



5 October 2015

To  
SICOM Limited  
Solitaire Corporate Park  
Building No 4, 6<sup>th</sup> Floor,  
Andheri - Ghatkopar Link Road  
Chakala, Andheri (East)  
Mumbai 400093

KIND ATTN: MR JAYANT UDAR

Dear Sir

Re: Land admeasuring 16,994 square meters bearing City Survey Nos 10, 10/1, 11, 11/1 to 3, 12, 13, 28, 29, 31, 32, 32/1 to 4, 33, 34, 35, 35/1 to 3, 36, 36/1 to 4, 37, 37/1, 38, 39, 39/1 to 7, 40, 41A, 41B/1/1, 41/B/1/2, 42, 42/1 to 2, 43, 43/1, 44 and 45 lying, being and situate at Village Bapnala, Andheri (East), in the Registration District of Mumbai ("the said Land")

We have been instructed by you to provide you our report (hereinafter referred to as "**this Report**") in respect of the rights of Eversmile Construction Company Private Limited a private limited company incorporated deemed existing under the provisions of the Companies Act, 2013 and having its registered office at Conwood House, Yashodham, Gen A K Vaidya Marg, Goregaon (East), Mumbai 400063 (hereinafter referred to as "**Eversmile**") to develop the said Land under the provisions of Regulation 33 (10) of the Development Control Regulations of Greater Mumbai, 1991.

**1. STEPS TAKEN FOR PREPARING THIS REPORT**

For the purpose of preparing this Report, we have taken the following steps:

- 1.1 Perused photo copies of the documents and papers provided to us, the details of which are annexed hereto and marked as **Annexure "A"**.
- 1.2 Caused search to be conducted in the records of the concerned Sub-Registrar of Assurances in Mumbai for the past 40 years, i.e. from 1975 to 2015 in respect to the said Land through Mr Vinod Sawant, Search Clerk, who has submitted his search report dated 24 June 2015 (hereinafter referred to as the "**said Search Report**"). The original of the said Search Report is annexed hereto and marked as **Annexure "B"**.
- 1.3 Caused search to be conducted in the records of the Registrar of Corporate Affairs pertaining to the members of the said Joint Venture namely Eversmile Construction Company Private Limited, D B Realty Limited and Konark Conwell LLP through V Singhi & Associates, Company Secretaries, and have relied on their search report dated 29 June 2015 based on an online search on the website of the office of the Registrar of Corporate Affairs (hereinafter referred to as the "**said ROC Report**"). The original of the said ROC Report is annexed hereto and marked as **Annexure "C"**.

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- 1.4 Raised general requisitions dated 23 March 2015 on the said Joint Venture (hereinafter referred to as the "said Requisitions") and further special requisitions from time to time. A copy of the aforesaid general requisitions raised along with the answers thereof is annexed hereto and marked as Annexure "D".
- 1.5 Caused public notices to be published in English and Marathi newspapers i.e. Free Press Journal, Mumbai Edition on 11 June 2015 and Navshakti Times, Mumbai Edition on 12 June 2015. The original public notices published in the aforesaid newspapers are annexed hereto and collectively marked as Annexure "E".
- 1.6 Relied on the Declaration dated 27 August 2015 executed by Eversmile and Declaration dated 1 September 2015 executed by the ECC DB Joint Venture.
- 1.7 Inspected the original title documents pertaining to the said Land as stated in paragraph 13 hereinbelow.

## 2. FLOW OF TITLE OF THE SAID LAND

- 2.1 It appears that A.H. Wadia Charity Trust was the owner of various parcels of land situated at Village Sahar and Bapnala, Andheri (East) ("Wadia Trust Land").
- 2.2 Kapadia Development Co-operative Housing Society Limited ("Kapadia Society") claimed ownership by way of adverse possession to the following lands admeasuring in aggregate 85,446.10 square meters forming part of Wadia Trust Land ("Kapadia Land"):

Survey Nos	Area
Survey No 5	2,833 square meters as per 7/12 extract (as per the below agreement and 7/12 extract)
Survey No 6 Hissa No 1 (part)	Areas not known as 7/12 extract is not provided to us.
Survey No 6 Hissa No 3 (part)	Areas not known as 7/12 extract is not provided to us.
Survey No 12 (part)	37,806 square meters (as per below agreement) and 30,873 square meters (as per the two 7/12 extract provided to us),
Survey No 13	3,440 square meters as per 7/12 extract,
Survey No 14	19,728 square meters as per 7/12 extract
Survey No 98 (part)	21,853.10 square meters as per 7/12 extract



- 2.3 It appears that by and under a Letter Agreement dated 25 July 1981 addressed by A. H. Wadia Charity Trust to Century Builders, A.H. Wadia Charity Trust had agreed to sell the Wadia Trust Land to Century Builders subject to the rights of Kapadia Society by adverse possession to the Kapadia Land for the consideration and on the terms and conditions as stated therein.
- 2.4 Thereafter, by and under an unregistered Agreement for Sale cum Development Agreement dated 26 August 1986 executed between Kapadia Society (therein referred to as the Society of the First Part), Messer Century Builders (therein referred to as the Builders of the Second Part) and Veena Estate Private Limited (therein referred to as the Developers of the Third Part), Kapadia Society with the confirmation and concurrence of Century Builders granted in favour of Veena Estate Private Limited development rights in respect of the Kapadia Land in consideration of Veena Estate Private Limited *inter-alia* (i) constructing and handing over to the members of the Kapadia Society 50 Flats admeasuring 500 square feet each and (ii) paying a sum of Rs 5,00,00,000 (Rupees Five Crore) to Century Builders in the manner as stated therein and on the terms and conditions as stated therein. The aforesaid unregistered Agreement dated 26 August 1986 *inter-alia* states that Veena Estate Private Limited shall be entitled to assign the benefits of that agreement to any person or party and for that purpose it will not be necessary for Veena Estate Private Limited to obtain previous consent either from Kapadia Society or Century Builders. The agreement further states that neither Kapadia Society nor Century Builders shall be entitled to terminate the agreement.
- 2.5 By and under a Consent Decree dated 22 December 1994 passed by the Hon'ble High Court of Judicature at Bombay in Suit No 1170 of 1993 filed by Kapadia Society against Mary C P Wadia who seems to be the trustee of A.H. Wadia Charity Trust and others and registered at the office of the Sub-Registrar Assurances at Bombay under Serial No 4656 of 1995, the Hon'ble High Court of Judicature at Bombay *inter-alia* recorded that Kapadia Society (Plaintiff's therein) are owners of the Kapadia Land by adverse possession and are in possession of the Kapadia Land. Century Builders is also a party to the aforesaid Consent Decree and it has also confirmed the ownership of Kapadia Society to the Kapadia Land along with certain other lands. On perusal of the consent decree it appears that Kapadia Society had filed the aforesaid suit to declare itself as owners and for perpetual injunction against the A.H. Wadia Trust and the defendants therein from dealing with the Kapadia Land.
- 2.6 By and under an unregistered Supplemental Agreement dated 27 August 2004 executed between Kapadia Society (therein referred to as the Society of the First Part), Messer Century Builders (therein referred to as the Builders of the Second Part) and Veena Estate Private Limited (therein referred to as the Developers of the Third Part), the parties to the aforesaid agreement amended the consideration clause by stating that Veena Estate Private Limited would only be liable to provide 2 residential flats admeasuring 900 square feet each to 2 of the members of Kapadia Society and allot commercial premises admeasuring 4,247 square feet in favour of 8 members of Kapadia Society in common in the project known as Ascot Centre under construction on Kapadia Land instead of 50 flats admeasuring 500 square feet each subject to the terms and conditions as stated therein.



2.7 It appears that although city survey of Kapadia Land was undertaken and the survey numbers comprised in the Kapadia Land were allotted CTS Nos, but the aforesaid agreements and consent decree continued to describe the Kapadia Land only by way of survey numbers instead of CTS Numbers. We have reviewed the Kami Jasta Patrak ("KJP") provided by Eversmile and it appears that following CTS Numbers were allotted to the survey numbers comprised in the Kapadia Land:

<b>Survey Nos</b>	<b>Corresponding CTS Nos (prior to sub-division of the CTS Nos) as per the aforesaid Agreement dated 26 August 1986 and as per the KJP provided to us</b>
Survey No 5	CTS Nos 28, CTS Nos 29, CTS Nos 30, CTS Nos 31 and CTS Nos 32 (part)
Survey No 6 Hissa No 1 (part)	CTS Nos 36 (part), CTS Nos 37 (part), CTS Nos 38 CTS Nos 39 (part) and CTS No 40
Survey No 6 Hissa No 3 (part)	CTS Nos not known as we have not been provided with a copy of the relevant KJP.
Survey No 12 (part)	CTS Nos 10 (part), CTS Nos 11 (part), CTS Nos 12, CTS Nos 13, CTS No 33 CTS No 34 CTS No 35 (part) CTS No 36 (part) CTS No 39 (part) CTS Nos 41, CTS Nos 42 (part), CTS Nos 43 (part), CTS Nos 44 and CTS Nos 45
Survey No 13	CTS No 46 (part)
Survey No 14	CTS No 47 (part)
Survey No 98 (part)	CTS No 145 (part)



- 2.8 Upon perusal of the Property Register Card, it appears that some of the aforesaid CTS Nos comprised in Kapadia Land were sub-divided.
- 2.9 A portion of the Kapadia Land admeasuring 12,431.80 square meters bearing C.T.S Nos 10, 10/1, 11, 11/1 to 3, 12, 13, 28, 29, 30, 31, 32, 32/1 to 4, 33, 34, 35, 35/1 to 3, 36, 36/1 to 4, 37, 37/1, 38, 39, 39/1 to 7, 40 and 41 lying, being and situate at Village Sahar and Bapnala ("Notified Slum Land") was encroached by slums and the same was declared a slum vide notification dated 27 October 1977 bearing Reference No DC.ENC/A/41-BAPNALA under the provisions of Section 4 (1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act), 1971.
- 2.10 We note that in the year 1977 land bearing CTS No 41 admeasuring 8,398 square meters was a part of the aforesaid slum declaration. On perusal of the entries recorded on the Property Register Card of land bearing CTS No 41A, we understand that pursuant to amalgamation and sub-divisions area comprised in land bearing CTS Nos 46 and 47 were added in land bearing CTS No 41, after which the area of land bearing CTS No 41 became 59,586.20 square meters. Thereafter, CTS No 41 was sub-divided into CTS Nos 41A admeasuring 10,625.70 square meters and CTS Nos 41B to 41E collectively admeasuring 48,960.50 square meters. These facts were recorded on the PR Card of CTS No. 41A on 24 December 1997. Further, on perusal of the remarks made on the Property Register Card of CTS No 41B/1/1 we understand that pursuant to amalgamation and sub-division CTS No 41B was further sub-divided into CTS No 41B/1 and 41B/2 and that area of land bearing CTS No 41B/2 admeasuring 1,875.10 square meters was added to CTS No 41B/1. Further, the said entry records that subsequently CTS No 41B/1 was further sub-divided into CTS No 41B/1/1 admeasuring 273 square meters and CTS No 41B/1/2 admeasuring 1,973.50 square meters. These facts were recorded on the PR Card of CTS No. 41B/1/1 on 5 February 2007.
- 2.11 By and under an order dated 9 January 2003 passed by the Hon'ble High Court of Judicature at Bombay in Company Petition No 805 of 2002 in Company Application No 198 of 2002, the Hon'ble High Court of Judicature at Bombay accorded its consent for a scheme of arrangement embodied in the Scheme of Amalgamation *inter-alia* between Veena Estate Private Limited with Eversmile Construction Company Private Limited on the terms and conditions as stated therein. The aforesaid order further records that the entire business and undertaking of Veena Estate Private Limited including its properties and assets both moveable and immovable, tangible and intangible of whatsoever nature and wheresoever situate such as land, buildings, factories, premises, installations, constructions, plants & machineries, industrial and intellectual properties, trading, rights etc without any further act or deed stand transferred to and vest in Eversmile Construction Company Private Limited pursuant to the provisions of Section 394 of the Companies Act, 1956.
- 2.12 Thereafter by and under an Agreement dated 25 May 2005 executed between Kapadia Society (therein referred to as the Society of One Part) and Eversmile Construction Company Private Limited (therein referred to as the Developers of the Other Part) and registered at the office of the Sub-Registrar of Assurances at Mumbai under Serial No 5321 of 2005, the Society therein confirmed the grant of the development rights in favour of Eversmile in respect of Notified Land (excluding CTS No 38 admeasuring 366.90 square meters and CTS



No 40 admeasuring 344.60 square meters, CTS No 41B/1/1 admeasuring 273 square meters and CTS No 41B/1/2 admeasuring 1,973.50 square meters (CTS 41B/1/1 and CTS 41B/1/2 earlier being a part of CTS No 41) ) along with land bearing CTS Nos 41A (part), 42, 42/1 and 2, 43 and 43/1 collectively admeasuring 10,344.92 square meters for the consideration and on the terms and conditions as stated therein. The aforesaid Agreement dated 25 May 2005 states that the same has to be read in conjunction with the understanding arrived between the parties in 1986 and the understanding and agreement between the parties arrived in 1986 and in March 2005 is valid and subsisting. This Agreement records that all obligations of Eversmile under the earlier agreement have been complied with by Eversmile. Eversmile has informed and declared to us that the area of land bearing CTS No 41A (part) development rights of which were confirmed in the aforesaid Agreement dated 25 May 2005 is 6,828.52 square meters.

2.13 By and under a Joint Venture Agreement dated 7 March 2007 executed between Eversmile Construction Company Private Limited (therein referred to as Eversmile of the One Part) and DB Realty Limited (therein referred to as DB of the Other Part) Eversmile and DB constituted ECC-DB Joint Venture as an association of persons for jointly developing land admeasuring 15,140 square meters, subject to increase based on the actual consents, forming part of the said Land (as defined in paragraph 4.1 hereinbelow) in pursuance of the said LOI. Eversmile and DB Realty Limited are entitled to 25:75 % of the profit and losses of the ECC-DB Joint Venture. The aforesaid Joint Venture Agreement requires one director of DB Realty Limited and one director of Eversmile to execute mortgage deeds, if and when required. As per the aforesaid Joint Venture Agreement, Eversmile is responsible to obtain approvals and consents for development of the project on land admeasuring 15,140 square meters forming part of the said Land and DB Realty Limited is responsible to carry out and complete the development of the project as per the approvals and also arrange for requisite funding in the joint venture for the project either by itself or through borrowings in the name of ECC-DB Joint Venture. The overall control, management and charge of the ECC-DB Joint Venture has been vested with DB Realty Limited. The sale activity of the tenements are to be organized by DB Realty Limited in the name of the ECC-DB Joint Venture. We observe that land bearing CTS 37 and 39 were not included in the Schedule of the aforesaid Joint Venture Agreement for which joint development rights were granted in favour of DB Realty. Further we observe that land bearing Old CTS No 41/B/2 admeasuring 1,875.50 square meters corresponding to CTS No 41B/1/2 admeasuring 1,973.50 square meters was not included in the second schedule of the aforesaid joint venture agreement.

2.14 Thereafter, by and under a Deed of Conveyance dated 2 July 2010 executed between Kapadia Society (therein referred to as the Society of the One Part) and Eversmile Construction Company Private Limited (therein referred to as the Purchasers of the Other Part) and registered at the office of the Sub-Registrar of Assurances at Mumbai under Serial No 8034 of 2010, Kapadia Society sold, assigned, conveyed and transferred unto Eversmile following portions of the Kapadia Land collectively admeasuring 9881.68 square meters (not forming part of the Notified Land, excepting CTS No 38 admeasuring 336.90 square meters):

- (i) C.T.S Nos 38 admeasuring 336.90 square meters,
- (ii) CTS No 40 admeasuring 244.60 square meters,

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- (iii) CTS No 41A (part) admeasuring 3,797.18 square meters,
- (iv) CTS No 41B/1/1 admeasuring 273 square meters,
- (v) CTS No 41B/1/2 admeasuring 1,973.50 square meters,
- (vi) CTS No 44 admeasuring 28.20 square meters,
- (vii) CTS No 45 admeasuring 17 square meters and
- (viii) CTS No 145B/10/2 admeasuring 3,211.30 square meters

for the consideration paid by the Purchasers therein under the Agreement dated 26 August 1986 as stated in paragraph 2.4 hereinabove and as modified by and under the Supplemental Agreement dated 27 August 2004 stated in paragraph 2.6 hereinabove (provide 2 residential flats admeasuring 900 square feet each to 2 of the members of Kapadia Society and allot commercial premises admeasuring 4,247 square feet in favour of 8 members of Kapadia Society in common in the project known as Ascot Centre) and on the terms and conditions as stated therein. In the aforesaid Deed of Conveyance Eversmile is entitled to deal with and dispose of the benefits that may accrue out of rehabilitation of the Slum Dwellers and/or from the development of the aforesaid land and to receive and appropriate the consideration thereof including sale component buildings. The portion of CTS No 41A (part) admeasuring 6,828.52 square meters covered under the Agreement dated 25 May 2005 is the balance portion of CTS 41A arrived at after deducting the area of 3,797.18 square meters covered under the aforesaid Deed of Conveyance dated 2 July 2010.

2.15 Although CTS No 145/B/10 admeasuring 3,211.30 square meters has been purchased by Eversmile under the aforesaid deed of conveyance but since the scope of this report is to verify and comment on the title of the said Land (as defined hereinbelow), we are not commenting on the title of CTS No 145/B/10 under this report. Further Eversmile has informed us that land bearing CTS No 38 admeasuring 336.90 square meters and CTS No 40 admeasuring 244.60 square meters are being used to construct the Rehab Component (as defined hereinbelow) and is not proposed to be mortgaged in your favour. The Land referred to in paragraph 2.14 hereinabove, except CTS No 145/B/10 admeasuring 3,211.30 square meters, CTS 38 admeasuring 336.90 square meters and CTS 40 admeasuring 244.60 square meters is hereinafter and hereinbefore referred to as "Eversmile Land" Eversmile Land admeasures 6,088.88 square meters.

2.16 By and under a Deed of Admission dated 26 May 2012 executed between Eversmile Construction Company Private Limited (therein referred to as Party of the First Part), DB Realty Limited (therein referred to as the Party of the Second Part) and Konark Developers, a partnership firm (therein referred to as Incoming Member of the Third Part), Konark Developers was inducted as a member of the association of person known as ECC-DB Joint Venture on the terms and conditions as stated therein. The profit and loss sharing ratio in the association of person under the aforesaid Deed of Admission has been changed to Eversmile -1%, DB Realty Limited – 75% and Konark -24% with effect from April 2012. As per



the aforesaid Deed of Admission, all obligation of DB Realty Limited as stated the aforesaid Joint Venture Agreement shall be jointly carried out by Konark Developers along with DB Realty Limited. Konark Developers has been vide Certificate of Registration on Conversion dated 3 February 2014 converted to a limited liability partnership under the provisions of Limited Liability Partnership Act, 2008 and is now known as Konark Conwell LLP and it presently comprises of Shonit Dalmia, Rakadevi Dalmia, Shikha Dalmia and Amitabh Kejriwal, as its partners having its office at Mittal Estate Building No 7, Andheri Kuria Road, Andheri (East), Mumbai 400059.

- 2.17 Thereafter, by and under an Agreement dated 12 March 2014 executed by Eversmile, DB Realty Limited and Konark Developers, it was *inter-alia* agreed between the members of the ECC-DB Joint Venture that land admeasuring 1,875.50 square meters bearing CTS No 41/B/2 be included in the second schedule of the aforesaid Joint Venture Agreement and ECC-DB Joint Venture shall be entitled to develop the same together with the land mentioned in the aforesaid Joint Venture Agreement.
- 2.18 By and under an Agreement dated 31 July 2015 executed by Eversmile, DB Realty Limited and Konark Developers, the members of the ECC-DB Joint Venture rectified the second schedule of the aforesaid Joint Venture Agreement to include land bearing CTS 37 admeasuring 33.70 square meters and 39 admeasuring 15.10 square meters in the second schedule thereof.

### 3. SLUM DWELLERS CONSENT / UNDERTAKING & ANNEXURE II

- 3.1 By and under an Undertaking / Consent dated 28 January 2002 executed by the Managing Committee / Promoters / Members of the New Technical Co-operative Housing Society (SRA) (proposed) as listed therein, the Managing Committee / Promoters / Members of the New Technical Co-operative Housing Society (SRA) (proposed) as listed therein *inter-alia* accorded their consent in favour of Veena Estate Private Limited for development of the said Land (as defined in paragraph 4.1 hereinbelow).
- 3.2 By and under an Undertaking / Consent dated 20 February 2002 executed by the Managing Committee / Promoters / Members of Old Technical Co-operative Housing Society (SRA) (Proposed) as listed therein, the Managing Committee / Promoters / Members of the Old Technical Co-operative Housing Society (SRA) (proposed) as listed therein *inter-alia* accorded their consent in favour of Veena Estate Private Limited for development of the said Land (as defined in paragraph 4.1 hereinbelow).
- 3.3 By and under an Undertaking / Consent dated 19 April 2005 executed by the Managing Committee / Promoters / Members of Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed) as listed therein, the Managing Committee / Promoters / Members of the Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed) as listed therein *inter-alia* accorded their consent in favour of Veena Estate Private Limited for development of the said Land (as defined in paragraph 4.1 hereinbelow).
- 3.4 We understand from Eversmile that Old Technical Co-operative Housing Society (SRA) (Proposed) has amalgamated with New Technical Co-operative Housing Society (SRA)





(Proposed) and therefore, one Society by the name of New Technical Co-operative Housing Society (SRA) (Proposed) is formed however, we have not been provided with any documents in this regard.

- 3.5 By and under its letter dated 24 January 2003 addressed by Additional Collector to the Slum Rehabilitation Authority, the Additional Collector certified a list of occupants situated on the said Land comprised in the Old Technical SRA Co-operative Housing Society Limited (Proposed) and New Technical SRA Co-operative Housing Society Limited. On perusal of aforesaid Letter dated 24 January 2003 addressed by Additional Collector it appears that the Old Technical Co-operative Housing Society (SRA) (Proposed) and the New Technical Co-operative Housing Society (SRA) (Proposed) consists of 429 tenants.
- 3.6 On perusal of the Undertaking / Consent dated 28 January 2002 and 20 February 2002, we understand that Veena Estate Private Limited has obtained more than 70% consent of the tenants of Old Technical Co-operative Housing Society (SRA) (Proposed) and the New Technical Co-operative Housing Society (SRA) (Proposed) as listed therein. Eversmile has informed us that all the tenants who have given their consent are all eligible tenants and they comprise of more than 70% tenants.
- 3.7 By and under its letter dated 4 September 2008 addressed by the Additional Collector to the Slum Rehabilitation Authority, the Additional Collector certified a list of occupants situated on the said Land comprised in Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed). On perusal of the aforesaid letter dated 4 September 2008 addressed by the Additional Collector we understand that Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed) consists of 78 tenants out of which 28 tenants are eligible from which 20 tenants have given their consent for redevelopment.
- 3.8 On perusal of the Undertaking / Consent dated 19 April 2005 we understand that Veena Estate Private Limited has obtained more than 70% consent of the tenants of Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed) as listed therein. Eversmile has informed us that all the tenants who have given their consent are all eligible tenants and they comprise of more than 70% tenants.

#### 4. LETTER OF INTENT AND APPROVALS

- 4.1 By and under its letter dated 13 March 2012 bearing Reference No SRA/ENG/680/KE/PL/LOI issued by the Slum Rehabilitation Authority ("LOI") in favour of Eversmile Construction Company Private Limited, New Technical Co-operative Housing Society (SRA) (proposed) and Emmanuel Lelewadi (SRA) Co-operative Housing Society (Proposed), the Slum Rehabilitation Authority sanctioned a slum scheme in respect of land collectively admeasuring 16,994 square meters ("the said Land") on the terms and conditions as stated therein:

- (i) A portion of the Notified Slum Land admeasuring 4,012.60 square meters bearing C.T.S Nos 10, 10/1, 11, 11/1 to 3, 12, 13, 28, 29, 31, 32, 32/1 to 4, 33, 34, 35, 35/1 to 3, 36, 36/1 to 4, 37, 37/1, 38, 39, 39/1 to 7 and 40;
- (ii) the Eversmile Land; and



- (iii) Land bearing CTS No 42 admeasuring 12.70 square meters, CTS No 42/1 admeasuring 12.10 square meters, CTS No 42/2 admeasuring 9.70 square meters, CTS No 43 admeasuring 17.20 square meters, CTS No 43/1 admeasuring 12.90 square meters and CTS No 41A (part) admeasuring 6,827.82 square meters collectively admeasuring 6,892.42 square meters.

We have been informed by Eversmile and Eversmile has also declared to us that the CTS No 41A (part) recorded in the LOI pertains to the CTS No 41A (part) which was dealt with under the Development Agreement dated 25 May 2005 executed by Kapadia Society in favour of Eversmile and the area thereof is 6,828.52 square meters and the balance portion of CTS 41A (part) admeasuring 3,797.18 square meters was purchased by Eversmile under the aforesaid Deed of Conveyance.

- 4.2 Thereafter, by and under a letter dated 14 October 2013 bearing Reference No SRA/ENG/680/KE/PL/LOI ("Revised LOI") issued by the Slum Rehabilitation Authority in favour of Eversmile Construction Company Private Limited, the Slum Rehabilitation Authority revised the aforesaid letter of intent in the manner as stated therein. The aforesaid revised letter of intent dated 14 October 2013 permits Eversmile to construct 21,470.78 square meters rehabilitation component ("Rehab Built Up Area") and 21,470.78 square meters sale component ("Sale Built Up Area").
- 4.3 We have been informed by Eversmile that the Sale Built Up Area is proposed to be developed only on the Eversmile Land admeasuring 6,088.88 square meters and the balance portion of the said Land admeasuring 10,905.12 square meters is being used for constructing the Rehab Built Up Area and the Recreation Ground ("Rehab Land").
- 4.4 The Rehab Built Up Area and the Rehab Land is hereinafter referred to as the "Rehab Component". The Sale Built Up Area and the Eversmile Land is hereinafter referred to as the "Sale Component". The Rehab Land and the Sale Component is separated by a Nalla running through the said Land.
- 4.5 Eversmile has informed and declared to us that the following lands have not been declared slum under the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"): land bearing CTS No 41B/1 admeasuring 273 square meters, CTS No 41B/2 admeasuring 1973.50 square meters, CTS No 42 admeasuring 12.70 square meters, CTS No 42/1 admeasuring 12.10 square meters, CTS No 42/2 admeasuring 9.70 square meters, CTS No 43 admeasuring 17 square meters, CTS No 43/1 admeasuring 12.90 square meters, CTS No 44 admeasuring 28.20 square meters, CTS No 45 admeasuring 17 square meters and CTS No 41A (part) admeasuring 3,157.06 square meters collectively aggregating to 5,513 square meters. The aforesaid lands are referred to in the LOI as non-slum land.
- 4.6 By and under its letter dated 4 January 2013 bearing Reference No SRA/ENG/294/KE/PL/LAY addressed by the Slum Rehabilitation Authority, the Slum Rehabilitation Authority approved the plans submitted in respect of the said Land subject to the terms and conditions as stated therein including the terms and conditions stated in document bearing Registration No BDR9-9746 of 2012 dated 29 November 2012.



5. **DP REMARK**

5.1 The Development Plan Remark dated 30 March 2012 bearing Reference No CHE/1285/DPWS/K/E ("DP Remark") in respect of the said Land records that the said Land falls under District Commercial Zone (C2) and the DP Remark further records the following:

Reservation Affecting the Land	:	Parking Ancillary to the Airport & Recreation Ground (both parts of larger reservation;
Reservations abutting the Land	:	Nil
Designations affecting the Land	:	Nil
Designations abutting the Land	:	Nil
D.P. Roads affecting the Land	:	DP Road (13.40 M) (2Nos)
Existing Roads	:	Present (27.45 M)
Zone	:	District Commercial Zone (C2)
Reservation if Relocated	:	Recreation Ground

5.2 The DP Remark further records that the said Land partly falls within the Airport Boundary and hence specific remark from the Airport Authority / Mumbai International Airport Limited should be obtained separately before any development on the said Land.

5.3 The DP Remark further records that specific remarks of MMRDA should be obtained before commencing any development on the said Land.

5.4 The DP Remark further records that specific remarks of E.E.B.P (WS) H&K Wards should be obtained for layout / sub-division / amalgamation and the development of the said Land shall be as per the terms and conditions of the layout.

5.5 By and under its order dated 10 May 2012 passed by the Hon'ble High Court of Judicature at Bombay in Notice of Motion No 579 of 2010 in Writ Petition No 1152 of 2002, the Hon'ble High Court of Judicature at Bombay directed the State of Maharashtra and others to permit Eversmile to implement the slum rehabilitation scheme in terms of the minutes of the order dated 10 May 2012 annexed thereto.

5.6 The aforesaid Minutes of the order dated 10 May 2012 inter-alia states that the relocation of the Recreation Garden as per the plan annexed thereto is approved and the same shall not be less than 1,973.50 square meters. The Minutes of the order inter-alia further states that permission is granted to the Executive Officer, Slum Rehabilitation Authority to approve the slum rehabilitation scheme on the said Land subject to the terms and conditions as stated therein and including the following as stated in paragraph 2 (iii) of the Consent Terms recorded in the aforesaid order dated 10 May 2012:



- (i) Before grant of commencement certificate for construction of the last 25% of sale built up area, the boundary of the relocated DP Recreation Reservation shall be demarcated, cleared of all encroachment, developed and provided with compound wall around the same with proper gate opening to public access and handed over to the Municipal Corporation in accordance with Regulation 34 of the Development Control Regulations of Greater Mumbai, 1991.

5.7 The aforesaid Minutes of the order dated 10 May 2012 further states that the Chief Executive Officer, Slum Rehabilitation Authority is directed to ensure no permission for construction of the last 25% of the sale built up area is permissible on the said Land till such time the respective relocated reservation is fully developed and handed over to the Municipal Corporation.

5.8 We have been informed that the Recreation Ground has now been relocated from land bearing CTS No 41B/1/2 admeasuring 1,973.50 square meters to the land bearing CTS No 41A (part) admeasuring 1973.50 square meters which portion is adjoining the Rehab Land. Eversmile has informed and declared to us that the land bearing CTS No 41A (part) on which the Recreation Ground has been re-located does not form part of the Eversmile Land.

## 6. NON AGRICULTURAL ORDER

6.1 By and under its order dated 14 January 2011 bearing Reference No C/Desk-III-C/LND/NAP/SR-1958 passed by the Collector, Mumbai Suburban District, the Collector regularized the non-agricultural use in respect of a portion of the said Land excluding CTS No 41B/1/2 admeasuring 1,973.50 square meters to the Society to use the same as per the plans approved the Slum Rehabilitation Authority subject to the terms and conditions as stated therein.

6.2 Although no formal NA Order has been provided to us in respect of CTS No 41B/1/2 but the SRA has permitted development thereof and plans have been sanctioned in respect thereof. The aforesaid NA order dated 14 January 2011 includes the land area of 1973.50 square meters from CTS No.41A, which is directed by the Hon'ble High Court of Judicature at Bombay to be exchanged with CTS No.41B/1/2, which was earlier reserved for Recreation Ground. Once the Recreation Ground is completed and handed over to MCGM, a revised NA order would have to be obtained for land bearing CTS No 41B/1/2 and an order for a portion of CTS No 41A admeasuring 1973.50 square meters to be reflected as Recreation Ground.

6.3 Eversmile has informed and declared to us that they have been regularly paying the NA Assessment Tax in respect of the said Land and the aforesaid order dated 14 January 2011 has not been revoked and cancelled by the Government including the Collector.

## 7. URBAN LAND CEILING

7.1 The Additional Collector and Competent Authority vide its order dated 11 January 1984 bearing Reference No C/U/LC/D-V/6(1)/SR-XIX-742 exempted land admeasuring 21,853 square meters by inter-alia stating that the provisions of Chapter III of the Urban Land (Ceiling & Regulation) Act, 1976 are not applicable to the holdings of the Kapadia Society as it falls in the exempted category under Section 19 (1) (V).



- 7.2 The Additional Collector and Competent Authority vide its order dated 28 October 1983 bearing Reference No C/ULS/SRI(1)-X-739, C/ULC/SR-I(1)XIII-516, C/ULC/SR-I(1)-VI-6 and C/ULC/SR-I(1) XIX-654 exempted land admeasuring 63,593 square meters under the provisions Section 19 (1) (V) of the Urban Land (Ceiling & Regulation) Act, 1976.
- 7.3 In light of the aforesaid two orders passed by the Additional Collector and Competent Authority, the entire Kapadia Land was exempted from the provisions of the Urban Land (Ceiling & Regulation) Act, 1976.
- 7.4 Eversmile and/or Kapadia Society had not obtained a Section 20 order under the Urban Land (Ceiling & Regulation) Act, 1976 in respect of the said Land and no proceedings have been initiated and hence after the implementation of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 would not apply to the said Land.

## 8. REVENUE RECORDS

### 8.1 PROPERTY REGISTER CARD

- 8.1.1 We have received and perused copies of the Property Register Card issued in the year 2012 and the relevant details recorded on the Property Register Card are set out in "Annexure F" hereto.
- 8.1.2 We notice that the other rights column in the PR Card reflects the names of (i) Ralf J Gonsalves on most of the portion of the said Land as reflected in "Annexure G" hereto and (ii) Bayo Putlaji Jhadhav in respect of CTS No 44 and 45 collectively admeasuring 35.20 square meters, as tenants. Eversmile has informed us and declared that they were tenants in respect of structures standing on a portion of the said Land, however, they have surrendered their rights in favour of Eversmile and their structures have been demolished in pursuance thereof and no claims or litigations initiated by Ralf J Gonsalves and/or Bayo Putlaji Jhadav in respect to the said Land and/or any portion thereof.
- 8.1.3 We note that the names of Kapadia Society and Eversmile have not been updated in the property register card in relation to their respective portions comprising in the said Land. However, Kapadia Society has applied for mutation of its name on the Property Register Card on 22 May 2015 and the same is pending.

### 8.2 7/12 EXTRACTS

- 8.2.1 We have received and reviewed the copies of the 7/12 extracts dated 30 March 2015 in respect of the following Survey Nos, part of which is comprised in the said Land:
- (i) Survey No 5 admeasuring approximately 26 Gunthas reflecting the name of Kapadia Society as holder;



- (ii) Survey No 6 Hissa No 1/1(part) admeasuring approximately 37 Gunthas reflecting the name of Kapadia Society as holder;
- (iii) Survey No 12 (part) admeasuring 5 Acres and 39 Gunthas reflecting the name of Kapadia Society as holder;
- (iv) Survey No 6 Hissa No 1/1 (part) admeasuring 336.90 square meters reflecting the name of Eversmile as holder; and
- (v) Survey No 12 (part) admeasuring 4,115.38 square meters reflecting the name of Eversmile as holder.

8.2.2 We have not been provided with a copy of the 7/12 extract pertaining to Survey No 6 Hissa No 3. Eversmile has informed and declared to us that land bearing Survey No 6 Hissa No 3 does not form part of Eversmile Land and/or the said Land and the same belongs to the Central Government. We have not been provided the Mutation Entries reflected in the aforesaid 7/12 extracts and previous revenue records, save and except Mutation Entry No 119 dated 2 January 2012 by which the name of Eversmile was mutated on the revenue record in respect of Survey 6 Hissa No1/1/A and Survey No 12 (part).

8.2.3 We understand that instead of issuing a single 7/12 extract for Survey No 6 Hissa No 1 and Survey No 12 showing the names of both Kapadia Society and Eversmile as co-owners of their respective portions of the aforesaid Survey Numbers, the Revenue Department as a matter of practice has issued separate 7/12 extract for the same survey numbers for separate portions owned by Kapadia Society and Eversmile and therefore there are separate 7/12 extracts issued for the same survey number with different lands.

8.2.4 The 7/12 extract for Survey Number 12 (part) admeasuring 4115.38 square meters out of the Eversmile Land admeasuring 6,088.88 square meters is in the name of Eversmile. The Property Register Card of the balance land admeasuring 1973.50 sq. meters. (being land admeasuring 6,088.88 square meters less land admeasuring 4115.38 square meters) bearing CTS No.41B/1/2, which though purchased by Eversmile under the aforesaid Conveyance dated 2 July 2010, is shown as reserved for Recreation Ground for the Municipal Corporation. Once the exchange / relocation is completed as per the High Court order dated 10 May 2012, Eversmile would have to obtain mutation of the Property Register Card of CTS No.41B/1/2 to delete the reference to Recreation Ground and mutate its name thereon.

## 9. MORTGAGE

- 9.1 Eversmile has by and under an Agreement dated 25 June 2014 executed between Eversmile and ICICI Bank Limited bearing Registration No 4756 of 2014 mortgaged a portion of the Eversmile Land bearing CTS Nos 41A(part), 41B/1/1, 41B/1/2, 44 and 45 collectively admeasuring 6,088.88 square meters in favour of ICICI Bank.



- 9.2 Eversmile has informed and declared to us that the original title deeds of the Eversmile Land is in custody of HDFC Limited and HDFC Limited is holding the same for and on behalf of ICICI Bank Limited. Eversmile has further informed and declared to us that HDFC Limited has no charge of any nature whatsoever in the said Land and/or the said Eversmile Land. Eversmile has also declared to us that HDFC Limited will release the original title deeds of the said Eversmile Land in favour of Eversmile, on repayment of all dues of ICICI Bank Limited. Eversmile has further declared that save and except the aforesaid mortgage in favour of ICICI Bank Limited, no other mortgage is subsisting on the said Land or any part thereof.
- 9.3 Eversmile and/or ECC DB Joint Venture is not entitled to mortgage the Rehab Component and/or the land on which the Rehab Component is being constructed as the same has to be eventually conveyed in favour of the society of the slum dwellers.

## 10. LITIGATIONS

We have received few papers pertaining to the litigations from Eversmile, and a summary of the same is provided hereinbelow.

### 10.1 Suit No 1782 OF 2006

10.1.1 Malkit Singh and another had filed S.C. Suit No. 1782 of 2006 in the Hon'ble City Civil Court at Bombay against M/s Goenka Builders and the Municipal Corporation of Greater Mumbai inter-alia seeking (i) a declaration that the construction of structure admeasuring 40\*35 on land admeasuring about 220 square meters bearing Survey No. 5, corresponding CTS No. 31 without the permission of MCGM is illegal and unlawful and (ii) an order of injunction to restrain M/s Goenka Builders from dispossessing Malkit Singh and another from land admeasuring about 220 square meters bearing Survey No. 5, corresponding CTS No. 31. . Malkit Singh and another has filed the aforesaid suit claiming that he is in possession of the aforesaid land bearing CTS No 31 since 1976, however, the plaint does not disclose the document based on which the plaintiffs acquired possession of the aforesaid land bearing CTS No 31. We notice that neither Kapadia Society nor Eversmile nor SRA is a party to the aforesaid Suit.

10.1.2 Malkit Singh and another have also filed a Notice of Motion in Suit No 1782 of 2006 inter-alia for restraining Goenka Builders, their servants, agents, persons claiming through them from dispossessing the plaintiff therein. However, we have not been provided with copies of any order passed in the aforesaid Notice of Motion.

10.1.3 We note that Land bearing CTS No. 31 admeasuring 220 square meters of Village Bapnala does not form part of the Eversmile Land, however, it forms part of the Rehab Land If Malkit Singh and another finally succeed in the aforesaid suit then the Court may direct Eversmile to exclude the aforesaid Land (forming part of the Rehab Land) and its FSI arising therefrom from the SRA scheme which is presently being implemented on the said Land.



- 10.1.4 M/s Goenka Builders filed a Notice of Motion in the aforesaid Suit No 118 of 2010 and inter-alia raised preliminary issues under Section 9A of the Civil Procure Code, 1908. We have not been provided with a copy of the aforesaid Notice of Motion. However, we understand that through this Notice of Motion Goenka Builders had sought for return of the plaint to be presented to an appropriate forum on the grounds that the Civil Court is barred from entertaining the suit under Section 42 of the Slum Act as the aforesaid land bearing CTS No 31 is a declared slum and a SRA scheme has been approved.
- 10.1.5 By and under an order dated 2 September 2009 passed by the City Civil Court the City Civil Court allowed the Notice of Motion filed by M/s Goenka Builders and the Hon'ble Court returned the plaint to Malkit Singh and another to be filed in the appropriate forum, on the grounds that the suit is barred under Section 42 of the Slum Act as Goenka Builders had obtained a letter of intent from SRA and development of the property has progressed and the aforesaid land is a declared slum and the challenge should be made before the Competent Authority.
- 10.1.6 Being aggrieved by the aforesaid order dated 2 September 2009 passed by the Hon'ble City Civil Court, Malkit Singh and another filed an Appeal from Order No 118 of 2010 against Goenka Builders, and another in the High Court of Judicature at Bombay challenging the aforesaid order dated 2 September 2009 passed by the City Civil Court.
- 10.1.7 By and under an order dated 7 December 2010, the Hon'ble High Court of Judicature at Bombay has admitted the aforesaid Appeal from Order No 118 of 2010 filed by Malkit Singh and another, however, the same is pending hearing for disposal.
- 10.1.8 Goenka Builders has not filed a written statement in the aforesaid suit.
- 10.2 **Suit No 1558 of 2011**
- 10.2.1 Vijay Shriram Patil and Satish Shriram Patil claim that their father Shriram Uttamrao Patil was leased land admeasuring 6,000 square feet bearing CTS Nos 36, 36/1 to 4, 37 and 37/1 by one Mohammad Issac Muzaffarali vide Agreement of Lease dated 21 April 1962 and their father's name appears in the revenue record. Vijay Shriram Patil and Satish Shriram Patil further claim that a structure known as Shriram Patil Chawl consisting of 17 rooms was constructed on the aforesaid land bearing CTS Nos 36, 36/1 to 4, 37 and 37/1. Vijay Shriram Patil and Satish Shriram Patil have also claimed to be the legal heirs of Shriram Uttamrao Patil who demised on 3 August 1989 and they further state that their father Shriram Uttamrao Patil used to carry on business in the name of style of Patil Book Binding from the aforesaid Shriram Patil Chawl. Vijay Shriram Patil and Satish Shriram Patil further claim that their father was assisted by various relatives and friends and in lieu of such assistance their father had accommodated them in the Shriram Patil Chawl on gratuitous license basis. Vijay Shriram Patil and Satish Shriram Patil have alleged that Eversmile has demolished the Shriram Patil Chawl.





- 10.2.2 In pursuance of the aforesaid Vijay Shriram Patil and Satish Shriram Patil have filed Suit No 1558 of 2011 against the Slum Rehabilitation Authority and Eversmile in the City Civil Court of Bombay at Dindoshi wherein the Vijay Patil and another are claiming right in respect of land bearing CTS No. 36, 36/1 to 4, 37 and 37/1 of Village Bapnala along with structures known as Shriram Patil Chawl consisting of 17 rooms. Vijay Shriram Patil and Satish Shriram Patil have inter-alia prayed for (i) declaring that they have valid and subsisting right to reside and remain upon the land bearing CTS No. 36, 36/1 to 4, 37 and 37/1 of Village Bapnala and Eversmile cannot prevent the access of the plaintiff, (ii) declare that the demolition of the structures of the plaintiff by Eversmile is illegal and the same should be reconstructed and (iii) injunction restraining Eversmile, their servants, agents, assignee/s from entering into or carrying out any construction activities on land bearing CTS No. 36, 36/1 to 4, 37 and 37/1 of Village Bapnala. .
- 10.2.3 Vijay Shriram Patil and Satish Shriram Patil have also claimed that they have instituted the proceedings to protect their rights in the land and not for seeking alternate accommodation.
- 10.2.4 Eversmile has filed their written statement in the aforesaid Suit No 1558 of 20011 and have inter-alia contended that the suit is baseless, vexatious, devoid of any merits and it discloses no cause of action. Eversmile has further claimed that the aforesaid suit is barred under the provisions of Section 35 read with Section 42 of the Slum Act as the land is declared a slum and slum scheme has been implemented by Eversmile by obtaining all necessary permission/sanctions from the Competent Authority. Eversmile has further claimed that the Hon'ble City Civil Court does not have pecuniary jurisdiction to try and entertain the aforesaid suit and the jurisdiction issue be decided as a preliminary issue. Eversmile has contended that the Vijay Shriram Patil and Satish Shriram Patil have filed the aforesaid suit based on forged and fabricated documents and the aforesaid suit is filed to extort money from Eversmile. Eversmile has also contended that Vijay Shriram Patil and Satish Shriram Patil have not joined necessary parties to the aforesaid suit inter-alia being the relatives who used to allegedly reside in the alleged Shriram Patil Chawl and such relatives names are not produced and neither of them have approached the Court for reliefs. Eversmile has further stated that Eversmile has already created third party rights in the buildings to be constructed under the scheme who are not parties to the present suit. Eversmile has further informed the Court that they have acquired development rights from Kapadia Society. Eversmile has further informed the Court that the alleged lease deed relied upon by the plaintiff, is unregistered and hence no title would pass.
- 10.2.5 We note that Land bearing CTS No. 36, 36/1 to 4, 37 and 37/1 of Village Bapnala does not form part of the Eversmile Land however, it forms part of the Rehab Land If Vijay Shriram Patil and Satish Shriram Patil finally succeed in the aforesaid suit then the Court may direct Eversmile to exclude the aforesaid Land (forming part of the Rehab Land) and its FSI arising therefrom from the SRA scheme which is presently being implemented on the said Land. We further note that Vijay Shriram Patil and



Satish Shriram Patil are claiming to be lessee of aforesaid land admeasuring 6,000 square feet, whereas as per the Property Register Card of the aforesaid land, the total area aggregates to 138.70 square meters. Therefore, there appears to be a mismatch of the area claimed by Vijay Shriram Patil and Satish Shriram Patil.

- 10.2.6 Notice of Motion No 2277 of 2011 was also filed in Suit No 1558 of 2011 by Vijay Patil for ad-interim / interim reliefs. However, The Hon'ble City Civil Court has by and under its order dated 20 February 2015 dismissed the aforesaid Notice of Motion No 2277 of 2011 filed by Vijay Shriram Patil and Satish Shriram Patil on the grounds that the Notice of Motion is pending of 4 (four) years, the land has been declared a slum, the relatives of the Plaintiffs are not impleaded in the suit and it appears that Eversmile has after complying with procedural aspect commenced work. The Hon'ble Court further held that in rarest of rare case a mandatory injunction can be granted and the Hon'ble Court stated that it has not found prompt reaction on the part of the plaintiffs therein.
- 10.2.7 Eversmile has also filed a Notice of Motion No 2097 of 2011 in the aforesaid Suit No 1558 of 2011 for framing preliminary issue of whether the Hon'ble City Civil Court had jurisdiction to try and entertain the suit and also whether the suit is barred by limitation.
- 10.2.8 Thereafter, by and under an order dated 25 October 2013 passed by the Hon'ble City Civil Court, the Hon'ble City Civil Court ruled that the suit is not barred by limitation and that the Hon'ble City Civil Court has jurisdiction to entertain and try the suit.
- 10.2.9 Being aggrieved by the aforesaid order of the Hon'ble City Civil Court Eversmile has filed Civil Revision Application No 23 of 2014 against Vijay Patil and another in the High Court of Judicature at Bombay for quashing and setting aside the aforesaid order dated 25 October 2013.
- 10.2.10 By and under an order dated 20 January 2014, the Hon'ble High Court of Judicature at Bombay has admitted the aforesaid Civil Revision Application and the same is pending hearing.
- 10.3 Eversmile has informed and declared to us that no adverse orders have been passed in any of the aforesaid proceedings which shall impact the title of Eversmile to the Eversmile Land and/or the rights of Eversmile and/or the said Joint Venture to develop the said Land and/or the title of Kapadia Society to its portion of the said Land.

## 11. SEARCHES AND INVESTIGATIONS

### 11.1 ROC SEARCH

- 11.1.1 The ROC Search Report in respect of Eversmile records the following outstanding charges on the said Land:



- (a) ICICI Bank Limited amounting to Rs 30,00,00,000 (Rupees Thirty Crore) which was created on 25 June 2014 and registered with the ROC on 25 July 2014.
- (b) Allahabad Bank amounting to Rs 46,00,00,000 (Rupees Forty Six Crore) which was created on 29 December 2004 and registered with the ROC on 1 February 2005.

11.1.2 Eversmile has informed and declared to us that save and except mortgage in favour of ICICI Bank Limited there are no other mortgage subsisting on the said Land and that the aforesaid Allahabad Bank loan has been re-paid in full and their charge has been released. Eversmile has provided us a copy of the certificate of V M Kundaliya & Associates, Company Secretaries which shows that the aforesaid charge was satisfied on 12 April 2007.

11.1.3 The ROC Search Report in respect of DB Realty Limited records the following outstanding charges on the said Land:

- (a) Bank of India amounting to Rs 225,00,00,000 (Rupees Two Hundred Twenty Five Crore) which was created on 15 October 2013 and registered with the ROC on 14 November 2013.
- (b) Bank of India amounting to Rs 30,00,00,000 (Rupees Thirty Crore) which was created on 4 July 2013 and registered with the ROC on 7 August 2013.
- (c) Bank of India amounting to Rs 65,00,00,000 (Rupees Sixty Five Crore) which was created on 4 July 2013 and registered with the ROC on 7 August 2013.
- (d) ICICI Bank Limited amounting to Rs 30,00,00,000 (Rupees Thirty Crore) which was created on 25 June 2014 and registered with the ROC on 25 July 2014.

11.1.4 DB Realty Limited has informed and declared to us that save and except mortgage in favour of ICICI Bank Limited there are no other mortgage subsisting on the said Land and that the aforesaid Bank of India loan does not pertain to the said Land or any part thereof.

11.1.5 The ROC Search Report in respect of Konark Conwell LLP states that there are no outstanding charges in respect of the said Land vis-à-vis Konark Conwell LLP.

## 11.2 SUB-REGISTRAR SEARCH

11.2.1 All documents reflected in the Sub-Registrar Report is listed in Annexure G hereto.

11.2.2 We have been informed by Eversmile that documents listed at Serial Nos 1 to 4, 6, 7, 10 to 16, 18 to 21, 29 to 33, 37 and 38 does not pertain to the said Land.



11.2.3 Save and except the documents listed at Serial Nos 5, 17, 22 to 27, 34 to 36 we have not been provided with a copy of any of the other documents listed in Annexure G.

## 12. PUBLIC NOTICE

12.1 Public notice has been published on 11 June 2015 in the Free Press Journal, Mumbai edition and on 12 June 2015 in Navshakti, Marathi inviting objections in respect of the title of Eversmile to the Eversmile Land and the right of ECC-DB Joint Venture to develop the said Land under the provisions of Regulation 33 (10) of the Development Control Regulations of Greater Mumbai, 1991. However, we have not received any objection to the same.

## 13. INSPECTION OF ORIGINAL DOCUMENTS

13.1 ICICI Bank Limited has provided us inspection of the following original document which is in their custody:

The Deed of Conveyance dated 2 July 2010 executed between Kapadia Society (therein referred to as the Society of the One Part) and Eversmile Construction Company Private Limited (therein referred to as the Purchasers of the Other Part) bearing Registration No 8034 of 2010.

13.2 Save and except the original of the Joint Venture Agreement dated 7 March 2007 executed between Eversmile Construction Company Private Limited (therein referred to as Eversmile of the One Part) and DB Realty Limited (therein referred to as DB of the Other Part), Eversmile has provided us inspection of the following original documents:

13.2.1 Unregistered Agreement for Sale cum Development Agreement dated 26 August 1986 executed between Kapadia Society (therein referred to as the Society of the First Part), Messer Century Builders (therein referred to as the Builders of the Second Part) and Veena Estate Private Limited (therein referred to as the Developers of the Third Part);

13.2.2 Unregistered Supplemental Agreement dated 27 August 2004 executed between Kapadia Society (therein referred to as the Society of the First Part), Messer Century Builders (therein referred to as the Builders of the Second Part) and Veena Estate Private Limited (therein referred to as the Developers of the Third Part);

13.2.3 Agreement dated 25 May 2005 executed between Kapadia Society (therein referred to as the Society of One Part) and Eversmile Construction Company Private Limited (therein referred to as the Developers of the Other Part) and registered at the office of the Sub-Registrar of Assurances at Mumbai under Serial No 5321 of 2005;

13.2.4 Deed of Admission dated 26 May 2012 executed between Eversmile Construction Company Private Limited (therein referred to as Party of the First Part), DB Realty Limited (therein referred to as the Party of the Second Part) and Konark Developers, a partnership firm (therein referred to as Incoming Member of the Third Part);



13.2.5 Agreement dated 12 March 2014 executed by Eversmile, DB Realty Limited and Konark Developers ;

13.2.6 Agreement dated 31 July 2015 executed by Eversmile, DB Realty Limited and Konark Developers

**14. INCOME TAX**

We have been provided a certificate of the Statutory Auditor of Eversmile which shows that the said Land is a Stock in Trade / Project Work in Progress in the books of Eversmile and ECC-DB JV and hence a certificate from the Income Tax Authorities under Section 281 of the Income Tax Act, 1961 is not required for creating a charge / mortgage in respect of the said Eversmile Land and/or the development right relating to the Sale Component. We have been informed that there are no pending proceedings against Eversmile under the Income Tax Act, 1961 and the rules framed thereunder.

**15. ARCHITECTURAL ASPECTS**

We have not conducted any architectural due diligence in respect of the said Land and the structures intended to be constructed thereon, as we do not advise on any architectural aspects. We also do not conduct any site inspection. We have requested you to independently carry out all architectural due diligence in respect of the said Land including whether the structures intended to be developed on the said Land are being constructed in accordance with the sanctioned plans and the applicable rules and regulations. You shall also independently ascertain the permissive use of the said Land and structures intended to be developed thereon, whether the FSI used or intended to be used on the said Land has been duly and properly utilised, whether the said Land is affected by any reservation or road set back or land acquisition proceedings, whether the development intended to be carried out on the said Land is in accordance with the applicable Development Control Regulations and other applicable laws and regulations. You are also requested to independently examine the building permissions, approved layout, approvals, clearances (including zoning permissions, environmental clearances, crz approvals etc) obtained / to be obtained in respect of the structures constructed / to be constructed on the said Land. We also advise you to conduct inspection of the site to ascertain the exact boundaries and area of the said Land and also verify through an architect the location of the land on which Saleable Component, Rehab Component and Recreation Ground has been sanctioned.

**16. ASSUMPTIONS**

This Report is based on the following assumptions:

- 16.1 that photocopies of all documents furnished to us are complete, accurate and a faithful reproduction of the originals of which they purport to be copies;
- 16.2 that all public records and documents, and the entries therein, referred to or relied upon herein are true, accurate, current and have been validly made;



- 16.3 that all sanctions and permissions referred to or relied upon herein have been validly obtained and have not been cancelled or revoked at any time;
- 16.4 there are no facts or circumstances in existence and no events have occurred which render any of the documents referred to or relied upon in this Report void or voidable, repudiated or frustrated or capable of rescission for any reason and in particular, but without limitation by reason of lack of consideration, default, fraud or misrepresentation and that no authorization, whether under any power of attorney, resolution or otherwise, has been withdrawn, cancelled or revoked;
- 16.5 the genuineness of all signatures, the authenticity of the documents submitted to us and conformity in all respects of the copies of documents produced before us to the originals thereof;
- 16.6 the genuineness of the contents and authority of the sender in respect of the email messages and their attachments received by us;
- 16.7 For issuance of this Report we have relied on various factual details provided by Eversmile and ECC DB Joint Venture and we have assumed that the information which has been provided by Eversmile and ECC DB Joint Venture through their answers to the requisitions raised and also under their respective Declarations based on which this report has been prepared is valid and genuine and the same has not been independently verified by us;
- 16.8 CTS 41 admeasuring 8,398 square meters forms part of CTS No 41A and/or CTS no 41B/1/1 and/or CTS No 41B/1/2 and does not form part of CTS No 41C, 41D and 41E. That CTS No 41B has further been sub-divided into CTS No 41B/1 and CTS No 41B/2;
- 16.9 Reconciliation of all CTS Nos comprising in the said Land including CTS No 41 as is stated in paragraph no 2.11 and 2.13 hereinabove, as there seem to be sub-divisions and amalgamations of the same.

## 17. CONCLUSION

- 17.1 Subject to what is stated hereinabove, we observe that Eversmile Construction Company Private Limited is the owner of the Eversmile Land admeasuring 6,088.88 square meters (which forms part of the said Land) and its title to the same is clear, marketable and free from all encumbrances and Eversmile has a right to develop the same subject to the following:
- (a) mortgage created in respect of a portion of the Eversmile Land admeasuring 6,088.88 square meters in favour of ICICI Bank Limited as stated in paragraph 9 hereinabove;
- (b) rights created in favour of DB Realty Limited and Konark Conwell LLP in pursuance of the Joint Venture Agreement read with the Deed of Admission, the Agreement dated 12 March 2014 and Agreement dated 31 July 2015 as recorded in paragraph nos 2.13, 2.16, 2.17 and 2.18 respectively hereinabove, under which agreements the responsibility of development of the said Land and sale of the tenements thereof has been cast upon DB Realty Limited and Konark Conwell LLP;



- (c) rights of the slum dwellers and project affected persons in relation to the Rehab Component as per the LOI, Revised LOI and Regulation 33 (10) of the Development Control Regulations of Greater Mumbai, 1991 read with Appendix IV thereof and all notifications / circulars / resolutions issued by the Slum Rehabilitation Authority ("Regulation 33 (10)");
- (d) Compliance of LOI, Revised LOI and Regulation 33 (10), the terms and conditions of Minutes of the order dated 10 May 2012 as stated in paragraph 5 hereinabove and all other development related approvals and sanctions;
- (e) Right of the members of Kapadia Society to receive 2 residential flats admeasuring 900 square feet and 8 members of Kapadia Society to receive commercial premises admeasuring 4247 square feet in the project known as Ascot Centre under construction on Kapadia Land;
- (f) Obligations towards the Recreation Ground to be constructed as per the order of the Bombay High Court referred to in paragraph nos 5.5, 5.6 and 5.7 hereinabove.

17.2 Subject to what is stated hereinabove, we state that Eversmile has acquired development rights in respect of the balance portion of the said Land admeasuring 10,905.12 square meters (i.e. said Land minus Eversmile Land) from Kapadia Society, who is the owner thereof by adverse possession and also by virtue of the consents given by the slum dwellers and the LOI and Revised LOI, and such right of Eversmile is clear, marketable and free from all encumbrances subject to the following:

- (a) Outcome of the pending litigations in respect of the land bearing CTS Nos 31, 36, 36/1 to 4, 37 and 37/1 collectively admeasuring 358.70 square meters forming part of the Notified Land as stated in paragraph no 10 hereinabove on which we understand that the Rehab Component is being constructed. If Malkit Singh and another in respect of land admeasuring 220 square meters bearing CTS No 31 and Vijay Shriram Patil and Satish Shriram Patil in respect of land admeasuring 138.70 square meters as per the property register card (stated as 6,000 square feet in the plaint) bearing CTS Nos 36, 36/1 to 4, 37 and 37/1 finally succeed in their respective aforesaid suits then the Court may direct Eversmile to exclude the their respective lands (forming part of the Rehab Land) and the FSI arising therefrom from the SRA scheme which is presently being implemented on the said Land;
- (b) Obligations towards Recreation Ground to be constructed as per the order of the Bombay High Court referred to in paragraph nos 5.5, 5.6 and 5.7 hereinabove;
- (c) rights created in favour of DB Realty Limited and Konark Conwell LLP in pursuance of the Joint Venture Agreement read with the Deed of Admission, the Agreement dated 12 March 2014 and Agreement dated 31 July 2015 as recorded in paragraph nos 2.13, 2.16, 2.17 and 2.18 respectively hereinabove, under which agreements the responsibility of development of the said Land and sale of the tenements thereof has been cast upon DB Realty Limited and Konark Conwell LLP;



- (d) rights of the slum dwellers and project affected persons in relation to the Rehab Component as per the LOI, Revised LOI and Regulation 33 (10);
  - (e) Compliance of LOI, Revised LOI and Regulation 33 (10), the terms and conditions of Minutes of the order dated 10 May 2012 as stated in paragraph 5 hereinabove and all other development related approvals and sanctions; and
  - (f) Eversmile and/or ECC DB Joint Venture is not entitled to mortgage this portion of the said Land (i.e. the said Land minus Eversmile land) as it is being used for construction of the Rehab Component.
- 17.3 Subject to what is stated hereinabove, Eversmile is entitled to mortgage only (i) the ownership rights to the Eversmile Land and the (ii) development rights to the extent of the Sale Component subject to the obligation under the LOI, Revised LOI and Regulation 33 (10) including obligation of rehabilitating the slum dwellers and project affected persons and subject to the following:
- (a) Consent of DB Realty Limited and Konark Conwell LLP to be evidenced by execution of the instrument creating the mortgage;
  - (b) No objection Certificate of ICICI Bank or release of the mortgage created in favour of ICICI Bank Limited as stated in paragraph 9 hereinabove;
  - (c) Outcome of the pending litigations which is pertaining to the Rehab Component as stated in paragraph 10 hereinabove; and
18. **DISCLAIMER**
- 18.1 The contents of this Report are our views on the title to the Property based on our perusal of the Documents, and in no event shall we be liable for any consequential incidental or punitive losses, damages or expenses whatsoever.
- 18.2 We are unable to co-relate the area of the said Land as mentioned in the title document with the 7/12 extracts provided to us.
- 18.3 We have not undertaken any searches in the courts or any judicial forums for ascertaining whether any litigations have been initiated and/or pending in respect of the said Land.
- 18.4 To the extent that this Report contains or refers to reports, memoranda, lists, information, opinions or advice from any other person, that person remains exclusively responsible for the contents of such reports, memoranda, lists, information, opinions or advice.
- 18.5 For the purpose of this Report, we have relied upon the said Search Report of Mr Vinod Sawant and the ROC Search Reports of Sundeep Singhi and Associates. Please note that the process of searches in the registries and/or Governmental offices is often not reliable since the records are not updated / maintained properly.





- 18.6 The searches have been conducted in the offices of Sub Registrar of Assurances from 1975 to 2015 (40 years). However, the manual register for the year 2015 has not been binded yet. A few Index-II in the records of the Sub-Registrar are missing and pages of certain books are completely torn and therefore the report is subject to torn pages and missing documents.
- 18.7 This Report is issued for the sole use of the addressee and without our consent it is not to be referred to and relied upon by any other person whatsoever. The contents of this Report are confidential. Neither this Report nor any of its contents shall be copied, quoted, disclosed, referred to in any document or given to any third party, in whole or in part, other than you without our express written consent. We accept no responsibility or legal liability to any person other than you in relation to the contents of the Report even if the Report has been disclosed with our consent.
- 18.8 Our maximum aggregate liability to any involved parties arising from, or in relation to, this Report (in contract, tort, negligence or otherwise howsoever arising) shall not in any circumstances exceed the professional fee payable to us for this specific mandate.
- 18.9 This Report must be read together with all the Annexures annexed hereto. This Report is issued for the sole use of the addressee.

Yours faithfully  
For Khaitan & Co



Mr. Anishek Sharma  
Partner

Encl: As above.