such date shall be thirty days from the date of the Notice-to-Vacate to be issued by the Developer.

### **1.2 Interpretation-** In this Agreement:

1.2.1 a reference to a person includes a reference to a body corporate, association or partnership;

1.2.2 a reference to a person includes a reference to those person’s heirs, executors, successors and lawful/ permitted assigns;

1.2.3 a reference to a clause or schedule or annex, unless the context otherwise requires, is a reference to a clause of or schedule or annex to this Agreement;

1.2.4 a reference to a document is a reference to that document as from time to time supplemented or varied.

## **Without Prejudice**

Draft for Discussion

- 1.2.5 Words denoting the singular shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa;
- 1.2.6 All annexes/schedules appended to this Agreement or executed by the Parties pursuant to this Agreement form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the annexes.
- 1.2.7 if by the terms of this Agreement, any act would be required to be performed on or within a period ending on a day which is a public holiday, that act shall be deemed to have been duly performed if it is performed on the working day immediately succeeding the last holiday.
- 1.2.8 the terms and conditions as recorded in this Agreement shall prevail over the tender and offers made by the Developer to the Society.
- 1.2.9 references to the word “include” or “including” are deemed to be followed by the words “without limitation”;
- 1.2.10 any obligation on a party not to do or omit to do anything shall include an obligation not knowingly to cause or allow that thing to be done;
- 1.2.11 the terms “hereof”, “herein”, “hereto”, “hereunder” or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Clause or Recital hereof. The headings in this Agreement are merely to facilitate the easy perusal of this Agreement and do not/ should not be construed to define, explain or interpret the clauses.

## **2. RECITALS FORM AN OPERATIVE PART OF THIS AGREEMENT-**

The recitals of this Agreement are treated as forming an operative part of this Agreement and the same shall be read and construed accordingly.

## **3. GRANT OF DEVELOPMENT RIGHTS-**

3.1 The Society hereby grant to the Developer and the Developer hereby accept the complete, exclusive rights and entitlements, free from all encumbrances, claims and demands in respect of the Redevelopment of the Property subject to the terms contained in this Agreement.

3.2 In consideration of the grant of Redevelopment rights in respect of the said Property to the Developer, the Developer have agreed to the following:-

- 3.2.1 to construct the Members’ New Units for the Members, free of costs as provided herein (detailed provisions of which are mentioned in Clause **8.2** hereof).

## **Without Prejudice**

Draft for Discussion

3.2.2 to pay to the Members Hardship Compensation @ Rs. 250/- (Rupees Two Hundred and Fifty only) per square foot of the Members' Existing Units (detailed provisions of which are mentioned in Clause 9.1 hereof).

3.2.3 to pay to each Member displacement compensation (to enable Members to arrange for and reside elsewhere), being (i) a monthly compensation towards temporary accommodation calculated from the Appointed Date till the date of expiry 30 days period of Possession Notice issued after receipt of Occupancy Certificate, (ii) a non-recurrent one-time lumpsum packing/ shifting/ transit allowance, (iii) a lumpsum compensation to meet miscellaneous expenses that the Members may incur towards temporary accommodation (detailed provisions of which are mentioned in Clause 10 hereof).

3.3 The Developer has already paid to the Society interest free Security Deposit of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) (detailed provisions of which are mentioned in Clause 11 hereof);

3.4 It is clarified that: -

3.4.1 The Land is not transferred and is not intended to be transferred by to the Developer under this Agreement.

3.4.2 Within 60 days from the date of Possession Notice issued to the Society for all the Members of the Society, the Society shall admit purchasers of Free Sale Premises as Members of the Society and issue share certificates to them. Subject to the purchasers of Free Sale Premises shall submit application along with all requisites forms as per the Society Bye-Laws to the Society. The purchasers of Free Sale Premises shall only have to pay the face value of the shares of the Society allotted to them respectively and the statutory prescribed entrance fees and Corpus Contribution as per the terms of this Agreement but no other premiums, transfer charges, contributions or other amounts whatsoever. The purchasers of Free Sale Premises shall enjoy the advantages, benefits and privileges in the Society and use all the common areas, amenities and services in the redeveloped project as may be provided to the Members of the Society.

3.4.3 The title to the Plot is being retained by the Society and will continue to vest in the Society.

## **4. MAXIMUM AREA TO BE DEVELOPED-**

4.1 For the Redevelopment of the Property, the Developer is fully and freely



## Without Prejudice

Draft for Discussion

entitled and at liberty to utilize the entire Development Potential in terms of this Agreement as per prevailing rules i.e. FSI based on road width not exceeding 2.97 FSI.

- 4.2 If any additional FSI beyond the Development Potential becomes available for utilization on the Plot before completion of redevelopment (“**Enhanced Development Potential**”), the same shall belong to the Society and if the terms of utilization are agreed upon between the Developer and the Society, the terms shall be captured in a Supplemental Agreement to be executed between the Developer and the Society.
- 4.3 Any benefits arising out of any amendment in the D.C.P. Regulations or any circular/ orders including incentive FSI/ benefits arising out of Regulation 33/7(B)/ FSI or any benefits that the authorities may grant in respect of road set-back area, the Developer can use the same in the proposed redevelopment, subject to the same not exceeding Development Potential upto the Occupation Certificate of the New Building(s).
- 4.4 It is clarified that the Developer will not develop the said Property under any Slum Rehabilitation scheme, Public-parking scheme or under any MHADA scheme, PPT scheme, contravening structure clubbing scheme and the New Building(s) will strictly be used for permitted user.
- 4.5 In the event, any part of the Development Potential is not utilized in the Project at the time of receipt of the Full Occupation Certificate of the New Building(s), the right of the Developer to utilize the residue of the Development Potential shall automatically lapse to all intents and purposes and the same shall revert to the Society without any claims whatsoever from the Developer by way of reimbursements, compensation, payments or otherwise howsoever, and the Society shall be entitled to deal with the same after the Defects Liability Period.

**5. REPRESENTATIONS OF THE SOCIETY AND THE MEMBERS.** The Society and the Members hereby represent, covenant, agree and undertake (as the case may be) as follows:

### **5.1 As Regards the Property-**

- 5.1.1 That the said Land is bounded by proper boundary walls and a gate and that there is no dispute with any of the adjoining properties as to boundaries or areas or encroachments;
- 5.1.2 That there is no order or direction of any court or any other authority that causes restriction to the demolition of the Existing Buildings/Structures or construction on/ development of the said Land;

## **Without Prejudice**

Draft for Discussion

- 5.1.3 The Society has not received any notice for acquisition, requisition or reservation of the said Property or any part or portion thereof nor is the said Property or any part thereof, to the knowledge of the Society/ Members, included in any intended or published scheme of improvement of the Municipality or other public body or authority;
- 5.1.4 There is no outstanding encumbrance, mortgage, charge, lien, notices for acquisitions, easement rights or outstanding interest, lien or claim by any person in respect of the said Property or any of the Members' Existing Flats nor are the same the subject matter of any pending litigation or attachment either before or after judgment save and except as disclosed in writing by the Society to the Developer.
- 5.1.5 Neither the Society nor the Members have dealt with the Property, and/or the FSI, TDR, or development potential of the Property, the Society has not entered into any agreement or arrangement granting development rights in respect thereof to any third parties, or contracted to create any right, title or interest in respect of the said Property, nor have they done or committed to do any acts, deeds, things or matters whereby or by means whereof their right, title or interest in respect of the said Property is or can be adversely affected and/or seriously prejudiced;
- 5.1.6 The Society is in possession and control of the documents of title relating to the Land which are listed in the **Annexure "IX"** to this Agreement, and no title document has been deposited with any third-party as and by way of security for grant of any loans or credit facilities, and/or as and by way of mortgage, or otherwise howsoever;
- 5.1.7 That all taxes, outgoings, duties and dues including without limitation, N.A. taxes, assessment bills, water bills, electricity bills have been paid and shall continue to pay till the Appointed Date and that no notice of distraint has been served on the Society;
- 5.1.8 That the said Land is of freehold tenure and that the title to the said Property is clear and marketable and free from all encumbrances;

### **5.2 As regards the Society**

- 5.2.1 The Managing Committee is a validly elected committee and all committee members have complied with all provisions of the Maharashtra Co-operative Societies Act 1960, the Maharashtra Co-operative Societies Rules 1961, and the bye-laws of the Society so as to validly continue as committee members;
- 5.2.2 The Society has complied with and shall always comply with all the provisions

## **Without Prejudice**

Draft for Discussion

of the Maharashtra Co-operative Societies Act 1960, the Maharashtra Co-operative Societies Rules 1961, and the bye-laws of the Society and that the Society has not done/ will not do any act which is in contravention to the provisions of the Maharashtra Co-operative Societies Act 1960, the Maharashtra Co-operative Societies Rules 1961, and/or the bye-laws of the Society and/ or which would put this Agreement in jeopardy;

5.2.3 In particular, the Society has followed the entire procedure laid down in the Circular dated 03<sup>rd</sup> January 2009 issued by the Chief Secretary, Co-operative & Marketing Society, for redevelopment of plots by co-operative societies (as modified on 4<sup>th</sup> July 2019);

5.2.4 That the Society is fully competent and has absolute right to enter into this transaction with the Developer;

5.2.5 The Society and the Members shall extend their co-operation to the Developer and shall furnish copies of their title documents if required for the development purposes;

5.2.6 The Society and the Members have fully and completely understood, approved and accepted the scheme of Redevelopment of the said Property, and all the terms and provisions of this Agreement and all related writings, and consequently, neither the Society nor the members shall under any circumstances require the Developer to pay/provide any additional or other consideration, benefits, payments, etc., other than as specifically recorded in this Agreement.

### **5.3 As regards the Members**

5.3.1 The Members have paid all their dues including maintenance and repair bills, outgoings, and duties of and relating to or proportionate to the respective Members' Existing Premises upto date and shall continue to pay the same for the entire period upto the Appointed Date;

5.3.2 All Members are resident Indians as defined by the Income Tax Act 1961 save and except for \_\_\_ Member who is/are NRI, and whose details are mentioned in **Annexure "X-1"** hereto)

5.3.3 Save and except for some of the Members' Existing Premises that have been given by the members thereof on leave-and-license basis (details whereof are mentioned in **Annexure "X-2"** hereto) all other Members' Existing Premises are in the occupation of the respective members and their immediate family members. In respect of those of the Members' Existing Premises given on license basis, the concerned Members shall not renew the licenses and shall ensure that such premises shall be vacated by the licensee within ten

**Without Prejudice**

Draft for Discussion

days of the Notice-To-Vacate;

- 5.3.4 No leave and license agreements of any of the Members' Existing Premises (whether by way of extension of existing license agreements or by way of fresh license agreements) shall be executed whereby the rights of the flat-owner/ licensor to prematurely terminate the agreement is restricted in any manner including by way of any locked-in periods, and all such agreements contemplated to be executed shall be furnished to the Developer before executing the same ;
- 5.3.5 Save and except for some of the Members' Existing Premises that have been mortgaged by the members thereof (details whereof are mentioned in **Annexure-“X-3”** hereto) none of the other Members' Existing Premises are mortgaged or loans taken or premises offered as security or encumbrances/ third party rights created (whether by way of registered or unregistered documents). As regards those of the Members' Existing Premises that have been mortgaged as stated above, the Members thereof shall either obtain release of the mortgages affecting their premises and/or procure NOC from the Mortgagee to the proposed redevelopment project and produce to the Society and the Developer the documents evidencing the same if required;
- 5.3.6 In the event any third party puts any claim in respect of any of the Members' Existing Premises or obstructs the development work, the concerned Member shall deal with and clear such claims/obstruction at his/her own costs and expeditiously so as to not cause any delay in the Redevelopment work, and shall be responsible for the consequences if delay is caused to the project;
- 5.3.7 None of the Members' Existing Premises are attached either before or after judgment or at the instance of any court or taxation authority or any other statutory authorities and none of the Members have given any undertaking to any taxation authorities so as to not deal with or dispose of his/her right, title and interest in his/her flat/ premises;
- 5.3.8 There are no proceedings pending in any Court or before any authority or any attachment or prohibitory order of any Court or authority concerning, touching and affecting any of the Members' Existing Flats which prevent any of the Members from executing this Agreement or in any manner dealing with their premises;
- 5.3.9 None of the Members are restrained under any provisions of law including the Income-Tax Act 1961 from selling or transferring or dealing with any of the Members' Existing Premises;
- 5.3.10 No petition or proceedings for insolvency/ bankruptcy/ winding-up has been

**Without Prejudice**

Draft for Discussion

filed or initiated before any court of law or other competent authority against any Member by any creditors or any other person or persons;

5.3.11 None of the Members have entered into any agreement or arrangement with any other person or persons for sale, transfer or assignment of any of the Members' Existing Premises and none of the Members have accepted any token deposit, earnest money or any other consideration/ amount from any person or persons and the Members hereby agree to indemnify the Developer against any third-party claims of whatsoever nature in respect of the Members' Existing Premises;

5.3.12 No other person (other than the mortgagors or licensees mentioned in Annexures "X-2" & "X-3" hereto) has any claim, share, right, title or interest of whatsoever nature including by way of sale, exchange, lease, sub-lease, mortgage, (equitable or otherwise), gift, trust, inheritance, tenancy, lien, or otherwise howsoever in any of the Members' Existing Premises, and that the Members have absolute and unfettered powers to deal with their respective premises;

5.3.13 The Members are the absolute legal and beneficial owners of the respective Members' Existing Premises and have a clear and marketable title to the same, free from all encumbrances, save as mentioned herein;

5.3.14 The Society agrees to get all the Members to file their nominations with the Society. As agreed between the Parties, in the event of the death of any member, the Developer is entitled to hand over the possession of the deceased member's new flat and pay the agreed consideration/ amounts that were due to the deceased member to such nominee as will be indicated by the Society and without being liable in any manner whatsoever to any other heirs of such deceased member. In the case of any dispute, the Developer is entitled to hand over the keys and the possession of such disputed flat to the Society and the Society shall be liable to resolve the dispute and hand over the possession of such flat without the Developer being responsible in any manner;

5.3.15 The Society is responsible to ensure compliance by individual Members of the terms hereof and, in particular, the vacating and handing over of the Members' Existing Premises and the settlement of any third-party claims pertaining to the Members' Existing Premises or the Members' New Units and the Members' New Car-Parking Spaces;

5.3.16 The Members shall not do any act whereby the right of the Developer created herein may prejudicially be affected;

## **Without Prejudice**

Draft for Discussion

- 5.3.17 During the construction of the said New Building(s), no hindrance or obstruction will be caused by any member in carrying out of redevelopment of the said Property by the Developer;
- 5.3.18 The Society has passed necessary resolution as required by MCGM to enable the Developer to avail benefit of Incentive FSI under the provisions of Regulation 33(7)(B) of DCPR 2034.
- 5.3.19 In view of the Developer incurring and agreeing to incur the substantial obligations and liabilities (financial and otherwise) set out herein, besides which the Society is being provided the rights to the Reserved Developer's Flats as per this Agreement to ensure completion in case of default, after the plans for the Minimum Development Potential are sanctioned as per the terms of this Agreement, this Agreement is non-terminable and shall not be cancelled or terminated by the Society and/or the Members and instead the Society shall have Step-In-Right as set out in clause No.23.2 subject to the Developer shall comply its obligation mentioned in this Agreement.

## **6. SOCIETY'S TITLE**

- 6.1 The Society has represented that the title to the Land is clear and marketable and free from all encumbrances.
- 6.2 The Society has provided to the Developer photo copies of the title documents in their possession, more particularly set out in Annexure 'IX' annexed hereto and on basis of the title documents provided by the Society, the Developer have prima facie accepted the title of the Society to the said Property more particularly described in Schedule hereunder written. The Developer is entitled to investigate the title of the Society to the Land by causing to publish a Public Notice/s in newspapers inviting third party claims.
- 6.3 It is agreed that if, at any time hereafter, any encumbrance/s arise and/or any claim/s or demand/s are received from any party in respect of the said Property or Part Property, it shall be the sole responsibility of the Society/ Members, respectively, at their costs, to have such encumbrance/s, claim/s and demand/s, and/or suits, actions, proceedings and disputes (as the case may be) settled, removed, or withdrawn, however the Developer shall be entitled to extension of time for completion of the Project, if such encumbrance/s, claim/s and demand/s, and/or suits, actions, proceedings and disputes result in delay in compliance of Developer's obligations as stipulated in this Agreement.

## **Without Prejudice**

Draft for Discussion

6.4 Before execution hereof, the Developer has verified all issues that affect loading of TDR-FSI and have inspected the Property and are fully aware of the physical conditions.

### **7. THE NEW BUILDING(S)-**

7.1 **Composition of the New Building(s).** The Developer shall construct the New Building(s) which shall comprise of \_\_\_\_\_ and \_\_\_\_\_ and commercial and residential floors (which will contain inter alia the Members' New Flats/commercial premises and the Developer's Free Sale Flats/commercial units).

7.2 **Residential-cum Commercial Building.** The New Building(s) shall comprise of residential flats for residential purpose and commercial premises for commercial purposes.

7.3 **Refuge Areas.** Refuge areas will be provided as per the D.C.P. Regulations. The Developer does not have the right to and agree not to create any rights in favour of any flat-purchasers in respect of the refuge areas, and access to the same will not be restricted in any manner. The refuge areas shall be a common area belonging to the Society, and no flat-owner shall have the exclusive use thereof. The Society shall adhere to and shall ensure adherence of the provisions of the D.C.P. Regulations and regulations of the Fire Department and other authorities with regard to the refuge areas.

7.4 **Terraces-** All the common terraces which are free of FSI in the said New Building(s) shall always belong to the Society and shall be common area and facility for the benefit of the owners / occupants of all the flats in the New Building(s).

7.5 **Common Areas.** All common areas such as compound, open space on the Society's Plot, lobby, terrace above the upper-most residential floor, refuge areas, shall belong to the Society for the benefit of all its members (which will include all purchasers/ allottees of the Developer's Sale Flats).

#### **7.6 Car-Parking Spaces:**

7.6.1 **Members' New Car-parking Spaces-** The Developer shall provide 1(one) car parking space for each of the Member's New Units. Thus total 198 MCGM approved car parking spaces shall be provided to the Society for allotment amongst the Members of the Society.

7.6.2 The car parking spaces shall be demarcated between the Society and Developer after the car parking plans are approved by appropriate authorities. The Society shall be responsible to allot car parking spaces to the Members from the car parking spaces earmarked for the

## Without Prejudice

Draft for Discussion

Members. The Developer shall not be concerned with, or involved in, the allocation and distribution of the Members' New Car-parking Spaces between the Members.

7.6.3 The Developer shall be entitled to construct or erect any stack or mechanized car parking facility in the New Building and type of car parking spaces to be provided to the Society for allotment amongst the Members shall be of mechanized nature, however the same shall be independent mechanized parking spaces and not of dependent type. In the event, if any surface car parking spaces of non-mechanized nature are constructed, then the same shall be distributed between the Society and Developer in the ratio of 50% : 50%.

7.6.4 **Developer's Car-parking Spaces.** After providing car parking spaces to the members of the Society as provided hereinabove, all the balance of the car-parking spaces available in the Project (including those in the \_\_\_\_\_, \_\_\_\_\_, compound, and within or as part of any mechanised parking systems that may be installed by the Developer) are the Developer's Car-parking Spaces and the Developer is fully, freely and exclusively entitled to allot the same between the allottees and purchasers of the Developer's Flats as the Developer deems fit whereupon the same shall be deemed to have been allotted to such allottees and purchasers by the Society, and the Society undertakes not to challenge or change the same. The Society is bound and liable to recognise such allottees and purchasers as holders of the car-parking spaces allotted to them by the Developer. The Society undertakes to execute all such writings in conformity with the above, as may be required by the Developer with respect to the allotment of and rights to the Developer's Car Parking Spaces.

7.6.5 **Two Wheeler Parking Spaces.** Subject to planning and sanction of plans by the concerned authorities, if any two wheeler parking spaces are constructed in the New Building, the same shall be distributed between the Society and Developer in the ratio of 50% : 50%.

7.7 The New Building(s) shall be constructed as per prevailing ISI codes, and shall be earthquake resistant as per the D.C.P. Regulations.

7.8 The design of the New Building(s) including the RCC structure, type and thickness of slabs, type and thickness of internal and external walls, elevation, etc., shall be carried out by the Developer as per the advice of their Architects/ structural consultants/ RCC Consultants engaged for the Project shall be provided to the Society/PMC.



## Without Prejudice

Draft for Discussion

7.9 The New Building(s) shall have proper fire-fighting system, wind load and seismic load design, rain water harvesting system in accordance with the D.C.P. Regulations.

7.10 The amenities to be provided in the Members' New Units shall be identical to the amenities the Developer shall provide in Developer's Free Sale Flats/Units.

7.11 Since the area of the said Land is above 4000 sq.mtrs. and less than 10,000 sq.mtrs., 5% of total Land area shall be required to be handed over to MCGM as Amenity Open Space, as per prevailing DCPR, 2034. The Developer shall not claim any compensation/ reduction in the area as agreed to be provided to the Existing Members of the Society in the New Buildings under the present Development Agreement, due to handing over of the said Amenity Open space. The Society also shall not be entitled to any separate benefit on account of handing over of the said Amenity Open space and/or handing over of road set back area, if any.

**8. DETAILS OF THE MEMBERS' NEW UNITS.** The Developer shall utilize the Society's retained area and construct the Members' New Units for the Members on the following other terms & conditions: -

8.1 **Area Representation of the Members' Existing Units.** The Parties hereto have accepted the carpet areas of the Members' Existing Units as detailed in the Annexure "III-1" hereto, and shall not dispute the same.

8.2 **Free Area Entitlement.** The Members are entitled to be provided, free of all costs, with new units comprising of the carpet areas of the Members' Existing Units plus 23% (twenty three percent) additional RERA carpet area. ("**Free Area Entitlement**").

8.3 **Location of the Members' New Units.** The Members' New Commercial premises will be located at ground floor of the New Building(s) whereas the Members' New Flats will be located from the first residential floor and upwards of the New Building(s) (so as to cover the lower residential floors of the New Building(s)) ('first residential floor' being the floor containing residential flats The Society shall allocate the Members' New Units amongst the Members before the Specified Date. Details of the Members' New Units are recorded in the list annexed hereto and marked Annexure "VIII", in which-

8.3.1 Column 'A'- lists the names of the Members holding the Members' Existing Units;

8.3.2 Column 'B'- gives the unit numbers of the Members' Existing Units;

## **Without Prejudice**

Draft for Discussion

8.3.3 Column 'C'- lists the carpet areas of the Members' Existing Units;

8.3.4 Column 'D'- lists the RERA carpet areas of the Members' New Units (including 23% Additional Free Area);

8.4 **Additional Purchased Area.** If any Member/s desires to purchase Additional Area over and above their Free Area Entitlements such Member/s shall indicate their intention to the Developer and the payment for such area shall be as per the payment schedule annexed hereto and marked as **Annexure "XI"**. The Developer has agreed to allot in aggregate \_\_\_\_\_ square feet RERA Carpet Area to the Existing Members who may be desirous of purchasing Additional Purchased Area. The stamp duty, registration charges and GST in respect of the Additional Purchased Area shall be borne and paid by the concerned Members.

8.5 **Deficit tolerance /deficit compensation of carpet areas-**

8.5.1 To ensure proper finishes of the walls, a tolerance of upto 2% (Two percent) difference in the RERA Carpet Areas of the Members' New Units is accepted by the Parties without payment of any penalties/ compensation.

8.5.2 If the RERA Carpet Areas of the Members' New Units exceeds the agreed carpet areas mentioned in **Column-D of Annexure "VIII"** hereto, the Society/ Members shall not be required to compensate the Developer for the same. However, if the RERA Carpet Areas as per measurement in any of the Members' New Units is less than the RERA Carpet Areas mentioned in **Column-D of Annexure "VIII"** hereto, in such event the shortfall up to 2 % of the carpet area shall be condoned (and not compensated for). However if the shortfall is more than 2 % of the RERA carpet area, then in such event the Developer shall compensate such Member @ Rs. 25,000/-(Rupees Twenty Five Thousand Only) per square foot for any shortfall in the RERA carpet area beyond 2 %, and such payment shall accompany the Possession-Notice. Under no circumstances, the shortfall in RERA Carpet Area to be provided by the Developer to the Members shall exceed 2 % of RERA Carpet Area of Members' New Units.

8.5.3 To ensure timely verification of the RERA Carpet Areas in respect of the Members' New Units, the Developer shall inform the Society's PMC on the completion of brick/ block work of each floor and the Society's

## **Without Prejudice**

Draft for Discussion

PMC shall be entitled to inspect and measure the same within seven working days of such intimation, after which (i) the Society shall be deemed to have accepted the accuracy of the areas of those of the Members' New Units on such floors, (ii) the Developer shall proceed with finishing the flats/units, and no further claims shall be raised regarding deficit areas. Any deficit in areas brought to the notice of the Developer by the Society's PMC shall be rectified by the Developer or, if not rectified, compensation for the same will be paid by the Developer to the concerned member at the rates specified in Clause 8.7.2 above and such payments shall be made along with the Possession-Notice.

8.5.4 It is hereby clarified that under no circumstances, there shall be any variation in carpet areas of the Members' New Units as per the sanctioned plans and the difference if any, shall be only on the account of finishing of walls of the New Units.

8.6 **PMC certification of RERA carpet area.** On receipt of the approval of plans of the New Building(s) from the MCGM, the Society's PMC shall certify the RERA carpet area of the Members' New Units as per RERA [since RERA defined carpet areas will form a common factor whilst calculating the proportionate property taxes, maintenance bills, outgoings and dues etc., of all units in the New Building(s)].

8.7 **Height.** The slab to slab height (including slab thickness) of all the Flats (including Developer's Free Sale Area) in the New Building(s) shall be equal/uniform or not less than 9.50 feet and in respect of new commercial units, it shall not be less than 12.5 feet. For the sake of clarity, it is further recorded that such height shall not be available in toilets/ bathrooms, or sunk areas or where beams are located. It is further clarified that the Developer has made planning in such manner that the height of the new building shall be upto 70 mtrs.

8.8 **Floor Plans.** Proposed floor plans in respect of the Members' New Units as drawn up by the Developer and approved by the Society are annexed hereto and collectively marked **Annexure "XII"**. The annexed floor plans shall be submitted by Developer for approval to the MCGM and other concerned statutory authorities. The Developer is entitled to amend the plans of the New Building(s) provided however that the same do not result in reduction in the areas and floors or orientation of the Members' New Units. Any amendment in building plans that will result in changes to the areas or floors or orientation of the Members' New Units shall require the prior approval of the Managing Committee of the Society.

## **Without Prejudice**

Draft for Discussion

**8.9 Members' Amenities.** The Members' New Flats and Members' Commercial Premises will be provided with the respective Amenities listed in Annexure "V" and "V-1" respectively as annexed hereto. Under no circumstances shall the Amenities be less than those agreed to be provided as per Annexure "V" and "V-1". If, however, the Developer provide further or better amenities than those listed in Annexure "V" and "V-1", the same shall be done at the costs of the Developer alone, and the Society and/or its Members shall not be required to compensate/ reimburse the Developer for the same unless such better amenities have been provided at the request of the Society and/or the Members.

### **8.10 Individual Confirmatory Writings/PAAA in respect of the Members' New Units.**

8.10.1 A Permanent Alternate Accommodation will be executed in favour of the Members to confirm the allocation of each of the Members' New Units as per this Agreement ("**Deed of Confirmation/PAAA**").

8.10.2 The Developer shall execute the said Deeds of Confirmation/PAAA in favour of the Members before the Specified Date. PROVIDED however that if any Member has not signed this Agreement or if any Member is unavailable to execute/ register their Deed of Confirmation/PAAA as a result of which stamp duty at a higher rate is made applicable, then notwithstanding anything contained herein, such members shall be liable to pay the stamp duty and registration charges in respect of his/ her Deed of Confirmation/PAAA, and the execution/ registration of the same shall be done at a time that is suitable to the parties thereto. It is hereby clarified that the GST, stamp duty and registration charges on the Free Area Entitlement of all the Members who have executed this Agreement shall be borne and paid by the Developer.

**8.11 Alteration to Members' New Units.** No alteration whatsoever is permitted to be made by the Members to the size or location or plumbing lines of the kitchens, bathrooms/ toilets of the Members' New Units. If any other change is sought by anybody, he/she shall deal directly with the Developer and if the same is agreed upon, the same shall be carried out. The other members shall not raise any objection to any such agreed changes that may be agreed upon by the Developer with any particular member. It is clearly understood and agreed that no member shall make any changes to their flats/units so as to affect the elevation of the New Building(s), and individual members alone shall be liable for any damage as a result of such changes.

**9. DETAILS OF HARDSHIP COMPENSATION/CONSIDERATION PAYABLE TO THE MEMBERS**

9.1 **Hardship Compensation for Members.** The Developer has agreed to pay to the Members holding the Members' Existing Units a hardship compensation/ consideration calculated @ Rs.250/- (Rupees Two Hundred & Fifty Only) per square foot carpet area of the Members' Existing Units, aggregating to Rs. 1,81,16,250/- (Rupees One Crore Eighty One Lakhs Sixteen Thousand Two Hundred and Fifty Only). The aforesaid hardship compensation is the agreed predetermined lump sum amount payable to the Members (i) for having given concurrence and consent for the Redevelopment of the Property (ii) for alleviating the hardship that the Members (including joint members and their family members) will have to endure on account of shifting out of the Members' Existing Units to facilitate the Redevelopment of the Property, and shifting back into the Members' New Units on completion of the New Building(s), (iii) for allowing the Developer to demolish the Members' Existing Units, (iv) for having agreed to share the common areas with more persons on completion of the Project. (v) to help Members meet the increase in the outgoings & dues including property taxes/ Society charges, in respect of the Members' New Units (herein referred to as the "**Hardship Compensation**"). The Hardship Compensation shall be paid as under-

9.1.1 Cheques towards 50% of Hardship Compensation drawn in favour of the respective Members shall be deposited by the Developer with the Society on the Appointed Date;

9.1.2 Cheques towards balance 50% of Hardship Compensation and drawn in favour of the respective Members shall be handed over to the respective Member at the time of handing over possession of Members' New Units in New Building(s) to the respective Members.

9.2 The Hardship Compensation payable to each Member is stated in **Annexure "XIII"** hereto.

**10. DETAILS OF DISPLACEMENT COMPENSATION FOR TEMPORARY ACCOMMODATION.** The entire Property has to be vacated by all Members/ occupants to facilitate the demolition of the Existing Structures and the construction of the New Building(s). To facilitate the aforesaid, it is hereby agreed that the Members shall make their own arrangements for temporary accommodation elsewhere and in lieu thereof each of the Members holding the Members' Existing Units shall be paid compensation as mentioned below (for the benefit of the members including joint members and their families).

**10.1 Monthly Displacement Compensation:**

**Without Prejudice**

Draft for Discussion

**A. Residential Flats.** As agreed between the Parties, the Developer shall deposit with the Society post dated cheques towards monthly displacement compensation @ Rs.55/- (Rupees Fifty Five only) per square foot of the carpet areas of each of the Members' Existing Flats per month for a period of 12 months calculated from the Appointed Date ("**Monthly Displacement Compensation**").

10.1.1 in the 11<sup>th</sup> month from the handing over of first 12 months postdated cheques, the Monthly Displacement Compensation for further 12 months @ Rs.55/- (Rupees Fifty Five only) per square foot of existing carpet area per month by way of a 12 postdated cheques to each Member per sq ft. carpet area per month shall be deposited by the Developer with the Society.

10.1.2 Thereafter, on or before completion of 23<sup>rd</sup> month from the Appointed Date, the Developer will hand over to the Society 12 monthly postdated cheques @ Rs. 60/- (Rupees Sixty only) per square foot of existing carpet area per month, commencing from the 25<sup>th</sup> Month from the Appointed Date.

**B. Commercial Units:** As agreed between the Parties, the Developer shall deposit with the Society post dated cheques towards monthly displacement compensation @ Rs. 90/- (Rupees Ninety only) per square foot of the carpet areas of each of the Members' Existing Commercial Unit per month for a period of 12 months calculated from the Appointed Date ("**Monthly Displacement Compensation**").

10.1.1 in the 11<sup>th</sup> month from the handing over of first 12 months postdated cheques, the Monthly Displacement Compensation for further 12 months @ Rs.95/- (Rupees Ninety Five only) per square foot of existing carpet area of each of the Members' Existing Commercial Unit per month by way of a 12 postdated cheques to each Member per sq ft. carpet area per month shall be deposited by the Developer with the Society.

10.1.2 Thereafter, on or before completion of 23<sup>rd</sup> month from the Appointed Date, the Developer will hand over to the Society 12 monthly postdated cheques @ Rs. 100/- (Rupees Hundred only) per square foot of existing carpet area of each of the Members' Existing Commercial Unit per month, commencing from the 25<sup>th</sup> Month from the Appointed Date.

10.1.3 The Developer shall be liable to pay Monthly Displacement Compensation to the Members from the Appointed Date until the date of Occupancy Certificate at the rate as stated in this Agreement. It is clarified

## Without Prejudice

Draft for Discussion

that if the Developer completes the part of New Building(s) and obtains Part Occupancy Certificate including for the Members' New Commercial Units, then the Developer shall be entitled to offer possession of the Members' New Commercial Units to the respective Members and from the date of receipt of Part Occupancy Certificate, the Developer shall not be entitled to pay Monthly Displacement Compensation to the Members holding Commercial Units till the date of receipt of part Occupation Certificate.

10.1.4 It is agreed that upon depositing/handing over the post dated cheques for every tranche by the Developer with the Society as stated hereinabove, the Society shall distribute the said post dated cheques towards Monthly Displacement Compensation amongst the Members.

10.1.5 It is agreed that the Monthly Displacement Compensation shall be increased by 10% per year from completion of 36 months from the Appointed Date till handing over possession of Member's New Units with Occupancy Certificate.

10.1.6 It is clarified that the Monthly Displacement Compensation payable to the Members of the Society as set out hereinabove is a lumpsum compensation amount and neither the Developer nor the Members and/or the Society shall be concerned with the amount actually spent in getting temporary alternate accommodation outside the Property.

10.2 **Compensation for packing/moving expenses.** The Developer shall also pay to each of the Members a non-recurrent one-time lumpsum compensation of Rs. 15,000/- (Rupees Fifteen Thousand Only) towards packing/ moving expenses that the Members may incur to move out of the Members' Existing Units and into temporary accommodation that they procure and back into the Members' New Units ("**Shifting Compensation**"). The Shifting Compensation shall be paid to the Members on the Appointed Date.

10.3 **Compensation for Realtor fees, etc.** The Developer shall also pay to each of the Members a non-recurrent one-time lumpsum compensation @ Rs.55/- (Rupees Fifty Five only) per square foot of the carpet areas of each of the Members' Existing Flats and @ Rs. 90/- (Rupees Ninety only) per square foot of the carpet areas of each of the Members' Existing Commercial Unit towards brokerage/ realtor fees, stamp duty/ registration fees, and all other expenses in respect of the temporary accommodation procured by them during the redevelopment period ("**Temporary Accommodation Expenses**"). The cheque towards Temporary Accommodation Expenses shall be handed

## **Without Prejudice**

Draft for Discussion

over to the Society on the Appointed Date for distributing amongst the Members.

10.4 Herein, the Monthly Displacement Compensation, the Shifting Compensation and the Temporary Accommodation Expenses, where required, are collectively referred to as the “**Displacement Compensation**”.

10.5 A statement of the Displacement Compensation payable to each Member is included in **Annexure “XIII”** hereto.

10.6 The Developer will not be liable to pay Monthly Displacement Compensation after receipt of part Occupation Certificate in respect of the Members’ New Commercial Premises to the concerned members holding existing commercial units and on receipt of Occupancy Certificate in respect of Members’ New Flats with Members’ Amenities therein are completed after receipt of Part occupancy Certificate and after the with Members’ Amenities are completed after receipt of the Occupancy Certificate of the New Building(s),.

10.7 The Members are not accountable to the Developer for the utilization of the Displacement Compensation, and the Developer shall have no claims of any nature whatsoever to the same. Any taxes in respect of the amounts paid by the Developer to the Members under this Agreement including Hardship Compensation or Displacement Compensation shall be the responsibility of the Members alone, and the Developer shall not be responsible/liable for the same in any manner whatsoever.

10.8 Any cheques lying with the Society or the Members for the period beyond the date of receipt of the Occupation Certificate shall be treated as cancelled and the same shall be returned to the Developer.

## **11. DETAILS OF PAYMENT TO THE SOCIETY.**

11.1 As agreed between the Parties, the Developer has already paid to the Society an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) as interest free Security Deposit. The Society shall refund the interest free Security Deposit to the Developer within 15 days from the date of Full Occupancy Certificate of New Building(s).

11.2 As agreed between the Parties, the Developer shall reimburse to the Society, the professional fees payable by the Society to its Advocates and PMC, maximum to the extent of an aggregate amount of Rs.40,00,000/- (Rupees Forty Lakh Only) (inclusive of applicable taxes thereon) to the Society towards. The said amount shall be paid as under-



**Without Prejudice**

Draft for Discussion

11.2.1 Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Lakh only) shall be paid to the Society on \_\_\_\_\_;

11.2.2 Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Lakh only) shall be paid to the Society on the Appointed Date.

**12. DEVELOPER'S PREMISES-**

12.1 Besides the Members' New Units and the Members' New Car-Parking Spaces mentioned above, all other flats and all other car-parking spaces are Developer's Premises and shall belong to the Developer.

12.2 The Developer shall have the absolute right to utilize the balance FSI out of the Development Potential and to construct and deal with the Developer's Flats, Commercial Units and Developer's Car Parking Spaces (Developer's Premises");

12.3 The Developer's Premises are and shall be the absolute and exclusive property and assets of the Developer, and by virtue thereof the Developer and the purchasers and allottees of the Developer's Premises have and shall have a proportionate interest in the capital and Property of the Society.

12.4 The Developer has full discretion in the planning/ designing of the New Building(s) and the Developer's Premises including matters concerning the internal layout and amenities provided however that the same does not reduce the areas of the Members' New Units. The Developer is also entitled to provide bare/unfurnished flats in respect of the Developer's Premises, and/or to provide/install any extra or premium amenities in the Developer's Premises if demanded and requested by the prospective purchasers at extra cost.

12.5 The Developer alone are entitled to sell/ allot the Developer's Premises under the provisions of RERA or any other applicable law or otherwise deal with the same or to lease, grant licence, or otherwise deal with the same (and without having to take any permission of the Society) and appropriate the proceeds unto themselves provided however that the Developer shall not and hereby undertake not to put any person/s in possession/ occupation of the Developer's Premises until such time that the Members' New Flats are ready with the Members' Amenities and the Occupation Certificate of the New Building(s) has been obtained and thereupon the Possession-Notice is served on the Society offering possession of the Members' New Units.

12.6 At the Developer's sole option, the Society may be joined in such agreements/documents; provided that no obligation or liability shall be cast upon the Society thereunder which is contrary to, or inconsistent with, the Society's specific obligations herein.

**Without Prejudice**

Draft for Discussion

12.7 The Developer further agree as follows-

12.7.1 Subject to the terms hereof, any contract or agreement that may be entered by the Developer in respect of the Developer's Premises shall be on principal basis and not as the agent of the Society or the Members.

12.7.2 All the consideration which shall be received by the Developer from the sale of the Developer's Premises shall belong to the Developer and will be received by them on their own account.

12.7.3 The Society/ Members shall not be liable or responsible in any manner whatsoever in respect of any of the Developer's Premises and shall not be liable or responsible to any such persons with whom the Developer enter into any agreement in respect of the Developer's Premises, whether in respect of the monies paid/ to be paid to the Developer in respect thereof, the terms that the Developer or such persons agree upon in respect of the Developer's Premises, any delays in completion or in handing over any of the Developer's Premises, any breach or deviation of terms claimed by the Developer or such persons, any claims for interest/ penalties/ refunds/ damages etc., or under any other circumstances whatsoever.

12.8 **Housing Loan.** The purchasers/ allottees of the Developer's Premises may borrow/avail of housing loan from any financial institution/ bank/ organization/ employer to fund the purchase; however, the repayment of the loan/ interest and other charges on such loan shall be the sole responsibility of the purchaser availing such loan. The Society grants/ shall be deemed to have granted its consent and NOC to all such purchasers of the Developer's Premises for creating such charge, lien and/or other security upon such flats and/or their right, title and interest therein. The Society hereby acknowledges that the Developer and/or flat-purchasers and/or the banks/ financial institutions shall rely on the aforesaid to create charge/ lien and to release loans as aforesaid.

12.9 All the purchasers and allottees of the Developer's Premises (and the Developer, if they chose to retain any of the Developer's Premises) shall be admitted as members of the Society subject to the Purchasers shall submit application along with all requisites forms as per the Society Bye-Laws to the Society and they shall only pay the face value of the shares of the Society allotted to them respectively, and the statutorily prescribed entrance fees and the Corpus Contribution as per this Agreement, but no other premiums, transfer charges, contributions, or other amounts whatsoever.

**12.10 Corpus Contribution-**

12.10.1 The Society holds certain amount in repairs/reserve/sinking fund for the existing Members. The purchasers of the Free-Sale Premises shall be required to contribute towards the repairs/reserve/sinking fund on pro-rata basis for equalizing their contributions with that of the existing Members . On the Appointed Date, the Society shall furnish to the Developer the details of the funds of the Society (with accounts) and the proportionate contribution to be made in respect of the Free-Sale Premises to enable the Developer to inform the purchasers of the same. The Developer shall under the agreements for sale proposed to be executed by them with the prospective purchasers of Free-Sale Premises put such terms and conditions about the contribution towards the repairs/ reserve/ sinking fund as set out in this clause.

12.10.2 The Developer shall not be responsible for the collection/ payment of the proportionate Corpus Contribution in respect of the Developer's Flats if the Society does not inform the Developer on the Appointed Date, the details of the funds of the Society and the proportionate Corpus Contribution to be made in respect of the Developer's Flats.

12.10.3 Such proportionate Corpus Contribution shall be paid on the Society admitting the concerned purchaser/allottee to the membership of the Society and issuing and handing over the requisite shares/ share certificate in the name of such purchaser/allottee. The Corpus Contribution shall be retained by the Society and shall not be distributed amongst any of the members (including the present members).

**12.11 Unsold Premises.** If any of the Developer's Premises remain unsold for twenty-four months from the date of the Full Occupancy Certificate, the Developer shall become a member of the Society and shall pay the proportionate Corpus Contribution for each unsold flat against the Society issuing separate shares/ share certificate to the Developer as per Clause 12.9 above, and all amounts towards outgoings, dues, taxes, maintenance and Society's charges in respect of the unsold Developer's Premises which other members of the Society are required to pay- however, no prior permission of the Society shall be required nor any transfer charges shall be payable to the Society when the Developer effects sale of the unsold flats. The Developer is entitled to get a reimbursement of the corpus contribution from the purchaser(s) of

## **Without Prejudice**

Draft for Discussion

such premises sold. As and when the purchasers of the Developer's Premises are admitted to the membership of the Society, the Society will transfer the share certificate to the purchasers of each of such premises without charging any transfer fees/ donation or corpus contribution.

12.12 On the Developer issuing the Possession-Notice to the Society by the Developer, the Developer is entitled to forward applications for admission to membership of the Society in respect of the Developer's Premises and the Society is bound to complete the admission process and issue the shares/ share certificates to the applicants within fifteen days of their receiving a written intimation thereof and all of the following documents from the Developer:-

12.12.1 Photocopy of the sale agreement along with copies of the stamp duty receipt and registration receipt in respect thereof;

12.12.2 Application for membership with the applicable membership fee;

12.12.3 Cost of shares;

12.13 The Society and the Members undertake not to admit any purchasers/ allottees as member(s) on their own and shall only do so on receiving a written notice from the Developer alone. Any delay by the Society in admitting any of the flat-purchasers/ allottees to the membership and issuing shares/ share certificates shall make the Society liable for action taken by the flat-purchasers/ allottees.

12.14 It is clarified that the Members, the purchasers/ allottees of the Developer's Premises admitted to the membership of the Society and the Developer (if they retain any of the Developer's Premises), shall enjoy the advantages, benefits and privileges in the Society and the use and benefit of all common amenities, facilities, areas and services in the redeveloped Project including fitness centre/gymnasium, etc., on the same footing / basis as all the Members.

12.15 The applicable property taxes, N.A. taxes and dues of/ relating to the Developer's Premises shall be paid by the Developer from the Date of Full Occupation Certificate until the Developer's Premises are sold and the concerned purchaser(s) are put in possession thereof.

12.16 The Society shall not obstruct, and shall ensure that its members do not obstruct, the sale/ allotment of the Developer's Flats and/or the Developer's Car-Parking Spaces and the access thereto, and they shall extend all necessary support and cooperation in this regard so long as the Society does not have to bear any expenses.

12.17 The Society is aware that the Developer has taken rights of Redevelopment

## **Without Prejudice**

Draft for Discussion

and will be incurring substantial obligations so as to be able to sell the Developer's Premises and realize the proceeds thereof, and that such sales will continue beyond the completion of the Project. The Society also agrees that part of the Developer's marketing efforts will be the showcasing of the New Building(s)/ Project. The Society hereby agrees that any feature lighting, if any installed by the Developer to light up the façade/ features of the New Building(s) or the air-conditioners that may be provided in the lobby shall not be switched off or access by the Developer's marketing personnel, channel partners and/or by prospective flat-purchasers for viewing the common areas (including the common terrace, fitness centre, parking areas, etc.) as may be provided in the Project shall not be obstructed by the Society or its members. The aforesaid term is an intrinsic part of this Agreement.

### **13. GENERAL PROVISIONS RELATING TO THE REDEVELOPMENT WORK.**

- 13.1 As stated in Clause 8.10 hereof, the Developer has prepared and the Society has approved the tentative plans in respect of the Members' New Units, copies whereof are annexed hereto at Annexure 'XII' hereto. The Developer can carry out minor changes as may be required by the MCGM, so long as the same does not reduce the Carpet Areas of the Members' New Units or change the location of any of the Members' New Units. If, however there is any change in the layout which causes reduction in the Carpet Areas of the Members' New Units or if there is any change in the location of any of the Members' New Units that occurs prior to the Vacating-Notice then the Developer shall obtain the Society's prior approval in respect thereof, which approval, or rejection, of such change shall be provided by the Society within a reasonable time, but in any event not later than fifteen days from the date the Developer submits the applicable revised floor plans of the Members' New Units to the Society.
- 13.2 The Members are at liberty to dismantle and take away their furniture and fixtures, including cupboards, units, shelves (including those fixed to the walls) from the Members' Existing Premises not later than 7 days before the Specified Date. The Members shall not remove any doors, windows, door/window frames, safety doors, C. P. Fittings, sanitary fittings, Electric components and cables. As on the date that each of the Members' Existing Premises has been vacated, any furniture, household items or paraphernalia left behind shall be deemed to have been abandoned/ discarded.
- 13.3 The value realized from the demolition/ salvage (which will be carried out by the Developer at its costs) shall be collected by and shall belong to the Developer alone.

**Without Prejudice**

Draft for Discussion

- 13.4 All permissions required from all concerned authorities for the Project shall be obtained by the Developer at its costs. The Developer shall strictly adhere to the rules and regulations of the MCGM and all other authorities and shall also strictly adhere to the provisions of law including RERA whilst carrying out the Redevelopment work. In the event the Developer commits any breach as a result of which the Society incurs any loss or damage, the Developer shall indemnify and keep indemnified the Society to the extent of the loss or damage that the Society may thus suffer.
- 13.5 As and when called upon by the Developer, at the cost of the Developer the Society shall sign, execute, register, issue and deliver to the Developer all applications, writings, letters, plans, forms, documents, etc., as may be required by Developer, for submission to the MCGM and other concerned authorities or otherwise, to enable the Developer to undertake and complete the Redevelopment of the Property as envisaged herein, including to enable the Developer to obtain the full sanction and approval of the building plans and specifications and utilization of the Development Potential to the maximum extent possible and permissible and to obtain approval and sanction of/to any amendments, modifications and/or variations thereto/therein.
- 13.6 The Developer shall not be responsible or liable for any breaches or non-compliance of any approvals, permissions, plans, sanctions, orders and NOCs granted or issued in respect of or relating to the said Property for the period prior to the date of this Agreement.
- 13.7 The Developer shall pay and discharge duly and punctually all those liabilities to the building contractors, labour, material suppliers, workmen and other employees employed by the Developer for the purpose of and incidental to the Redevelopment work in terms hereof.
- 13.8 The Developer is entitled to amend the plans pertaining to the Developer's Premises without requiring the prior approval of the Managing Committee of the Society provided that there will be no resultant reduction in the areas of the Members' New Units or change in the location thereof.
- 13.9 The Common Amenities & Specifications of the New Building(s)/ Project that the Developer shall provide are listed in Annexure "VI" annexed hereto and the same shall be provided at the costs and expense of the Developer alone. If the Developer provides further or better specifications/ utilities/ facilities than those listed in Annexure "VI" the same shall be done at the costs of the Developer alone, and the Society or its Members shall not be required to compensate/ reimburse/pay the Developer for the same.
- 13.10 Except as provided herein, the entire Redevelopment/ construction costs

## **Without Prejudice**

Draft for Discussion

including the fees of the Architects, R.C.C. Consultants and all other professionals/consultants appointed by the Developer, the bills of the various contractors appointed by them, the wages/ dues of the workmen, costs of all materials, bills of suppliers, all charges, fees and deposits to be paid to the concerned authorities for the Project, costs of/ expenses for procuring and loading TDR, Premium FSI, Fungible FSI, etc., and all premiums/ charges payable to the MCGM and other concerned authorities shall be borne and paid by the Developer alone. The Developer shall be entitled to obtain the refund from the MCGM/ concerned authorities of all refundable deposits which are paid/ payable by the Developer to the MCGM/ concerned authorities. The Society shall have no claim on refundable deposits which are paid/ payable by the Developer to the MCGM/ concerned authorities. If any such deposits are refunded to the Society, the same shall be paid-over by the Society to the Developer without any demur within one week of the amounts being credited into the Society's account. The Developers shall load TDR, Premium FSI, Fungible FSI, etc., and shall pay all premiums/ charges payable to the MCGM and other concerned authorities in accordance with this Agreement.

13.11 The Developer shall adhere to all provisions of law as regards the workmen employed/ engaged in the Project and shall be responsible for all the liabilities in respect of/claims by the workmen/ persons so employed/ engaged in the construction work.

13.12 The Developer is entitled, at its own risk and costs, to avail of loans, credit facilities, etc., from banks, financial and credit institutions and/or any other persons, inter alia, for the Redevelopment of the Property, and on a principal-to-principal basis, and to create any mortgage, charge and/or other security interest in respect of its rights and entitlements herein, provided that the Developer shall not create any mortgage, charge or other security interest in respect of the said Land, the common areas and/or Members' Existing Premises and/or the Members' New Units and/or Reserved Developer's Flats. For the aforesaid purposes, the Developer shall be at liberty to execute all agreements, documents and writings, provided that the Developer shall be the principal debtor and they shall solely be liable and responsible to repay such loans with interest, costs, charges and expenses thereon. The Society and the Members shall not be liable or responsible in any manner whatsoever for any such loans or credit facilities availed of by the Developer and/or for any default on the part of the Developer.

13.13 The Society and/or its Members shall not cause any obstruction or hindrance to the construction/ development work and the Society/Members shall not

**Without Prejudice**

Draft for Discussion

claim or demand any additional consideration by whatever name called for any reason whatsoever from the Developer, other than that provided in this Agreement.

13.14 While all permissions, approvals and sanctions of the MCGM/ concerned authorities pertaining to the New Building(s) are available online, any such documents in physical form as may have been obtained by the Developer shall be handed over by the Developer within twelve months of receipt of Full Occupancy Certificate.

13.15 **Electric Sub-station.** In the event any electric/power sub-station/s and/or distribution kiosk/s is/ are required to be provided or relocated upon any part of the said Property, then the necessary sub-lease, license and/or other necessary documents in respect of such portion/s thereof upon which such sub-station/s and/or distribution kiosk/s will be constructed / installed, shall be executed by the Society in favour of the concerned electricity/power provider. Any delay by the Society will not make the Developer liable in terms of penalties, enhanced rental compensation, etc.

13.16 From the date hereof, the Developer shall be entitled, at its costs, to advertise and publicize the Redevelopment of the Property and the Developer's Premises in all and any media and install and maintain, hoardings/ signage upon the Property, but subject to the provisions of this Agreement and applicable law. The Hoarding shall be removed by the Developer upon completion of redevelopment. The Developer shall also be entitled to project/display its corporate logo and signage/neon signs bearing name of "Arkade" with its logo, on roof top/terrace hereinabove, of such dimensions and manner as the Developer may decide. The right of the Developer to project only its signage shall survive in perpetuity without payment of any rent or other monies in respect thereof to the Society and it shall be binding upon the Society and Purchaser/s from the Developer's Premises as also all persons into whosoever hands the said Property may come. However the Developer shall bear and pay and discharge all costs, charges, expenses including/maintenance of the signage and electricity charges at the roof top/terrace and shall provide a separate electric meter for the same.

13.17 The Society or the Society's PMC shall not hinder, interfere with or restrict the Developer whether during or after the completion of the Redevelopment, from entering upon, holding, possessing, occupying and enjoying the Developer's Flats and the Developer's Car-parking Spaces save and except that the Society's Managing Committee members and/ or the Society's PMC/ Consultant shall, after issuing prior notice, visit the site subject to adherence of all site rules regarding safety.



## **Without Prejudice**

Draft for Discussion

13.18 The Parties agree and undertake to comply with all their obligations without any delay or default, and on a time bound basis. Accordingly, it is agreed and clarified that unless any other time period is specified in this Agreement, when any consent is required to be given by the Society to the Developer, the Society shall provide such confirmation or consent or communicate its disapproval (as the case may be) not later than the date that the Society is required to provide the same, failing which the Society shall be deemed to have granted such confirmation or consent.

13.19 To prevent delays and disputes arising, the Developer shall deal only with the Managing Committee of the Society in all matters concerning the Redevelopment of the Property as per the terms and provisions of this Agreement, and the Developer shall not be required to deal with or entertain any Members independently. Accordingly, the Society shall ensure that no Members independently approach the Developer in respect thereof.

13.20 On completion of the New Building(s), the Society shall comply with and ensure compliance of all rules and regulations pertaining to the use, operation, upkeep and maintenance of all equipment and systems including fire-fighting, elevators, mechanized parking systems/ hoists/lifts, water-pumps, electrical systems, safety/security equipment, etc., and shall obtain from the concerned authorities and keep valid all required certifications.

13.21 The Society does hereby agrees that neither the Society nor any of the Members of the Society any time hereafter will object to the neighborhood property development with deficient open space subject to the same not imposing any financial burden on the Society/Members and the Society does hereby agree to indemnify and to keep indemnified the MCGM and the Developer in this behalf;

## **14. LICENSE TO ENTER UPON THE PROPERTY-**

It is hereby specifically agreed between the Parties hereto that the Developer is only given the right to carry out the Redevelopment of the said Property on the terms mentioned herein and bring contractors, workmen and such other staff and employees on the said Property and to keep and store necessary materials on the said Property, and generally to carry out the Redevelopment work in terms of this Agreement. The Developer shall remove its workmen and employees and stored material from the said Property at the earliest possible on completion of the New Building(s) with all amenities and improvements. The license has been granted in favour of the Developer in respect of the said Property after procuring IOD for Minimum Development Potential is irrevocable till completion of the Project and at all material times, the possession of the said Property shall remain with the Society.

## **Without Prejudice**

Draft for Discussion

The license to construct shall come to an end on completion of the Project (subject to the continuing, absolute and unfettered rights of the Developer to the Developer's Premises).

### **15. POWER OF ATTORNEY-**

15.1 The Society has, on execution hereof, executed in favour of the Developer a Power of Attorney inter-alia authorizing the Developer to do and execute all such acts, deeds and things required for commencing and completing the Redevelopment of the said Property in terms of this Agreement including dealing with the MCGM and other authorities and obtaining sanction/ approval of building plans and for obtaining all permissions required for the Project. Notwithstanding the aforesaid, the Society agrees and undertakes to sign and execute such letters, applications, writings, plans, etc., that may be required by the Developer or by the MCGM or other concerned authorities in respect of the Redevelopment at the cost of the Developers.

15.2 All acts, deeds and things done by the Developer by virtue of the Power of Attorney shall be at the risk and costs of the Developer.

15.3 The Developer agree assure and undertake to carry out only lawful acts pursuant to the Power of Attorney and the Developer hereby indemnify and save harmless and shall keep indemnified and harmless the Society against all actions, costs, claims, damages, fines, litigations, penalties, prosecutions or proceedings that they or any of them may face due to any act or omission or commission of the Developer relating to the powers or the development.

### **16. THE SOCIETY'S PMC-**

16.1 The Society's PMC shall guide/ advise the Society in the matters pertaining to the construction work and adherence to the time schedule of this Agreement and adherence to the plans approved by the MCGM.

16.2 If the Society's PMC points out any work which is pending or is to be remedied, or points out any shortfall in the area within the time stated in this Agreement, the same shall be carried out/ remedied/ compensated by the Developer as per the terms of this Agreement.

16.3 While the Society and the Society's PMC can freely access the website of the MCGM for details and copies of all plans and permissions approved by the MCGM in respect of the New Building(s), the Developer agrees to furnish to the Society's PMC copies of working drawings, architectural drawings, structural drawings if required.

### **17. PRE-VACATING OBLIGATIONS & HANDING OVER PROCESS-**

**Without Prejudice**

Draft for Discussion

- 17.1 The Developer shall get the plans of the New Building(s) sanctioned by the MCGM with IOD upto the Minimum Development Potential and procure such FSI (whether by way of Premium paid FSI, or TDR/ FSI or Fungible FSI, as the Developer decides) upto the Minimum Development Potential within a period of 12 (Twelve) months from the date of this Agreement with a grace period of 6 (Six) months, but subject to Force Majeure and the terms hereof.
- 17.2 On receipt of the sanction of building plans to the extent of the Minimum Development Potential, the Developer shall issue the Notice-To-Vacate to the Society, calling for the entire Property to be vacated and handed over to the Developer for purposes of Redevelopment. The Developer shall specify in such Notice-To-Vacate the date by which all of the Members' Existing Premises and the entire Property, duly vacated, should be handed over to the Developer for the purposes of Redevelopment, and such date shall be thirty days from the date of the Notice-to-Vacate (the "**Specified Date**").
- 17.3 The Society shall, within ten days of the receipt of such Notice-to-Vacate, give the Developer letter(s) executed by all the Members confirming that all Members shall vacate their Members' Existing Premises with their families/ occupants and furniture/ paraphernalia and hand over to the Developer, by the Specified Date, the Members' Existing Premises for purposes of Redevelopment. The Society and the Members shall be responsible to get any licenses vacated within ten days of the Notice-To-Vacate being issued by the Developer to the Society. The Society and the Members are responsible to get No Objection/ No-dues Certificates from the concerned banks/ financial institutions/ creditors in respect of those of the Members' Existing Premises that have been mortgaged, if required, within ten days of the Notice-To-Vacate being issued by the Developer to the Society.
- 17.4 It is hereby further agreed that in the event any of the Members of the Society fail to execute this Agreement and/or provide the aforesaid confirmation letter and/or fails/refuses to vacate and handover any of the Members' Existing Premises ("**Dissenting/Defaulting Members**"), then the Developer shall take the required legal action as the Developer may deem fit in its sole discretion against such Dissenting/Defaulting Members so as to get the Property vacated in order to proceed with the redevelopment as envisaged under this Agreement. The Developer shall be entitled to claim for damages, interest on payments made, legal fees and costs incurred etc. from such Dissenting/Defaulting Members and if the amounts due to such Members are not sufficient to cover penalties, /amounts due by such Dissenting/Defaulting Members, the Developer shall be entitled to withhold the possession of the New Units of such members in default till recovery of all dues.

## Without Prejudice

Draft for Discussion

17.5 It is confirmed that the actual date that the Developer is handed over the entire Property, duly vacated, for purposes of Redevelopment shall be the “**Appointed Date**”.

### **18. PROCESSES FOR HAND-OVER OF MEMBERS' NEW UNITS-**

18.1 On completion of the Members' New Units and with Members' Amenities and upon completion of the New Building(s) and on the Developer applying for the Part/Full Occupancy Certificate in respect of the New Building(s), the Developer shall intimate the Society and the Society's PMC with the Developer's Architect shall undertake a joint inspection of the Members' New Units. Any remediation work shall be decided by the Society's PMC with the Developer's Architect and carried out by the Developer.

18.2 The Developer shall at least 15 days prior to such tentative/ estimated date of the receipt of Occupation Certificate of New Building, issue Pre-Intimation of OC in writing to the Society, so as to enable the Existing Members to take necessary steps/arrangement for taking possession of Members' New Units immediately upon issuance of Possession Notice by the Developer upon receipt of Occupation Certificate. Upon receipt of the Part/Full Occupation Certificate, the Developer shall issue Possession Notice inter alia offering possession of respective Members' New Units to the Society through Chairman/Hon. Secretary / Committee Members, and the Society shall accept, receive and take possession from the Developer, otherwise it will be deemed to have handed over possession to the Existing Members of the Society (hereinafter referred to as the “**Deemed Possession**”) on expiry of Possession Notice period. The Developer shall be free to hand over possession of premises from Free Sale Premises to respective purchaser/s as contemplated herein after 7 days from the date of Possession Notice offering possession of Member's New Units to the Society. On receipt of the Occupancy Certificate in respect of the New Building(s) and completion of the Members' New Units, the Developer shall issue to the Society (for itself and on behalf of Members), Possession Notice offering possession of the Members' New Units and Members' New Car-parking Spaces. However, the Developer shall be entitled to offer possession of Members' New Commercial Units after obtaining part Occupancy Certificate.

18.3 After issuance of Pre-intimation of OC by the Developer, the Society/Existing Members shall be entitled to inspect the respective Members New Units and satisfy themselves with respect to internal amenities/facilities as per the Snagging List and the Developer shall be liable to complete the Member's New Units in terms of Snagging list. Any uncashed cheques for the period of Occupancy Certificate shall be treated as cancelled and shall be returned to

## **Without Prejudice**

Draft for Discussion

the Developer without demur.

18.4 The Society shall be responsible to (i) cause the Members who are entitled to the possession of their new units, to take physical possession thereof, and sign appropriate letters (in terms of a draft prepared by the Developer and approved by the Society) confirming, inter alia, that they have received and taken peaceful and vacant possession of their respective new units, (ii) collect any uncashed cheques/ balance amounts refundable to the Developer as per terms of this Agreement. The Society shall ensure that the aforesaid process is completed not later than fifteen (15) days from the date of the Possession Notice issued by the Developer.

18.5 Simultaneously with the Developer issuing the Possession Notice and paying the balance Hardship Compensation to the Members and paying for deficit in the areas beyond the tolerance limit of 2%, if any, the Developer shall be freely entitled and at liberty to offer and deliver peaceful and vacant possession of all the Developer's Premises to the respective allottees, purchasers and acquirers thereof.

### **19. CONTINUING WORKS OF IMPROVEMENTS-**

The Society/ Members are aware that on receipt of the Occupation Certificate, the Developer will have to hand-hold the Society so as to ensure a smooth functioning of the elevators, pumps, common lights, switches, car-parking systems, gates, and other common amenities and a seamless hand-over of the management of the same to the Society. The Society/ Members are also aware that after receipt of the Occupation Certificate, there will be works of improvements and beautification done so as to enhance the aesthetics of the New Building(s) and the common areas and facilities (whether by way of landscaping, green areas, ornamental plants, lobby improvements & furniture, etc.). The Society/ Members are also aware that the interior works to the Developer's Premises will continue beyond the Occupation Certificate. The Society/ Members shall not obstruct such work being carried out nor shall they raise a claim of unfinished work by the Developer.

### **20. FORCE MAJEURE -**

20.1 The Parties hereto agree that the time for completion of the New Building(s) and obtaining the Occupation Certificate shall be subject to Force Majeure not attributable to the Developer.

## Without Prejudice

Draft for Discussion

20.2 The term “Force Majeure” wherever used in this Agreement shall mean any event or circumstance or combination of events or circumstances as specified below that affects the Developer in the performance of their obligations in accordance with the terms of this Agreement and includes:

20.2.1 acts of God including earthquakes, floods, inundations, landslide, storm, tempest, hurricane, cyclone, lightning, epidemic, pandemic, declaration of lockdown or containment zone by the authorities, and the resultant effects causing restrictions on movement of workmen or material or delays due to restricted/ reduced functioning of the MCGM/ other authorities;

20.2.2 order, injunction, or decree or judgement of any Court staying the construction activities or restricting the Redevelopment, non-grant of tree NOCs or other required NOCs by the authorities in the course of development, changes in policy of the Municipal Corporation or other authorities which restrict the Redevelopment and/or any future prevention by way of any amendment in law or new law, rules or regulation applicable which adversely affects the re-development of properties across the Mumbai Suburban;

20.2.3 acts of terrorism, war, hostilities (whether declared or not), invasion, rebellion, riots.

20.2.4 Non availability of steel, cement or any other building materials, water for construction or supply of electric power.

20.3 On occurrence of Force Majeure events and as soon as is practicable, the Developer shall notify the Society of the same setting out the nature and extent of the Force Majeure/ event.

20.4 Notwithstanding anything to the contrary, if any Force Majeure condition occurs, time for compliance of the Developer’s obligations shall stand extended and the Developer shall continue paying the Monthly Displacement Compensation at the rate specified in Clause 10 hereof, but shall not be liable to bear or pay any interest or penalties or liquidated damages or any other amounts, charges, liabilities etc. for such period. The right to suspend performance provided by this clause has effect only for the period during which the Force Majeure conditions exist.

## **21. RESERVED DEVELOPER’S FLATS –**

The Developer has agreed to keep unsold/unencumbered 3 flats of aggregate 3000 square feet RERA Carpet Area from the Developer’s Flats in the New Building(s) (hereinafter referred to as the said “**Reserved Developer’s Flats**”). It is

## Without Prejudice

Draft for Discussion

agreed between the Parties hereto that the Reserved Developer's Flats shall be released by the Society in accordance with the construction progress of New Building (s) in the following manner:-

21.1 The first Reserved Flat shall be released on the Developer completing Plinth of the proposed New Building.

21.2 The second Reserved Flat will be released on the Developer completing 10 RCC slab of the proposed New Building.

21.3 The third Reserved Flat will be released on completion of all the RCC slabs of the New Building.

## **22. COMPLETION SCHEDULE-**

22.1 As stated above, the Developer shall get the plans of the New Building(s) sanctioned by the MCGM with IOD upto the Minimum Development Potential and procure such FSI (whether by way of Premium paid FSI, or TDR/ FSI or Fungible FSI, as the Developer may decide) upto the Minimum Development Potential within a period of (12) Twelve months from date of execution hereof with a grace period of (6) Six months, but subject to Force Majeure.

22.2 Within 36 (thirty six) months of the Appointed Date, but subject to Force Majeure, the Developer shall complete the New Building(s) and obtain the Occupation Certificate thereof and also complete the Members' New Units with all the Members' Amenities and issue the Possession-Notice to the Society failing which the Developer shall have grace period of 6 (six months) to comply with its obligations as aforesaid ("**Grace Period**") for which the Developer shall continue paying the Monthly Displacement Compensation at the rate mentioned in Clause 10 hereof. For any delay beyond 42 (forty two) months from the Appointed Date, the Developer will be liable to continue paying Monthly Displacement Compensation besides which the Developer shall be liable to pay pre-estimated liquidated damages of Rs. 5,00,000/- (Rupees Five Lakh Only) per month to the Society till the Possession Notice is issued (for distribution amongst its Members or dealt with as the Society deems fit), besides which the Society shall have the rights as mentioned in Clauses 23.2 below.

22.3 If the Developer fail to make timely payment of the Monthly Displacement Compensation as per the terms of this Agreement or if any of the post-dated cheques are not honored on their due dates, the Society shall have the right to utilize the interest free Security Deposit placed by the Developer with the

## Without Prejudice

Draft for Discussion

Society and utilize the same for payment of the Monthly Displacement Compensation to the Members.

22.4 It is agreed that if the delay is due to Force Majeure or obstruction by any Members resulting in delay/ stoppage of work, the Developer shall not be required to pay the liquidated damages but shall continue paying Monthly Displacement Compensation at the rate mentioned in Clause 10 hereof.

### **23. DEVELOPER'S DEFAULT-**

23.1 In view of the Developer incurring and agreeing to incur the substantial obligations and liabilities (financial and otherwise) set out herein, besides which third-party rights would be created as per this Agreement in respect of the Developer's Premises, besides which the Society is being provided the rights to the Reserved Developer's Flats as per this Agreement to ensure completion in case of default, the Parties agree as follows-

In the event, subject to Force Majeure, the Developer does not get the plans for Minimum Development Potential sanctioned by the MCGM within 12 months from the date of this Agreement, or thereafter within a grace period of 6 months, then the Developer shall have further grace period of 6 (six) months to get the IOD for Minimum Development Potential. In the event the Developer fails to get the IOD for Minimum Development Potential within further grace period of 6 months, the Developer shall be granted an extension by the Society for obtaining Initial IOD for Minimum Development Potential subject to payment of a sum of Rs. 5,00,000/- per month as penalty/liquidated damages to the Society for the extended period.

23.2 If the Developer fails to obtain the Occupation Certificate of the New Building(s) and complete the Members' New Units with Members' Amenities as per the terms of this Agreement by expiry of the Grace Period and/or fail to pay Hardship Compensation as set out in Clause 9.1 hereof and/or fail to pay Displacement Compensation as set out in clause 10, and/or if any of the post dated cheques for Monthly Displacement Compensation are not honoured on the due dates, then the Society shall give 30 days' notice to the Developer to comply with their obligations and if the Developer fails to do so, then the Society shall have the right to step in and deal with the Reserved Developer's Flats in the manner stated herein and complete the construction of the New Building(s) and Members' New Units with all the amenities and facilities by appointing their own contractors, architects as the Society deems fit and/or pay Hardship Compensation/ Displacement Compensation as the case may be, as per the terms of this Agreement ("**Step-In Rights**").

23.3 In the event of the Society exercising its Step-In Rights, the Society shall first



## Without Prejudice

Draft for Discussion

utilize the Security Deposit placed by the Developer with the Society. In the event the amounts are not sufficient to pay the Monthly Displacement Compensation and to complete the construction of the New Building(s) as per the terms of this Agreement, the Developer shall be liable to forthwith pay such further amounts as may be required by the Society, failing which the Society shall be entitled to deal with Reserved Developer's Flats as stated below (it being clearly understood and agreed that save and except for the Reserved Developer's Flats which will be dealt with as per the terms below, the rights of the Developer to the Developer's Flats and Developer's Car-Parking Spaces shall remain unchanged)-

23.3.1 The Society's PMC shall prepare a report inter-alia estimating the pending construction work, timelines and estimated costs/ expense to complete the New Building/s and to pay the Members the Monthly Displacement Compensation till such period of completion, following which the Society is entitled to sell such of the Reserved Developer's Flats as are required to realize such estimated costs as per the report of the Society's PMC (the "**Identified Reserved Developer's Flats**"), and for such sale price as the Society deems fit subject to the Developer having the first right of refusal to take over the said Identified Reserved Developer's Flats. The Society agrees to provide the Developer with a written notice of 15 (fifteen) days with respect to the offer received by the Society from the prospective buyer/ purchaser which Society deems fit and appropriate to consider for sale of such Identified Reserved Developer's Flats. The Developer shall have 7 (Seven) days from the date of receipt of the Society's Notice to respond in writing confirming its intention to take over the Identified Reserved Developer's Flats at a same price offered by the prospective buyer/ purchaser. If the Society has not received a written response by the end of said 7 (Seven) days period or if the Developer's decline to accept Society's offer, then the Society shall thereafter be free to sell the Identified Reserved Developer's Flats at a same price in the market on such terms and conditions as Society shall determine without any further obligation to offer the same to the Developer. It is further clarified in the event if the Developer confirm the taking over of the Identified Reserved Developer's Flats then the Developer shall be bound to make the payment of the entire consideration for the Identified Reserved Developer's Flats within a period of 15 days from the date of such confirmation made to the Society, failing which the right of first refusal granted to the Developer for the Identified Reserved Developer's Flats under this Clause shall stand revoked.

## **Without Prejudice**

Draft for Discussion

23.3.2 The amounts realized from selling the Identified Reserved Developer's Flats shall be deposited by the Society into a separate bank account and the funds shall be utilized by the Society towards the Monthly Displacement Compensation payable to Members up to the Occupation Certificate and to complete the Members' New Units and the New Building/s with Occupation Certificate, for which the Society shall be entitled to appoint their own contractors and Architects. On receipt of the Occupation Certificate, the balance amount in such account of the Society shall be refunded to the Developer and if there is any deficit, the same shall be made good by the Developer.

23.3.3 The Developer shall provide all necessary support and cooperation, and execute all NOCs, letters, resignations, deeds and documents, as may be required by the Society for exercise of its rights. The Society shall consult the Developer, if required with regard to the application for Occupation Certificate to be obtained in respect of the New Building(s);

23.4 After completion of the Members' New Units and on procuring Occupation Certificate from the MCGM, the Society shall cease to have any Step-In Rights or rights to any Reserved Developer's Flats, and the Developer be entitled to complete the Developer's Premises.

## **24. DELAY OR DEFAULT BY MEMBERS-**

24.1 If any Member fails to hand over to the Developer on or before the Specified Date full and complete vacant possession of the existing premises owned/occupied by him/her/them then and in such event such Member as the case may be in default shall be liable to pay and shall pay to the Developer, as penalty a sum calculated at the rate of Rs. 5,000/- (Rupees Five Thousand only) per day for the period of the first 10 days commencing from the Specified Date, and thereafter at the rate of Rs. 10,000/- (Rupees Ten Thousand Only) per day beyond the expiry of the aforesaid period of 10 days computed from the Specified Date till the time such Member as the case may be in default actually vacates and hands over vacant possession thereof to the Developer, and the amount so calculated shall be adjusted against the Hardship Compensation/ Monthly Displacement Compensation and/or any amounts payable to such Member as the case may be in pursuance of this Agreement.

24.2 In the event any of the Members as the case may be hinder, interfere with, restrict or obstruct the Redevelopment of the said Property, or any third-party puts forward any claim which results in a delay or stoppage of work, then

## **Without Prejudice**

Draft for Discussion

notwithstanding anything contained in this Agreement, the Developer shall not be held to be in breach, and time for completion of the Project as stated in this Agreement shall stand extended to the extent of such delay and the Developer shall not be liable to pay any penalty for such delay.

24.3 The aforesaid is without prejudice to the rights of the Developer and the Developer is entitled to take such action as they deem fit including without limitation a right to claims for damages, interest on payments made, costs incurred, etc.

24.4 The Parties agree that the pecuniary penalties are agreed upon considering the considerable time and expertise put by the Developer towards the Project and the crores of Rupees that they are and will be expending towards the Project and the losses and loss of opportunity that the Developer will have to bear on account of any delay or default caused by any Members as the case may be.

24.5 If the amounts due by the Developer to such Member as the case may be in default are not sufficient to cover the penalties/ amounts due by such Member as the case may be, then the Developer is entitled to withhold the possession of the new flat/unit of such Member as the case may be in default till recovery of all dues.

## **25. DEFECTS LIABILITY-**

25.1 If any defect in the New Building(s) or in the material used in the construction is brought to the notice of the Developer within the Defects Liability Period, such defect/s shall be rectified by the Developer at its own costs, subject to the following-

25.1.1 Such defects are not caused due to any renovations/ changes/ interior works carried out in the Members' New Units.

25.1.2 the Members are not entitled to shift/ change any plumbing lines and/or electricity lines or make any internal changes to the Members' New Units that will be in deviation of the building plans sanctioned by the MCGM/ authorities and/ or which may affect the Occupation Certificate issued by the MCGM or lead to any action being taken by the MCGM or any other authorities against the Developer. Any damage caused to the common areas or adjoining flats will be rectified by the concerned Member at his/her/their costs.

25.1.3 The Society is responsible to ensure that the elevators, pumps, parking systems and other equipment provided by the Developer is handled by trained personnel and that the same are handled with due care and

## **Without Prejudice**

Draft for Discussion

caution and not misused and that annual maintenance contracts shall be signed with the original equipment manufacturers or their authorized maintenance personnel so as to ensure timely servicing and authorized maintenance and repairs. In case of electrical systems or plumbing systems, maintenance, repairs or servicing of the same are only done by qualified plumbers and electricians.

25.1.4 Defects liability shall not cover events of force majeure or regular wear and tear.

### **26. TIME IS OF THE ESSENCE-**

26.1 Time being of the essence of the contract, the Parties hereto shall strictly follow the schedules mentioned herein.

26.2 Subject to the terms hereof, any delay in the payment of any of the instalments of the consideration payable to the Society or to the Members will attract interest at the rate of 15% per annum without prejudice to other rights of the Society and the Members.

26.3 If there is a delay in any of the Members' Existing Premises being handed over to the Developer or of the Property being handed over to the Developer or if any of the Members of the Society (or persons claiming through them) cause any obstruction to the Project, the time limit for completion of the project as stated in this Agreement shall stand extended to the extent of such delay and to such further days as determined therein without the Developer being liable for any penalties and the Developer is entitled to take legal proceedings as it deem fit including without limitation a right to claims for damages, interest on payments made, costs incurred, etc. and the same shall be without prejudice to other rights of the Developer including rights as per this Agreement.

### **27. TAXES, UTILITY BILLS, OUTGOINGS AND DUES-**

The monthly outgoings, dues and taxes of the Members' Existing Premises shall be paid by the Members and the taxes, duties and dues in respect of the said Property shall be borne and paid by the Society for the entire period up to the Appointed Date. Thereafter, the Developer shall pay the same up to the date of completion of the construction of the New Building(s) provided however that from the date of expiry 7 days period of Possession Notice issued after receipt of Occupancy Certificate, the Members shall pay the outgoings, taxes, duties and dues of the new project proportionate to their respective New Flats as well as the proportionate maintenance charges, whether or not they take possession thereof. The Society is responsible to ensure that all Members make timely payment of their

## **Without Prejudice**

Draft for Discussion

respective outgoings/ maintenance charges/ dues/ taxes. The Developer in respect of the unsold Developer's Premises shall be liable to pay the outgoings, taxes, duties and dues from the date of the Occupation Certificate of the New Building(s), while the flat-purchasers shall be liable to pay the outgoings, taxes, duties and dues from the date of the Developer putting them in possession of their respective flats.

### **28. INCOME TAX/ TDS-**

28.1 It is agreed between the Parties hereto that if TDS is required to be deducted from the amounts payable by the Developer to the Members of the Society under the terms of this Agreement, the same shall be deducted at the applicable rate.

28.2 Any taxes payable in respect of the amounts paid by the Developer to the Society/ Members shall be the responsibility of the Society/individual members alone, and the Developer or the purchasers/ allottees of the Developer's Premises shall not be responsible/liable for the same in any manner whatsoever.

28.3 In the event any income tax/ capital gains tax is payable by the Society/ the Members by virtue of this Agreement at any time in future, the Society and/or the Members (or the heirs, executors, administrators, assigns and persons claiming through them) shall be liable to pay/ shall pay the same. Neither the Developer nor the purchasers/ allottees of the Developer's Premises (even after their admission to the membership of the Society) (or their heirs, executors, administrators, assigns and persons claiming through them) shall be liable to pay or be called upon to contribute towards the same.

### **29. MODE OF PAYMENT TO MEMBERS -**

Payments of all amounts due to the Members under this Agreement shall be by cheques drawn in favour of each member (in the name of the first named member in the Share Certificate unless otherwise directed by the Society in writing) and will be handed over by the Developer in the manner stated in this Agreement in discharge of their obligation of payment of the amounts stated in the cheques to the Members. It shall be the responsibility of the Society to hand over the payments to the Members as per this Agreement and obtain receipts thereof and hand over the same to the Developer.

### **30. MANAGING COMMITTEE DECISIONS SHALL BIND ALL MEMBERS-**

As agreed between the Parties, all decisions taken and documents executed by the Managing Committee of the Society shall be deemed to be for and on behalf

**Without Prejudice**

Draft for Discussion

of all Members and shall bind all Members of the Society (including persons claiming through members).

**31. CONDITIONS FOR SALE OF MEMBERS' EXISTING PREMISES-**

31.1 None of the Members shall sell or otherwise transfer their rights to any of the Members' Existing Premises or their rights and entitlements under this Agreement or to the Members' New Flats under any agreement, arrangement or understanding whatsoever until they and the intending transferees first execute(s) and register(s) and hand over to the Society and the Developer a Deed of Adherence of the form mutually agreed between the Society and Developer, thereby agreeing to abide by and comply with all the obligations of the transferor-member under this Agreement without any demur.

31.2 Any further writings required by the Society to secure the rights of the Society and/or the Developer and/or the other members shall be given by the concerned member or by the transferee(s) without any demur.

31.3 This Agreement shall be binding on the new purchaser(s)/ transferee(s) to all intents and purposes and such purchaser(s)/ transferee(s) alone shall be entitled to the new premises and to the concerned member's share of the consideration/ amounts or the balance thereof or any other benefits as per this Agreement.

31.4 The member(s) who sell(s)/ transfer(s) his/her flat or shares shall cease to have any rights to the new flat or to receive any monies as per this Agreement or generally to any benefits or rights under this Agreement from the date of such transfer.

31.5 The proposed transferee shall not be entitled to, and shall not, claim any right adverse or prejudicial to the rights/interests of the Developer and/or obstruct or interfere with the Redevelopment.

**32. THE DEVELOPER COMPANY-**

32.1 The Developer shall not assign, encumber and/or transfer the benefits of this Agreement nor any right or obligation hereunder to any person or persons.

32.2 The Developer, by the resolution passed by its Board of Directors at their meeting held \_\_\_\_\_ have authorized Mr. \_\_\_\_\_ from amongst its directors to represent the Developer and deal with the Society/ Members regarding all matters connected with the Project and also to sign and execute this Agreement and all other documents or writings as may be required for the Project. All decisions that will be taken by the aforesaid Director shall be binding to all intents and purposes on the

**Without Prejudice**

Draft for Discussion

Developer. A certified copy of the resolution of the Developer is annexed hereto and marked **Annexure “XV”**.

**33. NO ASSIGNMENT-**

The Developer shall not assign or transfer the benefits of this Agreement to any person or persons.

**34. NO PARTNERSHIP-**

This Agreement shall not be treated as a partnership or a joint venture between the Parties hereto and this Agreement contemplates only the development rights agreed to be granted by the Society in favour of the Developer on the terms and conditions as provided herein.

**35. STAMP DUTY/ REGISTRATION CHARGES/ GST/ INCIDENTAL COSTS.**

35.1 The Developer shall bear and pay the stamp duty, registration charges, GST and all incidental costs on this Agreement, the Power of Attorney and on all documents that may be executed contemporaneously with this Agreement.

35.2 The Developer shall also pay the stamp duty, registration charges, GST and all incidental costs on the individual confirmatory agreements/ PAAAs/writings of the Members subject to the terms hereof. If any member purchases additional area, the stamp duty, registration charges, GST and all incidental costs for such purchased area shall be borne by such members alone.

**36. NAME OF THE NEW BUILDING(S)-**The name of the New Building(s) shall be decided by the Developer, however the name of the Society shall remain as “**Nutan Ayojan Nagar** Co-operative Housing Society Limited”.

**37. NOTICES-**

The respective addresses of the Parties hereto for service of any notice are as follows:

37.1 If to the Society and/or to the Members or any of them-

The Hon. Secretary,  
Nutan Ayojan Nagar Co-operative Housing Society Ltd.,  
Liberty Garden, Cross Road No. 4, Malad (West),  
Mumbai 400 064,  
E-mail address-\_\_\_\_\_

37.2 If to the Developer-

Arkade House, 2<sup>nd</sup> Floor,  
Next to Children’s Academy,

**Without Prejudice**

Draft for Discussion

Ashok Nagar, Kandivali East,

Mumbai 400 101

E-mail address- sandeepjain@arkade.in

37.3 Any notice required to be served on the Parties hereto shall be in writing and shall be sufficiently served if sent by registered post acknowledgement due or personally delivered or e-mailed at the respective addresses, unless notice of a different address is received.

**38. DISPUTE RESOLUTION-**

All disputes, claims and questions whatsoever which may arise with respect to this Agreement or any other agreement to be executed between the Parties hereto touching or relating to or arising out of these presents or the construction or application thereof or any clauses or thing herein contained or in respect of the duties responsibilities and obligations of either party hereunder or as to any act or omission of any party or as to any other matter in anywise relating to these presents or the rights, duties and liabilities of either party under these presents shall be referred to the arbitration of a Sole Arbitrator. In the event the Parties fail to agree on a Sole Arbitrator within 30 days from the date of the dispute, the appointment of the Arbitrator will be made in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or amendment or re-enactment thereof. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modifications or amendments or re-enactments thereof. The venue and seat of the arbitration shall be Mumbai and the arbitration proceedings shall be conducted in English. The costs of arbitration will be initially paid jointly by Parties in equal shares. The Arbitrator/s shall be entitled to determine by the award as to who will finally bear the cost and in what proportion. The Award of the Arbitrator/s shall be binding on all Parties.

**39. JURISDICTION-**

The Parties hereto agree that the Courts at Mumbai only shall have jurisdiction in respect of all matters whatsoever arising out of this Agreement.

**40. NON-EXECUTION OF THIS AGREEMENT BY MEMBERS-**

In the event any of the Members are not available/ do not sign this Agreement, his/ her name will be removed as a signatory and the execution of the documents will be completed and this Agreement shall bind all members to all intents and purposes and the project will be proceeded with as contemplated in this Agreement. Action shall be taken against any Member who obstructs the Project.

**41. RERA-** The Developer shall strictly adhere to the provisions of RERA and MAHA-RERA and agree that in the event of any complaint being filed or in the event any



## **Without Prejudice**

Draft for Discussion

breach is caused of the provisions of RERA or the Rules thereunder (whether by way of delays in the project, breaches of any of the terms of the agreements with the purchasers of any of the Developer's Premises, or otherwise howsoever), the Developer alone shall be liable for the same.

### **42. CLOSING PROVISIONS-**

42.1 **No waiver of Rights.** Save and except as expressly provided in this Agreement, no exercise, or failure to exercise, or delay in exercising any right, power, or remedy vested in any Party under or pursuant to this Agreement shall constitute a waiver by that Party of that or any other right, power, or remedy.

42.2. **Amendment.** This Agreement may be modified or amended only by a writing duly executed by the Society and the Developer.

42.3 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable; (b) this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from; and (d) in lieu of such illegal, invalid, or unenforceable provision, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

42.4 **Authority to Sign.** The Parties hereto represent that the persons signing this Agreement have full and complete authority to do so on behalf of the respective Parties and execution hereof by the Parties creates a legal and binding obligation on the respective Parties.

#### **42.5 Permanent Account Numbers-**

42.5.1 Photocopies of the PAN Cards of the Society and of the Members (as available with the Society) are listed in "**Annexure-XVI**" annexed hereto.

42.5.2 Photocopies of the PAN Cards of the Developer are listed in "**Annexure-XVI**" annexed hereto.

42.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and contains all agreed terms and conditions for the Redevelopment of the said Property, and supercedes the tenders, offers, prior agreements/ understandings/ writings, whether oral or written, with respect to the Redevelopment of the Property.

**Without Prejudice**

Draft for Discussion

42.7 **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

**THE SCHEDULE.**

(Description of the Property)

All that pieces and parcels of land bearing Survey No. 479/1 corresponding to CTS No. 225 admeasuring 6598.70 sq.mtrs., Survey No. 478 corresponding to CTS No. 223/4 admeasuring 139.20 sq.mtrs. and Survey No. 478/1 corresponding to CTS No. 224/A admeasuring 121 sq.mtrs. aggregating to total 6858.90 sq.mtrs. of Village Malad (South), Taluka Borivali, Mumbai Suburban District together with \_\_\_\_\_ buildings/structures of the Society situated at Liberty Garden, Cross Road No.4, Malad West, Mumbai- 400 064

**IN WITNESS WHEREOF** the Parties hereto have hereunto set and subscribed their respective hands and seals on the day and year first hereinabove written.

THIS COMMON SEAL OF the Withinnamed " <b>SOCIETY</b> " <b>NUTAN AYOJAN NAGAR CO-OP. HOUSING SOCIETY LTD.</b> in pursuance of the Resolution dated _____, 2023 passed in the Special General Body Meeting held on _____, 2023	Signature and Thumb Impression	Photograph
(1) _____ (Chairman)		
(2) _____ (Secretary)		
(3) _____ (Treasurer)		

**Without Prejudice**

Draft for Discussion

In the presence of ..... )

1. \_\_\_\_\_ )

2. \_\_\_\_\_ )

SIGNED AND DELIVERED by the Withinnamed " <b>DEVELOPER</b> " " <b>ARKADE DEVELOPERS PRIVATE LIMITED</b> " Through the hands of its Directors under Board Resolution dated _____, 2023	Signature and Thumb Impression	Photograph
<b>(i) MR. SANDEEP JAIN</b>		
<b>(ii) MR. ARPIT JAIN</b>		

In the presence of .....

1. \_\_\_\_\_

2. \_\_\_\_\_