

एनएचबी(एनडी)/डीआरएस/नीति सं.21/2007
13 अप्रैल, 2007

सभी पंजीकृत आवास वित्त कंपनियों को

महोदय,

आवास वित्त कंपनियों द्वारा राआबैंक अधिनियम, 1987 की धारा 29बी की उप-धाराओं (1) एवं (2) के अनुसार निवेशित आस्तियों पर अपने जमाकर्ताओं के पक्ष में चल प्रभार का सृजन

आवास वित्त कंपनी (राआबैंक) निर्देश, 2001 के अनुच्छेद 14ए के अनुसार, सार्वजनिक जमा राशियां स्वीकार/धारित करने वाली आवास वित्त कंपनियों को राआबैंक द्वारा समय-समय पर निर्धारण किये अनुसार राआबैंक अधिनियम, 1987 की धारा 29बी की उप-धाराओं (1) एवं (2) के अनुसार धारित सांविधिक अर्थ सुलभ आस्तियों पर चल प्रभार का सृजन करना होगा ।

2. अतः सार्वजनिक जमा राशियां स्वीकार/धारित करने वाली आवास वित्त कंपनियां एक "न्यास विलेख" की प्रक्रिया से अपने जमा कर्ताओं के हित में चल प्रभार का सृजन करेंगी । इस प्रकार सृजित प्रभार कंपनी पंजीयक द्वारा भी पंजीकृत किया जाएगा और इस संबंध में सूचना न्यासियों और विनियमन एवं पर्यवेक्षण विभाग, रा.आ.बैंक, नई दिल्ली को भी भेजी जाएगी ।

3. "न्यास विलेख" प्रोफार्मा की एक प्रति जिसमें इससे संबंधित ब्योरा दिया गया है, अनुलग्नक-। के रूप में आवास वित्त कंपनियों के मार्ग-दर्शन हेतु संलग्न की जा रही है । "न्यासी दिशा-निर्देश" भी अनुलग्नक-।। पर संलग्न किये गये हैं ।

4. इस परिपत्र में उल्लिखित निर्देशों को निदेशक मंडल के समक्ष प्रस्तुत किया जाए और इस प्रक्रिया को 30 जून, 2007 तक प्रभावी कर दिया जाए तथा उसके अनुपालन की पुष्टि हमें भेजें ।

5. कृपया पावती दें ।

भवदीय

(राकेश भल्ला)

महाप्रबंधक

विनियमन एवं पर्यवेक्षण विभाग,

संलग्न : यथोपरि

DRAFT TRUST DEED

This Trust Deed is made at this day 2007 betweenCompany Ltd. incorporated under the Companies Act, 1956 having its registered office at (hereinafter referred to as "The Company") of the One Part, and Company Ltd. incorporated under the Companies Act, 1956/.....Bank constituted/incorporated under the..... Act, and having its registered/Head office at the trustees (hereinafter referred to as "The Trustees") of the Other Part.

Whereas by its Articles of Association, the Company is authorized to borrow, or raise money, *inter alia*, by accepting deposits and secure the payment of money;

And Whereas the Board of Directors of the Company being duly empowered by the Articles of Association of the Company have decided by a resolution passed in the meeting of the Board held on the day of 200...to raise deposits from the public under various schemes;

And whereas as per the instructions of the National Housing Bank, the Company has to create a charge of the Depositors on (a) the securities purchased by it by investing the amount specified by the National Housing Bank in terms of and in accordance with sub-section (1) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time and on (b) the deposits made or bonds subscribed as specified by the National Housing Bank in terms of and in accordance with sub-section (2) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time (hereinafter referred to as "the Securities") ;

And Whereas the Company proposes to create charge of the Depositors on the Securities;

And whereas the said Trustees mentioned above have consented to act as Trustee of the Depositors by its resolution dated passed by its Board of Directors.

Now this deed witnesseth and it is hereby mutually agreed to and declared by and between the parties hereto as follows:

1. Unless there be something in the subject or context inconsistent therewith, the following expressions shall have the meaning hereinafter mentioned that is to say:

(a) "The Company" means Company Ltd.

(b) "The Trustees" means Company Ltd. incorporated under the Companies Act, 1956/..... Bank constituted/incorporated under theAct, and having its registered/head Office at

(c) "Deposits" means a public deposit accepted by the Company for the time being outstanding and entitled to the benefits of these presents.

(d) "Depositor" means any person who has made a deposit with the housing finance company or a heir legal representative, administrator or assignee of the depositor as defined in the Housing Finance Companies (NHB) Directions, 2001.

(e) "Charged Securities" means (i) the securities purchased by the Company by investing the amount specified by the National Housing Bank (in approved securities and/or in Account in Demat securities deposited with M/s, the Depository and in physical form) in terms of and in accordance with sub-section (1) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time and on (ii) the deposits made and the bonds issued by the National Housing Bank subscribed by the company in terms of and in accordance with sub-sections (1) and (2) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time.

(f) "Act" means the Companies Act, 1956 (1 of 1956) and any modification or re-enactment thereof.

(g) "Specified bankers" means the banks in which the company keeps the charged securities and any part thereof, an intimation of which will be given to the trustees and the National Housing Bank.

(h) The words denoting the singular include the plural and vice-versa, unless the contrary appears from the context.

2. The deposits entitled to the benefit of these presents shall consist of total amount already deposited by the depositors outstanding with the company and to be deposited in future to rank *pari passu* without preference or priority by reason of the date of deposits or otherwise and secured by the charge hereby created on the Securities.

3. The Company hereby covenants with the trustees that the Company on the maturity of the deposits (the maturity of these deposits will take place after the completion of the maturity period of the respective deposits) or such earlier days as amounts shall become payable, will pay the depositors the amount of deposits including interest thereon as and when it becomes due and payable.

4. All payments due by the Company in respect of the deposits whether of interest or principal shall be made by cheque/warrant/DD/pay order by the Company and the Company shall make at its own expenses all arrangements for the smooth payment of the principal as well as the interest amount on the said deposits.

5. In consideration of the deposits outstanding on the date of this Trust Deed and the deposits to be collected in future the Company hereby create charge in favour of the trustees on all (a) the securities purchased by it by investing the amount specified by the National Housing Bank in terms of and in accordance with sub-section (1) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time and on (b) the deposits made or bonds subscribed by it by depositing the amount or subscribing to the bonds by a sum specified by the National Housing Bank in terms of and in accordance with sub-section (2) of Section 29B of the National Housing Bank Act, 1987 or by notifications issued by the National Housing Bank thereunder from time to time amounting to Rs..... (Rupees only) existing as well as the Securities to be purchased by the Company in future under the provisions of Section 29B of the National Housing Bank Act, 1987 for the benefit of depositors for the amounts due and all other charges, expenses and other dues, the payment of which has been secured by a charge on the Securities under these presents and the charge as created has been as the floating charge. The trustees may at any time, by notice in writing to the Company, convert the said floating charge into a fixed charge and get it registered as legal charge in case the trustees are of

the opinion that the said Securities are in danger of being seized or sold under any sort of distress or execution leveled or threatened or in any other case.

6. The Company hereby undertakes that after the execution of these presents, it shall register the charge hereby created, with the Registrar of Companies under section 125 of the Companies Act, 1956 and furnish the information of the registration of the charge to the Trustees and the National Housing Bank. The Company shall also register the trustee's lien on the Securities with the concerned bank/ depository or any other authority and will advise the Trustees and the National Housing Bank about the same.

7. The Company shall hold all the charged Securities until the security hereby constituted shall become enforceable under the terms of these presents in which case the Trustees may in their discretion as next hereinafter mentioned or shall upon the request in writing of the 90% depositors by value take possession of the charged securities or any of them and may in the like discretion and shall sell, call in, collect and convert into money the same or any part thereof with full power to sell any of the said securities either together or in parcels, and either for a lump sum or for a sum payable by instalments or for a sum on account and a mortgage or charge for the balance and with full power sale to make any special or other stipulations as to title or evidence or commencement of the title, or otherwise, which the Trustees shall deem proper and with full powers to modify or rescind or vary any contract for sale of the said securities or any part thereof and to re-sell the same without being responsible for any loss which may be occasioned thereby and with full power to compromise and effect compositions and for the purposes aforesaid or any of them to execute and do all such assurances and things as they think fit. If however, any of the charged securities has matured and become due and payable during the continuance of these presents, the company shall be entitled to receive and appropriate the payment of such a charged security subject to the company making investment of and/or depositing the amount of the shortfall in liquid assets arising out of redemption of such a charged security, if any, forthwith and shall always

maintain liquid assets as prescribed under section 29(B) of the National Housing Bank Act, 1987 or notifications that may be issued by the National Housing Bank from time to time.

8. The amounts due to the depositors under this indenture shall become immediately payable and the security hereby constituted shall become enforceable within the meaning of these presents in each and any of the following events:

(a) If the Company makes default in ensuring the full cover for public deposits as stipulated in Direction No.NHB.HFC.DIR.15/CMD/2005 dated December 19, 2005 issued by the National Housing Bank as amended by the National Housing Bank from time to time.

(b) If the Company without the consent of the depositors ceases to carry on its business or indicates its intentions to do so.

(c) If an order has been passed by the Court of competent jurisdiction or a special resolution has been passed by the members of the Company for winding up of the company.

(d) If the Company makes defaults in complying with the orders passed by Company Law Board or any other authority constituted under the Companies Act, 1956 directing the Company to pay the amount to the depositors.

(e) If in the opinion of the Trustees, the security of the depositors is in jeopardy.

9. As soon as the amount shall become payable and the security enforceable under the preceding clause 8 (and unless the time for payment and the security to be enforced has been expressly extended by the depositors by a resolution passed with simple majority), the Trustees shall take possession of the charged securities and shall forthwith take steps to realize the charged securities and distribute the amount to the depositors on pro rata basis.

10. Until the happening of any of the events mentioned in clauses No. 8 & 9 of this Indenture, the Trustees shall not in any manner interfere with the management of affairs of the said business except to the extent it may consider necessary for the preservation of the charged securities or any part thereof or ensuring the full cover for deposits as indicated in Clause 8 (a) of these presents.

11. The Trustees shall apply the proceeds of such sale or other mode of realization in the following manner, that is to say, that the Trustees shall pay:

(a) In the first place all costs, charges and expenses in or about such sale or the performance or execution of trust or otherwise in relation to these presents or otherwise in respect of the security, including the remuneration of the Trustees, if any.

(b) Secondly, the amount then due and owing to depositors

(c) And lastly, the surplus, if any, to the Company or its assignee.

Provided that if the said money shall be insufficient to pay all such amounts in full, then the said amounts shall be paid rateably and without preference or priority among all depositors according to the amount due in respect of the deposits held by them.

12. When all the amount secured by these presents been paid and satisfied, the Trustees shall forthwith upon the request and at the cost of the Company and on being paid all the costs, charges and expenses properly incurred by the said Trustees in relation to the security, re-convey, reassign, release and surrender the charged securities or so much of the same as shall not have been sold or disposed of to the Company or its assigns.

13. The Company hereby covenants with the Trustees:

(a) That the moneys secured by this deed shall be free of encumbrances at all time.

(b) That the Company shall keep the said charged securities and any part thereof with the specified bankers.

(c) That the Trustees will have a right to verify the charged securities at any time and the Company will give its full co-operation to the Trustees in this regard.

(d) The company shall furnish the details of Statutory Liquid Assets to the Trustees.

14. The Company shall pay to the Trustees all legal, travelling and other costs, charges and expenses incurred by them in connection with execution of trust of these presents including costs, charges and expenses of and incidental to the approval and execution of these presents and all other documents affecting the security herein and will indemnify them against all actions, proceedings, costs, charges, expenses, claims and demands whatsoever which may arise or be brought or made against or incurred by him in respect of any matter or thing done or permitted to be done without their wilful default in respect of or in relation to the charged securities.

15. The Trustees of the depositors will execute and exercise all or any of the trusts power, authorities and discretion so vested in them by these presents in a judicious and fair manner and will not be held responsible except for the breach of trust knowingly and intentionally committed by them.

16. In the event of winding up of the Trustees, another Trustee will be appointed having all the powers, authorities as stated under these presents and such appointment will be made by the board of directors of the Company.

17. The Trustees may by agreement with the directors of the Company modify the terms of this deed in any manner that may be necessary to meet any requirement or contingency, provided that the Trustees are satisfied that such modifications are in the interest of the depositors

18. The Company hereby covenants with the Trustees that Company will at all times during the continuance of the security carry on and conduct its business in proper and efficient manner with due diligence and efficiency and will take all possible steps to keep the charged securities intact and will keep proper books of account as required under the Act and give all information to the said Trustees in relation to discharge of his duties under these presents.

19. The Company hereby further covenants with the Trustees that the Company shall duly perform and observe the obligations, hereby imposed upon it by this Trust.

In witness whereof the company has caused its common seal to be affixed to these presents and the Trustees have hereto set their hands the day and year above written.

Witnesses

Common Seal of the Company affixed in the presence of

(Director)

(Director)

(Trustee)

(Trustee)

Liquid Assets (Housing Finance Companies) Trustees Guidelines

1. These Guidelines may be called the National Housing Bank Guidelines for Trustees of depositors of the Housing Finance Companies (HFCs).

2. No company/bank shall be entitled to act as a Trustee of depositors unless it is a scheduled commercial Bank or Limited company engaged in trust business with minimum capital of Rs 50 lakh and who are independent and have no relationship with the company, its principal share holders or Directors of the Company. .

3. The duties of every trustee of depositors will be

(i) To execute the trust deed with the company for the protection of interest of the depositors.

(ii) To do the duties of the trustees as enshrined in the Trust Deed executed with the Company.

(iii) To take possession of the property charged in accordance with the provisions of the trust deed.

(iv) Enforce security in the interest of depositors.

(v) To do such acts or as are necessary in the event the security becomes enforceable.

(vi) To carry out such acts as are necessary for the protection of interest of the depositors.

(vii) Ascertain and satisfy himself that the

(a) The interest due on the deposits had been paid by the Company on or before the due dates.

(b) The depositors had been paid the monies due to them on the date of maturity of the deposit.

(c) Exercise due diligence to ensure compliance by the Company of the provisions of the trust deed.

(d) To take appropriate measures for protecting the interest of the depositors, as soon as any breach of the trust deed comes to the notice.

(e) To inform the National Housing Bank as soon as any breach of the trust deed comes to his notice.

(f) To communicate with National Housing Bank, on half yearly basis the compliance of trust deed by the Company, defaults if any in payment of interest to the depositors and action taken.

4. The trustees for the depositors shall call or cause to be called by the Company a meeting of all depositors.

(a) On a requisition in writing signed by at least 51% of the depositors in value for the time being outstanding.

(b) The happening of any event which constitutes a default for which in the opinion of the trustees the security of the depositors is in jeopardy.

A report of such meeting may be forwarded to the National Housing Bank, New Delhi.

5. The trustee may inspect books of account, records, register of the Company and the trust property to the extent necessary for discharging his obligations with prior intimation to the National Housing Bank.

6. The trustees for depositors shall not make untrue statement or suppress any material in any documents, reports, papers or information furnished to the National Housing Bank.

7. The trustee for depositors shall ensure that the National Housing Bank is promptly informed about any action, legal proceedings etc. initiated against him in respect of any material breach or non-compliance by it, of any law, rules directions of the National Housing Bank or of any other regulatory authority.

8. The trustee for depositors shall not delegate any of his functions to any employee or agent. However, the trustee may employ employees, agents, Advocates or any other professional for any routine or clerical functions. In case the trustee employs any employee, he will be responsible for his /their acts or omissions in respect of the conduct of his/their business.