

Co option and Confirmatory AGREEMENT

This Co option and Confirmatory Agreement (the Agreement) is made on this the _____ day of _____, 2020 at _____ by and between Housing Development Finance Corporation Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at Ramon House, H T Parekh Marg, 169, Backbay Reclamation, Churchgate, Mumbai 400 020, hereinafter called "HDFC" (which expression shall unless the context otherwise requires, include its successors and assigns) of the One Part AND the borrower whose name and address are mentioned below , hereinafter called "the borrower" (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his/her respective heirs, executors, administrators and legal representatives (where the /a Borrower is an individual/Sole Proprietor), successors (where the/a Borrower is a company incorporated under the Companies Act, 1956 or any other body corporate), the partner(s) from time to time of the firm, the survivor(s) of them and the heirs, executors, administrators, legal representatives and successors of the partners (where the Borrower is a partnership firm), of the) of the Other Part

AMENDATORY to the Loan Agreement dated _____(hereinafter referred to as "the MAIN LOAN AGREEMENT") entered into between HDFC and the Borrower;

WHEREAS pursuant to the Main Loan Agreement , HDFC has agreed to disburse a loan to Borrower on the terms and conditions as contained in the said agreement;

AND WHEREAS in modification of certain terms of the Main Loan Agreement, the Parties have decided to reduce certain terms and conditions agreed upon , into writing , through these presents.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS UNDER:

The term "Borrowers" as defined in the schedule to the Main Loan Agreement shall hereinafter mean and include :

Shri _____ s/o Shri _____ Resident of _____ (insert details of existing individual borrower/s).

_____. a company registered under the Indian Companies Act, 1956 and having its registered office at _____ (hereinafter referred to as the Company);

and that the above stated Borrowers have co opted and confirm to the terms of the Main Loan Agreement and accordingly shall be jointly and severally liable for the loan as per the terms and conditions of the Main Loan Agreement as well as this Agreement. Unless otherwise mentioned, the term "Borrowers" shall mean and include the above stated entities as well.

1.2 The applicability, terms and conditions of the Main Loan Agreement are incorporated herein by this reference and shall form and integral part of this Agreement.

2. **ADDITIONAL CONDITIONS PRECEDENT TO DISBURSEMENT OF THE LOAN**

2.1 In addition to the Conditions Precedent to disbursement of the loan as mentioned in Article 4 of the Main Loan Agreement, the following conditions precedent to disbursement of the loan shall also be applicable :

The obligations of HDFC to make any disbursements under the Main Loan Agreement shall also be subject to the conditions that :

The Borrower hereby undertakes to HDFC that the property offered as security as mentioned in the Schedule I to the Main Loan Agreement is absolutely unencumbered and free from any liability whatsoever and has an absolute, clear and marketable title.

The Borrower hereby undertakes and warrants to HDFC that there shall be no changes or amendments to the Documents of constitution such as the Partnership deed/ Memorandum and Articles of Association of the Borrowers , as may be applicable, without the prior written consent of HDFC and that the Borrower(to the extent as may be applicable) shall not entertain any request for the same during the pendency of the Loan.

iii. The Borrower will ensure that there shall be no changes in the controlling pattern of the Borrower.

iv. The Borrowers hereby declare that there is no action, suit, proceedings or investigations pending or to the knowledge of the Borrowers threatened by or against the Borrowers before any Court of Law or Governmental Authority which might have a material effect on the financial and other affairs of the Borrowers or which might put into question the validity or performance of this Agreement or the Main Loan Agreement.

3 **Other Covenants**

3.1 In addition to the Covenants as mentioned in Article 5 of the Main Loan Agreement, the following Covenants shall also be applicable:

Adverse Changes in Profits and Production of the Borrower

Promptly inform HDFC of the happening of any labour strikes, lock-outs, shut-downs, fires and other similar happenings, etc. likely to have an adverse effect on the profits or business of the Borrower and of any material changes in the rate of production or the sales of the Borrower or with the explanation or the reasons therefor.

Application to the Board of Industrial and financial reconstruction under the SICA or other Acts or Statutes for reorganization or for any changes in the nature or form of Business of the Company

The Corporate Borrower shall obtain HDFC's prior written permission before making any application to the BIFR or before entering into a scheme of merger, amalgamation, demerger/reverse merger or any activity of reorganization in the nature and structure of the Company as per the provisions of the Indian Companies At, 1956.

Non declaration of Dividend

The Corporate Borrower hereby declares and affirms that, during the pendency of the Main Loan Agreement and this Agreement, it shall not declare any dividends without obtaining the prior written permission of HDFC or distribute the profits made by the Company in any which manner including but not limited to giving a loan to the employees of the company/ directors of the Company/ to any subsidiary or group company.

Changes in the Business of the Borrower

The Borrower shall not change the nature of its Business or undertake any business other than the business that it presently does without obtaining the prior written permission of HDFC.

Notice of Winding-up or Other Legal Proceedings

The Corporate Borrower shall promptly inform HDFC if and when any statutory notice of winding-up under the provisions of the Companies Act, 1956 or any other law or of any suit or legal process intended to be filed/initiated against the Borrower and affecting the title to the property mentioned in the schedule is received by the Borrower and /or if a Receiver is appointed for any of its Properties or Business or undertaking.

Loss/Damage by Uncovered risks

The Borrowers shall promptly inform HDFC of any loss or damage to the property mentioned in the Schedule of the Main Loan Agreement which the Borrowers may suffer due to any force majeure or act of God such as earthquake, flood, storm, tempest or typhoon, etc. against which the property may not have been insured.

Payment of Municipal, Local and Other Taxes or Charges

Pay duly and punctually all taxes, rates, charges, fees, etc. payable to any Government, Municipality, Local authority or to any other Competent Authority whatsoever for and in respect of the holding, use, upkeep, maintenance, etc. of the property mentioned in the Schedule of the Main Loan Agreement.

Status

The Borrower confirms that the Borrower is duly organized and validly existing entity under the applicable laws of the jurisdiction of its organization or incorporation and if relevant under such laws, in good standing and shall comply (if required as per the nature of the legal entity of the Borrower) with the provisions contained in the Indian Companies Act, 1956 / Indian Partnership Act, 1932, The Limited Liability Partnership Act , 2008.

Absence of litigation

The Borrowers hereby declare and affirm that there is no pending litigation or action threatened against any of the, its affiliates, directors, partners, designated partner, shareholders in any court of competent jurisdiction, tribunals, governmental bodies, agency, official or any arbitrator that is likely to affect the legality, validity, enforceability of the terms and conditions of this Agreement and the terms and conditions of the Main Loan Agreement in any which manner or materially affects the nature of business or the profitability of any of the Borrowers.

Consents

All Governmental and other consents that may be required to have been obtained by the Borrower with respect to this agreement or any other supporting documents have been obtained and are in full force effect and all conditions of any such consents have been complied with.

Financial Position

The Borrower , to the extent as may be applicable, has furnished an Audited Balance Sheet/ Financial Statement to HDFC prior to taking the disbursement of the loan and the financial position of the Borrower at the said date is correctly disclosed by the said Balance Sheet/ Financial Statement and since the date the financial position of the Borrower has not been materially changed.

The Borrower (to the extent as may be applicable) shall furnish to HDFC all such information, statement, particulars, estimates and reports etc., as HDFC may require from time to time as to the compliance with the terms of the loan and shall also submit to HDFC information and detail satisfactory to HDFC, unaudited quarterly income statements of the Borrower within 30 (thirty) days of the close of each quarter period and copies of audited financial statements including balance-sheet and profit and loss account (in detail and not in the abridged form) within 120 (one hundred twenty) days after the close of each financial year

Compliance of provision of Companies Act in relation to the Borrowings

To the extent as may be applicable, The Borrower states and confirms that its borrowings conform to Section 180(1)(c) of the Companies Act 2013 and other provisions of the Companies Act 2013 & Companies Act 1956 to the extent applicable . The Borrower shall supply certified copies of the resolutions passed in this regard and a certificate from its auditors showing the Borrowings.

The Corporate Borrower shall duly create and perfect the security in favour of HDFC and shall also *inter alia* register HDFC's charge in respect of the property mentioned in the Schedule of the Main Loan Agreement within the period stipulated therefor and furnish evidence thereof to HDFC.

(m) Insurance

The Borrower hereby confirms that the all assets have been adequately insured and such insurance is in full force and effect and no event or circumstance has occurred, nor has there

been any omission to disclose a fact, which would in either case entitle any insurer to avoid or otherwise reduce its liability under any policy relating to the insurances.

- (n) That to the Extent as may be applicable, No director / Partner / Designated Partner of the Company / Firm / LLP has been declared to be a willful defaulter. The Borrower shall not induct a person in any capacity whatsoever, who is a director / partner / member of an entity identified as willful defaulter. In the event of such a person is found to be a director / partner / member of an entity identified as willful defaulter, the Borrower shall take expeditious and effective steps for removal of such person.
- (o) The Borrower shall notify HDFC of any action or steps taken or legal proceedings started by or against it in any court of law for its winding-up, dissolution, insolvency, bankruptcy, administration or re-organization or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower/ Company or of any of the assets.

(p) Assignment

The Borrower/s shall ensure that their obligations herein and as mentioned in the Main Loan Agreement do and will rank above all its other present and future obligations. The Borrowers shall not assign or transfer all or any of its rights, benefits or obligations under the Main Loan Agreement and this Agreement without the prior written approval of HDFC. HDFC may, however at any time, assign or transfer all or any of its rights, benefits and obligations under the Main Loan Agreement and this Agreement. Notwithstanding any such assignment or transfer, the Borrowers shall, unless otherwise notified by HDFC, continue to make all payments under the Main Loan Agreement to HDFC and all such payments when made to HDFC shall constitute a full discharge to the Borrowers from all their liabilities in respect of such payments.

Without prejudice to the aforesaid provision, HDFC may (at its sole discretion), without notice to the Borrowers, share the credit risk of the whole or a part of the Loan with any other bank by way of participation. Notwithstanding such participation, all rights, title, interests, special status and other benefits and privileges enjoyed or conferred upon or held by HDFC under the Main Loan Agreement and this Agreement shall remain valid, effective and enforceable by HDFC on the same terms and conditions and the Borrowers shall continue to discharge in full all its obligations under the Main Loan Agreement and this Agreement to HDFC. The Borrowers shall not have and shall not claim any privity of contract with such participating bank on account of any reason whatsoever.

3.2 Additional Negative Covenants

In addition to what is contained in Article 5.4 of the Main Loan Agreement , unless HDFC shall otherwise agree, the Borrowers shall not

Charges

Create or permit any charge or lien on the property mentioned in the Schedule other than in favour of HDFC. For the purpose of this Clause the term “lien” shall include mortgage, pledge, charge, privileges and priorities of any kind.

Merger, Consolidation, etc.

Undertake or permit any merger, consolidation, reorganisation, scheme of arrangement or compromise with its creditors and/or shareholders.

Corporate Existence

(To the Extent as may be applicable in relation to the nature of the legal entity of any of the Borrower) Maintain the Corporate existence of the Borrowers as under The Indian Companies Act 1956, the Limited Liability Act, 2008 , as may be applicable, during the pendency of the loan.

Pay any commission to its promoters, partners, designated partners , directors, managers or other persons for furnishing guarantees, counter guarantees or indemnities or for undertaking any other liability in connection with any Indebtedness incurred by the , the Borrower or in connection with any other obligation undertaken for or by the Borrower.

Make any investments whether by way of deposits, loans, or investments in share capital or otherwise, in any concern or provide any credit or give any guarantee, indemnity or similar assurance except as otherwise permitted under this Agreement.

The Borrower (To the Extent as may be applicable in relation to the nature of the legal entity of any of the Borrower) shall not recognize or register any transfer of shares in the Borrowers shareholding pattern/capital made or to be made by the promoters and their associates.

Avail of any credit facilities or accommodation from any bank(s) or financial institution(s) or any person, firm or company in any manner nor shall it deal with or through any other bank(s) or

financial institution(s).

Change or cause to the change (to the extent as may be applicable) its shareholding pattern/ extent and nature of holding of the Body Corporate and / or its directors/partners/ designated partner and / or its constituent documents in the nature of the Memorandum of Association, Partnership Deed (to the extent as may be applicable).

Infuse additional equity / capital / shareholder into the Borrower/s(to the extent as may be applicable).

Not recognize any pledge of shares of the Borrower by the Promoters / shareholders other than in favour of HDFC.

4. Additional Representations and warranties of the Borrowers

In addition to the warranties as mentioned in Article 6 of the Main Loan Agreement, The Borrowers hereby make the following additional representations, declarations, warranties and agreements and confirms that they are, true, correct, valid and subsisting in every respect as of the date of this Agreement and as was on the date of the date of the Main Loan Agreement , the date(s) of drawals under the Loan, the date(s) of execution of each amendment to this Agreement and the Main Loan Agreement and each Due Date, which representations, declarations, warranties and agreements shall survive the execution and delivery of this Agreement, the provision of the Loan under the Main Loan Agreement and this Agreement and repayment/payment in full of the Loan and all monies in respect thereof :

The *Loan application* is true and accurate in all material respects, is not misleading and does not omit any material fact, the omission of which would make any fact or statement therein misleading and the other representations and warranties in the *Loan Application* shall be deemed to form part of the representations and Warranties herein made.

(“Loan Application” for the purpose of this Agreement means, as the context may permit or require, any or each of the application(s) / request(s), if any, for the Loan made by the Borrowers to HDFC , and all acceptances, information, particulars and clarifications furnished by the Borrower from time to time in respect of the Loan.)

- (a) The Borrowers have the competence and power to enter into this Agreement and the Main Loan Agreement and to carry on its business and operations as it is being or is proposed to be conducted;
- (b) All acts, conditions and things required to be done, fulfilled or performed, and all authorizations required or essential for the entry and delivery of this Agreement and the Main Loan Agreement or for the performance of the Borrowers obligation/s in terms of and under this Agreement and the Main Loan Agreement and for the carrying on of its business and operations have been done, fulfilled, obtained, effected and performed and are in full force and effect and no such authorization has been, or is threatened to be, revoked or cancelled;
- (c) The Borrowers have not received any notice, nor is it aware that any authorization necessary or required to be obtained in present or in future, will not be granted or obtained;
- (d) The Borrowers are in compliance in all respects with all laws (including environmental laws) and regulations affecting their assets, their business and operations. There are no circumstances that may at any time prevent or interfere with such compliance;
- (e) The Borrower have the power / authority to avail the Loan from HDFC and the total borrowings (including the Loan) are within the prescribed limits, if any and that for the Borrowers that are body corporate, all representatives are authorized duly to deal for an behalf of their respective body corporates.

This Agreement and the Main Loan Agreement has been duly and validly executed by the Borrowers or on behalf of the Borrowers and this Agreement and the Main Loan Agreement along with all Schedules constitutes or as and when executed in accordance with its terms will constitute, legal, valid and binding obligations of the Borrowers enforceable in accordance with their respective terms.

5. ADDITIONAL EVENTS OF DEFAULT

5.1. In addition to the Events of Default as mentioned in Article 7.1 of the Main Loan Agreement, the following shall be additional events of default:

Attachment or Distraint on the property mentioned in the Schedule

If an attachment or distraint is levied on the property mentioned in the Schedule or any part thereof and/or certificate proceedings are taken or commenced for recovery of any dues from the Borrowers.

Proceedings against the Borrowers

The Borrowers shall have voluntarily or involuntarily become the subject of proceedings under any Bankruptcy or Insolvency Law.

Appointment of Receiver or Liquidator

The Borrowers had a Receiver or a Liquidator appointed of all or any part of its undertakings.

Voluntary Dissolution of the any of the Borrower

If the any of the Borrower shall be voluntarily or involuntarily dissolved or become bankrupt or insolvent, the principal of and all accrued interest on the loan and other charges and dues under this Agreement and the Main Loan Agreement shall become due and payable forthwith (anything in this Agreement or the Main Loan Agreement to the contrary notwithstanding).

Non obtaining prior written permission of HDFC wherever required

If the Borrower fails to obtain HDFC's prior written approval for acts as directed or obtains HDFC's permission and fails to comply with the terms and conditions enumerated therein or is in Breach of any of the terms and conditions of this Agreement and / or the Main Loan Agreement or any ancillary document/s executed in connection to this Agreement and the Main Loan Agreement.

(f) Any unauthorized modification in the shareholding pattern/ partnership of the Borrower, including issuance of new shares in the share capital of the corporate Borrower.

5.2 In the Event of occurrence of any of the Events of Default as mentioned above and those mentioned in the Main Loan Agreement HDFC shall have right invoke all its rights available to it under the Main Loan Agreement and this Amendatory Agreement as well as those available to it under the relevant Statutory Laws and Rules against the Borrower , jointly and severally.

HDFC shall have the option to obtain any refinance facility or loan from any bank, company, institution or body, against the property mentioned in the Schedule I of the Main Loan Agreement or such other security that may have been furnished by the Borrowers to HDFC.

The entry into, delivery and performance by the Borrowers of, and the transaction contemplated by, this Agreement and the Main Loan Agreement do not and will not conflict: (a) with any law; (b) with the constitutional documents, if any, of the Borrowers; or (c) with any document which is binding upon the Borrowers or on any of its asset/s. *Notwithstanding anything contained hereinabove, it is agreed between the parties hereto that in an event any of the Borrowers' is prohibited in law and/or for any other reason to undertake the co-obligation of repayment of the loan primarily to HDFC and /or any clause casting such a co-obligation becomes unenforceable in any jurisdiction for any reason whatsoever, the remaining Borrower shall forthwith deemed to have been assumed the said obligation as if the same was intended to be so between the parties since the inception of this loan.*

The terms and conditions of this Agreement shall remain co-extensive and coterminous to the terms and conditions of the Main Loan Agreement. In the event of any repugnancy between the terms and conditions of the Main Loan Agreement and of this Agreement, the terms and conditions of this Agreement shall prevail.

SIGNED AND DELIVERED by the within-named
HOUSING DEVELOPMENT FINANCE CORPORATION
LIMITED by the hand of _____ its

_____ .

SIGNED AND DELIVERED by the within named:

Shri _____

THE COMMON SEAL OF _____ the Company
herein has pursuant to the Resolution of the Board of
Directors passed in that behalf on _____ hereunto been
affixed in the presence of Shri _____ its Director
who has signed these presents in token thereof.

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