

**Form – IV**  
**(Terms 7(3)(c))**

***Mortgage Deed***

**Instruction for executing the Mortgage Deed**

1. The Mortgage Deed is to be executed after the Loan Agreement is signed and requires execution by the Borrowing Agency only under its Common Seal in the presence of at least two witness;
2. This final endorsement of the Mortgage Deed must be got approved from Central Wakf Council prior to its execution;
3. The Mortgage Deed should be stamped in accordance with the Stamp Act unless the Mortgage Deed has been exempted from the payment of stamp duty. However, it should be stamped only after the approval of the Mortgage Deed has been obtained from Central Wakf Council.
4. After execution, the Mortgage Deed should be registered with the Registrar or Sub-Registrar of the area where the mortgage property is located and a photo state copy of the receipt after lodging the Mortgage Deed for registration should be forwarded to Central Wakf Council with the request for the release of the first instalments;
5. The original copy of the Mortgage Deed, duly registered, should be forwarded to Central Wakf Council as and when received from the Registrar or the Sub-Registrar of Assurance.

## *Mortgage Deed*

THIS INDENTURE executed at..... this ..... day of ..... one thousand nine hundred and ..... between, (a) (.....State Wakf Board) constituted under Section.....of the Wakf Act of 1995 having its head office at.....represented by its Secretary, Shri.....and (b) Wakf/Trust..... represented by its Mutawalli (hereinafter called the 'Borrowers' which expression shall, unless repugnant to the context or meaning thereof, include their successors and assigns of the one part, and the Central Wakf Council constituted under Section 9 of the Wakf Act, 1995 having its registered office at Block 11, Gallery 14, Jamnagar House, New Delhi – 110 011 (hereinafter called the Council which expression shall unless repugnant to the context or maining thereof, include its successors or assigns) of the other part.

### **WHEREAS:-**

- I. The Borrowers have undertaken a housing and/or urban development scheme known as the .....in the city of ..... in the State of ..... for the acquisition and development into residential colonies and commercial area of developed/partly developed/ and under developed land measuring..... acres/ hectares situated within/outside the Municipal Limits of the city of ..... (hereinafter of referred as the said scheme).
- II. The total investment for the complete implementation of the said scheme has been estimated by the Borrowers at Rs..... lakhs;
- III. Pursuant to an application made by the borrowers to the Council for a loan of Rs..... repayable in.....instalments from ..... to ..... to be utilised towards the cost of implementation of the said scheme, the Council has agreed to grant to the Borrowers a loan of the aforesaid amount of Rs.....) (in words.....) in instalments to be disbursed as provided in the Agreement dated.....executed by and between the Council and the Borrowers (hereinafter referred to as the Loan Agreement).

- IV. One of the conditions for the aforesaid loan Agreement is that the Borrowers prior to the disbursement of the first instalment of loan as provided in the said loan Agreement shall furnish to the Council a Guarantee from the Government of the State or a guarantee from a Nationalized or Subsidiary Bank or other financial institutions or create either a first mortgage or one or more Deeds of Mortgage or a first mortgage by deposit of Title Deeds of the immovable properties owned and possessed by the borrowers of a total value of not less than 133 1/3% of the total amounts for securing due fulfillment of the obligations of the Borrowers in terms of the said Loan Agreement and for due repayment of the Principal amount and the amount of donation together with the other monies as shall be due to the Council in pursuance of the said Loan Agreement.
- V. In accordance with an in fulfillment of the terms and conditions of the said Loan Agreement the Borrowers have agreed to create a first mortgage of the several pieces and parcel of land and/or buildings and/or flats/ houses together with the land on which they are constructed, held by the Borrowers @ Rs.....which are situated within the Municipal limits of the..... and are fully described in the first Schedule hereunder written and delineated in red ink on the plan annexed hereto.
- VI. The Borrowers are well and sufficiently seized and possessed of and are entitled to the aforesaid properties duly described in the First Schedule hereunder written and delineated in the plan hereto annexed and;
- VII. The ..... State Wakf Board, Borrowers (a) of the first part, has agreed and has given sanction under Section 51 of the Wakf Act, 1995, to secure the loan and mortgage the property vide their Resolution No..... dated.....
- VIII. The Government of the State of.....dated..... has, by its letter No.....dated..... addressed to the Borrowers conveyed its approval under section 75 of the Wakf Act, 1995 for the mortgage of the properties described in the First Schedule hereunder written.

**NOW THIS INDENTURE WITNESSETH AS FOLLOWS: -**

1. In pursuance of the said Loan Agreement and in consideration of the Council having agreed to lend to the Borrowers a sum of upto Rs..... (Rupees..... only) in the manner laid down in the loan Agreement and subject to the execution hereof and the compliance of the terms and conditions contained in the said Loan Agreement and otherwise complying with all the obligations hereunder the Borrowers do hereby covenant with the Council that the Borrowers shall repay to the Council the said sum of Rs..... (Rupees..... only) (Hereafter for brevity's sake also called the "said principal sum") in accordance with the repayment schedule mentioned in the said Loan Agreement and/or any modification thereto, together with donation on the said Principal sum or the balance thereof remaining unpaid for the time being at the current rate of.....% (.....) per annum or at such higher rate as may be fixed by the Council in terms of the Loan Agreement computed on the amounts loaned from the respective dates on which each of the respective instalment comprising the said principal sum shall be lent and advanced by the Council to the

Borrowers and payable half-yearly on 30<sup>th</sup> day of June and 31<sup>st</sup> day of December of each year calculated as per terms of the Loan Agreement. PROVIDED ALWAYS AND IT IS HEREBY AGREED THAT all donation which shall during the continuance of this security accrue due on the said principal sum of any part thereof which shall for the time being remain unpaid and all other monies which become payable under these presents shall in case the same be not paid on the days on which they respectively become due carry donation at the rate a foresaid computed from the respective time of such donation or monies accruing due upon the footing of compound donation computed at the rate aforesaid with rests taken or made half-yearly on the days hereinbefore provided for payment of donation and all such compound donation shall be a charged on the land and/or building hereby mortgaged but so that this provision shall not be deemed to authorize the Borrowers to allow any donation or other monies as aforesaid to fall into arrears unless permitted so to do by the Council nor shall it in any way affect the convenient by the Borrowers to pay donation every half-yearly and to pay such other monies as aforesaid or the rights of the Council to file suit or take other legal proceedings or take other action under these presents to recover donation or other monies due under these presents that may have been in arrears and remain unpaid and the Borrowers shall after the same shall become due upon demand pay to the Council all such donation and all other monies which may have become due and payable under these presents donation and all other monies which may have become due and pay able under these presents PROVIDED HOWEVER THAT it shall be lawful for the Council to deduct from any monies to be lent and advanced by it to the Borrowers as aforesaid any arrears of donation or instalments of principal or other monies then remaining due and payable by the Borrowers to the Council. PROVIDED FURTHER THAT in the event of default in the payment of the instalment of loan and/or donation on the due dates the Borrowers shall (except as the Council may otherwise agree in writing) to the Council additional donation at the penal rate of 2 ½ % (two and half percent) per annum on such over due payments and all such additional donation shall be a charge on the land and /or building(s) hereby mortgaged. PROVIDED LASTLY THAT subject to the provisions contained in the loan Agreement the Borrowers will be at liberty to repay the outstanding principal sum in full or in part before the due date or dates prescribed for payment in these presents, ;such premature repayments made by the Borrowers shall be applied first to the accrued donation and then to the outstanding amount of the said principal sum.

2. For the consideration aforesaid, and to secure due fulfillment of the obligations of the Borrowers in terms of the said loan Agreement and also to secure due repayment of the principal amount of donation together with the all money as shall be due to the Council pursuant to these presents, the Borrowers do hereby grant convey assign and assure unto the Council and all singular the aforesaid pieces and parcels of land and/or buildings and/or flats/houses together with the land on which they are constructed situate lying and being in the Municipal Limits of the City of ....., the State of ..... and more fully described in the First Schedule hereunder written and delineated in red ink in the plan annexed hereto, and all the State right, title, donation, claim and demand of the Borrowers into or upon, all the pieces and parcels of land and/or building and flats/houses and land referred to hereinabove (hereinafter referred to as “the Mortgaged properties”). TO HAVE AND TO HOLD THE MORTGAGE PROPERTIES unto the Council absolutely forever subject to the proviso for redemption hereinafter contained.
3. PROVIDED THAT if the Borrowers shall duly fulfill its obligations under the Loan Agreement and pay to the Council all monies and other amount payable hereunder, the Council shall, at any time thereafter upon the request and at the cost of the Borrowers release the mortgaged properties hereinbefore expressed to be

hereby assigned unto the Borrowers or as it shall direct.

4. PROVIDED THAT when the amount of the instalment paid by the Borrowers to the Council towards the principal amount of the loan aggregates to or exceed 75 per cent of the value of the property mortgaged hereunder and provided the Borrowers have paid up the donation and any other miscellaneous amounts then due in full the Borrowers will be entitled to redeem the respective mortgaged property.
5. PROVIDED further that the Borrowers will be entitled at any time they chose to redeem the property mortgaged under any one or more mortgaged deeds by paying up the Council an amount equal to 75% of the value of the property mortgaged under any one or more mortgaged deeds towards the principal amount of the loan and all the donation and any other miscellaneous amount due and payable upto the time of such redemption/repayment under the loan.
6. The Borrowers hereby conversant with the Council as follows :
  - i) All the mortgaged properties described in the first Schedule hereunder Written are the absolute property of the Borrowers and at the sole disposal of the Borrowers and free from any charge of encumbrances what so ever. The Borrowers now have full and absolute power to grant convey assign, transfer and assure ALL AND SINGULAR the mortgaged properties upto and to the use of the Council in the manner aforesaid.
  - ii) The Borrowers and all other person lawfully or equitably claiming or entitled to claim any estate, right, title or donation into, or upon the mortgaged properties or any of them, or any part thereof, respectively, shall and will, from time to time, and at all times, execute, make and do or causes and procure to be executed, made and done every such assurance, act and thing, for further or more perfectly assuring all or any of the mortgaged properties unto and to the use of the Council as shall be reasonably required.
  - iii) The Borrowers shall at all times, during the continuance of these presents and the security hereby created, pay all rents and Taxes, present as well as future, and all dues, duties and outgoing whatsoever payable in respect of the mortgaged properties immediately the same shall have become due and will keep the mortgaged properties and every part thereof in a good and substantial state of repair and also keep the same insured in the joint names of the Borrowers and the Council, against damage by the fire without any obligation on the part of the Council to call for such insurance in their full value with some insurance company of repute to be approved of in writing by the COUNCIL AND the Borrowers will punctually pay all premia on such insurance & will produce to the Council on demand the policy of such insurance & the receipts for premium so paid, and all monies to be received under such policies shall at the option of the Council be applied either in and towards payments of the monies hereby secured or the replacing or reinstating the property in respect of which the monies have been paid. AND in case the Borrowers shall neglect to keep the mortgaged property or any part thereof in good and substantial repairs or to pay the rents, rates, taxes and assessments, outgoing dues duties as aforesaid or to effect or keep up such insurance as aforesaid and pay the renewal premia thereon then and in any of such cases, it shall be lawful for, but not obligatory upon, the Council to repair and keep in good and substantial repair and working order the mortgaged property or any part thereof, and pay any such rents, rates, taxes and assessments, outgoings, dues and duties and to insure and keep insured the mortgaged property to their full value or may less sum and for such times as the Council shall think proper and to pay the renewal premia therefore and all monies costs and charges of such repair the paying of such rents, rates taxes and assessments outgoings,

dues and duties and the making and continuing of such insurance by the Council as aforesaid, and the payment of renewal premia therefore, shall be charged upon the mortgaged properties.

- iv) The Borrowers shall permit the Council and its servants and agents, either Alone or with working and/others, from time to time and at all reasonable times, to enter into, and upon the mortgaged properties, and at the cost of the Borrowers to inspect the same. The expenses incurred by the Council on such inspection shall be debited to the Borrowers and shall be a charge on the mortgaged properties.
- v) The Borrowers shall give all information and assistance and submit such statements and returns as may be required by the Council or by any person, appointed by it, in relation to the said scheme.
- vi) The Borrowers shall not allow a receiver other than a receiver appointed by the Council pursuant to the provisions hereinafter contained to be appointed of the mortgaged properties or any part thereof, or any distress or execution to be levied, or enforced upon or against any of the mortgaged properties. The Borrowers shall not create or purport or attempt to create any change or mortgage ranking, of which by any means may be made to rank on the mortgaged properties, or any part thereof, pari passu with or in priority to the security hereby constituted, nor shall it create or purport to create a second or subsequent change on the mortgaged properties without the previous consent of the Council in writing.
- vii) The Borrowers shall comply with the provisions of all laws, whether now existing or which may be enacted hereafter, as may be applicable to the scheme.
- viii) The Borrowers shall, during the continuance of this security, keep all title deeds of the land comprised in the mortgaged properties, deposited with the Council or its nominees and shall hold the same in trust for the Council for any period in which the said documents are left or allowed to remain with it or released to it temporarily on its request. The Borrowers shall in no case deliver the said documents of title to any other person or deal with them in any manner prejudicial to the interests of the Council during the continuance of this security.
- ix) The said loan advanced by the Council shall be utilized by the Borrowers only for the purposes of the said scheme and for no other purpose whatsoever.
- x) The Borrowers shall maintain proper and separate books of account for the said Scheme and shall have them at all times posted and shall submit a full report and render accounts half-yearly (on 31<sup>st</sup> March and 30<sup>th</sup> September) in respect of the progress made and expenditure incurred by the Borrowers in the execution of the said Scheme and shall give a full and true account of all sales made and income received on plots or houses covered by the said scheme. The Borrowers shall further permit the officer or other representatives of the Council to inspect (during office hours) any of its books/records etc. and to take extracts there from.
- xi) The Borrowers shall not without the prior permission of the Council obtained in writing invest any part of the loan money advanced, by way of deposits; loans share capital or otherwise in any concern.

7. PROVIDED FURTHER AND IT IS HEREBY AGREED AND DECLARED THAT:

- i) It shall be lawful for the Council, at any time without any further consent of the Borrowers to sell concur with any other person in selling the mortgaged properties or any part thereof, either by public auction or private contract, with liberty also to make such conditions or stipulation respecting title or evidence of title or other matters as the Council may deem proper with power to buy in the mortgaged properties at any sale by auction or to rescind or vary any contract for sale and to resell the mortgaged properties without being answerable or responsible for any loss or diminution occasioned thereby and with power also to execute assurances and giving effectual receipt for the purchases money and do all other acts and things for completing the sale which the persons or persons exercising the power of the sale shall think proper AND the aforesaid power shall be deemed to be a power to sell and concur in selling the mortgaged properties without the intervention of the Court.
- ii) The power of the sale hereinafter contained shall not be exercised by the Council unless and until (a) default shall have been made by the Borrowers in payment of any instalment of the principal amount of the loan due and payable under the Loan Agreement or under these presents and for the space of three months next after the notice (2) of Section 69 of the Transfer of property Act 1882, requiring the payment of any principal money due and payable under the Loan Agreement or these presents or such part thereof as may for the time being due shall have been served on the Borrowers (b) donation amounting at least to Rs.10,000/- shall be in arrears and remain unpaid for three months after becoming due.
- iii) All other provisions and trusts ancillary the power of sale which are contained in section 69 of the Transfer of property Act, 1882, shall apply to this mortgage.
- iv) Upon any such sale as aforesaid the receipt of the Council for the purchased money shall effectually discharge the purchasers or purchasers there from and from being concerned to see to the application thereof or being answerable for the loss or miss application thereof.
- v) The Council shall have the right to appoint any of its officers, or any other person whom it may consider proper, as receiver of the mortgaged properties and all the provisions, powers and trusts contained in Section 69 A of the Transfer of Property Act, 1882 shall apply to the Receiver appointed by the Council.

Provided that no such appointment shall be made until the power of sale has become exercisable under the preceding clause 7(ii).

- vi) Section 67 of the Transfer of property Act, 1882, shall not apply to these presents.
- vii) Over and above the other provisions herein contained and without prejudice thereto, in the event that default shall be committed by the borrowers in the repayment of any loan instalment on the date set out in the loan Agreement and such default continuing for a period of forty five days, or if donation amounting to at least Rs.10,000/- shall be in arrears and unpaid for one month after becoming due, the Council shall have the right after giving 24 hours written notice to the Borrowers of the mortgaged properties and realize all the properties and assets mortgaged to the Council hereunder and the Borrowers shall in such event forthwith on the expiry of such notice as aforesaid deliver the mortgaged properties to the Council And henceforth the Council shall be entitled quietly to possess, use and enjoy the said properties and receive the rents, income, profits and benefits thereof without interruption or hindrance the Borrowers or by any person or persons who so ever AND THAT freed and discharged from or otherwise well and sufficiently

saved and kept harmless and indemnified by the Borrowers from and against all and all manner of former and other States, titles, Claims, demands charges and encumbrance whatsoever. Any transfer of any of the properties and assets made by the Council in exercise of any of the powers under the foregoing provisions shall vest in the transfer all right in or to the property or assets transferred as if the transfer had been made by the Borrowers themselves and further if and when the Council shall take over the mortgaged properties as aforesaid the Council shall be deemed to be the owner thereof for purposes of all suits by or against the Borrowers and shall sue and be sued in the name of the Borrowers Provided however that the Council shall not in any event be liable for any loss or damage caused by or arising out of the exercise of any of the powers and rights herein contained not shall it be subject to any of the liabilities of the mortgage in possession.

- viii) The Council shall have the right by notice in writing to require the Borrowers to discharge in full its liabilities to the Council under the Loan Agreement and hereunder in the following cases and in any of such cases the whole of the amount that remaining payable to the Council shall at the option of the Council be paid by the Borrowers to the Council within fifteen days of the date of the notice as if the time for the payment thereof had then expired, namely;
- a) If default shall be committed by the Borrowers for a period exceeding Thirty days in the payment of any sum or sums due and payable under these presents, or
  - b) If donation amounting to at least Rs.10,000/- shall be in arrears and unpaid for thirty days, after becoming due.
- ix) It shall be lawful for the Borrowers to retain possession of and use the mortgaged properties and to realize the rents and profits thereof as well as to exercise all other rights as of the Council hereunder until the Council shall be entitled to take possession or exercise the right of sale or appoints a receiver under the provisions of these presents.
- x) It is hereby agreed that should the Borrowers at any time prior to the repayment of the loan and other sums due to the Council desire to redeem mortgaged properties or any part thereof after developing the same they may do so on fulfilling the following Conditions:-
- Create a first mortgage on and keep mortgaged until all monies due under the loan Agreement or hereunder have been repaid other alternative property not already mortgaged to the Council but owned and held by the Borrowers free from all encumbrances whatsoever which property shall be acceptable and approved by the Council and shall be of a value not less than the value of the property sought to be redeemed. All costs and expenses of any redemption and creation of a fresh mortgaged of any new property shall be born by the Borrowers.
- xi) The Council shall not be answerable or accountable for any involuntary losses which may happen in, or about, the exercise or execution of any of the powers or trusts which may be vested in the Council by virtue of these presents or by legislative enactment.
- xii) After the Council has entered into or taken possession of the mortgaged properties or any part thereof or after a receiver thereof shall have been appointed as aforesaid, it shall be lawful for but not obligatory upon, the Council or receiver as the case may be to carry out any necessary repairs or maintenance work and to manage or conduct the same, it or he shall in its absolute discretion think fit and proper and for any

such purpose to employ such agents, managers, engineers, technical men, receivers, lawyers, accountants, servants and workmen upon such terms and conditions as to remuneration or otherwise as it or he may think fit and proper and generally to do or cause to be done all such acts, deeds and things and to enter into such agreements or contracts respecting the mortgaged properties or any part thereof as it or he could do if it or he were absolutely entitled there to and without being responsible, in any way, for any loss or damage which may be occasioned thereby.

- xiii) The Borrowers shall pay all cost, charges and expenses between attorney and client in any wise incurred or paid by the Council and incidental to, or in connection with those presents or this security of execution of any other instrument or mortgage referred to hereunder or under the Loan Agreement and incurred as well as for the assertion of defence of the right of the Council for the protection and security of the mortgaged properties and for the demand, realization and recovery of the monies payable to the Council under the Loan Agreement or hereunder and the same shall, on demand, be paid by the Borrowers to the Council with donation thereon at the rate of 6% per annum or at such other higher rates as applicable under the provision to clause 6(a) of the Loan Agreement from time to time of the same having been so demanded and until such payment, the same shall be a charge upon the mortgaged properties.
8. For all or any of the aforesaid purpose, the Borrowers hereby irrevocably appoint the Council as well as the receiver or receivers to be appointed under these presents to be their attorney or attorneys in the name and on behalf of the Borrowers to execute and do under the covenants and provisions herein contained and generally to use the name of the Borrowers in the exercise of all or any of the powers by these presents conferred on the Council or any receiver(s) appointed by it.
  9. The Borrowers shall bear all stamp duty, if any, and registration charges including any penalty, charges and expenses in connection therewith and all other incidental expenses required to be incurred in connection with the execution and registration of these presents and other connected loan documents. The Borrowers shall also bear and pay all costs, charges and expenses of the Council incidental to the said scheme or the loan.
  10. No delay in exercising or omission to exercise any right power or remedy, accruing to the Council under this Agreement and no extension, accommodation, consent compromise, release or indulgence granted or shown by the Council shall be constructed as a waiver of any of the Council's rights, powers or remedies.
  11. Any notice required to be served on the Borrower shall for the purpose of these presents be deemed to be sufficiently served if it is left at \_\_\_\_\_ and such notice shall also be deemed to be properly and duly served if it is sent by post in a registered letter addressed to the Borrowers at the aforesaid address and such service shall be deemed to have been made at the time at which the registered letter would in the ordinary course be delivered even though returned unserved on account of the refusal of the Borrowers to accept such notice.
  12. All provisions, powers covenants and conditions, contained in the Loan Agreement shall extend and be applicable to these present and to the said principal sum and donation thereon and to all other monies payable to the Council hereunder as if all provisions, covenants and conditions contained in the Loan Agreement had been reproduced in these presents and it is hereby further agreed and declared that all provisions, covenants and conditions herein contained as also contained in the said Loan Agreement shall remain in full force till all monies due to the Council under these presents have been fully paid by the Borrowers to the Council.

**THE FIRST SCHEDULE ABOVE REFERRED TO**

All that pieces or parcels of land covering a total area of ..... hectares/acres situated in village ..... police Station ..... and Sub-Registry office ..... in the District of ..... in the State of ..... comprised in the following Khasra numbers.

Khasra No.

Area

Which said pieces or parcel of land are delineated in the map or plan annexed hereto and butted and bounded as follows that is to say.

On the North

On the East

On the South

On the West

**OR**

All the building(s) and/or Flats/houses situated in Village ..... Police Station ..... and Sub-Registry Office ..... in the District of ..... in the state of ..... and comprised as follows.

Which building (s) and/or Flats/houses are delivered in the map or plan annexed hereto and butted and bounded as follows :-

On the North

On the East

On the South

And on the West

*In witness whereof the Borrowers have caused*

Shri(a) .....  
(Name)

.....  
(Designation)

(b).....  
(Name)

.....  
(Designation)

to hereto set their hands to for and on their behalf and Shri ..... affix its common Seal on this deed on the day, month, and year first above written.

Signed & delivered by Shri ..... for and on behalf of the Borrowers.

The Common Seal of the Borrowers has been affixed in the presence of Shri ..... Of the Borrowers who has also signed these presents in token of the Common Seal having been affixed in this presence.

All the above signed in the presence of ;

WITNESSES

- 1.
- 2.