(c) As the building became more than 30 years old, on unanimous decision of the members of the society, the Society decided to get its property redeveloped and after adopting due process of appointing a suitable Developer, by a Development Agreement dated 30th April, 2008, the Society appointed the Old Developer herein as the Developer and granted development rights to it in respect of the said property for the consideration and on terms and conditions contained in the said Development Agreement.

(d) Since the said Development Agreement dated 30.04.2008 was not lodged for registration within the time prescribed under the Indian Registration Act, a Deed of Confirmation dated 18.04.2009 was subsequently signed by and between the Society and the Old Developer in respect of the said Development Agreement annexed thereto and was accordingly registered on 22.04.2009 under Sr. No. BDR-4/3481 of 2009 with the sub registrar of assurances at Bombay (hereinafter collectively referred to as the "said Development Agreement")

(e) In furtherance of the said Development Agreement, for the purpose of re-development of the said Property, the Society also granted in favour of the partners of the Old Developer a General Power of Attorney dated 22-04-2009 registered at Sr. No. BDR-4-03482-2009 with the Office of the Sub-Registrar, Andheri – 1 MSD;

(f) The Old Developer thereafter, got the Plans of the proposed development approved by the MCGM for putting up a new building under File No.CE-9464-WS-AK and obtained Intimation of Disapproval ("IOD") dated 15th June 2009 and Commencement Certificate ("CC") in respect thereof and to

use any further development potential subsequently, as and when necessary clearances and approvals are granted and the existing old building of the Society was demolished for construction of the new building;

(g) By the time the old building got demolished, in January, 2012, the Govt. of Maharashtra amended the then prevailing D. C. Regulations and permitted additional construction by use of compensatory Fungible FSI on payment of prescribed premium in lieu of elevation features, which were discontinued.

(h) However, by then the Old Developer had already constructed building with elevation features as per the IOD & CC and approved plans and therefore, they did not opt for use of fungible FSI on the already constructed portion;

(i) Being entitled to avail of all future benefits by virtue of the provisions of recital (k) of the Development Agreement, anticipating further approvals for all permissible construction on the total land comprised in the said property, as aforesaid the Old Developer planned construction of floors by claiming use of entire available development potential as defined hereunder, including that of the appurtenant land, as and when permitted to be so constructed on grant of necessary approvals in that behalf and made the foundation and structural design of the building under construction strong enough to take up additional load as and when further construction becomes possible.

(j) The Old Developer as per the initially approved Plans, on the one hand, constructed 8 Plus 9 (Part) Floors of which the 8th Floor contained 3 Flats and a refuge area and the 9th Floor (Part) contained 2 Flats and on the other hand applied for

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getting necessary clearances and permissions for putting up additional Floors and in anticipation of getting all such clearances and approvals as were sought, the Old Developer, went ahead and entered into Agreements for Sale in respect of flat no.901 area admeasuring 610.96 sq ft carpet & 1001 area admeasuring 521.84 sq ft carpet (proposed to be constructed out of sanctioned FSI 1643.69 sq. mtr.) and allotment letters in respect of the Flats bearing no.904 & 1002 (aggregate admeasuring 1237 sq ft carpet i.e. 137.95 sq mtrs even in respect of unconstructed/to be sanctioned additional Floors. The Old Developer had thus, even before construction of additional Floors, already agreed to sell unconstructed areas of about 2369.80 sq ft carpet equivalent to 264.28 Sq. Meters Built up in form of Flats to outside purchasers in anticipation of receiving approvals for further construction by utilization of the unused development potential (including that of appurtenant land).

Unconstructed Portion Already sold by Shreeji Infra i.e the OLD DEVELOPER which amounts to 2369.8 Sq.Ft Carpet Area which amounts to 220 Sq.Mts Carpet Area

Flat No.	Registered Document / Allotment Letter	Person to whom Flat Registered or Allotted	Carpet Area in Sq.Ft
901	Registered Document	Mr. Pratik Hasmukhlal Maniar Mrs. Priti Hasmukhlal Maniar	610.96 Sq.Ft Carpet Area

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1001	Registered Document	Mrs. Asha Hasmukhlal Maniar Mr. Hasmukhlal Karsanlal Maniar	521.84 Sq.Ft Capet Area
904	Allotment Letter	Mr. Nilesh J. Makwana	620 Sq.Ft Carpet Area
1002	Allotment Letter	Mr. Naresh Kanakia	617 Sq.Ft Carpet Area

(k) However, the clearances and approvals for construction by use of such further development potential were not received within the time as was expected and consequently the Old Developer could not continue further construction beyond the 9th (Part) Floor and so did not apply for Occupation Certificate;

(l) Barring grant of Occupation Certificate, as the building up to 9th Part Floor was completed to the extent of being habitable, the Old Developer handed over possession of members' flats to each of the members and then to some of purchasers for the purpose of furniture and fit-outs in the year 2013;

(m) The members and said purchasers, however, even after completion of the work of furniture and fit-outs in their respective Flats, continued occupation thereof;

(n)As the Old Developer, for the reasons aforesaid, could not continue construction beyond part 9 floor, the members of the society started facing several problems including leakages in the upper Floor Flats for which repeated complaints were made

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to the Old Developer. The Old Developer however, did not attend to the grievances of the members:

(o) The Old Developers also failed to register Agreements for Permanent Alternate Accommodation of some of the members;

(p) Because of Old Developer's inaction on members' grievances for a long time, there was large scale opposition to the Old Developer continuing with further development and members of the society prevailed upon the Mg. Committee to look for another Developer who could, in consideration of receiving development rights of all the permissible additional construction, take up the incomplete work and complete the building in all respect;

(q) However, no other developer would take interest in the incomplete project unless the Society brings either consent and NOC of the Old Developer or gets clear orders from the competent court declaring the Development Agreement with the Old Developer as duly terminated and/or cancelled.

(r) When the New Developer, through some of the members known to them, learnt about the aforesaid stalemate between the Society/members and the Old Developer, at the request of such known members, expressed their interest to take over the incomplete project and complete the same, whereupon the new Developer was requested to have a site visit to ascertain the nature and extent of incomplete works and thereafter to make an offer.

(s) The New Developer made such site visit, where after, they orally informed the Managing committee about the nature and

scope of work which they can agree to undertake against the Society granting them development rights for putting up further permissible construction on the incomplete building, but only after the Society manages either a NOC or a Court Order against the Old Developer or an amicable settlement;

(t) The management of the Society, after obtaining legal advise, had realized that to litigate with the Old Developer for orders of the Court would be a costly and time consuming affair. Therefore, the Society proposed that the responsibility to settle the matter with the Old Developer may also be treated as work to be attended to by the New Developer and keeping in mind such responsibility, requested the New Developer to make a written offer to the Society and assured that on receipt of such written offer, the same will be put up before a general body of the Society for consideration and approval/acceptance and on majority of the members approving/accepting such offer, the Society would first take such steps and legal action against the Old Developer for putting up an end to their rights, to which the New Developer agreed and thereafter grant further development rights;

(u) The New Developer, thereupon assured to make such written offer and pending receipt of a written offer, on New Developer's said oral offer and assurance, in its SGM dated 31.01.2016, the Society, in principle, took a decision to terminate the said Development Agreement with the Old Developer and revoke the Power of Attorney granted to its partners;

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(v) As in the SGM dated 31.01.2016 the Society passed a resolution to terminate the Old Developer, hence the New Developer, therefore, vide their letter dated 12th February, 2016

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offered to further develop the existing building left incomplete by the Old Developer as more particularly stated therein and listed therein the incomplete works / members' grievances which the New Developer would attend and complete at their costs.

(w) The Society, thereupon in another SGM convened and held on 26.02.2016, after due deliberation and discussion, took a decision approved by majority members present in the said meeting, to accept the said offer made by the New Developer on a condition that the Development Agreement and fresh Power of Attorney be executed only after the New Developer at its costs, first addresses to the grievances of the members against the old developer, complete some of the works, left incomplete by the Old Developer and bring around a settlement with the Old Developer and the same was orally communicated to the New Developer. In the said meeting the members of the Society also authorized two out of its three Office bearers to oversee due compliance of the said preconditions and on and after such compliance, to sign execute and register in favour of the New Developer a fresh Development Agreement, Power of Attorney and other related documents. A true copy of the Minutes of the said SGM dated 26.02.2016 is at **Annexure "A"** hereto ;

(x) The New Developer was informed about the decisions taken in the said SGM dated 26.02.2016, where after, as requested by the New Developer, pursuant to the said decision taken in the earlier SGM dated 31.01.2016, vide its letter dated 15th March, 2016, addressed to the Old Developer, therein citing several breaches and defaults on the part of the Old Developer,

notified the termination of the said Development Agreement dated 30.04.2008 to the Old Developer.

(y) The Old Developer, refuted the contention of the Society by its letter dated 12.04.2016 and sought to have a joint meeting to sort out pending issues;

(z) The members, however, refused to have any direct meeting with the Old Developer and told them to approach the New Developer and disregarding the Old Developer's claims and contention as also its offer for a joint meeting, vide letter dated 16th April, 2016, the Society sent a written acceptance of the offer made by the New Developer;

(aa) The partners of the Old Developer knew the Management of the New Developer and therefore, when learnt about their appointment, **as** was expected approached the New Developer and informed them that though they do not wish to have any dispute with the New Developer, since the Old Developer had already created third party rights in respect of the sellable Flats which were yet to be constructed on the Part 9th and Part 10th Floor, they will be obliged to litigate with the Society and challenge termination of their development Agreement or else they will be exposed to heavy claims of losses and damages from the Flat Purchasers;

(bb) The New Developer, thereafter, appreciating the concerns of the Old Developer, worked out and made a proposal to settle and upon mutual negotiations, certain terms were agreed between the Old and the New Developer and the New Developer assured to get the matter settled by the Society on the lines of the terms agreed between both the Developers.

(cc) The New Developer thereafter explained to the Society and informed it about the terms of settlement agreed upon by them with the Old Developer and since no burden of such settlement was to be taken by the Society, the Society agreed and gave a go ahead whereupon, it was inter alia agreed that i) the project will be taken over by the New Developer with the right to avail of and utilize all unused FSI benefits and all further and additional FSI benefits as may be available to them under the D. C. Regulations in force for the time being and from time to time including all such benefits available on the appurtenant land, ii) in consideration of grant of development rights in respect of such further construction benefits, the New Developer, after having brought around settlement with the Old Developer, will comply with their other assurances towards the society as contained in their said Offer letter dated 12.02.2016 and iii) so far as the Old Developer is concerned, they will have right to receive from the Flat Purchasers through Old Developer all the unpaid balance consideration in respect of Flats of the area agreed, which were committed to be sold by the Old Developer and as against that, the Old Developer will expressly accept termination of the said Development Agreement dated 30.04.2008 and also surrender the Power of Attorney dated 22-04-2009 and perform certain specific obligations which the New Developer would entrust to them till due completion of the project;

(dd) After receiving firm commitments from the Society and the Old Developers, the New Developer, in right earnest and totally relying upon and bona fide believing in the firm commitments given by the Society, on the one hand proceeded to attend one after the other of all the pending works left incomplete by the Old Developers, addressed to the grievances of the members

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and got, at their own costs, Permanent Alternate Accommodation Agreements of some of them duly executed and registered, cleared all pending statutory dues of the MCGM and other authorities, carried out extensive work to stop leakages reported in outer walls, got new water connections to ensure sufficient water supply to the occupants of the incomplete building, got lifts repaired and fully operational etc. etc. and on the other hand endeavored to seek clearances and approvals for utilization of further development potential including on the area of the appurtenant land, without which the project was not financially viable at that stage;

(ee) Since then, due to multiple unexpected events and circumstances beyond control of the parties which includes (i) claims made by the Municipal Corporation on portion of the land area belonging to the Society for the purpose of extending the existing Nalla abutting the said property, which claim was contested by the New Developer and ultimately with proper representations got made by the New Developer and clarifications given with supporting documents, the MCGM dropped the matter and thus got it sorted out, (ii) the formalities of handing over the road setback, again attended by New Developer, and (iii) the prevalent Covid pandemic and lock downs and restrictions etc. it took considerable time and additional heavy expenses on the part of the New Developers to clear all the hurdles and attend to all the members' grievances;

(ff) The New Developer, however, went on to attend to all things for which they had committed as also things which were beyond the scope of their commitments;

(gg) While the New Developers were, one after the other, sorting out all the issues, the Govt. of Maharashtra, for some time, suspended operation of the then prevailing D. C. Regulations and in soon thereafter, notified the new D. C. Regulations 2034 because of which also the efforts to get further approvals for additional construction got delayed.

(hh) The New Developer, after having brought around settlement with the Old Developer and after having ceaselessly incurring all costs including additional costs of things not envisaged in 2016 and after complying with all their commitments towards the Society and its members, approached the Society and requested that the promised Development Agreement, which in view of the Old Developer having agreed to accept termination on certain terms, would be required to be a tripartite agreement and a fresh Power of Attorney, be, with express consent and confirmation of the Old Developer, be executed and registered in favour of the New Developer;

(ii) The Office bearer of the Society assured to do as requested, but told the New Developer to get prepared by their Advocates drafts of such Tripartite Development Agreement and fresh Power of Attorney prepared and after getting the same approved by the Old Developer, to submit it to the Society so that the Society would circulate the same among all its present members and on receiving due approval and confirmation of majority of them, the same will be executed and registered in due course.

(jj) Accordingly, the New Developer got prepared through their Advocate a draft of such Tripartite Agreement as well as a Power of Attorney to be granted by the Society to the New

Developer, which was duly approved by the Old Developer and the new developer vide their letter dated 9th June, 2021 forwarded copies thereof to the Society for approval and acceptance thereof by the society;

(a) Because of prevalence of the 2nd Wave of Covid , instead of taking risk of convening a SGM, the Society's Mg. Committee perused the drafts and finding them in order, along with a Circular letter, circulated them to all its present members, and all those who have read the same, approved and confirmed the same by endorsing their respective signatures on the said Circular prepared by the Society, a true copy whereof is at **Annexure "B"** hereto;

(b) Now as desired by the parties, the said mutually agreed terms and conditions are reduced into writing as set out herein below.

NOW THESE ARTICLES OF AGREEMENT WITNESSETH and it is hereby agreed by and among the parties hereto as follows:

1. **RECITALS**

The recitals and annexure, if any, to this Agreement shall form an integral part of this Agreement and shall be read accordingly.

2. **ALLEGATIONS WITHDRAWN**

The Society and the Old Developer hereby declare and confirm that the claims and contentions as also allegations of one against the other as recorded in any correspondence exchanged between them till date, stand unconditionally

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withdrawn.

3. **BALANCE DEVELOPMENT POTENTIAL**

For the purpose of the contract among the parties recorded herein, what is being granted to the new Developer by this Agreement is an exclusive right to put up further construction on the existing incomplete building by utilization of all the unconsumed, balance Development Potential of the property which would mean all permissible FSI benefits on the said plot of land:

(a) 2.2 FSI made of Basic Land FSI on the area reflected on the P.R.Cards and equivalent outside loadable TDR Rights of the said property.

(b) Any further additional FSI as may be permitted under the new D. C. Regulations 34 notified by the Govt. of Maharashtra in December, 2019 and in force for the time being and from time to time

(c) Compensatory Fungible FSI on all the permissible basic FSI and TDR available on the area of the said plot and appurtenant land to the extent permitted on payment of Premium to MCGM.

(d) All construction permitted free of FSI, with or without premium.

(e) All the FSI granted against the road setback and any other FSI granted on the basis of the road width

Thus the rights which are being granted to the new Developer

are confined to the balance development potential which is and which may be available to them hereafter and which balance development potential is hereinafter briefly referred to as "The Balance Development Potential".

The part of the project which relates to construction already done by the Old Developer i.e. 8th Floor containing 3 Flats and a refuge Area and 9th Floor (Part) containing two Flats and which also contains members' new premises and part of Old Developer's sellable Flats is hereinafter briefly referred to as "**Phase- I**" and the project which relates to further development and construction by vertical extension of the existing building by utilization of unconsumed permissible Balance Development Potential, is hereinafter referred to as the **"Phase- II"**):

4. **STATUS OF THE DEVELOPMENT AGREEMENT Dated:30.04.2008 & NATURE OF TRANSACTION:**

A. Subject to the provisions with regard to limited benefits for Old Developer contained hereunder, the Old Developer doth hereby irrevocably accepts due termination of the Development Agreement dated 30.04.2008 made between the Owner Society and the Old Developer and except its limited right coupled with its obligations with regard to Flats agreed to be sold by it, the Old Developer, with the express consent and confirmation of the Society, absolutely gives up, surrenders, releases relinquishes and assigns all and whatever are its rights entitlements and benefits as well as obligations (Other than its obligations towards the Flat Purchasers through it) under the said Development Agreement dated 30.04.2008 unto and in favour of the New

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Developer on the terms and conditions as set out herein. It is agreed that this Development Agreement is entered into in continuity of the earlier Development Agreement dated 30th April, 2008 Subsequently Registered Under Serial No. BDR-4/ 3481/ 2009 between the Society and the Old Developer with an intent to honour Old Developer's commitments subject to terms and conditions contained herein.

B. In view of the above, the Old Developer declares and further confirms that all its rights and entitlements under the Development Agreement including all benefits of all the TDR loaded by the Old Developer, all sanctions, permissions and approvals obtained till date as also all sums incurred, all deposits and premium etc. paid for obtaining such permissions, approvals etc. stand absolutely and irrevocably assigned and transferred by the Old Developer to the New Developer and are thus fully taken over by and vested in the New Developer without the New Developer in any manner being liable to pay any consideration to the Old Developer in that regard. Consequently the Old Developer, except its obligations towards the Flats Purchasers through it, under the Agreements for Sale entered into between the Old Developer and each of such Flat Purchasers, is neither required to nor shall be called upon by the Society or its members to perform and discharge any of its unperformed obligations towards any of them so far as it would relate the 1st Phase of the project and the New Developer agrees to keep the Old Developer indemnified of and from any claim or demand with regard to Old Developer's unperformed obligations towards the Society and its members. Hereto

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annexed and marked as **Annexure "C"** is the list of Purchasers with particulars of the Flats agreed to be purchased by them from and agreed to be sold to them by the Old Developer with corresponding details of Agreements for Sale and Allotment Letters between the Old Developer and such Purchasers.

C. The New Developer hereby accepts the assignments and confirms having fully taken over the development of Phase II of the project in the manner provided hereinabove, together all the rights, interests and benefits of the Old Developer under the said Development Agreement registered with the Office of the Joint Sub-Registrar of Assurances, Andheri I, MSD at Sr. No. BDR4-03481-2009 subject to modification of certain terms of the said Development Agreement to the extent hereinafter recorded as has been mutually agreed between the Society its members on the one hand and the New Developer on the other hand.

D. It is agreed by and between the Parties hereto that the New Developer is and shall be entitled to resume development of the Phase II of the project and for that avail of and consume all unutilized said Balance development potential as defined in clause 1 above, of the property by constructing as many additional Floors as may be permissible under the D. C. Regulations prevailing now and hereafter from time to time till obtaining of the full occupation certificate subject to the terms and conditions of this Agreement as if the Development Agreement was originally executed by the Society in favour of the New

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Developer with terms thereof duly modified to the extent contained herein.

5. **OLD DEVELOPER'S BENEFIT/ENTITLEMENT**

In consideration of the Old Developer having absolutely and forever given up, surrendered, transferred and assigned all his claims, rights and benefits under the said Development Agreement as also benefit of all the permissions, sanctions, approvals etc. obtained till date for the exclusive benefit of the New Developer, it is agreed that the Old Developer shall be entitled to recover and receive from the purchasers of unconstructed 4 Flats –the balance consideration receivable from such purchasers under their respective Agreements for Sale/Allotment Letters and to have all such Purchasers admitted to the membership of the Society on the terms in that regard contained in the Development Agreement dated 30.04.2008 and have such rights and remedies against such Purchasers for any delay breach or default on their part of any of the terms and conditions of their respective Agreements for Sale/Allotment Letters. Except the right to receive the unpaid consideration from the Flat Purchasers for the area agreed subject to its unperformed obligations towards such purchasers, the Old Developer has and shall have absolutely no right whatsoever either in the said property or in the Development rights thereof.

It is however, clarified and expressly agreed that any of the Purchaser through the Old Developer is, subject to securing/paying to the Old Developer any unpaid consideration which he/she/they had committed to pay to the Old Developer under their respective Agreements for Sale/ Allotment Letter

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with the old Developers, are free to deal with and dispose off in any manner deemed fit by them, all their rights in the Flats/premises which they have so agreed to purchase from the Old Developer without seeking any consent from the Old Developers and/or the Society. It is further clarified that the right of the Old Developer is confined only to the extent of receiving balance consideration for the area agreed to be sold by the Old Developer. All other contributions, deposits and dues under the respective agreements of all such Purchasers through the Old Developers, will however be payable by them to the New Developer, since it is the New Developer who is going to complete construction of their Flats and provide amenities etc. therein. However, on and after any such Purchaser's admission to the membership of the Society, his/her/their rights in the Flats agreed to be purchased by them, shall be governed by the Bye-laws of the Society.

6. **OLD DEVELOPER'S REPRESENTATIONS:**

a) The Old Developer agrees, declares and confirms that except the Flat Purchasers in respect of its incomplete sellable Flats on part 9th and part 10 Floor, it has not entered into any agreement commitment deal or transaction any/or third-party rights affecting the said property or any part thereof.

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b) The Old Developer is entitled to receive the balance consideration from such flat purchasers according to the area of the flat promised. If the New Developer is providing extra area to any of such flat purchasers, then in such an event, it is the New Developer, who is entitled to receive

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the consideration for that extra area which he is providing and the Old Developer completely agrees to it.

c) The Old Developer has not raised any loan or liability against security of its development rights or on the security of any of its sellable Flats from any Bank, Institute or financer and that all and whatever money which it had temporarily borrowed have been fully paid off and discharged and nothing remains to be paid by it to any such lender.

(c) It has paid and discharged all its liabilities towards the building material suppliers, Architects, consultants, contractors, workmen and other agencies deployed for carrying out construction up to its existing stage and the Old Developer declares and confirms that nothing remains due and payable by it to any of them.

7. **OLD DEVELOPER'S OBLIGATIONS:**

a. Except the right to receive the unpaid consideration from the Flat Purchasers subject to its unperformed obligations towards such purchasers, the Old Developer has and shall have absolutely no right whatsoever either in the said property or in the potential development rights thereof.

b. If any of the Flat Purchasers through the Old Developers has or shall have any grievance, claim or cause of action against the Old Developer or any of its representations as contained in foregoing paragraph are found to be false and misleading, the entire liability and responsibility thereof shall be that of the Old Developer and as such in the event

of any such Flat Purchasers/claimant ever claiming any of their rights or remedies either against the Society or the New Developer, the Old Developer agrees and undertakes to indemnify and keep the Society and the New Developers and its successors absolutely and forever saved defended and kept harmless and indemnified of and against any such claim demand, loss, damage, suit, proceeding, costs and consequences which they might incur/suffer or sustain due to reason of any such claim or demand or any unpaid lender or creditor seeking to enforce recovery or security against the Society or the New Developer.

c. As and when the New Developer would complete the construction of Phase II, the Old Developer will help in obtaining occupation certificate in respect of the entire building but at the costs of the New Developer.

d. The Old Developer, shall continue to extend all co-operation and give personal attendance and assistance through its authorized partner particularly in the matter of getting all pending approvals and sanctions and attend to all such works as may be specifically requested by the New Developer and sign and deliver all such further and other applications, representations, papers, writings and deeds as may be necessary for expeditious clearing and processing all applications for all permissions and approvals to be obtained hereafter.

e. Be responsible for, perform and discharge, at its own costs, all statutory obligations towards all the Flats purchasers through the Old Developer under Maharashtra

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