

INDEMNITY

Preliminary Note

Indemnity and Guarantee

A contract of indemnity is a contract by which one party promises to save the other from loss caused by the conduct of the promisor himself or by the conduct of any other person (Sec. 124, Contract Act). It differs from a contract of guarantee which is a contract to perform a promise or discharge the liability of a third person in case of the latter's default (Sec. 126).

However, indemnity, as applicable to marine insurance, is not an indemnity within the meaning of Sec. 124, as the loss in a contract of marine insurance is covered by the contract itself and such loss is not caused to the assured by the conduct of the insurer or by the conduct of any other person.¹

Form of Indemnity

Sometimes a separate indemnity bond is executed and sometimes an indemnity clause is inserted in any other deed relating to a transaction from which the contract of indemnity arises, e.g. in a sale deed a covenant to indemnify the purchaser against any loss or damage suffered by any defect in title or by the discovery of any charge. When separately executed it may take the form of a deed or may be in the form of a note addressed to the person intended to be indemnified. The latter form is a simpler one and is generally adopted in banking and commercial transactions. In this form the name of the person addressed is given at the top and under it the covenant is written in the first person, the consideration being stated in the beginning of the covenant. The promisor signs at the end.

Generally an indemnity is a personal undertaking but sometimes the undertaking is secured by hypothecation of property in which case it is drafted as a mortgage.

Heirs and Successors

If the indemnity relates to any property, e.g. when given to a purchaser of land, it is expressed to be in favour of the other party and his successor-in-title to the property. In cases of other indemnities, the heirs, successors and assigns of the person to be indemnified are mentioned. The heirs and successors of the person giving the indemnity need not be mentioned as the contract can after his death be enforced against his legal representatives (Sec. 37, Contract Act).

¹ *State of Orissa v. United India Insurance Co.*, (1997) 5 SCC 512; A 1997 SC 2671

In England, indemnity deeds are executed in favour of sureties but this is not necessary in India as, under Sec. 145 of the Contract Act, a contract of indemnity by the principal in favour of the surety is implied in every contract of guarantee by the surety.

Where an indemnity bond executed by a third party in favour of a purchaser of property of a Hindu minor from the minor's guardian provided that if the minor on attaining majority refuses to ratify the sale and loss is caused thereby to the purchaser, the executant would indemnify the purchaser in respect of the sale consideration, and the minor after attaining majority challenged the sale, but the sale was held void for want of valid registration and not on ground of the former minor's refusal to ratify, it was held that no liability accrued on the indemnity bond.

Registration

Registration is not required unless immovable property is hypothecated.

PRECEDENTS

1---Indemnity Bond (in the Form of Agreement)

THIS AGREEMENT, etc.

WHEREAS by a deed of lease dated the ----- the said CD demised certain land to the said AB and one XY, since deceased, for a term of nine years from

AND WHEREAS one of the conditions entered in the said lease was that during the first year the said CD will not require the said lessees to pay rent for uncultivated land;

AND WHEREAS though the whole of the demised land was not cultivated during the first year, full rent for that year was realized by the said CD on the alleged ground that the aforesaid condition was not intended to apply to this lease, and that it was by an accidental omission that the same was not scored out of the printed form of lease before execution;

AND WHEREAS the said AB and XY served a notice on the said CD threatening to file a suit against the said CD for refund of the amount of rent so realized from them in violation of the aforesaid condition;

AND WHEREAS as the said XY died leaving behind him as his heirs two minor sons KL and MN who are under the natural guardianship of their mother PQ;

AND WHEREAS the said AB and the said PQ on behalf of the said minor sons KL and MN have withdrawn the aforesaid notice and have agreed to forego their claim for the said refund on the said CD agreeing to revise the term of the said lease and to extend the same from nine to twelve years.

AND WHEREAS in consideration of the aforesaid agreement of the said CD the said AB has agreed to indemnify the said CD from any claim which the said minor sons of the said XY may institute for refund of the said amount of rent inspite of the said PQ relinquishing the same on their behalf.

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement and for the consideration aforesaid the said AB hereby

agrees always to indemnify and keep harmless the said CD from any claim which the aforesaid KL and MN or either of them or their respective successors or assigns or any of them may at any time institute for the refund of any part of the rent paid by the said AB and XY for the year ----- under the aforesaid deed of lease dated the

IN WITNESS WHEREOF, etc.

2—Indemnity given to a Bank

THIS DEED OF INDEMNITY is made, etc.

WHEREAS a sum of Rs. ----- on account of Insurance Policies on the life of the late EF was collected after the death of the said EF by the said Bank and has since been held by the said Bank as a deposit carrying interest at ----- per cent per annum from the date of realization;

AND WHEREAS EF left at his death a widow GH and two minor sons JK and LM as his heirs.

AND WHEREAS the said AB has by order of the District Judge of ----- dated ----- been appointed a guardian of the person and property of the said JK and LM.

AND WHEREAS the said AB requested the said Bank to pay him the aforesaid deposit with interest due thereon and the said Bank has consented so to do upon the said AB giving such indemnity as is hereinafter contained in case there shall hereafter be a claim against the said Bank by the said JK or LM on his attaining majority or by the said GH for the said deposit or any portion thereof;

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement and in consideration of the said Bank paying out the said deposit to the said AB as guardian of the aforementioned JK and LM the said AB hereby agrees with the said Bank that he will at all times indemnify and keep harmless the said Bank from all claims and demands made and all actions and proceedings taken against the said Bank by the said JK or LM on his attaining majority or by the said GH in respect of the said deposit or any part thereof.

IN WITNESS WHEREOF, etc.

3—Indemnity to Tenant Paying Rent to a Person Whose Title is in Dispute

THIS DEED OF INDEMNITY is made on the _____ day of _____
BETWEEN AB, etc., (hereinafter called "the landlord") of the one part
AND CD, etc., (hereinafter called "the tenant") of the other part;

WHEREAS a dispute (*or*, a suit) is now pending between the
landlord and certain other persons as to the title to the _____ (*describe*
the property) which is now occupied (*or* held) by the tenant (*or*, to the
estate of one XY, in which the tenant holds certain land) under a lease
thereof dated _____ executed by _____;

AND WHEREAS the tenant has nevertheless agreed to pay to the
landlord the rent of the said _____ which is now in arrears and which
shall hereafter become due upon the landlord agreeing to indemnify him in
respect thereof.

NOW THIS DEED WITNESSES that in consideration of the tenant
agreeing to pay the said rent to him, the landlord hereby covenants with
the tenant that the landlord will repay on demand to the tenant all such
rent, sums of money, costs and damages as the tenant or his assigns shall
by due process of law or otherwise be compelled to pay and all costs and
damages which he or they shall otherwise sustain by reason of his or their
paying the said rent or any part thereof to the landlord in the manner
aforesaid.

IN WITNESS WHEREOF, etc.

4—Indemnity given to Drawer of Lost Cheque on Drawing a Second Cheque

(*In First Person*)

To

In consideration of your having this day given me a second cheque
for Rs. _____ being the amount of a previous cheque No. _____
dated _____ drawn by you in my favour which I have lost, I hereby
undertake to refund to you the said sum of Rs. _____ in the event of the
earlier cheque being presented to and paid by your banker within _____

months and to indemnify you against all expenses which may be incurred by you in relation thereto.

Dated-----

Signed-----

**5—Indemnity given to the Railway by a Consignee
who has Lost the Railway Receipt**

To

The----- Railway

In consideration of your having delivered to me the parcel No.----- containing----- valued at Rs.----- despatched from----- station to my address on or about the----- day of-----, the Railway receipt for which has been lost, I hereby undertake to hold you (the said Railway) its servants and agents harmless and indemnified against all claims in respect of the said parcel and its contents.

**6—Indemnity Bond given by a Shareholder or Debenture holder
for Issue of a Duplicate Share or Debenture Certificate or
Dividend or Interest Warrant in place of One Lost**

To

The Secretary

----- Company

We/I, AB, etc. hereby certify that I have lost/misplaced/not received share/debenture certificate/dividend warrant/interest warrant of your company as per details given below :—

<u>Application No.</u>	<u>Folio</u>	<u>Share/debenture</u>	<u>Dividend/</u>
	<u>Allotted</u>	<u>Certificate/Dividend/</u>	<u>interest/</u>
		<u>interest warrant No.</u>	<u>amount</u>

We/I hereby request you to please issue us/me a duplicate----- against the above-----.

We/I hereby agree to indemnify the Company in the manner herein after stated :

We/I have not pledged or deposited by way of security any of the share/debenture certificate relating to the aforesaid shares/debentures nor have sold or transferred any of the said shares/debentures and undertake that We/I shall deliver to you the original share/debenture certificate if and whenever found. (*Or, as the case may be*, We/I have not encashed, negotiated or otherwise dealt in so as to create any adverse claim upon the amount of the dividend/interest warrant).

Now it is hereby agreed that in consideration of the company issuing a duplicate share/debenture certificate/dividend/interest warrant for the said amount, We/I hereby covenant at all times hereafter and from time to time to save, defend and keep indemnified the company and their estates and effects from and against all actions, costs, suits, legal proceedings, claims, demands, charges, damages expenses and liabilities of whatsoever nature which the company may sustain or incur by reason of such issue of duplicate share/debenture certificate/dividend/interest warrant from and against any action which may be brought against the company by any person.

IN WITNESS WHEREOF We/I hereto have hereunto set and subscribed Our/My respective hands at _____ this the _____ day of _____ 2000.

WITNESS

APPLICANT

**7—Indemnity given by a Vendor against Possible Claim
of a Co-Sharer Believed to be Dead**

THIS DEED OF INDEMNITY is made, etc.

WHEREAS

(1) The property described in the schedule hereto was owned by the vendor and his brother D;

(2) The said D left home in 1986 and has not been heard of ever since and is believed to have been dead;

(3) The said D has left no other heir except the vendor;

(4) The vendor agreed to sell the said property to the purchaser and by a separate deed of indemnity to indemnify him against any possible claim of D or any of his heirs; and

(5) In pursuance of the said agreement the vendor executed a deed of sale on the-----.

NOW THIS DEED WITNESSES that in further pursuance of the said agreement and in consideration of the purchaser purchasing the said property the vendor hereby agrees to keep indemnified and harmless; the purchaser, his heirs, successors and assigns against all claims made and action or proceeding commenced by the said D or any person claiming through or under him in respect of the said property and against all costs and expenses incurred by the purchaser, his heirs, successors, or assigns in defending any such claim, action or proceeding.

IN WITNESS, etc.

8—Indemnity by a Company to Indemnify its Managing Director of Guarantees given by him to the Company's Bank¹

THIS DEED OF INDEMNITY is made, etc.

WHEREAS the said CD at the request of the Board of Directors of the Company of which he is the Managing Director and in consideration of the Company agreeing to give such indemnity as hereinafter appearing has signed or given and may hereinafter from time to time sign or give his promissory note or some other instrument in favour of the Bank (*the bankers of the Company*) by way of guarantee or collateral security for advances made or to be made from time to time by the said bank to or on account of the Company or in respect of other pecuniary accommodation to be from time to time afforded by the said bank to the Company.

NOW THIS DEED WITNESSES as follows:

1. The Company hereby agrees with the said CD that the Company will on demand repay to the said CD all sums which the said CD may have to pay to the said bank or any person or persons by reason of his having signed or given any such promissory note or instrument as aforesaid

¹ See also Form No. 8 (Counter Guarantee) under GUARANTEE, *ante*.

and will at all times hereafter keep the said CD fully indemnified against all claims or legal proceedings, costs and expenses in respect of any such promissory note or other instrument as aforesaid.

2. The obligations of the Company under the preceding covenant shall not be discharged by reason of the cessation at any time of the guarantees given by the said CD as aforesaid but shall continue in force or revive in the event of subsequent renewal thereof.

3. This deed shall not preclude the said CD from enforcing any other remedy to which he may be or become entitled as a surety under the guarantees given as aforesaid.

IN WITNESS WHEREOF, etc.

9—Indemnity Bond by Employee with Sureties when a Suspended Employee is Reinstated

THIS DEED OF INDEMNITY is made on the-----day of ----- BETWEEN AB, etc., (Bounden) AND CD, etc., and EF, etc., (Sureties) of the one part AND the Governor of the State of----- (hereinafter called "the Government") of the other part;

WHEREAS the Bounden above named was in the service of the Government as -----

AND WHEREAS the Bounden was placed under suspension from service from----- on certain charges against him;

AND WHEREAS a departmental inquiry was conducted against the Bounden and, as a result of the said inquiry, the Bounden has been reinstated to the post of ----- with effect from ----- vide G.O. No. ----- dated----- and an adverse entry was made in his character roll;

AND WHEREAS the Government has by G.O. No. --- dated --- sanctioned that the Bounden be paid his full pay for the period of suspension *i.e.* from ----- to ----- amounting to Rs. ----- but under Government rules and orders it is necessary that the moneys earned through employment by the Bounden during the aforesaid period should be deducted from the payments to be made as aforesaid;

AND WHEREAS the Bounden has denied having earned any money through employment during the above period,

AND WHEREAS the Government is willing to pay to the Bounden the aforesaid sum of Rs.—— only on condition that the Bounden shall execute a bond with two sureties, being these presents, to indemnify and save harmless the Government from any loss which the Government may incur by reason of any moneys earned through employment as aforesaid not having been paid to the Government;

NOW THIS DEED WITNESSES that in consideration of the Government agreeing to pay to the Bounden the emoluments as aforementioned, the Bounden and the Sureties hereby jointly and severally covenant with the Government that the Bounden shall pay on demand to the Government all moneys which may be discovered to have been earned through employment by the Bounden during the aforementioned period together with all costs and expenses, and the Bounden and the Sureties hereby agree² that the Government may, on the certificate of the Secretary to the Government in the Administrative Department, which shall be final, conclusive and binding on the Bounden and the Sureties, recover the same from them jointly or severally as arrears of land revenue.

IN WITNESS WHEREOF, etc.

² This clause will be legally effective only if it is backed by a statutory provision such as that contained in section 3 U.P. Public Moneys (Recovery of Dues) Act 1972, for parties cannot by mere agreement confer jurisdiction of revenue authorities to resort to coercive processes (e.g., arrest, attachment).

LEASE

Preliminary Note

Lease and Agreement for lease

A document in order to operate as a lease has to be a demise *in presenti*. The essential elements of a lease are the parties, the subject matter or immovable property, the demise or partial transfer, the term or period, the consideration or rent. The relationship is of contract. When the agreement vests in the lessee, a right of possession for a certain time it operates as a transfer and is lease. An agreement to grant lease in future cannot constitute a lease. Even if possession has been taken by the promisee, he cannot be held to be a lessee, because the doctrine of Equitable Interest does not apply in India, as in England.¹ His remedy lies in a suit for specific performance. The Supreme Court, while pointing out the distinction between a lease and an agreement for lease observed that a deed may be construed as a lease if contains words of present demise, but in spite of the words certain things have to be done by the lessor such as carrying out improvements and certain things have also to be done by the lessee such as giving of sureties, the document must be construed as a mere executory contract and not a lease.² In *Daulat Ram Sawhney v. Triloki Nath*,³ there was an agreement (entered into in contemplation of an allotment order under the rent control law, which order was later issued) that the promisee will be a tenant in future at the agreed rent. It was contended on behalf of the tenant that the letting out without an allotment order was invalid hence the rate of rent mentioned in it was not binding on him. This contention was rejected as the agreement did not create any tenancy. The above distinction should be borne in mind while drafting an agreement for lease or a lease deed.

The fact that the property demised was to be delivered to the possession of the lessee at a subsequent date is irrelevant for the purpose of determining whether the agreement in question represents a lease or not. Delivery of possession of the property demised is not a condition precedent for coming into operation of a lease. If there is a lease *in presenti*, as distinct from agreement to lease, no question of suit for specific performance arises and the relief instead is for delivery of possession.⁴

Agreement

An agreement for lease (as distinguished from a deed of lease) must be drafted as an ordinary agreement. The property to be leased should be clearly

1 *G.H.C. Ariff v. Jadunath Majumdar Bahadur*, A 1931 PC 79 (82).

2 *Tula Ram Rehmal v. The State of Bombay*, A 1954 SC 496.

3 A 1962 All 147 (F.B.).

4 *H.V. Rajan v. C.N. Gopal*, A 1975 SC 261, (1975) 4 SCC 302.

described and the period of lease, the rent and other terms and conditions of tenancy agreed upon must be mentioned. The terms, if long, may be embodied in a schedule.

Lease how made

A lease under the Transfer of Property Act can be made only by a registered instrument, if it is from year to year or for any term exceeding one year or reserves a yearly rent. Other leases can be made either by a registered instrument or by oral agreement accompanied by delivery of possession (Sec. 107). The State Governments have been empowered to permit any leases of the latter class to be made by unregistered leases or by oral agreements without delivery of possession (Sec. 107). The Transfer of Property Act does not apply to agricultural leases (Sec. 117) which are governed by local Acts.

An unregistered document of lease, in cases where the lease is required to be registered, conveys no title and creates no rights in the lessee; nor can a registered *Kabuliat*, by itself be sufficient to bestow a title upon the lessee or be considered a lease as defined in Sec. 105, Transfer of Property Act.⁷ However, such a document can be used for collateral purposes such as to show the nature of possession, the date of its commencement and the rate of rent.⁸ Collateral denotes that which is independent of, but subordinate to, an assurance or agreement affecting the same subject matter. If *Kabuliat* is followed by acceptance of rent, a tenancy is created.⁹

Further a lease should be executed both by the lessor and lessee. The earlier view was that a document signed by a lessor only does not operate as a lease (Sec. 107)⁸, nor a document signed by the lessee alone,⁹ all the same such a document binds the executant.¹⁰ However, the Supreme Court has clarified that even if a deed has been signed by only one of the parties it may be deemed to have been executed by both parties, if the transaction was in reality a "bilateral endeavour of both".¹¹ It has thus been held that the word "executed"

- 5 *Safdar Ali v. Ambika Prasad Dube*, A 1930 All 618.
- 6 *Ram Kishore v. Ambika Prasad*, A 1966 All 515; *Jai Ram Agarwal v. Uthi Adil D.J.*, 1987(2) ARC 506; *Zarif Ahmad v. Satish Kumar*, A 1983 All 164 (D.B.).
- 7 *Asa Ram v. Ram Kali*, A 1958 SC 183; See also *John Mithalal Desai v. Dineshbhai*, 1998 AHIC 1995 (Guj) (A rent is a lease as defined in the Registration Act, though not under the Transfer of Property Act)
- 8 *Indraloke Studio Ltd v. Santi Devi*, A 1960 Cal 609; *Hiralal Rawani v. Bastocolla Colliery Co. Ltd.*, A 1957 Pat 331.
- 9 *Nawabzada Moharomad Liaquat Ali Khan v. Ajulhia Prasad*, A 1943 All 212; *Lal Chand v. Radha Balhab*, A 1959 Raj 240; *Chandra Nath Mukherjee v. Chulai Pashi*, A 1960 Cal 40.
- 10 *Jagamath Upadhyay v. Amarendra Nath Banerji*, A 1957 Cal 479; *Pyare Lal v. Ran Sarup*, A 1944 All 221.
- 11 *Rajendra Pratap Singh v. Rameshwar Prasad*, (1998) 8 SCC 602.

occurring in the third paragraph of Sec. 107 Transfer of Property Act is not synonymous with "signed". It is also not worthy that the definition of lease given in the Registration Act expressly includes a rent note.¹²

Deed of lease

A deed should be drafted as a deed between the landlord and the tenant. They may be called "the lessor" and "the lessee", the terms used in the Transfer of Property Act, but it is open to the parties to use any other expressions such as "landlord" and "tenant". The general requirements of a deed of transfer mentioned in Part II of the Introduction apply to leases also and that Part should therefore be carefully read. A lease deed consists of the same parts as other deeds of transfer except that there is an additional part called the '*reddendum*'. The following special points or modifications should, however, be noted.

(1) *Recitals* are not generally necessary in a deed of lease and should not be inserted except when absolutely necessary in order to mention facts which cannot conveniently be mentioned in the operative part of the deed.

(2) *Consideration*—The practice in England is to mention the consideration of rent and lessee's covenants in the beginning of the *testatum* or witnessing clause thus:

"In consideration of the rent hereby reserved and of the lessee's covenants hereinafter contained the lessor hereby demises, etc."

As the rent reserved and the covenants of the lessee clearly appear from the later part of the lease and it clearly appears from these provisions what is the consideration of the lease, this clause about consideration is not necessary in India. But if a premium is also paid as part of the consideration the fact that such premium is also a part of the consideration and also the acknowledgement of the payment have got to be mentioned as they are not mentioned elsewhere in the lease. In such cases it will be convenient to mention the whole consideration, i.e. the premium, the rent reserved and the lessee's covenants. Similarly, if a lease is made in consideration of the surrender of a previous lease, the consideration should be mentioned. If a premium is *agreed to be paid in future* the same can be mentioned in the *reddendum*.

(3) *Operative Part*. Any words which clearly show the nature of the transfer, that is, the fact that the lessor divests himself of the possession and the lessee shall come into exclusive possession, may be used, e.g. the lessor hereby lets or "demises" or "grants a lease of". The technical words used in England is "demise" and in the absence of any commonly approved expression in India the same may be used here also.

12 *John Mithalal Desai v. Dmeshbhai*, 1998 AHIC 1995 (Guj).

(4) *Habendum* : The commencement and duration of the term of the lease are specified in the habendum, as :

"from the _____ day of _____ for a term of _____ years."

Or if the lease is permanent the words "in perpetuity" are used in place of "for a term of _____ years". If the tenancy is a life tenancy it may be expressed to be "for the life of the lessee". The date of commencement of the term should be clearly specified as "commencing on the _____" or "from the _____". The date may be the date of the lease in which case it may be expressed as :

"from the date hereof" or it may be a date *prior or subsequent* to the execution of the lease.

A term beginning *from* a specified day is reckoned as exclusive of that day (Sec. 110, Transfer of Property Act.) and if the term begins *on* a day, that day is included and is the first day of the term.

Lease for a term certain with right to continue in possession thereafter **was held on construction of its special terms, to be a lease for the life time of the lessee, but not a permanent lease.** Although the lease mentioned that the lessee's heirs would also have the right to remove the constructions made by the lessee, it was held that this only meant that if the lessee died before the expiry of the original fixed term, then the heirs would have that right, not that the lease was permanent and heritable.¹³ The undernoted case¹⁴ was distinguished on facts though the law stated therein was reiterated. As stated in INTRODUCTION, *ante*, a document has to be interpreted as a whole.

If no term is fixed and the lease is intended to be a year to year or month to month lease, it should be so stated, thus :

"from year to year."

(5) *Reddendum* : After the "TO HOLD" clause technically called the "habendum" and before the covenants, a new clause is added in leases which mentions the rent reserved with the mode and time fixed for payment. This is called the "Reddendum". It begins with the word "Yielding;" or "Rendering" or "Paying". In the definition of rent in Sec. 105 of the Transfer of Property Act, the word used is "render" but as "Pay" is the most commonly understood expression the word "Paying" may be used. "Yielding" however is not used in Indian law and its use in a deed of lease is not therefore recommended. If the consideration is rent in kind or service, the proper word would be "rendering".

If only a yearly rent is mentioned, it will mean that it is payable in one lump sum once a year; therefore if it is intended to be payable in instalments it should be clearly mentioned with the dates on which they should fall due. If no

¹³ *Chapsibhai Dhanjibhai v. Purshottam*, A 1971 SC 1878 : 1971 (2) SCC 205.

¹⁴ *Sivayogeswara Cotton Press v. M. Paachaksharappa*, A 1962 SC 413 (Lease construed to be permanent and heritable).

dates are mentioned but only "half yearly" or "quarterly" are mentioned, the rent will fall due in equal parts at these periods reckoned from the commencement of the term.

The rent should be expressed as being payable during the term of the lease by the use of some such words as "during the said term".

The place at which the rent is to be paid should also be mentioned, and if it is not mentioned it will be payable at the house or office or place of business of the lessor. Where a place is mentioned it is usual to add the words "or at such place or places as the lessor may from time to time appoint in this behalf" to provide for the contingency of the place mentioned being no longer suitable.

In order to safeguard the rights of the landlord evicting a tenant in the interval between two dates for payment of rent it is better to provide for proportionate payment of rent for the days of occupation by adding to the words of the *reddendum* the following clause :

"And also paying in the event of the said term being determined between two of the said yearly (*or* monthly or quarterly or half-yearly) days by re-entry (*or* notice) under the terms hereof a proportionate part of the said rent for the fraction of the current year (*or* month or quarter or half year) forthwith on such determination."

Or, simply by addition of the following words "and proportionately for any fraction of a year (month, quarter or half year)".

If the lease is executed some time after the commencement of tenancy and some rent has already become due and has been paid, it is necessary to add some such words as:

"the first of such payments after the date of this lease in respect of the new current year (month or quarter) to be made on the——day of——next."

(6) *Covenants* : The terms and conditions, to which the lease is made subject are given in separate paragraphs, one paragraph containing all the conditions which involve covenants by the lessee, another containing the lessor's covenants; and the third containing mutual covenants by both, if any. Sometimes it is more convenient to put together all the covenants under the heading "The lessor and the lessee hereby covenant with each other as follows."

There are certain covenants which are usually entered in all leases e.g. the lessee's covenant to pay rent, taxes, etc., and the lessor's covenant for quiet enjoyment. Some of them are so common that even if they are not expressly mentioned they are implied in every lease. They are embodied in section 108 of the Transfer of Property Act¹⁸ in which they are referred to in the form of statutory rights and liabilities of the lessor and the lessee. They may be shortly stated in covenant form as follows :

Implied Covenants

Lessee's Covenants

- (1) To disclose material facts enhancing the value of the lessor's interest (clause k).
- (2) To pay premium or rent (clause l).
- (3) To keep and restore the property leased in good condition, reasonable wear and tear and damage by irresistible force excepted (clause m).
- (4) To permit lessor and his agents to inspect the property (clause m).
- (5) To make good defects caused by his act or default within three months of notice by the lessor (clause m).
- (6) To inform lessor of any attack of a stranger on lessor's title (clause n).
- (7) Not to commit waste or use the property for a purpose other than that for which it is let (clause o).
- (8) Not to erect permanent structures (clause p).¹⁷
- (9) To deliver possession on expiry of lease (clause q).

Lessor's Covenants

- (1) To disclose material defects (clause a).
- (2) To give possession (clause b).
- (3) To secure possession and quiet enjoyment (clause c).
- (4) To allow all accessions to the property to be comprised in the lease (clause d).
- (5) To give option to the lessee to avoid lease when the property is destroyed (clause e).¹⁷
- (6) To pay for repairs or allow lessee to deduct the charges from rent if lessor neglects to make any repairs which he is bound to do (clause f).
- (7) To pay or allow lessee to deduct from rent any charges paid by him which lessor is bound to pay and which are charged on the demised property (clause g).
- (8) To allow lessee to remove fixtures attached by him (clause h).

15 The provisions of the Transfer of Property Act are subject to overriding provisions of rent control laws relating to urban buildings which are in force in various States.

16 For subsequent permission by lessor to make alterations and additions see precedent No.5 LICENCE, *post*.

17 Destruction of the property makes the lease voidable at the option of the tenant only. It does not automatically put an end to the tenancy : *Dhruvdev v. Harmohinder Singh*, A 1968 SC 1020; *Hari Krishan v. Ramesh Gupta*, 1998 AIHC 2457 (P & H).

(9) To allow lessee to remove crops sown by him and standing on determination of lease for an uncertain period (clause i).

(10) To permit lessee to transfer his interest (clause j).

These are statutory covenants which are implied even if not expressly stated.

It is therefore not strictly speaking necessary to insert them in leases governed by the Transfer of Property Act. But these covenants can be varied by contract and any variation must be expressly stated; as also any other conditions and covenants.

In England, the practice is to insert in the lease even those conditions which are ordinarily implied. This is done because they give greater definiteness to the obligations and because they bind the lessee and lessor personally during the continuance of the term even though they may have assigned their rights in the lease to others. But the latter is not consideration in India as under Sec. 108(j) the lessee remains subject to all the liabilities in spite of a transfer of his interest under the lease. But as the covenants under Sec. 108 are implied only "in the absence of a contract or local usage to the contrary," it is open to party to set up a local usage varying the implied conditions and this may lead to unnecessary disputes and litigation. It is, however, not necessary to set out all the covenants and it would be sufficient to say that

"The lessor and lessee will have the rights and will be subject to the liabilities mentioned in Sec. 108 of the Transfer of Property Act, 1882."

Such a covenant will make the conditions in Sec. 108 applicable to the lease in spite of any local usage to the contrary and even in territories where the Transfer of Property Act is not in force. All additional covenants should be inserted separately.

If any of the clauses of Sec. 108 is desired to be omitted or varied the same be excluded thus :

"Except clauses—of the said section which are hereby excluded" and the varied covenant may be inserted as a separate covenant.

It must, however, be clearly understood that where an express covenant is made no covenant can be implied on the same subject,¹⁸ therefore, the express covenant should be complete in itself.

The additional covenants necessary in a particular lease depend on the nature of the lease and of the demised property. Some of these covenants are usual but most of them are matters of contract. Only such covenants as are legally enforceable can be made. Most tenancies in India are now governed by

¹⁸ *Standdon v. Christmas*, (1847) 10 QB 135 at p. 141; *Standard v. Forbes*, (1837) 6 Ad. and EL. 572.

special local laws,¹⁹ and the tenure and the rights and liabilities under the lease are regulated by statutory provisions. Parties cannot legally contract themselves out of them to the prejudice of the tenant, and it is the duty of conveyancer to satisfy himself that covenants which the parties desire to enter into are not against the provisions of law.

Some of the general important covenants are discussed below :

(i) *Covenant to Pay Taxes*

The lease should define the mode in which taxes, rates, and other public charges are to be borne by the lessor and lessee respectively. Some taxes are payable under the law by a particular party but there is nothing illegal in the other party undertaking to pay the same and the contract will, as *between the parties to it*, be legal and enforceable. It is thus not unusual for the lessee to undertake to "pay all rates and taxes and cesses charged on the demised premises or payable by the lessor or the lessee in respect thereof." Ordinarily, land revenue, cesses, ground rent, house tax and other cognate dues are payable by the lessor, while water tax, scavenging tax, etc., are payable by the lessee, but it is always better to make a definite contract and embody the same in the lease. It is better to specify all the taxes to be paid by one party and to say in the other party's covenant that he is to pay all the others.

In England the words, "duties", "outgoings", "impositions" or "charges" are used but these words are not in vogue in India. The charges which are generally current in India are, cesses, rates and taxes.

(ii) *Covenant to Repair*

In practice, the parties always enter into an express covenant for repairs, but if they are satisfied with the statutory provision in clause (f) and (m) of Sec. 108 and do not want any variation they need not mention any specific covenant in this regard. Generally, the liability for certain repairs is thrown on the lessor and for others on the lessee.

Sometimes lessee's covenants are made in general words, e.g., to keep in "good and substantial state of repairs" or to keep in "good and tenantable repairs" or "good repairs" or "habitable repairs". The former covenant, though widely expressed, is construed with reference to the age and general condition of the house at the commencement of the lease, as the lessee has to repair that thing which he took and not to make a new and different thing and the lessee is not bound to make good defects caused by the natural operation of time and the elements upon a house of originally faulty circumstances.²⁰

19 "Rent control" laws in respect of urban buildings and land laws in respect of agricultural tenancies.

20 *Lister v. Lane*, (1893) 2 QB 212 at P. 217.

If the duty of repairs is undertaken by the lessor, the exact duty must be clearly and fully stated in the lessor's covenant. In such cases, in case of lessor's default the lessee is entitled to make the repairs and deduct the cost from the rent [section 108 (f)]. It is not therefore necessary to make an express covenant to that effect.

(iii) *Covenant to Insure Against Fire*

In India, such covenants are not frequent except in big towns or in cases of tenancy of commercial buildings, godowns, factories, etc. When a covenant is made, the company from which insurance policy is to be taken and the amount of insurance should be expressed, and the covenant should provide not only for insurance but also for punctual payment of *premia*. It should also provide how the insurance money is to be utilized in case a damage by fire takes place. If the duty of insurance is undertaken by the lessor, the lessee must covenant not to do anything on the demised premises which may render any increased or extra premium payable for insurance of the premises or which may make void or voidable any policy for such insurance.

(iv) *Covenant about Assignment*

Ordinarily, a lessee's right is transferable, except when he has an untransferable right of occupancy, or is a farmer of an estate in respect of which default has been made in payment of revenue [section 108(j)], and nothing need be said unless there is a contract to the contrary. Conditions forbidding or restricting transfers are frequently inserted; sometimes transfer is permitted only with the lessor's previous consent in writing. Or the lessee may be required to give notice of transfer to the lessor, or to pay to the lessor a part of the price he gets for the assignment. All such conditions are valid but must be expressly stated in the lease. In a case with the last mentioned condition where the lessee had not paid the part of the price to the lessor, it was held that the transfer was invalid.¹

(v) *Covenant about Use of Property*

If the purpose of the lease is stated in the *habendum* it is not necessary to add a covenant that the property shall not be used for any other purpose. Such a covenant usually called "a restrictive covenant" is implied by section 108(o). Sometimes a different use is allowed after previous permission of the lessor. If so, an express covenant to that effect is necessary. Sometime the purpose of the lease is not stated in the *habendum* but is stated in a restrictive covenant by the lessee, thus :

¹ *Mahendra v. Karali*, A 1946 Cal 496 (a case of agricultural tenancy under the Bengal Tenancy Act 1885). The legality of the condition may be considered in light of local Rent Control Acts.

"The lessee will use the demised house for residential purposes only, and, except with the previous permission in writing of the lessor, for no other purpose."

(vi) *Covenant for Quiet Enjoyment*

Sec. 108 (c) of the Transfer of Property Act provides that if the lessee pays the rent reserved and performs the contracts binding on him he will hold the property during the time limited by the lease without interruption. This is a covenant for quiet enjoyment which is implied in all leases governed by the Transfer of Property Act, in the absence of an express covenant on the subject.

It is, therefore, not necessary to insert an express covenant in leases governed by the Transfer of Property Act unless it is desired to restrict the implied covenant in any way. But it must be remembered that the interruption against which protection is afforded is a lawful interruption and not tortious disturbance by a trespasser, as a tenant has himself a remedy against a trespasser while he has none against a person having a right, e.g., one with a paramount title.²

(vii) *Covenant for Renewal*

This covenant should contain the agreement to renew the lease on the expiry of its present term on such conditions as may be agreed upon. These conditions should be clearly expressed, e.g., the term for which the renewal will be granted, whether any increase will be permissible or the renewal would be on the same rent, whether the lessee should give any notice to the lessor of an intention to exercise the option of having the lease renewed, who would bear the cost of renewal, etc. If the conditions are not mentioned renewal agreement can be enforced on reasonable terms.³

Provisos

There are certain covenants which are added as provisos because they control the general terms of the lease, e.g., the stipulation about re-entry on non-payment of rent or on the occurrence of a breach of covenant, or that giving liberty to the parties to determine the tenancy by notice within the term of the lease. These stipulations control the main provision in the habendum fixing a term of the lease and are really in the nature of proviso to it than an independent covenant. There is, however, no objection if such stipulations are drafted as covenants, e.g., that relating to forfeiture as a lessee's covenant, and that about determination by notice as a covenant by the party against whom the other party is given that power, or if power is given to either then as

2 *Katyani v. Udao Kumar*, 52 C 417, 50 IA 160, PC; *British India Corporation v. Secy. of State*, A 1945 All 425.

3 *Kodamban v. English and Scottish*, A 1945 Mad 199.

a covenant by both parties, though it would be more regular and accurate to put them as provisos. Such provisos should indicate their nature of being definite covenants. Also by the addition of words showing an agreement, thus:

"PROVIDED *always and it is hereby agreed that, etc. (or, as follows).*"

If the witnessing clause is divided into paragraphs (as in the Precedents in this book) the provisos should also be inserted in separate paragraphs.

The usual matters to be entered in the provisos are the forfeiture clause, the option to determine clause, the clause about suspension of rent in case of fire, and that enabling sub-lessee to pay rent to the superior landlord. The clause for renewal of term is also sometimes included in the provisos but it is more correct to include it in the lessor's covenants.

Sometimes provisos containing covenants by the lessee are added after the lessee's covenants, while others are inserted after the lessor's covenants, but sometimes all the provisos are added at the end. The latter procedure is preferable as in some provisos there may be covenants by both parties.

Forfeiture clause (commonly called the "Proviso for Re-entry").

The right of re-entry is reserved usually in cases of default in payment of rent or breach of a covenant, or on the lessee becoming insolvent. In case of default, it is sometimes provided that re-entry can be enforced only if any rent is in arrears for a specified period.

The proviso should be so drafted as simply to give a right of re-entry. Words often used to be inserted authorizing forcible entry or expulsion of the tenant⁴ but such authority would not be legal, and no such words are, therefore, necessary. The effect of the proviso is not automatically to determine the tenancy but simply to give the lessor the option to determine it. The tenancy continues until the lessor has given notice in writing to the lessee of his intention to determine the lease [Sec. 111(g)]. If the lessee does not peaceably surrender possession the lessor will have to sue for it and courts have been given wide powers to relieve the lessee of forfeiture (Sec. 114 and 114A). A clause reserving the rights of the lessor to sue the lessee for damages for breach of contract is also usually added at the end of the proviso though this seems hardly necessary.

Forfeiture clause is always strictly construed. Where, in a lease, there was a condition for re-entry on the insolvency of the lessee, and the lessee's interest was purchased in execution of a decree by X, and thereafter the lessee became insolvent, it was held that the "lessee" for purposes of the condition

⁴ This was done on the English Pattern, but in India re-entry by force is not legally permissible: See *Lallu Yeshwant Singh v. Rao Jagdish Singh*, A 1968 SC 629.

was, under the circumstances really X, and that as he did not become insolvent, no forfeiture took place.⁵

Devolution of Rights under the Lease

A lease is not a personal contract but is an estate in land which, unless for life, passes to the heirs as any other property and they take it with all the rights and responsibilities attaching to it.⁶ Similarly, the lessor's heirs cannot repudiate the lease and are bound by the covenants thereof.

As regards the transferees of lessor's interest, Sec. 109 of the Transfer of Property Act provides that the transferees shall have all the rights of the lessor but will be subject to the liabilities only if the lessee so elects, for the lessee may prefer to make the transferor continue to be liable. A lessee can transfer all his rights and liabilities.⁷ In any case, transferee is subject only to such liabilities as arise under covenants "running with the land", e.g., the covenant to pay rent, taxes, to repair, a condition for re-entry. Covenants which are merely personal are not binding on the assignee, e.g., to pay tax in respect of another property or not to keep a building within a certain distance of the demised premises.

However, a lessee shall not, merely by transferring his interest, even absolutely, cease to be subject to any of the liabilities attaching to the lease [Sec. 108(j)] unless the lessor releases him, for example, by treating the transferee on the footing of the original lessee. In such a case, a privity of contract is established between the lessor and the transferee and the original lessee is therefore released.

Interpretation Clause

Although, for the above reason, it is rarely necessary to have the successors and assigns of the lessor and lessee mentioned in the lease, yet a practice has grown up for the sake of safety and clarity to insert an interpretation clause providing that where the context so admits the expression the "lessor" shall include the owner for the time being of the lessor's interest in the demised property and the expression the "lessee" shall include his heirs, executors, administrators, and assigns.⁸ This is either inserted as a separate covenant clause at the end or is provided for in beginning after the names of the parties, thus—"AB, etc., (hereinafter called the lessor, which expression shall etc.)". In the author's opinion a clause somewhat on the above lines should be added as

5 *Hazari Mal v. Sada Sukh*, A 1925 Cal 750.

6 *Maharaja Tej Chand v. Sri Kanth Ghose*, 3 MIA 261.

7 Under rent control laws, however, subletting without the permission of the lessor generally entails forfeiture of the statutory protection of those laws.

8 The word "assigns" should be omitted in respect of lessee where subletting is prohibited either by statute or by express contract.

a covenant by both parties or in the proviso. The meaning of the document or of a particular part of it is to be sought for in the document itself. Of course the document means the document read as a whole and not piecemeal. In construing instruments you must have regard not to the presumed intention of the parties, but to the meaning of the words which they have used.⁹

Surrender

In many cases a surrender is implied, e.g., when a new lease of the same land is granted to the same lessee, or where a lease is granted to a third party with the assent of the lessee and possession is transferred by the latter to the new lessee.¹⁰

In a case where the leased premises were mortgaged in favour of the tenant and it was recited in the mortgage deed that the mortgagee undertook to surrender possession if the loan amount was paid within the specified period it was held that on such payment the lease was to be deemed to be surrendered.¹¹ It is however a matter of intention whether surrender was to be implied merely by execution of a mortgage in favour of the tenant. There is no automatic merger of the lease and the mortgage; hence unless there is implied or express surrender the right of the tenant will survive the redemption of the mortgage.¹²

Surrender may be made orally by delivery of the property which the lessor accepts. When surrender is made in writing it may be made by a separate deed or by an endorsement on the original deed. After reciting the lease and the consideration and agreement for surrender the lessee in the operative part of the deed "surrenders and yields up the demised premises to the lessor to the intent that the term created by the said lease and the estate and interest of the lessee under or by virtue of the said lease be absolutely and forever extinguished and the said premises may revert to the lessor, and the lessor absolves the lessee from the liabilities under the lease". If there is any other agreement by the lessor in consideration of the lease the same is entered as a covenant by the lessor.

Sometimes surrender is mentioned as a consideration of a new lease. In that case a clause about surrender is added in the new lease. If the surrender is made by endorsement on the lease, no recitals of the lease are necessary.

9 *Delhi Development Authority v. D C Kaushish*, (1973) 2 SCC 825. *Also see* Odgers Construction of Deeds and Statutes pp. 28-29 (5th Ed.) and INTRODUCTION, Part IV, *ante*.

10 *P.M.C. Kunhiraman Nair v. C.R. Naganatha Iyer*, (1992) 4 SCC 254.

11 *Shaw Mathuradas Mangelal & Co. v. N.S. Malage*, (1976) 3 SCC 680, *folld.* in *Kasilinga v. Kalivaperumal*, 1998 AHC 4326 (Mad).

12 *Gopalan v. Kurumana*, A 1996 SC 1659, *Cheriyian Sossamma v. Sundaressam Pillai*, (1999) 3 SCC 251; A 1999 SC 947.

In case of agricultural tenancies special procedure for surrender is prescribed by local Acts and the same should be followed.¹³

Where a deed contains mixed elements disclosing features of both mortgage and lease the court will have to find out the predominant intention of the parties from the recitals and the terms in the entire document and from the surrounding circumstances. How the parties or even their representatives in interest treated the deed may also be relevant, but the nomenclature given to it by the scribe or even by the parties is not always conclusive.¹⁴

Stamp Duty

For stamp duty on a lease, including an underlease or sub-lease and any agreement to let or sublet see Article 35 with local amendments, if any. For a deed of surrender of lease, see Art. 61.

Registration

All leases from year to year, or for a term exceeding a year, or reserving a yearly rent must be registered (Sec. 107, Transfer of Property Act and Sec. 17(1)(d) Registration Act).

13 *Mangala Kunhamina Umma v. Puthiyaveetil Paru Amma*, A 1971 SC 1575.

14 *Puzhakkal Kuttappu v. C. Bhargavi*, (1977) 1 SCC 17; see also, *C.S.Chandrashekhara v. George*, A 1985 Ker 131; *Mangala*, supra.

PRECEDENTS

1—General Forms of Various Formal Parts of a Lease¹

Consideration

1. Premium Paid and Rent Reserved

In consideration of the sum of Rs. _____ paid by the lessee to the lessor as premium (the receipt of which is hereby acknowledged) and of the rent and the lessee's covenants hereinafter reserved and contained.

2. Surrender of former Lease

In consideration of the surrender by the lessee of a former lease of the property hereby demised dated the _____ and made between AB, etc., and CD, etc., and of the rent and lessee's covenants hereinafter reserved and contained :

Reservation and Exceptions

1. Excepting and Reserving to the lessor—_____

Parcels

1. Trees

ALL timber and fruit trees, saplings, shrubs, and underwood now standing or growing or hereafter to be standing or growing on the demised land with power to enter upon the said land for collecting the fruit and fallen timber but with no power to cut down any trees without the permission of the lessor.

2. Grass

ALL grass now growing or hereafter to grow on the demised land.

3. Minerals

ALL mines, minerals and quarries (including the right, if necessary, to work and get the same by surface workings, the tenant receiving due compensation for all damages sustained through the exercise of this exception).

1 See Introduction, Part II, and GENERAL FORMS, *ante*.

2 *Ibid*

4. Right of Way

The use at all times and for all purposes in common with the lessee of the passage of ——— metres width leading from ——— to ——— or (ALL ways and rights of way hitherto used or enjoyed over the demised premises).

5. Right of Drainage

The free and uninterrupted passage and running of water and soil from and to other buildings and land of the lessor through the sewers, drains and water course which now are or hereafter may be in or under the demised premises.

6. General Rights

Subject to all rights and easements or re-granted easements belonging to or usually enjoyed with any adjacent property.

Habendum

TO HOLD the same to the lessee from the ——— from year to year; or

TO HOLD the same to the lessee from the ——— for a term of ——— years (months); or

TO HOLD the same to the lessee in perpetuity; or

TO HOLD the same to the lessee for the life of the lessee.

Reddendum*1. Reserving Rent*

PAYING therefor during the said term (tenancy) the lessor yearly (monthly) and proportionately for any fraction of a year (month) the rent of Rs. ——— to be paid⁴ on the ——— day of ——— in each year (month), the first of such payments to be made on the ——— next.

2. Annual Rent Payable in Instalments

PAYING therefor (as in Form 1) Rs. ——— by equal quarterly

3 This is suitable when the tenancy is not for a fixed term.

4 If rent is payable in advance add the words "in advance" after "paid" and delete the words "in each year, etc."

instalments on the _____ day of the months of _____ and in _____ each year, the first of such payments to be made on the _____ next.

3. *Alternative more Detailed Form*

PAYING therefor during the said term (tenancy) to the lessor the yearly rent of Rs. _____ by equal quarterly instalments on the _____ day of _____, and in each year, the first of such payments to be made on the _____ next and also paying in the event of the said term (tenancy) being determined between two of the said quarterly days by re-entry (or notice) under the terms hereof a proportionate part of the said rent for the fraction of the current quarter forthwith on such determination.

4. *If lease Executed after Commencement of Tenancy*

PAYING therefor each year (as in Form 1) the first of such payments after the date herein in respect of the now current year (month) to be made on the _____ next.

5. *Alternative form*

PAYING therefor each year (as in Form 1).

Provided that the rent already paid by the lessee in respect of his occupation since the commencement of this tenancy shall be in satisfaction as far as the same extends of the rent already accrued due hereunder.

6. *Different Rents*

PAYING therefor during each year of the said term (tenancy) to the lessor the respective rents following, that is to say:

1st year Rs. _____.

2nd and 3rd years Rs. _____ yearly.

4th, 5th and 6th years Rs. _____ yearly.

Subsequent years Rs. _____ yearly.

Such respective rents to be paid by equal quarterly, etc., (as in Form 2).

7. *Premium Agreed to be Paid*

PAYING therefor to the lessor the sum of Rs. _____ by way of premium in two equal instalments on the _____ and the _____ and during the said term, etc. (as in above Forms).

8. Rent to be Determined by Calculation

PAYING therefor during the said term (tenancy) to the lessor yearly rent at Rs. _____ per acre of the demised land actually cultivated by the lessee during such year on the _____ subject to a minimum yearly rent of Rs. _____.

9. Fixing Place of Payment

PAYING therefor during the said term (tenancy) to the lessor at _____ or at such other place or places as the lessor may from time to time appoint in this behalf yearly, etc., (as in other Forms).

10. Rent in Kind

RENDERING during the said term (tenancy) to the lessor at the end of every harvest after the crops have been reaped a half share of the agricultural produce actually grown by the lessee on the demised land.

11. Service

RENDERING during the whole of the said term (entire period of tenancy) to the lessor personal service of a gardener in the lessor's mango grove adjoining the demised land in accordance with the covenants herein contained.

Covenants

(a) By Lessee

1. Covenant to Pay Rent⁵

The lessee will during the said term (or, during the continuance of the said tenancy)⁶ pay the rent hereby reserved on the days and in the manner aforesaid.

2. Covenant to Pay Taxes⁷

The lessee will during the said term (or, during the continuance of the said tenancy) pay all rates, taxes and other charges now payable or hereafter to become payable in respect of the demised premises by the lessor or lessee thereof except the house tax (or, except those hereinafter agreed to be paid by the lessor).

⁵ This covenant is, strictly speaking, not necessary as it is implied by section 108(1), Transfer of Property Act (where that Act is in force).

⁶ These words are appropriate if the tenancy is not for a fixed term.

⁷ See Preliminary Note on this covenant.

3. *Covenant to Pay Land Revenue by Lessee*

The lessee will during the said term pay the land revenue and cesses now assessed or which may hereafter be assessed on the demised property.

4. *Covenant to Repair*⁸

The lessee will during the said term (*or*, continuance of the said tenancy) keep the demised premises and the fixtures, paintings and decorations thereof in good and tenantable repair, order and condition (*or*, in as good condition as they were (will be) in when the lessee was (will be) put in possession⁹ and will permit the lessor and his agents with or without workmen or others at all reasonable times to enter the demised premises and inspect condition thereof, and will repair and make good all defects of which notice in writing will be given by the lessor to the lessee within _____ calendar months after the giving of such notice.

5. *Covenant to Insure*¹⁰

The lessee will insure and shall at all times during the said term (*or*, continuance of the tenancy) keep insured the demised premises with all buildings, erections and fixtures now thereon or which may hereafter be constructed or erected thereon against loss or damage by fire in the sum of Rs. _____ in an Insurance Company approved by the lessor and will, whenever required, produce to the lessor the policy of such insurance and the receipts for the last premium in respect of the same and will apply all money received under the policy in reinstating the premises destroyed or damaged.

6. *To Insure against Fire*

The lessee will during the said term (tenancy) keep the demised premises insured against loss or damage by fire in the sum of Rs. _____ at least in some Insurance Company of repute and will whenever required

8 See Preliminary Note on this covenant. A covenant for repair is implied by Sec. 108(m) of the Transfer of Property Act. It is however expedient that this express covenant may be inserted as it is more extensive than an implied covenant.

9 Under this covenant it is not sufficient that the premises should remain in a reasonably habitable condition but they should be kept in as good condition as they were when the lessee obtained possession.

10 See Preliminary Note on this covenant.

produce to the lessor the policy of such insurance and the receipt for the last premium for the same and in case of destruction or damage of any part of the said premises by fire will rebuild or reinstate the same.

7. Not to do Anything to Increase Rate of Insurance

The lessee will not carry on or permit upon the demised premises any trade or occupation or do or suffer any other thing which may render any increased or extra premium payable for the insurance of the said premises against fire or which may make void or voidable any policy for such insurance.

8. Not to Commit Waste¹⁰

The lessee will not at any time during the said term without the consent in writing of the lessor pull down or damage any building belonging to the lessor or cut down or destroy any trees now or hereafter standing or growing on the said premises or open, work or dig for any mines, minerals, quarries, clay, gravel or sand in, upon or under the same.

9. To Prevent Loss of Easement

The lessee will during the said term use his best endeavours to prevent any easement of right belonging to or used with the demised premises from being obstructed or lost.

10. To Prevent Encroachment and Acquisition of Easements

The lessee will not allow any encroachment to be made or easement to be acquired on or over the demised premises and if any encroachment or easement shall be made or threatened to be made or anything is done or threatened to be done by any person which if not stopped might confer on him a right of easement against the demised premises the lessee will forthwith give notice thereof to the lessor and permit him and his servants and agents to enter the demised premises to inspect the same.

11. Not to Assign¹²

The lessee will not without the previous consent in writing of the

¹¹ This is necessary only if the Transfer of Property Act does not apply as section 108(o) implies such a covenant.

¹² See Preliminary Note on this covenant.

lessor sell, mortgage or sublet or in any other manner transfer or part with the possession of the whole or any part of the demised premises or his interest in the same.

12. Not to Sell or Mortgage

The lessee will not sell or mortgage his interest in the demised premises but may sublet the same from time to time for any term not exceeding _____ years at one time and will not on the expiry of any such term sublet again for at least _____ years.

13. To Give Notice of Assignment

The lessee will within _____ months after any transfer or assignment of his interest under this lease give notice in writing of such transfer or assignment and of the name and the address of the transferee or assignee.

14. To Give Lessor Right of Pre-emption

The lessee will not sell his interest under this lease without first giving the lessor the option to purchase such interest at the price which any other person is willing to give.

15. To Perform Covenants in Head Lease¹³

The lessee will at all times during the said term duly perform and observe all the covenants affecting the demised premises which are contained in the head lease of the said premises dated _____ on the part of the lessee thereunder to be performed and observed (except the covenants about payment of rent, etc.).

16. To Deliver up Possession¹⁴

The lessee will on the determination of this lease deliver possession of the demised premises to the lessor in as good condition as it was in when the lessee obtained possession, subject only to the changes caused by reasonable wear and tear or irresistible force.

¹³ Either a general covenant in this form should be inserted or all the lessee's covenants in the head lease which are intended to be binding on the sub-lessee should be specifically entered in the sub-lease.

¹⁴ Necessary only if the implied covenant under section 108 (q) of the Transfer of Property Act does not apply.

10. *Dispute about Repairs*

Provided that in all cases of dispute as to the necessity or sufficiency of any repairs required by the lessee or done by the lessor, the opinion of----- shall be final and binding on the parties.

11. *Provision on Default of Lessor¹⁸*

Provided that if the lessor shall fail to execute such repairs or to do the painting, etc., hereinbefore referred to, the lessee may serve a notice on the lessor calling upon him to execute and do the same within----- days of service of such notice and, if the lessor shall fail to execute or do the same, deduct the cost thereof from the rent hereby reserved until the same has been paid off, or otherwise recover the same from the lessor.

12. *To Renew Lease (one Renewal)*

If the lessee shall have given to the lessor not less than----- months' notice in writing prior to the expiration of the term reserved herein expressing a desire to renew the lease and shall have duly observed and performed all the terms and conditions hereof the lessor will grant to the lessee a new lease of the demised premises by way of renewal for a further period of----- years to commence from the date of expiry hereof at the same rent plus----- percent thereof and upon the same terms and conditions in all other respects as are reserved and contained herein (excluding only this present covenant for renewal).

13. *To Renew Lease, (Several Renewals)*

The lessor will at the request and cost of the lessee at the end of the said term and so on from time to time thereafter at the end of such further terms of years as shall be granted execute to the lessee a new lease by way of renewal for a term of----- years on such covenants and provisions herein contained as shall apply to such renewed lease provided that such renewed term of years as shall be granted shall not with the original term hereby granted exceed in the aggregate the period of----- years.

14. *To Renew Lease, Reserving Enhancement of Rent*

The lessor will, etc., (as in para 13 above) herein contained except that relating to the amount of annual rent reserved as shall apply to such

¹⁸ This is strictly not necessary, in cases governed by the Transfer of Property Act [Sec. 108 (f)]

6. Interpretation Clause²¹

It is hereby agreed that whenever such an interpretation would be requisite in order to give the fullest scope and effect legally possible to any covenant or contract herein contained, the expression "the lessor" hereinbefore used includes the owner for the time being of the lessor's interest in the demised premises and the expression "the lessee" hereinbefore used includes his heirs, executors, administrators, and assigns (or, permitted assigns); or

It is hereby agreed that where the context so requires or admits the expression "the lessor" shall include his successor-in-title and the expression "the lessee" shall include the lessee's heirs, executors, administrators, and assigns.

7. Interpretation Clause when Guardian or Manager is Lessor

It is hereby, etc., (as in para 6) herein contained the expression "the lessor" hereinbefore used includes all persons and the successor-in-title of each and every person on whose behalf the lessor is now entitled to contract and to accept the benefit of a contract in relation to the transaction herein contained whether such persons are named herein or not and the expression "the lessee", etc. (as in para 6).

8. Interpretation clause when Guardian or Manager is Lessee

It is hereby, etc., (as in para 6) herein contained the expression "the lessee" hereinbefore used includes all persons and the heirs, executors, administrators, and assigns of each and every person on whose behalf the lessee is now entitled to contract and to accept the benefit of a contract in relation to the transaction herein contained, whether such persons are named herein or not.

9. Registration Fee

It is hereby agreed that any fee payable for the registration of this deed will be paid by the lessor/lessee.

If the lessor is Government and it is desired that the lessee should be exempted from the duty, the above covenant may be entered into which will have the desired effect [Sec. 3 Proviso (1)].

21 See Preliminary Note on this.

4. To Pay Land Revenue and Taxes

The lessor will during the said term pay the land revenue, cesses, land or house tax (mention the taxes payable by the lessor under the contract), now payable or hereafter to become payable in respect of the demised premises or by the lessor or lessee thereof.

5. To Pay all Taxes Except Some

The lessor will during the said term pay all rates, taxes and other charges now payable or hereafter to become payable in respect of the demised premises by the lessor or lessee thereof except those hereinbefore agreed to be paid by the lessee.

6. To Repair

The lessor will at his own cost keep the demised premises (including electric installations) in thorough good repair and habitable condition and will in particular annually at such time as the lessee shall direct make such repairs as may be necessary and will also annually after the rains (at such time as the lessee directs) paint such parts of the demised premises both from inside and outside and also all doors, windows and other wooden structures which are painted at the date of this lease and will replace all broken glass panes, bolts etc.

7. To Execute Sanitary Works

And also will at any time during the said term, execute any works which may in the opinion of the Municipal (Sanitary) authorities be necessary in order to put the said premises into good sanitary order and condition.

8. To Replace Fixtures Worn out

The lessor will replace any of the fixtures and fittings specified in the schedule attached hereto which may during the said term become unfit for the purpose for which the same are now used by other fixtures and fittings of a like nature or equal or higher value.

9. To Repair Sanitary Fittings

And will keep the internal sanitary and water apparatus thereof in good and tenantable repair and condition.

such use be suspended and cease to be payable, and such abatement of rent shall be in full satisfaction of all claims for damages by the lessee against the lessor in respect of such destruction or damage.

6. *Option to Determine Lease*

If the lessee/lessor shall desire to determine the present tenancy and shall give to the lessor/lessee _____ calendar months' previous notice in writing of such desire (*add in case of lessee*, "and shall upto the time of such determination pay the rent and perform and observe the covenants on his part hereinbefore contained") then immediately on the expiration of such notice this lease shall be void without prejudice to the remedies of either party against the other in respect of any antecedent claim or breach of covenant; *or*

That the tenancy hereby created shall be determinable at the option of the lessor/lessee at any time by his giving to the lessee/lessor _____ calendar months' notice in writing; *or*

That either party may at any time determine the tenancy hereby created by giving to the other _____ calendar months' notice in writing.

7. *Contract about Notice and Demands*

It is hereby agreed that any demand for payment or notice requiring to be made upon or given to the lessee shall be sufficiently made or given if sent by the lessor or his agent through the post, by registered letter addressed to the lessee at the demised premises (*or at* _____) and that any notice requiring to be given to the lessor shall be sufficiently given if sent by the lessee through the post by registered letter addressed to the lessor at his usual or last known place of residence or business (*or, at* _____) AND that any demand or notice sent by post in either case shall be assumed to have been delivered in the usual course of post.

Leases and Prospecting Licences

Leases and prospecting licences in respect of mines and minerals are governed by the Mines and Minerals (Regulation and Development) Act 1957 and the rules respectively made by the Central Government (major minerals) and State Government (minor minerals) thereunder. The said Act and rules govern not only land of which Government is proprietor

renewed lease, etc. (as in para 13 above). Provided also that the lessor shall not be bound to grant any such renewal except at the rate of rent current in the neighbourhood at the date of such renewal for property with similar advantages, such rate of rent to be determined in case of dispute by ——. (Or, except at such enhanced rent not exceeding— percent of the rent payable immediately before such renewal as the lessor may deem reasonable).

(c) By Both Parties

1. Heading of Covenants

It is hereby agreed between the parties as follows; or, The lessor and the lessee hereby covenant with each other as follows:

2. General Covenants Extending Rights and Liabilities provided in Transfer of Property Act¹⁹

It is hereby agreed that in respect of the demised premises the parties hereto shall respectively have all the rights and be subject to all the liabilities of a lessor and of a lessee as set forth in Sec. 108 of the Transfer of Property Act, 1882 except Clauses — of the said section which are hereby excluded.

3. Arbitration Clause

It is hereby agreed that if at any time any dispute, doubt or question shall arise between the lessor and the lessee touching the construction, meaning or effect of this deed or any clause thereof or their respective rights and liabilities hereunder the same shall be referred to the sole arbitration of — whose decision shall be final and binding on the parties.

4. Contract about Cost of Deed

It is hereby agreed that all costs and expenses incidental to the preparation, execution and registration of this deed shall be payable by the lessor/lessee.

5. Contract about Stamp Duty

It is hereby agreed that the stamp duty, if any, payable on this deed shall be paid by the lessor.²⁰

¹⁹ See Preliminary Note.

²⁰ If the lessee is to pay it, no express covenant is necessary (Sec. 29, Stamp Act).

Provisos¹

1. *Heading of Proviso*

Provided always and it is hereby agreed that²

2. *For Re-entry³*

Whenever any part of the rent hereby reserved shall be in arrears for _____ after due date or there shall be a breach of any of the covenants by the lessee herein contained (*or*, the lessee shall be adjudicated insolvent) the lessor may re-enter on the demised premises and determine the lease.⁴

3. *Proviso Excluding Liability after Assignment*

That the lessee shall not be liable for the payment of rent hereby reserved or for the performance of any of the covenants hereinbefore contained after he has assigned the said lease (and given notice of assignment as hereinbefore provided).

4. *Payment of Rent by Sub-lessee to Superior Landlord*

That it shall be lawful for the lessee to pay the rent hereby reserved to the superior landlord whose receipts for such payments shall be in satisfaction or discharge of so much of the rent hereby reserved as shall be expressed in such receipts.

5. *Suspension of Rent in case of Fire*

That if any part of the demised premises is destroyed or damaged by fire so as to become unfit for use for the purpose for which it has been let, the rent hereby reserved or a fair and just proportion thereof according to the nature and extent of the damage sustained shall from the date of such damage (*or*, the expiration of _____ months from the date of damage) and until the premises shall have been rebuilt or reinstated and made fit for

1 See Preliminary Note, *ante*, on Provisos, page 414.

2 If there are several provisos say "agreed as follows:" and state the provisos in separate paragraphs.

3 See Preliminary Note, *ante*, sub-heading "Forfeiture Clause (Proviso for Re-entry)".

4 It is usual to add "and thereupon the lease shall absolutely determine." These words are, however not necessary if the lease is governed by Transfer of Property Act as this is the legal effect under section 111.

(b) That the lease will be determinable by either party by three months's notice to the other.

5. The lease shall contain a proviso for re-entry in case of non-payment of rent or breach of a covenant by the lessee.

6. The lease shall be prepared by the lessor at the expense of the lessee and shall be executed by the lessor and lessee on or before the_____.

The Schedule herein referred to

* * * *

IN WITNESS WHEREOF the parties have put their signatures hereinunder on the day and the year first above-written (or, on the respective dates mentioned against their signatures).

3—Agreement for Sub-lease of a House⁶

AN AGREEMENT (as in Form No. 2).

WHEREBY IT IS AGREED as follows :

1. The lessor shall grant and the lessee shall accept a lease of the premises described in the schedule hereto which are held by the lessor under a lease dated_____and made between_____(hereinafter called "the Superior Landlord") and the lessor for_____years from the_____day of_____at the monthly rent of Rs._____payable on the first day of the month succeeding that for which it is due.

2. Such lease shall contain the following covenants and provisions :

(a) *Covenants by the lessee*

Covenant to pay the rent as aforesaid and covenants similar to the lessee's covenants contained in the said head lease so far as they are applicable (except the covenant for payment of rent, and, etc.) so that the lessor shall be put in the place of the superior landlord and a covenant to indemnify the lessor against the observance and performance of the covenants and conditions in the head lease (except as aforesaid) so far as they are applicable.

⁶ Such an agreement does not itself constitute a lease, hence it does not require registration: *Food Corporation of India v. Babulal*, A 1998 MP 23 (DB).

but also lands which are private property. Forms of lease are also prescribed by rules. The covenants and restrictions are all governed by statutory provisions. Hence the text and forms relating to Quarrying and Mining have been omitted from this edition. See in this connection *Shri Tarkeshwar Sio Thakur Jiu v. Das Dass Dey & Co.*, (1979) 3 SCC 106 : A 1979 SC 1669; *M. Muniyandi v. Collector*, A 1998 Mad 136 relying on Sec. 4 (1), 21 (4) and 21 (5).

~~12~~ **Agreement to Let a House⁵**

AN AGREEMENT made the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the lessor") of the one part AND CD, etc., (hereinafter called "the lessee") of the other part.

WHEREBY IT IS AGREED as follows :

1. The lessor shall grant and the lessee shall accept a lease of the house known as No. _____, _____ street and situate in the town of _____ (or, fully described in the schedule hereto) for _____ years from the _____ day of _____ at the monthly rent of Rs. _____ payable in advance on the 1st day of each calendar month.

(2) The lessee shall enter into the following covenants :

- (a) To pay all rates and taxes except the house tax;
- (b) Not to alter the premises without the lessor's consent ;
- (c) To use the house for residential purposes only;
- (d) Not to assign or sublet without the lessor's consent.

3. The lessor will enter into the following covenants:

- (a) To keep the house in repairs;
- (b) To white-wash and colour-wash every year such parts as are now white-washed or colour-washed;
- (c) To paint wood work every third year.

4. The lessor and lessee will expressly covenant:

- (a) That they will respectively have the rights and liabilities specified in Sec. 108, Transfer of Property Act, 1882 except in Clauses (i), (j) and (m) thereof; and

⁵ Such an agreement does not itself constitute a lease, hence it does not require registration: *Food Corporation of India v. Babulal*, A 1998 MP 23 (DB).

the demised land over the land adjoining the demised premises on the east and shown on the plan as coloured blue for the purpose of going from the demised premises to the public road ----- on the west of the said land and *vice versa*, TO HOLD the said premises to the lessee from the ----- day of ----- for a term of ----- years PAYING therefor during the said term the yearly rent of Rs. ----- by equal half yearly payments on the ----- day of ----- and the ----- day of ----- in each year at the office of the lessor or at such other place or places as the lessor may from time to time appoint in this behalf, the first of such payments to be made on the ----- day of ----- next;

2. Lessee's Covenant

The lessee hereby covenants with the lessor as follows:

(i) To Pay Rent⁸

That he will, during the continuance of this lease, pay to the lessor the yearly rent hereby reserved on the days and in manner hereinbefore appointed.

(ii) To Pay Taxes

That he will, during the said term, pay all rates, taxes and charges of every description now payable or hereafter to become payable in respect of the demised premises or the buildings to be erected thereupon or by the landlord or the tenant in respect thereof.

(iii) To Build House

That he will at a cost of not less than Rs. ----- erect upon the demised premises in a substantial and workman-like manner and in accordance with the plan elevations section and specifications annexed hereto (*or, to be agreed by the lessor*) a dwelling house with necessary outhouses, boundary walls, sewers, drains, garages, etc., and shall complete the same in all respects fit for immediate occupation within ----- months from the date hereof (unless prevented by accident or unavoidable cause and in such case as soon after the said period as practicable)

(iv) Not to Make Additions

That he will not erect or build or permit to be erected or built on the

8 Not strictly necessary if the lease is governed by Transfer of Property Act.

(b) Covenants by the lessor

For the observance and performance of the lessor's covenants contained in the said head lease except such as under this agreement are imposed on the lessee.

(c) Provisos

For re-entry in case of default in payment of rent or breach of covenants by the lessee and for determination of this tenancy at the option of either party by giving three months' notice.

3. The lease shall be prepared by the lessor at the expense of the lessee and shall be executed by the lessor and lessee on or before the _____.

4. The lessor shall use his best endeavour to obtain the written consent of the superior landlord to the grant of the lease and if such consent cannot be obtained this agreement will become void.⁷

**4—Lease of Land for Building Purposes for a
Premium and Rent Reserved for a Term,
with a Renewal Clause**

THIS LEASE made on the _____ day of _____
BETWEEN AB, etc., (hereinafter called "the lessor") of the one part
AND CD, etc., (hereinafter called "the lessee") of other part.

WITNESSES as follows:

1. In consideration of the sum of Rs. _____ (Rupees. _____) paid as premium before the execution of these presents (the receipt of which the lessor hereby acknowledges) and of the rent hereinafter reserved and of the covenants on the part of the lessee hereinafter contained the lessor hereby demises to the lessee for the purpose of building a house or houses for residence only, ALL that land described in the schedule hereto and for greater clearness delineated on the plan annexed hereto and thereon shown with its boundaries coloured red together with all easements and appurtenances whatever belonging or in any way appurtenant thereto, and the free right of passage at all times and for all purposes to and from

⁷ Necessary only when under the head lease or under a local Act, a sub-lease without the lessor's consent is prohibited or is a ground for withdrawal of protection of the rent control law from ejection

the covenants by the lessee herein contained may hold and enjoy the demised premises during the said term without any unlawful interruption by the lessor or any other person whatsoever.

(ii) *For Renewal*

That he will at the request and cost of the lessee at the end of the term of _____ years hereby granted and so on from time to time thereafter at the end of each such successive further term of _____ years as shall be granted, execute to the lessee a new lease of the demised premises by way of renewal for the term of _____ years on such covenants and provisos herein contained except that relating to the annual rent reserved as shall apply to such renewed lease PROVIDED that such renewed terms of _____ years as shall be granted shall not with the original term of _____ years exceed in the aggregate the period of _____ years. AND PROVIDED ALSO that the lessor shall not be bound to grant any such renewal except at such enhanced rent not exceeding _____ per cent of the rent payable immediately before such renewal as the lessor may deem reasonable.

4. *Provisos (Re-entry¹⁰; Termination)*

PROVIDED ALWAYS and it is hereby agreed as follows:

(i) That whenever any part of the rent hereby reserved shall be in arrear for _____ months after due date or there shall be a breach of any of the covenants by the lessee herein contained the lessor may re-enter on the demised premises and determine this lease.

(ii) That the tenancy hereby created shall be determinable at the option of the lessor/lessee (or, either party) by giving to the lessee/lessor (or, the other party) _____ calendar months' notice in writing.

5. *Covenants by Parties*

It is hereby agreed between the parties as follows:

(i) *Service of Notice*

That any demand for payment or notice requiring to be made upon or given to the lessee shall be sufficiently made or given if sent by the lessor or his agent through the post by registered letter addressed to the

¹⁰ See Preliminary Note, *ante*, page 415, sub-heading 'Forfeiture Clause (Proviso for re-entry)'.

demised premises any building other than those specified in the last clause nor to make any addition to any building at any time existing thereon except with the approval of the lessor.

(v) To Repair

That he will during the term of tenancy hereby created keep the demised premises and all other buildings and structures which may at any time during the said term be erected or constructed on the demised land together with all roads, drains sewers, fences, compound wall and all other appurtenances to the demised premises and the said building and structures in good repair and condition.

(vi) Not to use for a Different Purpose

That he will not without the consent in writing of the lessor use or permit the use of the said land for any purpose other than that for which it is let and will not without such consent use or permit the use of the said dwelling house or any other buildings that may be erected on the demised premises for the purpose of carrying on any trade or business.

(vii) To Yield up Possession

That he will at the expiration of the said term or sooner determination thereof peaceably and quietly surrender to the lessor the said land after removing any constructions made by him thereon unless the lessor shall express his willingness to purchase the same at the market value of the materials in which case the lessee shall sell the same to the lessor at a valuation to be made by mutual consent or in case of disagreement by arbitration.

(viii) Not to Assign

That he will not assign or sub-let or otherwise part with the premises hereby demised or any constructions erected thereon or any part thereof without the permission in writing of the lessor.

3. Lessor's Covenants

The lessor hereby covenants with the lessee as follows:

(i) For Quiet Enjoyment⁹

That the lessee paying the rent hereby reserved and performing all

⁹ Not strictly necessary if the lease is governed by Transfer of Property Act.

(i) To Pay Taxes, etc.

During the said term the lessee will pay all rates, taxes and other charges now payable or hereafter to become payable in respect of the said premises.

(ii) To Repair

He will keep the said premises in good condition and complete repair and fit in all respects to be used for

(iii) Not to Transfer

He will not transfer, mortgage or sublet the said premises without having first obtained the consent in writing of the lessor.

3. Provisos for re-entry, option to determine (*as in Form 4*).

4. IT IS HEREBY AGREED between the parties as follows :

(i) That in respect of the said premises the parties hereto shall respectively have all the rights and be subject to all the liabilities of a lessor and of a lessee as set forth in section 108, Transfer of Property Act, 1882, except clauses (f), (g) and (i) of the said section which clauses are hereby excluded.

(ii) Covenant about notice (*same as in Form 4*).

(iii) Interpretation Clause (*same as in Form 4*).

IN WITNESS, etc.

**6—Lease of Land Already in Lessee's Possession,
with Retrospective Effect**

THIS LEASE, etc.

WITNESSES as follows :

1. The lessor hereby demises to the lessee ALL that land described in the schedule hereto on which the lessee has built a house and which has been in lessee's possession since _____ TO HOLD the same to the lessee from the beginning of the year _____ for a term of _____ years; PAYING therefor during the said term to the lessor yearly and proportionately for any fraction of a year the rent of Rs. _____ to be paid on the _____ day of _____ in each year the first such payment after

lessee at the demised premises (*or*, at _____), and that notice requiring to be given to the lessor shall be sufficiently given if sent by the lessee through the post by registered letter addressed to the lessor at his usual or last known place of residence or business (*or*, at _____) AND that any demand or notice sent by post in either case shall be assumed to have been delivered in the usual course of post.

(ii) Interpretation Clause

That wherever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or contract herein contained the expression "the lessor" hereinbefore used shall include the owner for the time being of the lessor's interest in the demised premises and the expression "the lessee" hereinbefore used shall include his heirs, executors, administrators and permitted assigns.

IN WITNESS WHEREOF the parties hereto have hereunder signed this deed on the dates mentioned against their respective signatures.

The Schedule herein referred to

(Particulars of the plots hereby demised)

5—Lease of Land and Building

THIS LEASE, etc., (*as in Form 4*).

WITNESSES as follows :

1. Demise of Land and Building

The lessor hereby demises to the lessee for _____ and for no other purpose ALL THAT plot of land described in the schedule hereto together with all buildings and trees thereon TO HOLD the same to the lessee from the _____ day of _____ for a term of _____ years PAYING therefor during the said term the yearly rent of Rs. _____ by half yearly payments on the _____ day of _____ and the _____ day of _____ in each year, the first of such payments to be made on the _____ day of _____ next.

2. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

- (i) *Arbitration Clause* -- as in para 3 of *General Forms of Covenants by both parties*,
 (ii) *Service of Notice* -- as in Form 4, clause 5 (i).
 (iii) *Interpretation Clause* -- as in Form 4, clause 5 (ii).

IN WITNESS WHEREOF, etc.

15— Lease of Dwelling House

THIS LEASE, etc., (as in Form 4).

WITNESSES as follows

1. Demise of dwelling house

The lessor hereby demises to the lessee ALL that dwelling house with the land fully described in the schedule hereto together with all outhouses, pucca well, motor garage, pathways, passage, garden and other appurtenances thereof, situate at ----- TO HOLD the same to the lessee from the ----- day of ----- for the term of ----- years (or, year to year) PAYING therefor during the said term the monthly rent of Rs. ----- (Rupees -----) payable on the first day of the month succeeding that for which the rent is due;

2. To Pay Taxes, etc.

The lessee hereby agrees that he will, during the said term (tenancy¹⁴), pay all rates, taxes and other charges excluding the house tax which now are or may hereafter become payable in respect of the demised property;

3. Lessor's Covenants

The lessor hereby agrees as follows :

(i) To Keep in Repairs

That the lessor shall keep the premises in good and substantial repairs during the said term and shall annually whitewash and do all necessary repairs to the outhouses and demised premises and on the lessee giving the lessor notice in writing of any special decays, defects and want of repair the lessor will within one calendar month from the receipt of such notice repair and amend the same;

¹⁴ If no term is fixed.

31—Lease by Reference to Expired Lease

THIS LEASE etc., (*as in Form 4*).

WITNESSES as follows :

1. The lessor hereby demises, etc., (*as in Form 4*).
2. Except as to the term of years hereby granted and the rent hereby reserved this demise is made upon the same terms and subject to the same covenants, provisos and conditions as were contained in the lease dated the _____ day of _____ and made between the parties hereto (*or*, between AB, etc., and CD, etc.,) as if the same were herein set forth at length with such modifications only as are necessary to make same applicable to the present demise and the parties hereto.
3. The lessee hereby covenants with the lessor to pay the rent hereby reserved on the dates and in manner aforesaid.
4. The lessor and the lessee hereby agree with each other that they will respectively perform and observe the several covenants, provisos and conditions subject to which the demise is made as aforesaid as ought on his part to be observed and performed.

IN WITNESS WHEREOF, etc.

32—Surrender of Lease by Endorsement on the Lease

(*With variation for the case of death of original parties*)

In consideration of the sum of Rs. _____ paid by the within-named lessor to within named lessee (*or*, by AB, etc., the successor-in-title of the within-named lessor to CD, etc., the successor-in-title of the within-named lessee), the receipt of which the said lessee (*or*, CD) hereby acknowledges, the said lessee (*or*, CD) hereby surrenders and yields up to the said lessor (*or*, AB) ALL the premises comprised in the within-written lease to the intent that the said lease and the estate and interests of the said lessee (*or*, CD) in the said premises thereunder be forever extinguished AND the said lessee (*or*, CD) hereby releases the said lessor (*or*, AB) from all obligations arising under the within-written lease AND the said lessor (*or*, AB) hereby releases the said lessee (*or*, CD) from the claims, demands and liabilities in respect of the within-written lease.

IN WITNESS WHEREOF, etc.

such case pay to the lessee as compensation such cost of any building or buildings standing on the demised premises on the date of such determination as may be mutually agreed upon or in case of disagreement as may be determined by ----- and on such payment being made such buildings shall vest in the lessor.

5. Covenant about notice and interpretation clause (*same as in para 5 of Form 4*).

IN WITNESS WHEREOF (*as in Form 4*).

7—Lease of Land for Playground

THIS LEASE made on the ----- day of ----- BETWEEN AB, etc., (hereinafter called "the lessor") of the one part AND -----, of the ----- High School, a society registered under the Societies Registration Act, 1860 such Secretary being authorised by the governing body of the society by resolution dated ----- in this behalf,¹¹ (hereinafter called "the lessee") of the other part ;

WITNESSES as follows :

1. The lessor hereby demises to the lessee for use as playground for the said ----- High School and for no other purpose ALL that land described in the schedule hereto To HOLD the same to the lessee from the ----- day of ----- for a term of ----- years PAYING therefor the yearly rent of Rs. ----- on the ----- day of ----- in each year at the office of the lessor, or at such other place or places as the lessor may from time to time appoint in this behalf.

2. Right of Re-entry

PROVIDED ALWAYS AND IT IS HEREBY AGREED that if the annual rent hereby reserved shall remain in arrears for a period of 30 days or if the demised land is at any time used otherwise than as a playground for the said ----- High School, the lessor may re-enter on the demised premises and determine this lease.

3. Interpretation Clause

It is hereby agreed that wherever such an interpretation would be

¹¹ U/s 5 of the Societies Registration Act the property of the society is vested in its governing body.

the date hereof in respect of the new current year to be made on the next.

2. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

- (i) *To Pay Rent (as in Form 4).*
- (ii) *To Pay Taxes (as in Form 4).*
- (iii) *Not to Alter*

The lessee shall not without the consent in writing of the lessor construct any new building or buildings on the demised premises or make any alterations in the buildings now standing thereon.

- (iv) *Not to make Additions (as in Form 4).*

- (v) *To Keep in Repair*

The lessee shall keep the building standing on the demised premises in good state of repairs and in habitable condition.

- (vi) *Not to use for other Purpose*

The lessee will not use the said land and buildings otherwise than for residential purposes.

- (vii) *To Yield up*

That the lessee will on the expiration of the said term or sooner determination thereof peaceably and quietly surrender to the lessor the said land after removing his building materials therefrom unless the lessor within three months preceding such expiry or within 15 days of such determination notifies his intention of purchasing the same at a cost to be determined in the manner hereinafter prescribed in Clause 4 hereof.

3. Lessor's Covenants

As in para 3 of Form 4.

4. Provisos

PROVIDED ALWAYS and it is hereby agreed as follows :

- (i) *Proviso for Re-entry (as in para 4 of Form 4).*
- (ii) *Option to Determine*

That the lessor may at any time after six months' previous notice in writing to the lessee determine the tenancy hereby created and shall in

(hereinafter called "the lessee") of the second part AND EF, etc., of the third part.

WHEREAS-----

(1) By a lease dated the ----- the lessor demised the land described in the schedule hereto to one X, etc., for building purposes for a period of ----- years and the said X erected some buildings thereon;

(2) By a deed of sale the said X transferred his rights and interest in the said land under the said lease and also the buildings standing on the said land to the lessee and the said EF.

(3) The lessor has now agreed with the lessee and the said EF that on the lessee and the said EF surrendering the aforesaid lease the lessor will grant to the lessee a fresh lease of the said land on the modified terms and conditions hereinafter contained.

NOW THIS DEED WITNESSES as follows :

(1) In pursuance of the aforesaid agreement and in consideration of the lease hereafter granted to the lessee, the lessee and the said EF hereby surrender and yield up to the lessor all the land comprised in the aforesaid lease dated ----- TO the intent that the said term created by the said lease and all the estate and interest of the lessee and the said EF in the said land under or by virtue of the aforesaid lease may be absolutely and forever extinguished from the date hereof and to the further intent that the lessor may forthwith grant to the lessee a new lease of the said land.

(2) In further pursuance of the aforesaid agreement and in consideration of the surrender hereinbefore contained, etc., (*as in para 2 of Form 8*).

IN WITNESS WHEREOF, etc.

10—Lease of Land in Favour of a Club

THIS LEASE made on the ----- day of ----- BETWEEN AB, (hereinafter called "the lessor") of the one part AND the Club¹² at -----, a society registered under the Societies Registration Act (*or, company within the meaning of the Companies Act, 1956*) (hereinafter called "the lessee") through ----- Secretary of the said club of the other part.

¹² If the Club is a registered company or society, it should join in its own name. If not, either all the members should join or the Secretary or President may enter into the lease in his own name and not merely as Secretary or President.

necessary in order to give the fullest scope and effect legally possible to any covenant or contract herein contained the expression "the lessor" hereinbefore used shall include the owner for the time being of the lessor's interest in the demised premises and the expression "the lessee" hereinbefore used shall include all persons from time to time acting as Secretary of the said society.

IN WITNESS WHEREOF, etc.

**8—Fresh Lease of New Land in Consideration
of the Surrender of Another Lease**

THIS LEASE made, etc., (as in Form 4).

WITNESSES as follows :

1. In consideration of the lease hereinafter granted by the lessor, the lessee hereby relinquishes from his tenancy and surrenders to the lessor possession of the land held by him as lessee under the lease dated the _____.

2. In consideration of the aforesaid surrender by the lessee and of the rent hereby reserved and the covenants herein contained the lessor hereby demises to the lessee ALL that land described in the Schedule hereto TO HOLD the same to the lessee from the _____ day of _____ for the term of _____ years PAYING therefor during the said term the annual rent of Rs. _____ in two equal instalments on the _____ day of _____ and the _____ day of _____ in each year at the _____ or at such other place or places as the lessor may from time to time appoint in this behalf.

*Covenants and
Provisions*

* * * *

**9—New Lease on Modified Terms in Consideration
of the Surrender of an Old Lease by the Lessee
and a Third Person (with Recitals)**

THIS LEASE is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the lessor") of the first part AND CD, etc.,

(vii) To Yield up

That he will on the expiration or sooner determination of the said term peaceably surrender and yield up the demised premises to the lessor, and in such an event the lessor may, at his option, either purchase the buildings, water pipes and other structures or fixtures belonging to the lessee and standing on the demised land upon the valuation of the lessee or may permit the lessee to remove the same.

3. Lessor's Covenants

The lessor hereby covenants with the lessee as follows :

(i) For Quiet Enjoyment

That the lessee paying the rent hereby reserved and performing and observing the covenants and conditions herein contained and on his part to be performed and observed shall and may peaceably and quietly hold, possess and enjoy the said demised premises during the said term in the manner aforesaid without any unlawful interruption or disturbance by the lessor or any person or persons whomsoever ;

(ii) To Pay Land Tax

That the lessor shall pay the land tax now imposed or hereafter to be imposed on the demised premises.

4. Provisos

PROVIDED ALWAYS, etc., (*Clause for re-entry and option to determine as in para 4 of Form 4*).

5. Interpretation clause -- As in para 5 (ii) of Form 4.

IN WITNESS WHEREOF, etc.

**11—Lease of Land for Building a House for a
Government Servant with Condition to
Sublet the same to Government¹³**

THIS LEASE made on the _____ day of _____
BETWEEN the Governor of Uttar Pradesh (hereinafter called "the lessor")
of the one part AND AB, etc., (hereinafter called "the lessee") of the
other part.

¹³ Cf. *State Bank of India v. Aditya Finance and Leasing Co.*, A 1999 Del 18 (case of Bank getting building constructed for being leased to it).

WITNESSES as follows :

1. Demise of Land

The lessor hereby demises to the lessee ALL that land described in the schedule hereto TO HOLD the premises hereby demised to the lessee for the purpose of the said _____ Club from the day of _____ for the term of _____ years; PAYING therefor during the said term the yearly rent of Rs. _____ by monthly payments of Rs. _____ on the _____ day of every month.

2. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

(i) To Pay Rent

That he will during the said term pay to the lessor the yearly rent hereby reserved on the days and in the manner hereinbefore appointed;

(ii) To Pay Interest

That if any monthly instalment of the rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for the period of one calender month next after the day whereon the same shall have become due the lessee shall pay interest at the rate of _____ per cent per annum;

(iii) To Pay Taxes

That he will pay all rates, taxes and other charges (except land tax) now chargeable or hereafter to be chargeable in respect of the demised premises;

(iv) Not to Build

That the lessee will not, without the previous consent in writing of the lessor, erect or suffer to be erected on any part of the said demised premises any building other than and except the building or structure already erected for the Club and shown in the plan annexed hereto;

(v) Not to use for Other Purposes

That the demised premises shall be used only for the purpose of a club as aforesaid and for no other purpose;

(vi) Not to Transfer

That he will not transfer or sublet his rights under this lease without the written consent of the lessor;

(4) To Lay Water and Electricity

That he will within the aforesaid period of _____ calendar months at his own expense lay out water pipes at such places on the demised premises as the Collector shall direct and will have complete electric installations on the premises with points, switches and plugs at such places as the Collector shall direct (*or*, that whenever facilities for laying out water or electric installations or both on the premises are offered and the Collector so requires, the lessee will at his expense lay out water pipes at such places as the Collector shall direct and/or will have complete electric installations in the house with points, switches and plugs at such places as the Collector shall direct within such time as may be fixed by the Collector);

(5) Not to make Alterations

That no part of the elevation or plan of such dwelling house or out buildings shall at any time be altered or varied from the original elevation or plan thereof without the consent in writing of the Collector and no other buildings shall be erected on the said premises without the like consent;

(6) To Repair

That he will at all times repair, and keep in good and substantial condition and repair, such dwelling house and out-buildings and also the boundary and other walls, sewers, drains, rails, gates, fences and fixtures of or connected with the same, and shall in particular execute all necessary repairs and do all necessary painting of walls, exteriors, doors, windows, etc. annually before the _____ day of _____ at a cost of not less than Rs. _____ ;

(7) To Permit Lessor to Inspect

That he will permit the lessor and his agent in the day-time after _____ hours' previous notice of his or their intention so to do, to enter into or upon the premises and view the condition of such buildings and also the boundary and other walls, sewers, drains or want of repair there found, which defects or want of repair the lessee will within three calendar months after such notice repair and rectify accordingly ;

(8) Not to use House except for Dwelling

That he will not at any time carry on or permit to be carried on upon the said premises any trade or business whatsoever or use the same for

WITNESSES as follows :

1. *Demise of Land*

The lessor hereby demises to the lessee ALL THAT plot of land described in the schedule hereto and with the boundaries thereof for greater clearness delineated on the plan annexed hereto and thereon coloured red TO HOLD the said premises to the lessee from the _____ day of _____ for the term of _____ years subject to the conditions hereinafter mentioned PAYING therefor during the said term the yearly rent of Rs. _____ by equal half-yearly payments on the _____ day of _____ and the _____ day of _____ in each year at the office of the Collector of _____ or at such other place or places as such Collector may from time to time appoint in this behalf, the first of such payments to be made on the _____ day of _____

2. *Lessee's Covenants*

The lessee hereby covenants with the lessor as follows :

(1) *To Pay Rent*

That during the said term he will pay the yearly rent hereby reserved, on the days and in the manner hereinbefore appointed;

(2) *To Pay Taxes*

That he will pay and discharge all rates, taxes and other charges which now are or hereafter may be payable in respect of the said premises or the buildings to be erected thereon by the lessor or lessee in respect thereof, except for the period during which the said buildings have been sublet by the lessee to the lessor under the covenant hereinafter following;

(3) *To Construct House*

That he will within _____ calendar months next after the date of this deed at his expense and at an outlay of not less than Rs. _____ in a good substantial and workmanlike manner and to the satisfaction of the Collector for the time being of the district of _____ (hereinafter called "the Collector") erect and complete on the said premises a dwelling house with suitable outbuildings according to a plan and elevation approved by the Collector;

(1) To Pay Taxes

That he will during the period of his sub-tenancy pay all rates, taxes and other charges which now are or which may hereafter become payable in respect of the said premises or the buildings to be erected thereon;

(2) To Renew Lease

That he will at the request and cost of the lessee at the end of the said term of _____ years and so on from time to time hereafter at the end of each successive term of _____ years that may be granted execute to the lessee a new lease of the said premises by way of renewal for the term of _____ years PROVIDED that such renewed term of years as may be granted shall not with the original term of _____ years hereby granted exceed in the aggregate the period of _____ years AND that the lessor shall not be bound to grant any renewal except at such enhanced rent not exceeding 50 per cent of the rent payable during the period immediately preceding the renewal as may be assessed by the Collector regard being had to the circumstances of the demised land and to the market value of similar plots in the neighbourhood, which assessment shall be final, save that where the estimated value of the plot, calculated at _____ times the proposed annual rent, shall exceed Rs. _____ the lessee shall have a right of appeal to the Commissioner of the _____ division AND save as to the amount of rent thereby reserved and as to the term thereby granted every renewed lease of the said premises shall contain such of the covenants, provisions and conditions in these presents contained as shall be applicable;

4. Provisos

PROVIDED ALWAYS, etc., Proviso for re-entry [*as in Form 4 Proviso (i)*].

5. Interpretation clause [as in Form 4, clause 5 (ii)].

The Schedule herein referred to

(Description of the land leased)

IN WITNESS WHEREOF, etc.

12—Perpetual Lease of Land

THIS LEASE made on the _____ day of _____

any other purpose than as a private dwelling without the consent in writing of the Collector first had and obtained ;

(9) Not to Assign House

That he will not, except with the permission in writing of the lessor, assign or otherwise part with the premises or the said building or any part of them otherwise than by a sub-lease from month to month terminable by 15 days' notice expiring with the end of a calendar month and will not permit any other person to occupy the same except on an express condition to vacate it on 15 days' notice;

(10) To Sublet House to Government

That he will sublet the said building and premises to the lessor for the residence of a Government servant whenever required to do so by the Collector at a monthly rent of Rs. ——— and will deliver possession of the same to the lessor or his agent on one calendar month's notice in writing served upon him by the Collector.

(11) Lessor's Right to Repair on Lessee's Default

That if at any time during the aforesaid sub-tenancy of the lessor the lessee shall in breach of the covenant hereinbefore contained refuse or neglect to execute such repairs as the Collector shall require, it shall be lawful for the Collector to serve upon him a notice in writing requiring him to execute such repairs within a specified time, and in case of the lessee's default, to execute such repairs and to deduct the cost of the same from the monthly rent payable by the lessor to the lessee until the same has been paid off.

(12) To Yield up

That, subject to the covenant regarding renewal of the lease hereinafter contained, the lessee shall on the expiry of the term hereby reserved or sooner determination of this lease peaceably surrender possession of the demised premises with such buildings thereon as may be standing at the time to the lessor;

3. Lessor's Covenants

The lessor hereby covenants with the lessee as follows:

Recitals

(1) By deed dated ——— day of ——— purporting to be made between the grantor (then a minor) and the grantee and executed on behalf of the grantor by his mother ——— purporting to act as his guardian, certain lands described therein were granted to the grantee for maintenance;

(2) The grantor brought a suit No. ——— of ——— against the grantee in the Court of the ——— to have the said deed set aside and cancelled;

(3) The parties agreed to compromise the same upon the terms that the said deed should be set aside and that the grantor should pay to the grantee a *guzara* or maintenance of Rs. ——— during her life and should also grant to her for her life a lease in respect of an area of ——— situate in ——— to be held by her free of rent for maintenance but with non-transferable rights and subject to the condition that no sub-lease of her rights in such area should be valid or have any effect after her death;

(4) A deed setting forth the terms of the said compromise was filed in the said Court on the ——— and a decree in terms of the said deed was thereupon passed.

NOW THIS DEED WITNESSES as follows :

1. Grant

That in pursuance of the said compromise decree the grantor hereby grants and transfers to the grantee ALL THAT land described in the schedule hereto TO HOLD the same to the grantee for her life subject to the terms and conditions hereinafter set forth.

2. Parties' Covenants

IT IS HEREBY AGREED AND DECLARED between the parties hereto as follows :

(i) Not to Pay any Rent

The said land shall be held and enjoyed by the grantee without the payment of rent or of any sum in the nature of rent to the grantor;

(ii) To Pay Revenue, etc.

The grantee shall pay all revenue, cesses, rates, taxes and other

BETWEEN AB, etc, (hereinafter called "the lessor") of the one part AND CD, etc., (hereinafter called "the lessee") of the other part,

WITNESSES as follows :

1. Demise of Land

The lessor hereby demises to the lessee ALL THAT plot of land described in the schedule hereto and delineated on the plan annexed hereto and thereon shown with its boundaries coloured red TO HOLD the said premises from the date of this deed in perpetuity PAYING therefor the yearly rent of Rs. _____ on the _____ day of _____ in each year.

2. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

(i) To Pay Rent

That he will pay the rent hereby reserved on the date hereinbefore mentioned.

(ii) To Pay Rates, Taxes, etc.

That he will pay all rates hereby reserved on the date hereinbefore mentioned.

3. Proviso for Re-entry

PROVIDED ALWAYS that whenever any part of the rent hereby reserved shall be in arrears for one month the lessor may re-enter on the demised land and determine this lease.

4. Interpretation clause (as in Form 4).

IN WITNESS WHEREOF, etc.

**13—Grant of Land Free of Rent in
Lieu of Maintenance**

THIS DEED OF GRANT is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the grantor") of the one part AND CD, etc., (hereinafter called "the grantee") of the other part.

WHEREAS --

14—Lease of a Brickfield

THIS LEASE, etc., (*as in Form 4*).

WITNESSES as follows:

1. Demise of Land

The lessor hereby demises to the lessee the plot of land described in the schedule hereto together with the liberties and with the reservation and exceptions hereinafter mentioned TO HOLD the said premises to the lessee from the _____ day of _____ for the term of _____ years PAYING therefor the rents and royalties hereinafter mentioned.

2. Rights of Lessee

The following liberties are included in the said demise:

(i) Lessee's Rights to get Earth and make Bricks

To get from the said land earth, clay and other materials to be used in the manufacture of bricks and to manufacture the same into bricks or tiles on any part of the said land and to sell and dispose of the bricks and tiles so manufactured but not, without the permission of the lessor, to dig any part of the said land to a depth exceeding _____ meter from the surface;

(ii) To Erect Machinery

To erect, construct and maintain such engines, machinery, kiln, clamps, ovens, workshops, buildings or cottages and other things necessary for the purpose of manufacturing, storing or selling bricks and to form such roads, communications and other conveniences on the said land as may be necessary or convenient;

(iii) To use Water and make Water Courses

For the purpose aforesaid and for the purposes of any building now or hereafter to be erected on the said land to use any water in or under the demised land and to divert the same and to make, construct or maintain any water-courses, ponds or reservoirs but not so as to interfere with the rights of adjoining owners or occupiers in respect of such water; and

(iv) General

Generally to do all things which shall be convenient or necessary for the purposes aforesaid.

charges now payable or hereafter to be payable in respect of the said land during the period of this grant ;

(iii) Not to Sublet, etc.

That the grantee shall not sublet, assign or mortgage any of her rights hereunder without having first obtained the permission in writing of the grantor.

(iv) Not to Grant Lease

That the grantee shall not grant or attempt to grant any lease of any part of the said land to any person except an ordinary cultivating lease and then only for a period of not more than _____ years ;

(v) Not to Build

That the grantee shall not erect or construct any buildings or plant any trees upon the said land or permit or suffer any other person to do so unless she has first obtained the written permission of the grantor ;

(vi) Not to Commit Waste

That the grantee shall not do, or permit or suffer any other person to do, any act or thing which might injure the said lands or decrease the value thereof;

(vii) To Realize Rent, etc.

That except as hereinbefore provided the grantee shall have powers necessary to enable her to realize for her own benefit the rents and profits of the said land;

(viii) That on the death of the grantee the said land and any building erected and trees planted thereon by the grantee or with her consent shall immediately revert to and vest in the grantor without the payment of any compensation whatever to any person claiming through or under the grantee.

3. *Provisos*

PROVIDED ALWAYS, etc., (*Proviso for re-entry as in para 4(i) of Form 4*).

4. *Interpretation clause (as in para 5(ii) of Form 4)*

IN WITNESS WHEREOF, etc.

(iii) Fencing

That he will fence off the demised premises from the adjoining lands and will keep the fences in good repair and condition.

(iv) To Remove Surface and Restore it

That he will before digging or opening any part of the land carefully remove the surface soil to a depth of at least -----centimetres and lay aside and preserve the same and will after working out such part of the land forthwith level the same and replace the surface soil thereof so as to make the same fit for agricultural purposes.

(v) Not to Remove Earth, etc.

That he will not remove any earth, clay or other materials from the demised premises but will manufacture the same into bricks and tiles only on the demised premises.

(vi) To Indemnify

That he will keep the lessor indemnified against all claims, suits, damages and expenses arising out of the use of the demised land for the aforesaid purposes or in respect of any nuisance apprehended therefrom or alleged to be occasioned thereby.

(vii) To keep Accounts

That he will always keep accurate accounts showing the number of bricks and tiles manufactured on the demised premises and the number of those in respect of which exemption from royalties is claimed, the date of manufacture and other matters necessary for calculating the royalties payable hereunder and will at all reasonable times and on the lessor's request grant inspection of the same to the lessor or his agents and will permit them to take copies or extracts therefrom.

(viii) To Permit Inspection

That he will permit the lessor or his agents at all reasonable times to enter upon the demised premises to inspect the same and the works carried on and bricks and tiles manufactured therefrom.

*(ix) Not to assign —as in Form 4, clause 2 (viii).**(x) To Yield up*

That he will at the determination of this lease deliver up the demised premises with all kilns, clamps and other buildings and erections in such

conditions, and shall be in accordance with the provision of this deed save that the lessee shall if so required by the lessor remove any kilns, clamps and other erections and restore in the manner hereinbefore provided the surface of any land which has been worked and not restored.

5. Lessor's Covenants

The lessor hereby covenants with the lessee as follows :

(i) *Covenant for quiet enjoyment* — as in Form, 4 clause 3 (i).

(ii) *Lessee to be Indemnified*

That he will keep the lessee indemnified against all claims, suits and demands made by other tenants of the lessor (or, by any person) in respect of injury or loss alleged to be caused by the proper exercise by the lessee of his rights and liberties hereunder.

(iii) *Lessee to take away Bricks, etc.*

The lessee will on determination of this lease be entitled to take away all bricks, tiles, engines, machinery and other fixtures and all plants and things whatsoever except buildings, etc.

6. Provisos

PROVIDED ALWAYS and it is hereby agreed as follows :

(i) *Power of re-entry* — as in Form 4, Proviso (i).

(ii) *Option to Surrender*

That the lessee may at any time and from time to time during the said term surrender to the lessor any part of the demised land after restoring the surface thereof as hereinbefore provided and the rent will thereupon be reduced by Rs. _____ per square metre of the land so surrendered.

(iii) *Option to Determine*

If at any time any suit filed against the lessee for any damage or injury apprehended or alleged to be caused by reason of the proper exercise of any of the rights and liberties hereby granted is decreed, then the lessee may forthwith determine the tenancy without notice.

Parties' Covenants

It is hereby agreed between the parties as follows :

- (i) *Arbitration Clause* — as in para 3 of *General Forms of Covenants* by both parties,
 (ii) *Service of Notice* — as in Form 4, clause 5 (i).
 (iii) *Interpretation Clause* — as in Form 4, clause 5 (ii).

IN WITNESS WHEREOF, etc.

15— Lease of Dwelling House

THIS LEASE, etc., (as in Form 4).

WITNESSES as follows,

1. Demise of dwelling house

The lessor hereby demises to the lessee ALL that dwelling house with the land fully described in the schedule hereto together with all outhouses, pucca well, motor garage, pathways, passage, garden and other appurtenances thereof, situate at ----- TO HOLD the same to the lessee from the ----- day of ----- for the term of ----- years (or, year to year) PAYING therefor during the said term the monthly rent of Rs.----- (Rupees -----) payable on the first day of the month succeeding that for which the rent is due;

2. To Pay Taxes, etc.

The lessee hereby agrees that he will, during the said term (tenancy⁴), pay all rates, taxes and other charges excluding the house tax which now are or may hereafter become payable in respect of the demised property;

3. Lessor's Covenants

The lessor hereby agrees as follows :

(i) To Keep in Repairs

That the lessor shall keep the premises in good and substantial repairs during the said term and shall annually whitewash and do all necessary repairs to the outhouses and demised premises and on the lessee giving the lessor notice in writing of any special decays, defects and want of repair the lessor will within one calendar month from the receipt of such notice repair and amend the same;

⁴ If no term is fixed.

(ii) *When to Repair*

That the lessor shall repair, when necessary, the well, the passages, pathways and the road connecting the public road with the house hereby demised and shall get the well cleaned at least once a year;

(iii) *Grass*

That the grass of the compound of the demised premises will be at the disposal of the lessee who will have every right to appropriate or to sell the same to any person he likes ;

4. *Provisos*

Provisos for re-entry and option to determine—as in para 4 of Form 4.

5. *Application of Sec. 108, Transfer of Property Act.*

It is hereby agreed between the parties that in respect of the demised premises the parties hereto shall respectively have all the rights and be subject to all the liabilities of a lessor and of a lessee as set forth in section 108, Transfer of Property Act, 1882, except Clause (m) thereof which is hereby excluded.

6. *Interpretation clause—as in clause 5 (ii) of Form 4.*

IN WITNESS WHEREOF, etc.

16—Lease of a Bungalow for Residence

THIS LEASE, etc., (as in Form 4).

1. *Demise of Dwelling House*

The lessor hereby demises to the lessee for residential purposes and for no other purpose ALL that the dwelling house situate at and known as No. _____ Road, at which premises contain by measurement

Sq. Mts. or thereabout and for greater clearness are delineated on the map or plan annexed hereto and thereon shown with their boundaries coloured red together with the grounds, garden, trees, fences, hedges, ditches, wells, easements and other appurtenances whatsoever belonging to the said dwelling house and premises or usually held or enjoyed therewith TO HOLD the same to the lessee from the _____ day of _____ for the term of _____ years (or, from year to year, or, from month to month)

from the _____ day of _____) PAYING therefor the monthly rent of Rs. _____ on the last date of each month beginning from the _____ day of _____ of _____

2. Lessee's Covenants

The lessee hereby agrees with the lessor as follows :

(i) To Maintain

That he will maintain the grounds and gardens appertaining to the said premises in the condition in which they are at the date of these presents subject to deterioration by natural causes beyond the control of the lessee;

(ii) To Pay Taxes, etc.

That he will pay all rates, taxes and other charges now payable or hereafter to become payable in respect of the demised premises except the house tax.

(iii) Not to Assign

That he will not without the previous consent in writing of the lessor transfer or sublet or otherwise part with possession of the demised premises.

(iv) To use for Residential Purpose only

That he will use the demised premises for residential purposes¹⁵ and for no other purpose except with the consent in writing of the lessor.

3. Lessor's Covenants

The lessor hereby agrees with the lessee as follows :

(i) To Maintain

That he will during the said term (tenancy¹⁶) maintain the demised premises in good and habitable condition and shall execute all necessary repairs including annual white-washing and colour-washing, plastering, painting, etc., and shall renew all broken panes, fittings, bolts, etc. ;

15 A clause that "the lessee shall use the premises for the purpose of residential personal office only and not for commercial purposes" was held in *V.S. Talwar v. Prem Chandra Sharma*, (1984) 2 SCC 420 not to amount to grant of the lease for composite (residential and business office) purposes. The use of the word 'personal' before 'office' was intended to convey the idea that the tenancy was not for the purpose of accommodating a place of business.

16 If there is no fixed term

(ii) To Maintain Electric Installations

That he will during the said term (tenancy) maintain the electric installations in the said premises, and supply at his own expense such electric fans as may be required by the lessee ;

(iii) To Repair

That he will carry out all immediate necessary repairs to the said premises to the entire satisfaction of the lessee;

4. Parties' Covenants

It is hereby agreed between the parties as follows :

(i) Application of Sec. 108, Transfer of Property Act

That in respect of the demised premises the parties hereto shall respectively have all the rights, and be subject to all the liabilities of a lessor and of a lessee as set forth in section 108 of the Transfer of Property Act, 1882, except Clauses (j) and (m) thereof which are hereby excluded.

*(ii) Interpretation clause—as in para 5 (ii) of Form 4.**5. Provisos for re-entry—as in para 4 (i) of Form 4.*

IN WITNESS WHEREOF, etc.

17—Lease of a Furnished House

THIS LEASE, etc., (as in Form 4).

WITNESSES as follows :

1. Demise of Furnished House

As in para 1 of Form 16, adding before the words "To HOLD" the words "furnished as stated in the inventory contained in the schedule hereto".

2. Lessee's Covenants

The lessee hereby agrees with the lessor as follows :

Cluses (i) to (iv) of clause 2 of Form 16, adding

(v) Breakages and Damage

That he will replace and make good all breakages, deficiencies and damage to the furniture, fittings and effects in the dwelling house and

premises which may happen during the period of his tenancy except by reasonable use and wear (and damage by accidental fire).

(vi) *To yield up*

That at the expiration of the said tenancy he will deliver up to the lessor possession of the demised premises with the whole of the said furniture and effects according to the said inventory in as sound, perfect and good condition as they now are in (or, as they were at the commencement of the tenancy, if the tenancy commenced before the execution of the lease) except as aforesaid.

(vii) *Infectious or Contagious Disease*

That in the event of any infectious or contagious disease which may require notification by virtue of any law, bye-law or rule thereunder, happening in the said house during the said tenancy, he will give written notice thereof or any other information which may be required relative thereto to the lessor before or immediately upon expiration of the tenancy and pay to the lessor the expenses of disinfecting the premises and replacing any article and things belonging to the lessor the destruction of which may be rendered necessary by such illness or may be incurred by such disinfecting and in case of default in giving such notice as aforesaid, pay to the lessor in addition the sum of Rs. _____ as liquidated damages.

(viii) *Not to Let out*

That the lessee shall not let out, lend or otherwise part with the possession of or remove from the demised premises any article of the said furniture, fittings or effects to any person or persons whatsoever without the previous consent in writing of the lessor nor shall allow the same to be attached by legal authority or under colour of a legal authority.

3. *Lessor's Covenants*

The lessor hereby agrees with the lessee as follows :

As in Form 16, adding,

(iv) That he will replace such of the articles stated in the said inventory as may become useless by reasonable use and wear (or, as may be damaged by accidental fire) during the term of the tenancy.

4-5 *As in Form 16.*

IN WITNESS WHEREOF, etc.

18—Form of Rent Note¹⁷

THIS RENT NOTE executed by me, AB, etc., (hereinafter called "the lessee") contains the terms and conditions agreed to between the lessor and the lessee as follows :-

1. Term

That the lessor has agreed to let and the lessee has agreed to occupy the house described in the schedule below for a period of eleven months commencing from the _____ day of _____ and the possession of the said house has been delivered to the lessee by the lessor.

2. Rent

That the lessee shall pay punctually on or before the 10th day of each month, the rent of Rs. _____ in advance to the lessor at such place as the lessor may from time to time intimate to the lessee and failing such intimation the rent shall be paid to the lessor's authorised representative.

3. Repairs

That the lessee shall keep the said house in proper state of repairs.

4. Not to Sublet

That the lessee shall not sublet or deliver possession of the house to any other person except with the previous written consent of the lessor.

5. To Vacate on Expiration of Term

That the lessee shall vacate the house at the expiry of the aforesaid period of eleven months provided that the lessee shall vacate the same earlier on receipt of one month's notice from the lessor to vacate the house and the lessee shall deliver vacant possession of the house to the lessor on the expiry of the notice period as aforesaid.

6. Notice if Lessee Vacates before Term Expires

That in case the lessee should desire to vacate the house prior to the expiry of the period of eleven months, the lessee shall give notice thereof

¹⁷ See Preliminary Note as regards legal implications of unilateral rent note.

to the lessor at least one month prior to vacating the house and delivering vacant possession of the same to the lessor.

7. Damages for use and occupation

That in case the lessee omits or fails to deliver vacant possession of the house to the lessor on the expiration or sooner determination of the lease, the lessee shall be liable to pay to the lessor as damages for use and occupation a sum equivalent to double the amount of rent for the period of continued occupation by the lessee or any other person on his behalf till the date of the recovery of the possession of the house by the lessor.

IN WITNESS WHEREOF, etc.

19—Tenancy in the form of Letter by Prospective Tenant

AB, etc. (*address*)

Dear Sir,

I gather that you would be willing to let your bungalow situate at _____ on the following conditions :

1. That the rent will be Rs. — — — per month.
2. That the tenant will punctually pay on or before the 10th of each month the aforesaid rent to you or to your authorised agent.
3. That the tenant shall pay all taxes, rates and impositions whatsoever in respect of the said premises payable by the owner or occupier thereof.
4. That the tenant shall not sublet or deliver possession of the said premises or any part thereof to any other person except with your previous written consent.
5. That the tenant shall keep the said premises in proper state of repairs.
6. That the tenant will keep the electric fans, installations and sanitary fittings in proper working order and should any damage happen to the same or to the wash basins, sinks, glass panes, etc., the tenant shall at his own cost replace the same with equipment and material of the same specifications.
7. That the said premises shall be let out for eleven months only and no further on the conditions herein contained.

8. That the tenant will vacate the said premises earlier on receipt of one month's notice from you and shall deliver vacant possession of the premises on the expiry of the period fixed in the notice.

9. That in case the tenant should desire to vacate the premises prior to the expiry of the period of 11 months mentioned above, the tenant shall give notice thereof to you at least one month prior to vacating the premises and delivering the possession of the same to you.

I hereby agree to the above terms and conditions and request you kindly to give me possession of the said premises as early as possible.

Yours faithfully,

(-----)

Dated :

Address : -----

**20—Lease of Land by Government for Building
a House and Lease of the House
by Lessee to Government**

THIS LEASE made on the ----- day of ----- BETWEEN the Governor of Uttar Pradesh (hereinafter called "the lessor") of the one part AND CD, etc., (hereinafter called "the lessee") of the other part.

WITNESSES as follows :

1. Demise of Land

The lessor hereby demises to the lessee ALL THAT plot of land containing about ----- Sq. Mts. in the town of ----- and described in the schedule hereto and delineated on the plan annexed hereto and thereon coloured red on which the lessee has built a house for the residence of the Superintendent of Police of the ----- district TO HOLD the same to the lessee from the ----- day of ----- for the term of ----- years PAYING therefor during the said term a yearly rent of Rs. ----- on the first day of ----- in each year, the first of such payments to be made on the ----- day of ----- next.

2. Sub-lease to Lessor

The lessee hereby sublets to the lessor ALL that the aforesaid plot of land with all the buildings and constructions erected and standing thereon

TO HOLD the same to the lessor for the term of the lease hereinbefore recited PAYING therefor the monthly rent of Rs. _____ on the 1st day of the month succeeding, that for which the rent is due, the first of such payments to be made on the _____ next.

3. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

(i) To Pay Taxes, etc.

That he will pay all rates, taxes and other charges now payable or hereafter to become payable in respect of the said premises or of any buildings now or hereafter to be erected thereon by the landlord or tenant in respect thereof;

(ii) To Keep in Repair

That he will at all times keep in good and substantial repair both externally and internally the houses and outbuildings and also the electric installations on the said premises and in particular will keep the roofs of all buildings water-tight and will white-wash such buildings both inside and outside every year after the rains and will maintain the electric installations in such repairs as will prevent leakage or waste of electric current PROVIDED that if at any time the lessee shall fail to execute such repairs and white-washing as are specified in the covenant hereinbefore contained the lessor after giving 14 days' notice to the lessee may execute the same and deduct the cost thereof from the rent payable by the lessor until such cost has been thereby paid off.

4. Lessor's Covenants

(i) To Pay Water Tax

The lessor hereby covenants with the lessee that when the said premises are occupied, he will pay the water rate and conservancy (scavenging) taxes payable in respect of the said premises and also the electric charges payable in respect of the same.

5. Provisos

PROVIDED ALWAYS and it is hereby agreed as follows :

(i) Option to Purchase Buildings

That the lessor may at any time upon giving not less than one month's notice in writing to the lessee purchase from the lessee all buildings erected by the lessee upon the said premises at a value which shall take into account the rate of rent payable by him to lessee for the said buildings and the market value of the lessee's interest then subsisting under this demise, which value shall be fixed in case the parties cannot agree by the arbitration of a board of three arbitrators, one to be nominated by each of the parties hereto, and the third appointed by such arbitrators or if either the lessor or the lessee shall neglect to appoint an arbitrator within two months after being served with a notice by the other requiring him to do so (such notice to be served on the lessee either personally or by leaving it at or posting by registered post to his last known address) then by the sole arbitration of the arbitrator appointed by such other of them, which arbitration shall be final, and immediately upon the payment by the lessor to the lessee of such value as aforesaid the demise shall absolutely determine.

(ii) Re-entry

That whenever any part of the rent hereby reserved and payable by the lessee shall be in arrears for a period of thirty days or there shall be a breach by the lessee of any of the covenants by the lessee herein contained the lessor may re-enter upon the said premises and determine this lease and on such determination all erections, buildings and fixtures on the said premises shall be forfeited to the lessor without the payment of any compensation whatever by him for or in respect of the same.

6. Interpretation Clause

It is hereby agreed between the parties that wherever the context so admits the expression "the lessor" shall include his successors and assigns and the expression "the lessee" shall include his heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, etc.

**21—Clauses about Buying Lessee's Structures
on Determination of Tenancy and
Settling Price by Arbitration**

The following modification shall be made in the ordinary lease :

1. *To lessee's covenants add—*

(i) "The lessee will at the expiration or sooner determination of the said term peaceably and quietly surrender the said premises to the lessor together with all such erections or buildings and all such fixtures thereon or therein as may then be upon the said premises as the lessor shall desire to take over at a valuation according to the option hereinbefore reserved to the lessor, but subject to the proviso for re-entry, hereinafter contained."

"That if the lessor shall not desire to take over such erections, buildings or fixtures, it shall be lawful for the lessee to remove the same within _____ months (but not later) after the expiration or determination of the said term."

2. *To the lessor's covenants add —*

(i) That the lessor may take over all or any of the erections, buildings and fixtures standing on the said premises at the expiration or sooner determination of the said term as he shall select on paying for them the market price to be fixed by mutual agreement and if the parties disagree by the arbitration of a board of three arbitrators, one to be named by the lessor and the other by the lessee and the third appointed by such arbitrators or if either of them, the lessor or the lessee, shall neglect to appoint an arbitrator within a fortnight after being served with a notice from the other of them requiring him to do so, then by the sole arbitration of the arbitrator appointed by the party serving such notice.

**22—Lease of a Mill with Fixed and Movable Machinery,
with the Concurrence of Mortgagee
of Part of the Property¹⁸**

THIS DEED OF LEASE is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called the "lessor") of the first part AND CD, etc., (hereinafter called the "mortgagee") of the second part AND EF, etc., (hereinafter called "the lessee") of the third part.

¹⁸ Such a composite lease of building along with the equipment, or lease of a factory including lease of a building along with the machinery, is valid. *Bhagyashree Combines v. Dist. Magistrate*, A 1998 Kant 328 (DB); followed *Uthamchand v. S. M. Pillay*, A 1968 SC 176; *Chitambar v. Chitambar*, A 1978 SC 1700. It is held that such a lease is valid, though the lease is of a building within the meaning of rent control law.

WHEREAS

(1) The lessor is the owner of the mill and fixed machinery and other property described in the first and second schedules hereto and of all the machinery and movable property described in the third schedule hereto;

(2) The mortgagee is in possession of the mill and fixed machinery and properties described in the first and second schedules hereto under a mortgage deed dated _____ executed by the lessor for a term of ten years;

(3) The lessor has now agreed to grant a lease of all the properties mentioned in the first, second and third schedules hereto to the lessee;
AND

(4) The mortgagee has, at the request of the lessor, agreed to join in the manner hereinafter appearing in the lease of the said premises described in the first and second schedules hereto.

NOW THIS DEED WITNESSES as follows :

(1) Demise of Mill and Machinery

In consideration of the rent hereinafter reserved and of the covenants on the part of the lessee hereinafter contained the lessor with the consent (hereby testified) of the mortgagee so far as regards the premises described in the first and second schedules hereto hereby demises to the lessee all that mill and machinery fixed and movable and all and every other property described in the first, second and third schedules hereto TO HOLD the same to the lessee from the _____ day of _____ for a term of 20 years PAYING yearly during the said term and so in proportion for any less time than a year the rent of Rs. _____ for the properties mentioned in the first and second schedules hereto and the rent of Rs. _____ for the property mentioned in the third schedule hereto by equal quarterly instalments on the first days of January, April, July and October in each year the first of such payments to be made on the first day of January next.

(2) Lessee's Covenant

The lessee hereby covenants with the lessor as follows :

(i) To Pay Rent

To pay during the term hereby granted on the days hereinbefore appointed the quarterly rent of Rs. _____ in respect of the property

mentioned in the third schedule to the lessor and the yearly rent of Rs.——— in respect of the properties mentioned in the first and second schedules hereto to the mortgagee during the continuance of the said mortgage and to the lessor thereafter.

(ii) *To Pay Taxes, etc. - as in clause 2 (ii) of Form 4.*

(iii) *Not to make additions - as in clause 2 (iv) of Form 4.*

(iv) *To Keep in Repairs*

As in clause 2 (v) of Form 4 adding "and also all machinery whether fixed or not and other movable properties hereby demised save and except in case of fire, storm, tempest and earthquake affecting the premises mentioned in the first and second schedules hereto," before the words "in good repair and condition".

(v) *To Permit Lessor and Mortgagee to Inspect, etc.*

To permit the mortgagee as regards the premises described in the first and second schedules hereto and the lessor as regards all the premises hereby demised with his agents to enter demised premises and examine the state of repairs and conditions thereof and of all machineries and other movable property hereby demised and to repair and make good all defects of which notice in writing shall have been given by the mortgagee or lessor as the case may be to the lessee within——— months after the giving of such notice.

(vi) *To Permit Lessor to Repair on Lessee's Default*

To permit the lessor as regards all the property hereby demised, in case of lessee's default to make repair in accordance with the covenant herein before contained, to enter upon the said premises and repair the same and the machineries whether fixed or not and all other moveable property hereby demised in accordance with the aforesaid covenant for repair and to pay to the lessor on demand all expenses incurred by the lessor on such repairs.

(vii) *To Insure*

The insure, etc., (*as in clause 5 in Lessee's General Covenants on page 413 ante*) adding after the words "erected thereon" the words "and all machinery fixed or not and all other movable property hereby demised."

(viii) To Deliver Possession on Determination

On the determination of this lease to deliver up possession, etc., (as in Clause 16 in Lessee's General Covenants on page 415 ante).

(ix) To Comply with Requirements of Law Regarding Factories

To comply with requirements of the law for the time being in force regarding factories and their working imposed upon the owner of the demised premises and at all times during the said term to indemnify and keep indemnified the lessor and the mortgagee against any breach or non-observance thereof.

(x) To estimate dilapidation — As in clause 17 in General Covenants of the Lessee on page 416 ante.

3 Lessor's Covenants

The lessor hereby covenants with the lessee as follows:

(i) For Quiet Enjoyment

As in clause 3(i) of Form 4.

(ii) For Renewal

As in clause 3(ii) of Form 4.

(iii) For Purchasing Working Stock

The lessor will on the expiration or sooner determination of the term of this tenancy take and purchase from the lessee all the working stock upon the said demised premises at a valuation as working stock.

4. Proviso

PROVIDED ALWAYS and it is hereby agreed that —

(i) For Re-entry

As in Clause 2 of the Proviso at page 421 ante.

(ii) Option to Determine Lease

If the lessor shall at the end of the first ———— year desire to determine the tenancy hereby created, etc., (as in clause 6 of the Provisos at page 422 ante).

(iii) The lessor shall be entitled, on giving written notice of his intention in that behalf to the lessee at least one calendar month before the determination of the present tenancy or within one week of the determination

thereof by re-entry, to purchase from the lessee any additional machinery or effects of the nature of the machinery or effects hereby demised which may during the term of this tenancy be put or erected in or upon the premises by the lessee at a valuation to be made by three persons one to be appointed by each and the third to be appointed by those two persons and in case the lessor shall not purchase the same it shall be lawful for the lessee to remove the same within reasonable time.

(iv) *Suspension of Rent in Case of Fire*

As in clause 5 of the Provisos at page 421 ante.

5. Parties Covenant

It is hereby agreed between the parties as follows:

(i) *Arbitration Clause*

As in clause 3 of covenants by both parties at page 419 ante.

(ii) *Cost of Deed*

As in clause 4 of covenants by both parties at page 419 ante.

(iii) *Cost of Stamp Duty*

As in clause 5 of covenants by both parties at page 419 ante.

(iv) *Interpretation Clause*

As in clause 6 of covenants by both parties at page 420 ante.

IN WITNESS WHEREOF, etc.

23—Lease of an Equipment¹⁹

THIS DEED OF LEASE, etc., (*as in Form 4*).

1. Definitions

In this lease, unless the context otherwise requires, the following expressions shall have the following meanings, namely :

¹⁹ It does not amount to lease of immovable property. In *Board of Revenue v. K. Venkataswami Naidu*, A 1955 Mad 620 (FB) a lease of properties relating to a touring cinema was held not to be a lease of immovable property. In *C.R.K. Pansal v. Sub-Collector*, A 1985 AP 390, an agreement for distribution, exploitation, screening and exhibition of a film for a certain period was held not to be a lease or mortgage of immovable property.

(i) Commencement Date

The commencement date shall be the earliest of (a) the date of last payment by the lessor to the manufacturer, or (b) the date of delivery or installation of the equipment, or (c) that date which is seven days after the date on which written intimation is sent by the manufacturer to the lessor and/or the lessee that the equipment is ready for delivery with the manufacturer.

(ii) Equipment

The equipment described in the schedule to this lease, purchased by the lessor at the request of the lessee, from the manufacturers named in the schedule, leased to the lessee for industrial use and (where the context so admits) any individual items comprised in the equipment including all alterations, replacements and/or additions during the period of this lease.

*2. Terms of Lease:**(i) Commencement of Lease*

The lessor hereby gives on lease, and the lessee hereby takes on lease, the equipment, for a fixed period of ----- from the commencement date, subject to the terms, conditions, covenants and stipulations contained herein and in the schedule.

(ii) To Pay Rent and Interest

The lessee shall pay to the lessor from the commencement date, lease rentals specified in the schedule, regularly and punctually, without any deduction or abatement, irrespective of whether the equipment is in use by the lessee or not.

Arrears of lease rentals shall carry interest at the rate of ----- per cent per annum, compounded with monthly rests, from the due date specified in the schedule till the date of actual payment.

(iii) To Yield up Possession

Upon termination of this lease by efflux of time, or otherwise, the lessee shall, at its own cost and expense, forthwith, deliver or cause to be delivered to the lessor the equipment, at such time and place as may be directed by the lessor, in good repair, order and condition (subject to normal wear and tear).

3. *Lessee's Warranties*

The lessee warrants that:

(i) The execution of this lease and the use and operation of the equipment by the lessee will not:

- (a) contravene any provision of any statutes, rules and regulations which the lessee is subject to and the lessee's Memorandum and the Articles of Association;
- (b) result in any breach of any agreement or arrangement to which the lessee is a party.

(ii) The lessee has obtained all consents, licences, approvals, etc., as are necessary for or in connection with the execution, validity and enforceability of this lease and for the storage, installation, use and operation of the equipment and undertakes to keep them effective and in force during the period of this lease and till the equipment is delivered back to the lessor in good order and condition.

4. *Lessee's Covenants*

The lessee shall:

(i) *Not to Remove*

Keep the equipment, at all times, in its control at its plant specified in the schedule and not remove the same therefrom without the prior written permission of the lessor;

(ii) *Affix Lessor's Name plate*

Affix a name plate or other mark on the equipment identifying the sole and exclusive ownership thereof of the lessor and not allow or permit the same to be removed or defaced;

(iii) *Not to Claim Ownership*

Hold the equipment as the bailee of the lessor and not claim any right, title or interest in the equipment other than that of a lessee or contest the lessor's sole and exclusive ownership thereof;

(iv) *To Repair and Keep in Good Condition*

Use and operate the equipment carefully and maintain the same in good working condition and repair at its own cost and expense, and comply

with all statutory and other requirements of law, rules, regulations and directions applicable to the storage or installation or governing use and operation of the equipment, and not to do or omit to be done any act or thing by which the warranties would be invalidated or become unenforceable wholly or partly.

(v) *To Pay Taxes, etc.*

Punctually and duly pay or cause to be paid all rates, taxes, licence fees, surcharges, registration charges and other outgoings payable in respect of the equipment or the storage, installation, use or operation thereof or of the premises where the same is kept and on demand produce to the lessor all receipts and other evidence of such payment ;

(vi) *To Insure*

Insure the equipment in the name of the lessor for its full replacement value, against all risks including transit, erection, fire, riot, theft, civil commotion and such other risks (including third party risks) as the lessor may require and pay all insurance premia and renew the insurance policies from time to time, under advice to lessor and not do or omit to do or be done or permit or suffer any act, deed or thing which might or could pre-judicially vitiate or affect any such insurance.

(vii) *Authorise Lessor to Act in Case of Claim*

In the event of any claim arising under any such insurance, give to the lessor immediate written intimation thereof and comply with the instructions of the lessor in connection therewith and permit and hereby authorise the lessor to take all steps, actions and proceedings and adjust or compromise any such claim as the lessor may think fit and to receive any moneys payable in respect thereof and to give effectual receipts and discharge therefor and generally to act for and on behalf of the lessee in respect of all such claims as the lessor may think fit. The lessor shall be entitled to receive and retain to the exclusion of the lessee and without thereby divesting itself of the property in the equipment or in the salvage thereof all moneys payable with respect to such claims.

(viii) *Reimburse on Failure to Insure*

In the event of failure on the part of the lessee to insure the equipment or to pay the insurance premia, as above, agree that the lessor may insure

the equipment and/or pay the insurance premia as above and shall forthwith on receipt of a notice of demand from the lessor reimburse all sums so paid by it together with interest thereon at the rate of _____ per cent per annum from the date of such payment by the lessor.

(iv) To Allow Inspection

Permit the lessor or all persons authorised by the lessor at all reasonable times (immediately in case of an emergency) to inspect, view and examine the state and condition of the equipment and for the purpose permit entry in the premises where the equipment is used, stored or lying.

(x) Not to Transfer or Encumber

Not transfer, assign or otherwise dispose of or purport to transfer, assign or dispose of the lessee's rights or obligations or interest hereunder by way of mortgage, charge or sub-lease, sale or other assignment, hypothecation, pledge, hire, encumbrance, conducting arrangement, licence, or otherwise in any manner part with the possession of the equipment or any part thereof or allow or purport to allow or create any lien, charge, attachment or other claim of whatsoever nature on the equipment or any part thereof.

(xi) Indemnify Lessor

Indemnify and keep indemnified the lessor, at all times, against any loss or claim or demand arising out of the storage, installations, use or operation of the equipment, and hold the lessor harmless, against all losses, damages, claims, penalties, expenses, suits or proceedings of whatsoever nature made, suffered or incurred consequent thereupon and for this purpose take out such workmen's compensation or third party insurance cover as may be necessary, customary or the practice in the business carried on by the lessee or as may be directed by the lessor, in that behalf.

(xii) To Pay Costs, etc.

On demand pay to the lessor all costs, charges and expenses incurred by the lessor in connection with the equipment or for the preservation, protection or enforcement of the lessor's rights or for re-taking or repossessing of the equipment, with interest thereon at the rate of _____ per cent per annum from the date of the incurring such costs, charges and expenses by the lessor till payment.

(xiii) Not to Claim Lessor's Statutory Allowance, deduction, etc.

Not claim any relief by way of any deduction, allowance or grant available to the lessor as owner of the equipment, under the Income-tax Act, 1961 or under any other statute, rules, regulations or guidelines issued by the Government of India or any statutory authority and not to do or omit to be done any act, deed or thing whereby the lessor is deprived wholly or partly and that the lessee shall, at the end of each financial year of the lease, provide to the lessor such information as it may require to claim relief by way of any deduction, allowance or grant, as the owner of the equipment, and the lessee undertakes to comply with and observe, at all times, the terms and conditions to be complied with or observed in respect of the use and operation of the equipment to entitle the lessor to obtain such relief.

(xiv) To Furnish Audited Accounts, etc.

Furnish to the lessor its audited Balance Sheet and Profit and Loss Account simultaneously with the issuance thereof to the shareholders of the lessee and also such other information as may be required by the lessor from time to time.

5. Acceptance of the Equipment

(i) The lessor hereby appoints the lessee as its agent to inspect, receive delivery and installation of the equipment from the manufacturer. By accepting the equipment the lessee shall be deemed to have examined the equipment and to have found it complete, in proper order and condition and entirely fit for its purpose and the lessee does not and will not, at any time, have any claim against the lessor in respect of or arising out of the equipment.

(ii) Consequence of Failure to take Delivery

In the event that the lessee shall refuse or be unable for any reason to accept delivery and installation of the equipment, other than for reason of the manufacturer failing to supply the same in satisfactory order and condition, the lessor shall be entitled to terminate this lease at once and

incurred by the lessor for insuring, transporting, storing, and maintaining the equipment and for its disposal and/or lease to third party or in any other manner whatsoever, without prejudice to the lessor's remedies for damages for breach of contract.

(iii) Lessor not Responsible for Delay in Delivery

The lessor shall not be responsible for any direct, indirect or consequential loss to the lessee or any third party arising from any delay in delivery and/or installation of the equipment either by the action of the manufacturer or otherwise howsoever or by reason of any delay in the commencement.

6. Lessee's Confirmations

The lessee acknowledges, represents, declares, agrees and confirms that:

(i) Suitability of Equipment

The equipment is of the required size, design, capacity and manufacture, suitable for its purpose and is selected by the lessee relying entirely on its own judgement and not on the statements or representations, if any, made by the lessor or its agents or servants.

(ii) Selection of Equipment

The lessor is not the manufacturer or dealer of the equipment and that the essential function of the lessor in this lease is to purchase the equipment selected by the lessee from the manufacturer designated by the lessee.

(iii) Lessor's Liability Excluded

The lessor shall in no way be liable, or responsible to the lessee for any liability, claim, loss, damage, or expense of any kind or nature whatsoever arising from the transportation and delivery of the equipment, lease of the equipment, its storage, installation, use or operation or its failure to operate or perform or otherwise howsoever.

(iv) Lessor's Ownership Acknowledged

As between the lessor and the lessee and their respective successors in title the equipment shall remain the personal property of and shall continue to be in the ownership of the lessor.

7. *Imposts, Taxes and Other Clauses*

(i) The lessee shall during the period of this lease and till the equipment is delivered back to the lessor in good working order and condition, bear all impost, charges and other duties, taxes and penalties as may be levied from time to time by the Government or any other authority pertaining to or in respect of this lease.

(ii) *Lessee to Pay Sales Tax, etc.*

The lessee agrees that the transaction covered by this lease is not understood to be a sale eligible to tax under the existing sales tax laws. If, however, by reason of any amendment of any law, Central or State, this transaction is held to be exigible to tax, as a sale or otherwise, either in whole or in part, or any input or material or equipment used or supplied in execution of or in connection with the lease are exigible to tax, the lessee shall pay such tax immediately upon the same becoming payable.

(iii) *To Reimburse Lessor*

If the lessee fails to pay monies referred to in (i) and (ii) above, the lessor may pay the same and the lessee shall reimburse all sums so paid together with interest thereon at the rate of _____ per cent per annum from the date of payment till such reimbursement.

8. *Termination by Default*

The lessor shall be entitled without prejudice to any other rights or remedies which the lessor may have under this lease or otherwise in law, to terminate this lease if the lessee fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions, or stipulations of this lease on its part to be observed and performed (other than failure to pay any sum hereunder when due and payable) and if such breach is remediable, fails to remedy the same within fourteen days of notice by the lessor specifying such default and requiring such default to be remedied.

9. *Consequence of Termination by Default*

Upon termination of the lease (other than by efflux of time) or assignment upon default hereunder by the lessee, the lessee shall forthwith pay the lessor

(i) a sum equal to the total amount of rent payable during the term of this lease which on termination had not been paid plus a default premium equal to 10% of the rentals payable under this agreement which on termination were unpaid and past due.

(ii) the cost of all repairs and maintenance of the equipment to render and maintain it in good working order and condition and all costs, charges and expenses incurred by the lessor in re-possessing the equipment and in enforcing its remedies howsoever occasioned. The parties hereto agree and record that the amounts to be paid by the lessee to the lessor as aforesaid have been *bona fide* and satisfactorily estimated to be the proper and reasonable amount that may be suffered by the lessor as and by way of liquidated damages.

Notwithstanding anything to the contrary herein contained, in the event of such termination the lessor shall also be entitled to sell, re-lease or otherwise dispose of the equipment in such manner as the lessor may think fit and the lessor shall not be bound to account to the lessee in any manner whatsoever.

10. Time to be of Essence

Time shall be of essence of this lease in so far as it relates to the observance or performance by the lessee of all or any of its obligations hereunder.

11. Registration Charges, etc.

The lessee shall pay to the lessor upon demand the stamp duty and registration charges, if any, payable on this lease and its duplicate and all lease deeds, agreement deeds, writings and documents executed by and between the parties hereto in respect of the equipment.

12. Jurisdiction

It is agreed by and between the parties that the civil courts at shall have the exclusive jurisdiction in respect of any matter, claim or dispute arising out of or in any way relating to this lease.

IN WITNESS WHEREOF, etc.

**24—Lease of Tube Well to Irrigation Department
for the Purpose of Working it
(Lessee Paying Royalty)**

THIS LEASE made, etc.

WITNESSES as follows :

1. Demise of Tube Well

The lessor hereby demises to the lessee ALL that tube-well standing on plot No. _____ in village _____, District _____ with the pumping plant erected thereon and all machineries, accessories and fixtures appertaining thereto together with the land on which the said tube well, machineries, accessories and fixtures stand all existing watercourses used in carrying water of the said tube-well to different fields TO HOLD the same to the lessee from the _____ for the term of _____ years PAYING therefor during the said term by way of rent the royalty hereinafter mentioned on the dates hereinafter specified.

2. Lessee's Covenants

The lessee hereby covenants with the lessor as follows:

(i) To Keep in Repairs

To maintain the demised premises including the said machinery and accessories in proper repairs and working order and condition;

(ii) To Pay all Charges

To keep his own staff for running the pumps and to pay all charges for the energy consumed by the motor;

(iii) Royalty

To pay to the lessor a royalty of 80 paise for every unit of energy consumed by the lessee in pumping water from the said tube well, whether the water is used on the lessee's field or otherwise, such royalty to be determined by the meter reading on the _____ and the _____ and to be paid on the _____ and the _____ following in each year.

3. Proviso

PROVIDED ALWAYS and it is hereby agreed between the parties hereto as follows :

(i) Termination if Well becomes Useless

If the said tube-well at any time fails to give any supply of the water or gives so little water that it becomes necessary to replace it and the lessor does not on being called upon to do so pay the cost of replacing it, the lessee may determine this lease.

(ii) Proviso for re-entry—as in Clause 4 (i) of Form 4.

4. Arbitration

It is hereby agreed between the parties hereto as follows :

(i) Any dispute between the parties hereto regarding the terms of this lease or the necessity of replacing the tube-well or any other matter arising out of this contract shall be referred to the Chief Engineer, Irrigation Department, Western Circle, whose decision thereon shall be final and binding on the parties.

(ii) Interpretation clause—as in Clause 5 (ii) of Form 4.

IN WITNESS WHEREOF, etc.

25— Lease by or to Limited Company*Necessary modifications*

1. In Parties, the Company will be described as “the _____ Company Limited, a Company within the meaning of the Companies Act, 1956, and having its registered office at _____ (hereinafter referred to as “the Company”) and should be described throughout as the Company instead of lessor or lessee.

2. The proviso for re-entry if the lessee is a Company will instead of insolvency provide for the contingency “if the Company shall enter into liquidation whether compulsory or voluntary or if their assigns not being a Company shall be adjudged insolvents, etc.”

3. In the interpretation clause “the Company” shall include “its assigns.”

4. The “service of notice” clause will provide for a notice on the Company being left at its registered office.

5. The lease will otherwise be as if it was by one or two joint tenants.

26—Lease on behalf of a Minor¹

THIS LEASE is made on the _____ day of _____ BETWEEN XY, etc., acting as guardian of the property of AB, etc., a minor (who is hereinafter called "the lessor") of the one part AND CD, etc., (hereinafter called "the lessee") of the other part.

WHEREAS—

1. The lessor is a minor and the said XY is his father and natural guardian under the Hindu Law (*or* has been appointed as the guardian of his property by an order of the District Judge of _____ dated the _____) (*or*, by the Will of MN, the deceased father of the lessor dated the _____).

2. The said XY acting on behalf of the lessor has agreed with the lessee to grant a lease of the property mentioned in the schedule hereto.

3. The District Judge of _____ has by his order dated _____ granted previous permission to the said XY to grant the proposed lease.²

NOW THIS DEED WITNESSES as follows:

1. The said XY on behalf of the lessor and in exercise of his power as natural guardian (*or*, the power conferred on him by the aforesaid Will dated the _____) (*or*, conferred on him, by the Guardians and Wards

1 A minor cannot grant or accept a lease, as acceptance also involves covenants on the part of the lessee. The guardian of his property may grant a lease. The guardian may, in case of a Hindu, be his natural guardian who has under section 8 (2) (b) of the Hindu Minority and Guardianship Act, 1956, no power to grant leases for any term exceeding five years or extending more than one year beyond the date on which the minor will attain majority, except with the previous permission of the court. He may also be guardian appointed by will or other instrument or by court. If he is also declared guardian under the Guardians and Wards Act, the court may, notwithstanding any restriction in the instrument of his appointment, grant him permission to grant a lease (Sec. 28). A lease for a longer term requires the court's previous permission (Sec. 29). The lease may be made either in the name of the minor or guardian but in the latter case it should be made expressly on minor's behalf, [vide Introduction, Part II : (c) Parties to the deed: (vii) Minor, ante].

2 Necessary in case of natural guardian of Hindu minor or if the guardian has been appointed or declared by Court and the lease is for more than five years or extends more than one year beyond the ward's minority, *or* the lease is prohibited by the instrument of appointment and the court grants permission notwithstanding this prohibition.

Act, 1890) (or, with the previous permission of the said District Judge granted by him by his order dated the _____) hereby demises, etc., (as in appropriate Form of lease)

2. Lessor's covenants as in the appropriate Form of lease.

3. The said XY on behalf of and so as to bind the lessor but so as not to impose any liability on himself except as to his own acts or default hereby covenants with the lessee as follows :

(As in appropriate Form of lease),

4. Provisos, etc.

As in appropriate form of lease, except that power of re-entry should be given to the lessor and not to the guardian.

IN WITNESS WHEREOF, etc.

27 Lease on behalf of Mentally Ill Person⁴

THIS LEASE made on the _____ day of _____ BETWEEN XY, etc., Manager of the property of AB, etc., a mentally ill person (who is hereinafter called "the lessor") appointed by an order of the District Judge of _____ dated _____ acting on behalf of the lessor of the one part AND CD, etc., (hereinafter called "the lessee") of the other part.

WITNESSES as follows :

1. The said XY, acting on behalf of the lessor under permission granted to him in this behalf by the District Judge of _____ by his order dated _____ hereby demises, etc.,

Other clauses as in Form 26.

28—Lease by Trustees⁵

THIS LEASE made on the _____ day of _____ by AB, etc., CD, etc., and EF, etc., trustees of the estate of XY appointed as such by a

3 Necessary if the certificated guardian is not authorised to grant the lease without court's permission.

4 The manager of the property of a mentally ill person appointed by court can alone grant a lease of such person's and that too with the court's permission (Sec. 59, Mental Health Act).

5 Sec. 36 of the Trusts Act 1882 (General authority of trustee) provides that except with the permission of the principal civil court of original jurisdiction, no trustee shall lease trust property for a term exceeding 21 years, nor without reserving the best yearly rent that can be reasonably obtained.

deed of trust dated the _____ executed by the said XY, acting under the power conferred on them by the said deed of trust (hereinafter called "the lessor"), etc., AND, etc.

Other clauses as in appropriate Form of lease

29—Lease by Managing Trustees of a Charitable Institution⁶

THIS LEASE is made on the _____ day of _____ BETWEEN AB and CD managing trustees acting on behalf of the trustees of the Mayaram Female Hospital Trust (hereinafter called "the lessors"), etc.

WHEREAS—

1. One XY, owner of a large estate including the land hereby demised by a deed of endowment dated the _____ created a trust called the Mayaram Female Hospital Trust and endowed the said estate for the upkeep of the said Mayaram Female Hospital at _____ and appointed the lessors and certain other persons as trustees for carrying out the objects of the said trust.

2. By a scheme of management settled by an order of the District Judge of _____ dated _____ the lessors have been appointed managing trustees for the management of the said estate and have been empowered to grant lease of the land comprised in the said estate.

NOW THIS DEED WITNESSES as follows :

1. The lessors as such managing trustees as aforesaid and acting under the powers granted to them under the aforesaid scheme of management on behalf of all the trustees of the said Mayaram Female Hospital Trust hereby demise, etc., *as in appropriate Form of lease.*

30—Lease by Way of Renewal—When the Original Lease has not yet Expired

(With variation if there has been a derivation of the interests of the lessor and the lessee).

THIS LEASE is made on the _____ day of _____ BETWEEN
(as in Form 4).

⁶ The Trusts Act 1882 does not apply to public or private religious or charitable endowments. They are governed by personal law and by the Charitable and Religious Trusts Act 1920, Charitable Endowments Act 1890 and the Religious Endowments Act 1863 apart from various State enactments and Sec. 92, C.P.C.

WHEREAS

1. By a lease dated _____ the property described in the schedule thereto was demised by AB, etc., to CD, etc., for a term of _____ years subject to the rent thereby reserved and the lessee's covenants therein contained.

2. The interest of the said CD in the said property is now vested in the lessee, and that of the said AB in the lessor.⁷

3. The lessee has now requested the lessor to grant a lease to him (in accordance with the lessor's covenant in this behalf contained in the aforesaid lease)⁸ for a further period of _____ years from the date of expiry of the term of the aforesaid lease on the terms hereinafter expressed (which the lessor has agreed to do).⁹

NOW THIS DEED WITNESSES as follows :

1. The lessor hereby demises to the lessee ALL those premises demised by the aforesaid lease (with the same exceptions and reservations as are therein expressed) TO HOLD the same to the lessee from the _____ for a term of _____ years subject to the payment in the same manner and on the same days of a yearly rent of the same amount as that reserved by the aforesaid lease (or, a yearly rent of Rs. _____) and subject to and with the benefit of such covenants (other than the covenant for renewal), provisos and conditions as are contained in the aforesaid lease.

2. It is hereby mutually agreed by and between the lessor and the lessee that they will respectively perform and observe the several covenants, provisos and conditions in the aforesaid lease (except the _____) as fully as if the same were repeated at length in this lease with such modifications only as are necessary to make them applicable to this demise and the parties hereto.

3. PROVIDED ALWAYS that if the aforesaid lease is determined under the proviso for re-entry therein contained this deed shall become absolutely void.

IN WITNESS WHEREOF, etc.

7 Omit if the parties are original lessor and lessee.

8 These words may be omitted if there is no renewal clause in existing lease.

9 If the renewal is in accordance with a renewal clause in the existing lease, these words may be omitted.

31—Lease by Reference to Expired Lease

THIS LEASE etc., (*as in Form 4*).

WITNESSES as follows :

1. The lessor hereby demises, etc., (*as in Form 4*).
2. Except as to the term of years hereby granted and the rent hereby reserved this demise is made upon the same terms and subject to the same covenants, provisos and conditions as were contained in the lease dated the day of and made between the parties hereto (*or, between AB, etc., and CD, etc.,*) as if the same were herein set forth at length with such modifications only as are necessary to make same applicable to the present demise and the parties hereto.
3. The lessee hereby covenants with the lessor to pay the rent hereby reserved on the dates and in manner aforesaid.
4. The lessor and the lessee hereby agree with each other that they will respectively perform and observe the several covenants, provisos and conditions subject to which the demise is made as aforesaid as ought on his part to be observed and performed.

IN WITNESS WHEREOF, etc.

32—Surrender of Lease by Endorsement on the Lease

(*With variation for the case of death of original parties*)

In consideration of the sum of Rs. paid by the within-named lessor to within-named lessee (*or, by AB, etc., the successor-in-title of the within-named lessor to CD, etc., the successor-in-title of the within-named lessee*), the receipt of which the said lessee (*or, CD*) hereby acknowledges, the said lessee (*or, CD*) hereby surrenders and yields up to the said lessor (*or, AB*) ALL the premises comprised in the within-written lease to the intent that the said lease and the estate and interests of the said lessee (*or, CD*) in the said premises thereunder be forever extinguished AND the said lessee (*or, CD*) hereby releases the said lessor (*or, AB*) from all obligations arising under the within-written lease AND the said lessor (*or, AB*) hereby releases the said lessee (*or, CD*) from the claims, demands and liabilities in respect of the within-written lease.

IN WITNESS WHEREOF, etc.

33 Surrender of Lease, by a Separate Deed

THIS DEED OF SURRENDER is made on the --- day of
BETWEEN AB, etc., (hereinafter called "the lessee") of the one part AND
CD, etc., (hereinafter called "the lessor") of the other part.

WHEREAS the lessor granted to the lessee a --- years/perpetual
lease of the land mentioned in the schedule hereto on an annual rent of
Rs. ---;

AND WHEREAS the lessee has agreed with the lessor to surrender
to him the said land by relinquishing all the right and interest which the
lessee holds in respect of the same under the lease hereinbefore recited in
consideration of a sum of Rs.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the aforesaid agreement and in consideration of
the sum of Rs. --- paid by the lessor to the lessee (the receipt of
which the lessee hereby acknowledges) the lessee hereby surrenders and
yields up to the lessor the property mentioned in the schedule hereto and
demised by the lease hereinbefore recited with all the appurtenances thereto
belonging TO the intent that the said term/perpetuity created by the said
lease and all the estate and interest of the lessee in the said property under
or by virtue of the said lease may be absolutely and forever extinguished
from the date hereof and the said property may revert to the lessor.

2. The lessee hereby releases the lessor from all obligations arising
under the said lease.

IN WITNESS WHEREOF, etc.

34—Surrender of a Portion of Demised Land and Proportionate Reduction of Rent

THIS DEED OF SURRENDER made, etc., (as in Form 33).

Recital of Lease

WHEREAS by a deed of lease dated --- the lessor granted a
heritable and non-transferable permanent lease of the land described in
the schedule hereto to the lessee on an annual rent of Rs. ---;

AND WHEREAS the aforesaid permanent lease comprised among
other lands the plot No. --- containing an area of --- but as the

same has been in actual possession of XY and his ancestors as statutory tenants the lessee could not obtain possession thereof;

Agreement to Surrender a Part

AND WHEREAS the lessee has agreed with the lessor for the surrender to him of the said plot No. ———— in consideration of the reduction of rent hereinafter agreed to be made.

NOW THIS DEED WITNESSES as follows :

1. Surrender

In pursuance of the said agreement and in consideration of the reduction of rent hereinafter agreed to be made, the lessee hereby surrenders and yields up to the lessor the said plot No. ———— etc., and all the estate, right, title, interest, claim or demand whatsoever of the lessee into, out of or upon the said plot TO the intent that the perpetuity created by the said permanent lease as to the said plot and all estate and interest of the lessee in the said plot under or by virtue of the said permanent lease be absolutely and for ever extinguished from the date hereof and the said plot may revert to the lessor.

2. Parties' Covenants

It is hereby agreed and declared as follows :

(i) *Reduction of Rent*

In consideration of the surrender hereinbefore contained the yearly rent of Rs. ———— reserved by the said permanent lease shall be from the year ———— *Fasli*, be reduced to the sum of Rs. ———— payable at the time and in the manner mentioned in the said permanent lease.

(ii) *Other Covenants to Remain in Force*

All the covenants and conditions contained in the said permanent lease shall continue in force in respect of and so far as they apply to the land remaining subject to the said permanent lease with such modifications as may be necessary in consequence of these presents.

IN WITNESS WHEREOF, etc.

35--Surrender of Lease Accepted in Consideration of Lessee Delivering His Building, etc.

THIS DEED OF SURRENDER, etc., (as in Form 33).

Recital

WHEREAS by a lease dated the _____ the lessor demised to the lessee the land described in the schedule hereto for a term of _____ years.

AND WHEREAS the lessee spent over Rs. _____ to turn the said land into a successful farm by reclaiming it, making *Kachcha* road and a small building on it and fixing a small sugar centrifugal, rice huller, persian wheels, etc., but on account of floods in the river, hard and clay nature of the soil and *gaudar* grass the enterprise has been a total failure and further investment of money on it is now beyond the means of the lessee and owing to personal circumstances he was unable to cultivate the land for the past two years or to do any thing on it;

AND WHEREAS in view of the aforesaid unfortunate circumstances the lessor has made a grant of Rs. _____ to the lessee as an act of grace and at the request of the lessee agreed to accept a surrender of the said lease for the remainder of the term thereof and to relinquish and forego all his rights under the said lease on the lessee abandoning all claims for compensation for buildings, structures and other improvements made upon the demised land.

NOW THIS DEED WITNESSES as follows :

1. Surrender

In consideration of the lessor relinquishing and foregoing all demands, rights or claims accruing to him under the said lease the lessee hereby surrenders and yields up to the lessor ALL that land comprised in and demised by the aforesaid lease and described in the schedule hereto with all building, well and other constructions erected, sunk and made on the said land and such other things as may be fixed on the land and other improvements made by the lessee thereon TO the intent that the term created by the said lease and all the estate and interest of the lessee in the said land under or by virtue of the said lease be absolutely and for ever extinguished and the said land may revert to the lessor with the aforesaid buildings, well, constructions, fixtures and improvements;

2. Release by Lessor

The lessor hereby releases the lessee, his heirs, executors, administrators and assigns from all claims, demands and liability arising under or in respect of the aforesaid lease;

3. Lessee's Relinquishment of Buildings, etc.

The lessee hereby relinquishes all claims to compensation for any buildings, wells, constructions, fixtures and improvements erected, sunk and made by him on the said land.

IN WITNESS WHEREOF, etc.,

36—Deed Altering Covenants in Lease

AN AGREEMENT made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the lessor") of the one part AND CD, etc., (hereinafter called "the lessee") of the other part.

WHEREAS this deed is supplemental to the deed of lease dated _____ made between the parties hereto;

AND WHEREAS the parties hereto have agreed that the said deed of lease be varied and modified in manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :

1. Sub-clause _____ of clause _____ of the aforesaid lease shall cease to have effect.

2. There shall be substituted for sub-clause _____ of Clause _____ of the aforesaid lease the following sub-clause, namely _____

(Set out the new sub-clause.)

3. The annual rent reserved by the aforesaid lease shall with effect from _____ be reduced (or, increased) from Rs. _____ to Rs. _____.

4. Save as hereinbefore modified the aforesaid lease shall continue in full force and effect.

IN WITNESS WHEREOF, etc.