

LICENCE

Preliminary Note

Licence and Lease

Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence (Sec. 52, Easement Act 1882). It differs from a lease in that under a lease an interest in the property is transferred while no interest is transferred under a licence, the effect of which is only to make an action lawful which would otherwise be unlawful. The distinction between a lease and licence has been brought out by the Supreme Court in various cases, and it has been held¹ that if a document gives only a right to use the property in a particular way or under particular terms while it remains in possession and control of the owner thereof it will be a licence. The licensee's occupation does not create in his favour any estate or interest in the property. Even in cases of exclusive possession, though *prima facie* the grantee is to be considered a tenant, yet he will not be held to be so if the circumstances and the conduct of the parties negative any intention to create a tenancy. For ascertaining the intention the substance of the document must be preferred to the form.

A licence is, unlike a lease, generally revocable and is not assignable; but sometimes a licence is coupled with a grant of an interest in property e.g. permission to go on land to make and use a water course. Such licences are not revocable. Other licences which are irrevocable are mentioned in Sec. 60 of the Easement Act.

Government Grants Act 1895 applies to licence as well as to lease granted by Government. Hence the rights, privileges and obligations of any grantee of

- 1 *Associated Hotels v. R.N. Kapoor*, A 1959 SC 1262; *M.N. Clubawala v. Fida Hussain*, A 1965 SC 610; *Sohan Lal Naraindas v. Laxmidas Raghunath*, 1971 (1) SCC 276; *Qudartullah v. M.B. Bareilly*, 1974 (1) SCC 202; *Sridhar v. Shri Jagannath Temple*, (1976) 3 SCC 485; *Board of Revenue v. A.M. Ansari*, (1976) 3 SCC 512; *The Corporation of Calicut v. K. Sreenivasan*, A 2002 SC 2051.
- 2 *Qudrat Ullah v. Municipal Board*, A 1974 SC 396; *Khalil Ahmed v. Tufeilhussain*, A 1988 SC 184; *Vayallakath v. Illikkal*, A 1996 SC 3288; *Basappa v. Gangadhar*, 1998 AIHC 2989 (Kant); (*Held shop given on licence, not lease*); *Shyam Sunder v. Delta International Ltd.*, A 1998 Cal 233 (DB), reversed in A 1999 SC 2607 (document of Licence not treated lease); *Board of Revenue v. A.M. Ansari*, A 1976 SC 1813; *Puran Singh v. S.B. Kriplani*, (1991) 2 SCC 180; *B.V.D'Souza v. Antonio Fernandes*, (1989) 3 SCC 574 A 1989 SC 1816

the Government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.³

Statutory Provision

The statutory provisions governing licences are contained in the Indian Easement Act, 1882, Chapter VI. In States where it does not apply, courts rely upon English common law and the general principles as embodied in the Act are also applied even though the Act as such does not apply in term.⁴

Form of Licence

No special form of grant is prescribed. It may be granted orally or by an agreement in writing or by a covenant contained in any other deed, such as lease, sale, etc. If it is granted in writing, the writing should be in the form of a deed or agreement or in the simple form of a deed poll. If no fee is to be paid and the licensee has not to enter into any covenants, the form of deed poll would be suitable, but if the licensee is to pay any fee and the licence is for a fixed term or revocable only by notice, a deed or agreement is preferable. The deed may be described as "THIS LICENCE" or "THE DEED OF LICENCE" or simply as "THIS DEED" and the parties as "Licensor" and "Licensee" or "Owner" and "Licensee" or "Grantor" and "Grantee".

Recitals

In a simple deed recitals will be rarely necessary.

Consideration

A licence may be for consideration (though this is not necessary). If so, it should be mentioned.

Operative Words

The operative words may be "licenses and authorizes to do" or "grants liberty and licence to do, etc.", or "grants leave and licence to do, etc." The exact liberty given, the property on which it is to be exercised, and the conditions imposed on the exercise should be clearly expressed in the deed. If there is a long list of the powers and authority given by the licence the same may be incorporated in a schedule to be referred to in the deed. The deed should make it clear that it is a licence and not a lease or a grant.

Revocation

In the absence of a contract to the contrary, a licence is generally revocable

3 *Hajee S.V.M. Mohd. Jamaludeed Bros & Co. v. Govt of T.N.*, A 1997 SC 1368 : (1997) 3 SCC 466 (re : right to collect hand stall, from coastal sites).

4 *Sital Chandra Chaudhry v. Allen J. Deane*, 34 IC 450; *Maung Chan Nayem v. Maung Pure*, 114 IC 519.

without notice unless it is coupled with a transfer of property and such transfer is still in force or the licensee has, acting upon the licence, executed a work of a permanent character and incurred expense (Sec. 60 of the Indian Easements Act). Cases in which a licence is deemed to be revoked are mentioned in Sec. 62. Any restrictions on the power of revocation, such as that of previous notice or payment of compensation should therefore be expressly provided in the licence.

Devolution of Right

A licence is generally not heritable and transferable. A licence to attend a place of public entertainment is, however, transferable (Sec. 56). A contract to the contrary should, therefore, be expressly stated. As a licence granted to A cannot be exercised by his servants or agents (Sec. 56), the servants and agents should also be expressly mentioned along with the licensee. A licence is purely a personal right between the licensor and the licensee; so a transferee from the licensor is not as such bound by the licence (Sec. 59).

Stamp Duty

If a licence is contained in any deed such as in a deed of sale or lease it does not constitute a matter distinct from the subject matter of such deed but is ancillary to it, hence no separate stamp duty is required under Sec. 5 Stamp Act in respect of the covenants relating to the licence, but if a separate deed is executed it will be chargeable with the same duty as an agreement not otherwise provided for (vide Article 5).

Registration

A mere deed of licence need not be registered unless any right, title or interest in immovable property of the value of Rs. 100 or more is created, declared, assigned, limited or extinguished (Sec. 17, Registration Act).

PRECEDENTS

1—Licence to Play Cricket, in the form of a Deed Poll

I, AB, etc., owner in possession of the land described in the schedule hereto hereby license and authorize all members for the time being of the _____ Club by themselves, their servants, agents and friends with all proper equipment necessary for the game of cricket, such as bats, wickets, balls, roller, etc., to enter and to go upon the said land at all times between the _____ day of _____ and the _____ day of _____ in every year so long as this licence shall be unrevoked and to practise and play the game of cricket and as far as may be proper for that purpose to cut and mow the grass growing there and to roll the said field and do all things incidental to practising and playing the said game doing no unnecessary damage to the said land or anything lying or growing thereon.

The Schedule herein referred to.

* * * * *

Signed by owner _____ on the _____

2—Ditto, in Deed Form

THIS DEED OF LICENCE made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the licensor", which term shall include his heirs, representatives, successors and assigns) of the one part AND CD, EF, GH, etc., members of the _____ Club, _____ (hereinafter called "the licensees" which term shall include all persons who may for the time being be the members of the said Club) of the other part.

WITNESSES as follows :

1. Permit to Play Cricket

The Licensor hereby licenses and authorises the licensees at all times during the continuance of this licence and so long as the _____ Club _____ (hereinafter called "the Club") continues to exist by themselves and by the servants and agents of the Club to enter upon that plot of land in _____

known as the cricket lawn and measuring approximately——by——metres and bounded on the north by——on the south by——on the east by——and on the west by——and there to practise and play the game of cricket and to roll the said plot and do all things incidental to practising and playing the game of cricket and no other.

2. Licensee's Covenants

The licensees hereby agree with the licensor as follows :

(a) *Not to Waste*

The licensees shall not commit any waste on or cause any damage to the said land.

(b) *Licensor may Revoke*

The licensor shall be at liberty at any time to put an end to this licence by giving to the licensees such notice as he may consider reasonable, and any notice delivered to the Honorary Secretary for the time being of the Club or to any other office-bearer of the Club or left at the office of the Club will be deemed to be sufficient notice to the licensees.

(c) *Licensee to Quit if Land Required*

If the said land is required by the licensor temporarily for any purpose, the licensees shall quit the same and suspend its use as aforesaid for such time as the licensor may direct but during the period of such suspension the licensor shall not be responsible for the maintenance of the grounds and shall not be bound to incur any expense on its maintenance other than to meet his own requirements.

(d) *To Submit Programme*

The licensees shall at the beginning of every year submit to the licensor a programme of their yearly functions, and fixtures.

(e) The licensees and every one using the said land on their behalf under this licence shall refrain from the use of the grounds when they are unfit for play and the decision of the licensor on the question of such unfitness shall be final.

IN WITNESS WHEREOF, etc.

3—Licence to Build and Maintain a Seed Store

THIS LICENCE is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the licensor"), of the one part AND CD, etc., (hereinafter called "the licensee") of the other part.

WHEREAS the licensor desired the licensee to open a seed store in _____ and the licensee has agreed with the licensor to do so upon being given a suitable site for such store and the necessary permission to build thereon.

NOW THIS DEED WITNESSES as follows:

1. *Grant of Easement*

In pursuance of the said agreement the licensor hereby grants to the licensee LEAVE AND LICENCE to build and maintain a seed store in the compound known as _____ and situate in _____ now in the possession of the licensor and upon that part of the said compound which is shown within red lines on the plan annexed hereto and to carry on the business of buying, selling and storing seeds in such store as aforesaid and also to construct a road from such store to the point marked A on the said plan and to erect and maintain a gate at the said point together with full right of passage along such road and from such store for the licensee, his servants and agents and all other persons coming to such store for the purpose of buying, selling, delivering or removing seed with trucks, tractor, trollies, carts, or other means of transport.

2. *Licensee not to use for Different Purpose*

The licensee hereby covenants with the licensor that he will not use the said site for any purpose other than the purpose aforesaid and that if he ceases to do so he will surrender the same to the licensor after removing all buildings therefrom and clearing the said site of all foundations or materials of buildings erected by him thereon.

3. *Quiet Enjoyment*

The licensor hereby covenants with the licensee that as long as the licensee performs and observes the terms and conditions hereinbefore

contained the licensor will not in any way hinder him in the use and enjoyment of the said site and of the licence hereinbefore contained AND will if he desires to surrender the said site permit him to remove the materials of all buildings erected by him thereon

IN WITNESS WHEREOF, etc.

4—Licence to Construct Road on the Licensor's Land

AN AGREEMENT 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;

Recitals

WHEREAS the grantee has applied to the grantor for liberty to construct, maintain and use a road across the land described in the schedule hereto between the points marked A and B on the plan annexed hereto and along the route between the said points which route is delineated on the said plan and thereon coloured red, which road is required for the better and more convenient working of the Sugar Factory of the grantee called the _____ factory;

AND WHEREAS such road if constructed would also be useful for the purposes of the grantor's estate;

AND WHEREAS the grantor has therefore agreed to grant such liberty as aforesaid to the extent and subject to the conditions hereinafter set forth and the grantee has likewise agreed to accept the grant on such conditions :

NOW THESE PRESENTS WITNESS as follows :

1. Grant of Easement

The grantor hereby grants to the grantee full licence to construct and maintain a road across the said land between the said points and along the said route and also a right of way along the same for pedestrian or vehicular traffic or by whatever means at all times for the grantee, his servants, agents and customers and TO HAVE and exercise such licence and right of way for as long as such road shall be required for any of the purposes of the grantee in working and managing the said Sugar Factory but no longer.

2. Grantee's Covenants

It is hereby agreed and declared that the aforesaid grant is subject to the following conditions all of which the grantee hereby covenants with the grantor to observe and perform :

(i) *To put up Notices*

As soon as such road shall be ready for use the grantee will put up and will at all times thereafter maintain in good and legible condition notices in Hindi and English and in a form to be approved by the grantor at each terminus of such road stating that the same is a private road maintained for the use of the grantee and that any use of the same by members of the public is merely permissive;

(ii) *To Stop Traffic*

That the grantee will at least once in every year and for a continuous period of not less than twenty-four hours stop all traffic along such road from either terminus thereof except traffic by the grantee, his servants, agents and customers or by the grantor and his servants and agents and will on every such occasion post a person at each such terminus and will both by notice and by the agency of such person explain that traffic is stopped in order to prevent the acquisition by the public of any right to use such road for any purpose whatever;

(iii) *Right to Revoke*

Upon any breach of either of the conditions hereinbefore contained the grantor may, notwithstanding the waiver of any previous right of revocation, revoke the aforesaid grant and thereupon the same shall become void.

3. Grantor's Covenants

The grantor hereby covenants with the grantee as follows :

(i) That so long as the conditions hereinbefore contained are observed the aforesaid grant will not be revoked ;

(ii) *Payment*

The grantor will every year pay either half the cost of the repair and maintenance of such road during the year or will

contribute towards the same the sum of Rs. _____, whichever sum shall be less;

(iii) *Grantee to Prevent use*

Except as hereinbefore provided the grantee shall not be bound to prevent or control the use of such road by any person nor shall be in any way responsible for any damage done by any person using such road other than persons in the employment or subject to the control of the grantee ;

(iv) *Option to Surrender*

The grantee or his successors may at any time surrender his or their rights under these presents and that nothing herein contained shall impose upon him or them any obligations to construct or to maintain such a road as aforesaid after such rights have been surrendered.

4. *Parties' Covenants*

The parties hereby agree that subject to the conditions hereinbefore mentioned the grantee shall repair and maintain the road in a good condition by carrying out necessary repairs and the sole responsibility in this behalf shall be that of the grantee. Non-payment of repair and maintenance contribution by the grantor under clause 3(ii) shall be no ground for not maintaining and keeping the road in good repairs.

It is further agreed between the parties that if the grantor shall fail to pay half of the repair and the maintenance cost of the road under clause 3 (ii) the grantee may recover the same from grantor through a court of law with interest at the rate of 18 percent per annum, compounded yearly.

5. *Interpretation Clause*

It is hereby agreed that where the context so requires or admits the expression "the grantor" hereinbefore used includes the owners for the time being of the said land on which this licence is granted; and the expression "the grantee" hereinbefore used includes his heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, etc.

5—Licence to make Alterations and Additions in Demised Premises¹

THIS LICENCE is 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

(1) By a deed of lease dated———the lessor (*or*, one MN predecessor-in-title of the lessor) demised the house described in the schedule hereto to the lessee (*or*, one GH the predecessor-in-title of the lessee).

(2) The said lease contained a covenant by the lessee not to make any structural additions or alterations to the said house without the previous permission of the lessor in writing.

(3) On the request of the lessee the lessor has agreed to grant the lessee permission to make the additions and alterations specified in the schedule hereto on the conditions hereinafter contained.

NOW THIS DEED WITNESSES as follows :

In pursuance of the said agreement the lessor grants to the lessee licence to execute in and upon the said premises the several alterations and works specified in the schedule hereto on condition that the same shall be completed within———months from the date hereof in conformity with the plan and specifications already submitted to and accepted by the lessor, which plan and specifications are annexed hereto and signed by the parties.

1. Lessee's Covenants

The lessee hereby covenants with the lessor as follows :

- (i) That he will complete the said alterations and additions within the period and in the manner hereinbefore specified;
- (ii) That in carrying out such alterations and additions he will do as little injury as possible to the existing structure of the said building and will make good any damage done or caused to the said building by the execution of such alterations and additions;

¹ See Preliminary Note on LEASE : Implied covenants.

- (iii) That in addition to rent reserved in the aforesaid deed of lease he will pay an additional rent of Rs. ——— per mensem along with the rent so reserved and in the manner provided in the said lease.
- (iv) That on the determination of the said lease unless released from compliance with this stipulation by the lessor, he will at his own cost reinstate and make good the demised premises and restore the same to the same state and condition as they are now in and as if the several additions and alterations hereby authorized had not been made [or, that on the termination of the lessee's tenancy of the said building, by the act of either of the parties hereto except in the case provided by Sec. 111 (c) of the Transfer of Property Act², the lessee will hand over to the lessor all such additions as aforesaid, (if carried out) in good condition and repair (reasonable wear and tear excepted) and shall not be entitled to any compensation or payment for value or cost of such alterations or additions].

2. Parties' Covenants

It is hereby agreed that the lessor's covenants and conditions contained in the said lease which are now applicable to the premises comprised therein shall continue to be applicable to the same when and as altered and shall be applicable to all additions which may be made thereto.

The Schedule hereinabove referred to.

* * * * *

IN WITNESS WHEREOF, etc.

6—Licence for Grazing and Appropriation of Fruits (with a Surety for the Licensee)

AN AGREEMENT made the ——— day of ——— BETWEEN AB, etc., (hereinafter called "the licensor") of the first part AND CD, etc., (hereinafter called "the licensee") of the second part and EF, etc. (hereinafter called "the surety") of the third part.

² Sec. 111 (c) provides for automatic determination of the lease on the termination of the interest of the lessor in the property.

WHEREBY the parties hereto agree as follows :

(1) During a period of _____ months/years commencing from the _____ day of _____ next the licensor will permit the licensee to do the acts and things specified in the first schedule hereto over all the land described in the second schedule hereto.

(2) The licensee will pay the licensor for such permission the sum of Rs. _____ by _____ instalments, payable as follows :

Rs. _____ on the _____ day of _____ 19 _____

Rs. _____ on the _____ day of _____ 19 _____

Rs. _____ on the _____ day of _____ 19 _____

(3) The licensee will be liable to pay for any damage done by him or his servants or agents or cattle, during the period of this licence, to any trees, shrubs, plants, culverts, drains or other property of the licensor on the said land and will accept as final the decision of XY³ as to his such liability and as to the amount of such liability and will pay the said amount within _____ days after being required by the licensor to do so.

(4) If the licensee makes default in payment of any instalment mentioned in clause (2), or of any sum which he is liable to pay under clause (3) hereof, he will be liable to pay interest on such sum at one percent per mensem from the date of default to that of actual payment, and the licensor shall also be at liberty to revoke this license and the licensee shall thereupon forfeit all his rights hereunder and shall not be entitled to any compensation by reason of such forfeiture.

(5) Water will be supplied to the licensee from the tube well at _____ and the licensor will take all reasonable care to maintain an adequate supply but he shall not be liable for any damage or loss which may be caused by any deficiency in the water supply and the licensee will not be entitled to any remission or compensation for such damage.

(6) The licensee will not be entitled to any remission or compensation on account of damage by storm, insect attack or other natural calamity unless such damage is of exceptional severity, in which case he will get a reasonable remission or compensation, and in case of disagreement about the liability of the licensor or as to the amount of remission or compensation

3 Such a clause makes him a referee and not an arbitrator. Clauses (6) and (8) are also similar in this respect.

allowable to the licensee, the matter shall be referred to XY whose decision shall be final.

(7) The licensee shall not sublet this contract either in part or in whole, unless the permission in writing of the lessor is previously obtained.

(8) The licensor may at his option determine this agreement at any time after one week's notice and shall in such case compensate the licensee (if the licensee is not in default) either by payment in money or by giving him over other land the same rights as are hereby given to him, and the licensee will accept as final the decision of the said XY concerning the amount to be paid or the land to be given, as the case may be.

(9)⁴ The surety in consideration of the licensor having given the licensee the permission hereinbefore mentioned agrees with and guarantees to the licensor that the licensee will duly pay all sums payable by him under the covenants hereinbefore contained and that in case the licensee makes default in the payment of any such sum the surety will pay the same to the licensor.

The first schedule herein referred to

(Description of the rights given)

(a) To cut and sell grass for profit.

(b) To gather and sell fruit for profit (except fruit of—trees).

(c) To graze cattle and sheep (but no other animals).

(d) To graze animals of any kind (except goats and elephants⁵).

The second schedule herein referred to

(Description of the land to which this agreement relates).

IN WITNESS WHEREOF, etc.,

7—Licence for Hotel Shop⁶

THIS DEED OF LICENCE is made at _____ on this the _____ day of _____ between AB HOTELS LIMITED, a public limited company incorporated under the Companies Act, 1956 and having its

⁴ If there is no surety then this clause is to be omitted and also the words "and E.F. etc. third part" in the enumeration of parties in the beginning.

⁵ It does not amount to a lease: *Om Prakash v. Ravinder Kumar*, 1995 Supp. (4) SCC 115; *Swarn Singh v. Madan Singh*, 1995 Supp (1) SCC 306; *Delta International Ltd. v. Shyam Sunder*, A 1999 SC 2607.

registered office at _____, hereinafter called "the Licensor" (which expression shall include its successors and assigns) of the ONE PART and CD, etc., (*the constitution and status of the licensee to be defined*), hereinafter called "the Licensee" (which expression shall include its successors and assigns) of the OTHER PART.

WHEREAS the Licensor is operating a 5-star deluxe hotel known as _____ at _____ on the plot of land admeasuring 20,000 sq. metres leased out to the Licensor by the _____ Development Authority under the perpetual lease deed dated the _____ day of _____ and in which the licensor is also required to have a shopping plaza as essential facility to the hotel customers;

AND WHEREAS the Board of Directors of the Licensor have decided to give on licence basis shops in the shopping plaza to intending parties to use the shops for the specified business purposes;

AND WHEREAS the Licensee is desirous to use as Licensee Shop No. _____ (measuring _____ sq. metres) in the said shopping plaza (hereinafter referred to as "the stipulated space");

NOW THIS AGREEMENT WITNESSES AND IT IS HEREBY AGREED, DECLARED AND RECORDED AS FOLLOWS :—

1. In consideration of the periodical payments hereinafter agreed to be paid by the Licensee and other Licensee's undertakings hereinafter set out, the Licensor hereby licenses and authorises the Licensee to enter upon and use the stipulated space for the purposes of carrying on _____ (hereinafter called "the authorised purpose") on the days and during the hours to be determined by the Licensor from time to time. Any change in the authorised purpose shall be made only with the permission in writing of the Licensor.

2. The Licence under this agreement shall be operative for a period of 5 (five) years from the date the stipulated space is made available to the licensee (hereinafter referred to as "commencement date") for carrying out the authorised purpose. At the option of the Licensee the licence under this Agreement shall be renewed for an additional period of not exceeding 5 (five) years at a time.

3. During the currency of this licence, the licensee hereby agrees with the Licensor and undertakes as follows :—

- (a) To pay to the Licensor a sum of Rs. _____ (Rupees — only) by the 10th day of every month, the first of such payments to be made on commencement date;
- (b) If default is made in paying the said amount in time, interest at 24% p.a. shall be chargeable from the due date(s) to the actual date of payment.
- (c) Not to use the stipulated space for any purpose other than for the authorised purpose;
- (d) To obtain and to keep in force all permissions and licences which may be required by law for use of the stipulated space and to comply with any condition which may be attached to any such permission or licence;
- (e) To manage and conduct the stipulated space so as to preserve the reputation of the Licensor and its hotel and to abide by the rules and regulations framed by the Licensor from time to time and that nothing shall be done, permitted or committed contrary to any provision made by or under any statute or law for the time being in force or rules and regulations framed by the Licensor and in particular not to use or permit the stipulated space to be used for any form of unlawful activities;
- (f) Not to make any alterations or additions to the stipulated space or to remove therefrom any of the Licensor's fixtures or fittings therein;
- (g) Not to alter the original colour of the outside of the stipulated space or the facade and front elevation nor erect sun-screens, curtains or blinds on the exterior nor paste any bills, advertisements, posters, notices, cuttings, etc., on the glasses, nor permit the same to be made, affixed or altered or erected in any circumstances;
- (h) To have the scheme, specification and the layout for decor, for interior decoration and furnishing of the stipulated space approved by the Licensor and to keep the same as approved by the Licensor keeping in view the high standard of a 5-star luxury hotel, and to carry out, at its own expense, such repair or renovation work as the Licensor may direct as a result of inspection by its representative(s) and that in default the Licensor

- shall be entitled to carry out such repairs or renovations and to recover the costs, charges and expenses thereof from the Licensee;
- (i) To forthwith remove or cause to be removed any goods, articles or exhibits exhibited or exposed for sale or being sold in the stipulated space, which in the opinion of the Licensor are obnoxious, obscene or undesirable;
 - (j) Not to store or cause to be stored any hazardous, combustible or dangerous goods in stipulated space nor use any gas, kerosene or electric stove or appliances for preparing any food or beverage item or for any other purpose;
 - (k) Not to hold any auction, bids or such other activities without prior written consent of the Licensor.
 - (l) Not to display, affix paint or exhibit any name or writing or anything upon the exterior of the stipulated space without obtaining prior written consent of the Licensor;
 - (m) Not to employ for work or otherwise allow any person at the stipulated space who is not of good character and behaviour and/or suffering from any contagious, infectious disease or is not suitably attired or otherwise unsuitable to be seen in a modern 5-star luxury hotel;
 - (n) To forthwith submit, at the requisition of the Licensor any member of its staff for medical examination by a doctor of the Licensor's choice at the cost of the Licensee;
 - (o) Shall use such route or passage only to go to or come out of the hotel premises (for reaching the stipulated space) or any toilet or wash-room as is stipulated by the Licensor for use by persons working at the stipulated space;
 - (p) To pay or cause to be paid charges for electricity (including meter hire charges), telephone calls, and other facilities/ utilities provided by the Licensor at the stipulated space immediately on receipt of bills/demand by the Licensor. In case of default, the Licensor may at its discretion withdraw the facilities/utilities;
 - (q) Not to do or permit to be done any act which may invalidate or in any way affect the insurance of the building or property wherein the stipulated space is located;

- (r) Not to throw dirt, rubbish, garbage, refuse or permit the same to be thrown in the stipulated space or in the verandah or the passage or in any other portion of the shopping plaza or hotel;
- (s) In the event of any damage or injury being caused to the stipulated space or any property of the Licensor by the Licensee or his servants or agents or any one upon the stipulated space with the acceptance or implied consent of the Licensee or as a result of the use of the premises for unauthorised purposes, the Licensee shall at its own expense make good all such damage or injury and in the event of his failure to do so within 15 (fifteen) days after the occurrence of such damage, the Licensor may make good such injury/damage and the Licensee shall indemnify the Licensor against all such costs and charges and expenses in respect thereof.
- (t) To charge the customers reasonable price for the goods sold or services rendered and in the event of any complaint, to satisfy the Licensor about the reasonableness of the price and to refund to the customer any amount in excess of the price which is considered reasonable by the Licensor.
- (u) To forthwith on the expiry of the licence or its earlier termination by the licensor vacate the stipulated space and remove all its wares, equipments furnishings, etc., and in default the Licensor's representatives shall be fully entitled to get the stipulated space vacated without being liable to damages or otherwise; and
- (v) To take out a policy of insurance in the joint names of the Licensor and the Licensee against all liability in respect of any damage or loss which may be suffered by any person other than the Company or the Licensee by reason or arising directly or indirectly out of the use of the stipulated space for the authorised purpose and to keep the Licensor indemnified against all such liability.

4. The Licensor hereby agrees with the Licensee as follows :—

- (a) To permit or cause to permit the Licensee, his servants and agents to enter and use the stipulated space;

- (b) To keep or cause to be kept the premises, in which the stipulated space licenced to the Licensee is situated, in good condition;
- (c) To provide the following facilities/services :—
- (i) Central air-conditioning facilities during business hours;
 - (ii) Cleaning and keeping in neat and tidy condition common passages, lobbies and entrances around the stipulated space;
 - (iii) Looking after and attending to the electricity, water and sanitary fittings and pumping requirements in the common passages, lobbies and entrance around the stipulated space; and
 - (iv) Providing watch and ward and the maintenance services for the shopping area, provided that the Licensor shall not in any way be responsible in case of any theft, pilferage or loss.

PROVIDED that the air-conditioning and telephone services may be shut off and cut off, after giving 24 (twenty four) hours notice in writing, for the purpose of altering, repairing services or overhauling any apparatus, machine, plant or installations;

PROVIDED FURTHER that in the event of failure of the central air-conditioning or the telephone installations due to any reason beyond the control of the Licensor, the Licensee shall have no recourse against the Licensor for non-provision of the above facilities/services; and

- (d) To permit the Licensee to use the common portions such as entrances, passages, stairways in the shopping plaza as are specifically designated by the Licensor from time to time.

5. (a) As security for proper maintenance of the stipulated space and proper conduct and complete compliance of terms and conditions of the Licence herein contained the Licensee shall pay to the Licensor an interest free security deposit of Rs. _____ (Rupees _____ only) in four equal instalments as per the details given below :—

1st Instalment of Rs. ———	Payable at the Commencement of this Licence deed.
2nd Instalment of Rs. ———	Payable on or before
3rd Instalment of Rs. ———	Payable on or before
4th Instalment of Rs. ———	Payable on or before

- (b) The Licensee shall maintain the said deposits at all times during the continuance of the licence.
- (c) The Licensor reserves the right to allow extension for such period as it may deem fit for paying the aforesaid instalments by the licensee at its sole discretion. However, interest @ 24% p.a. shall be charged from the due date (s) to the actual date of payments.
- (d) If the Licensee fails to pay the aforesaid instalments in time the Licensor shall have the right to terminate the License and the full amount of security deposit made under this Licence with the Licensor shall stand forfeited on such termination and the Licensee shall not be entitled to raise any dispute in this regard.
- (e) On the expiry of the period of the licence and the vacation of the stipulated space by the licensee in good and proper condition the Licensor shall refund the security deposit to the Licensee. If the security deposit is not refunded within 30 days from the date of expiry of this Licence and vacation of the stipulated space the Licensor shall be liable to pay an interest which would be 2% per annum higher than the prevailing bank lending rate from the date of the vacation of the stipulated space to the date of the payment.

6. The Licensee shall have the right to assign/transfer his/its right under this Licence with the written consent of the Licensor on such terms and conditions as the licensor may agree to.

7. The Licensee may bring upon the stipulated space such equipment as is necessary for the use of the stipulated space for the authorised purpose, provided that while upon the stipulated space all such equipment shall be at the risk of the Licensee and the Licensor shall not be liable for any damage/injury to such equipment.

8. The Licensor shall have the right to increase the amount of consideration set out in clause 3 (a) hereof on the _____ day of _____ and thereafter every 5 (five) years [in case term of the Licence is renewed beyond the initial period of 5 (five) years], provided, however, that such increase shall not exceed 25% (twenty-five percent) of the amount so being charged.

9. The licensee shall observe and adhere to the special and general conditions as per Annexures I and II respectively during the licence period of the shop.

10. The Licensor shall have the right to terminate the licence in case any of the terms of the Licence is contravened by the Licensee by giving 30 (thirty) days' notice in writing to the Licensee to remove the breaches of the terms contravened, and on failure of the licensee to remove the said breaches within 30 (thirty) days, the Licence will stand terminated. In case the Licensee is interested in terminating the licence the Licensee may do so by giving 60 (sixty) days' notice in writing to the Licensor and the Licence shall stand terminated on such expiry of the notice.

11. That the Licensee is a sole-proprietor/partnership/company. Name (s) of the sole-proprietor/partners/directors/controling shareholders as on date of the signing of this agreement have been furnished to the Licensor.

The Licensee hereby nominates Shri _____ partner (*director*) of the Licensee (hereinafter known as "the nominee") who shall be the person who will deal with the Licensor on behalf of the Licensee for the purposes of this Agreement. The Licensee shall notify, in writing, to the Licensor in case he/it desires any change in the nominee as proposed by him/it. The change will become effective only after the licensor has confirmed in writing its acceptance of the name of the new nominee.

12. That in case of any dispute, difference, between the parties, with regard to any matter including interpretation of this agreement and the clarifications thereof, the same shall be referred to the arbitration of the Chairman of the Licensor or any person appointed by the Chairman⁶ whose

6 It will not be expedient to have nominees of both parties as arbitrators because in that case the two nominees will have to appoint a third arbitrator who will act as the presiding arbitrator while the Chairman of the Licensor will become an ordinary member of the arbitral tribunal: Sec. 11 (3), Arbitration and Conciliation Act 1996

decision shall be final and binding between the parties and shall not be questioned in any court of law.

13. Notwithstanding anything contained hereinbefore the Licensor shall have the right to create charges/mortgages as and by way of first charge on its land, premises and the buildings (including the shops) constructed and to be constructed, in favour of the Financial Institutions and Banks as Security for their term loans advanced/to be advanced to the Licensor for the completion of its hotel project hereinbefore mentioned.

IN WITNESS WHEREOF, etc.

MORTGAGE, CHARGE, HYPOTHECATION AND PLEDGE

Preliminary Note

Mortgage

Definition of Mortgage

A mortgage is a transfer of an interest in specific immovable property as security for the repayment of money advanced or to be advanced by way of loan, or an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability (Sec. 58, Transfer of Property Act). This mode of transfer, so far as immovable property is concerned is governed by the provisions of Chapter IV of the Transfer of Property Act, 1882 which applies to the whole of India except the States of Punjab and Haryana. The Act is, however, not exhaustive and the principles of common law on which it is based are applied in areas and situations to which the Act does not apply. The right created by the transfer is accessory to the right to recover the debt. The nature of the right transferred depends upon the form of a mortgage. In case of a deed of a composite character containing mixed features of a mortgage as well as lease the dominant intention of the parties has to be gathered from the recitals and the terms in the entire document and also possibly from how the parties or their representatives treated the deed. The nomenclature given by them is not always conclusive. Where the essential feature, namely, that the property transferred is a security for repayment of debt is absent, the deed cannot be held to be a mortgage.¹ The following are the different forms of mortgage in vogue in India.

Forms of Mortgages

(1) *Simple Mortgage* : In this form, possession is not transferred but the mortgagor covenants personally to pay the debt and interest, and power is given to the mortgagee to have the property sold for the realisation of his dues in case the mortgagor makes default.

(2) *Usufructuary mortgage* : In this form, possession is delivered to the mortgagee who retains possession until satisfaction of the debt — the mortgagee taking the usufruct in lieu of interest, or, part payment of the principal, or partly in payment of interest and partly in part payment of the principal. The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled, during the term of the mortgage, to demand his mortgage money.

¹ *Puzhakkal Kuttappu v. C. Bhargavi*, (1977) 1 SCC 17.

(3) *Mortgage by conditional sale*² : In this form, the property is ostensibly sold subject to the condition that on default in payment of the mortgage money on a certain date, the sale shall become absolute, or that on such payment the sale shall become void, or that on such payment the buyer shall transfer the property to the seller. It is essential that the said condition be embodied in the document, which purports to effect the sale. Generally if the contract for re-purchase is recorded in a separate document the transaction is not treated as a mortgage by conditional sale, but a sale with condition of re-purchase. The mortgagee remains in possession, and in case of default of mortgagor's covenant, can sue for foreclosure. If the mortgagor pays the money within the time fixed by court, the property is re-transferred to him, otherwise the mortgagee becomes its absolute owner.

(4) *English mortgage* : In this form there is a covenant to repay the mortgage money on a certain date, and property is transferred absolutely to the mortgagee, subject to the proviso that the mortgagee will re-transfer it to the mortgagor upon payment of the mortgage money as agreed.

(5) *Equitable mortgage* : (Mortgage by deposit of title deeds) : In this form, which is permissible in certain towns mentioned in section 58 (f) (They are Calcutta, Madras and Bombay and numerous other big towns notified in this behalf by State Governments), the mortgagor delivers his title deeds with intent to create a security thereon. (This restriction as to specified towns relates not to the sites of the property but to the place where the title deeds may be delivered; the property may be situated elsewhere). Mere memorandum recording it is not required to be registered. If a contract is executed, registration is necessary.³

(6) *Anomalous mortgage* : Sometimes a personal covenant to pay the debt is also entered, in which case the mortgagee is entitled to demand his money and to sell the property. The mortgage then becomes a mixed, simple and usufructuary.

Who may Mortgage

Any person who is not under any disability, or any company or association or body of individuals, who has an interest in immovable property can mortgage that interest. Idols, in whom any property is vested, are also recognized as juristic persons capable of transferring and accepting transfers of property.⁴

- 2 On whether a deed is mortgage by conditional sale or sale with condition of repurchase see *Tamboli Ramanlal Motilal v. Ghanchi Chimanlal*, 1993 Supp. (1) SCC 295; *Chunchun Jha v. Ebadat Ali*, A 1954 SC 345; See also *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573; A 1999 SC 1441 (mortgage by conditional sale)
- 3 *V.G. Rao v. Andhra Bank*, A 1971 SC 1613.
- 4 *Bhoagat Rao v Shri Ram Chandra*, 96 IC 1004; *Pramatha Nath v Pradhyamma*, 67 IC 309, 52 C 809; *Narsinha v. Venkatalingum*, 50 M 687, 103 IC 302, (see also Preliminary Note under, GIFT, ante).

But no one can mortgage more interest than he himself has, e.g. a lessee can mortgage his leasehold right only and a life estate owner cannot make a mortgage so as to be effective after his death. A person not capable of making a contract, e.g. a minor or a lunatic, cannot make a mortgage but the guardian or manager of such person's property can mortgage the property, subject to such restrictions as may be imposed by law or by the deed or order of his appointment. The manager of a joint Hindu family can mortgage the family property under certain circumstances recognised in the Hindu Law. A partner in a commercial firm can mortgage the firm property to secure a partnership debt. A Corporation can only mortgage so far as it is expressly or impliedly authorized to do so.

Joint Hindu Family

According to the Dayabhaga School of Hindu Law, each coparcener has a right to alienate by sale or mortgage his separate share in the joint property, and, as a son does not acquire an interest in family property by birth, the father has absolute power of alienation. According to the Mitakshara law, a coparcener cannot alienate (though he can make a will of it) his undivided share in joint family property except in Western, Central and Southern India; and joint family property can be alienated only by all the coparceners or by the father or manager (*Karta*) under certain circumstances. A father can make an alienation only for payment of his antecedent debts⁵ (not tainted with illegality or immorality), or for a legal necessity, or for the benefit of the family. A manager (*Karta*) has the same powers under both the schools, that is, he can alienate the family property only for a legal necessity, or for the benefit of the family, or for a family necessity.

A father can alienate property to pay off old debts provided they are not tainted with illegality or immorality, but any other manager cannot do so unless the debts were contracted definitely for a legal necessity. Of course, a father or a manager can make any alienation with the consent of all the coparceners. A person taking a mortgage from the manager of a joint Hindu family or, in the case of a family governed by Mitakshara law, from a father, should therefore satisfy himself as to the existence of the circumstances under which the manager or father makes the mortgage, and it is preferable to have such circumstances carefully recited in the deed of mortgage to avoid future trouble. The fact that the property to be mortgaged belongs to a joint Hindu family, the school by which the family is governed, the status and position of the mortgagor in the family and the circumstances under which the mortgagor is justified in making the mortgage should be narrated in the recitals, as also the making of a bona fide inquiry by the mortgagee to satisfy himself about the existence of legal necessity.

As held in *Sm. Kamala Kumari v. Harekrishna*,⁶ even the mother of a sole coparcener (who is a minor) has no rights of a *karta* to alienate the joint

⁵ See discussion in *Gangadharan v. Janardhana*, (1996) 9 SCC 53: A 1996 SC 2127.

⁶ A 1998 Ori 198.

family property. She can do so as a guardian only with the permission of the court. An alienation without such permission is voidable : Sec. 8 (2) Hindu Minority and Guardianship Act 1956.⁷

Who may be a Mortgagee

Any person capable of holding property may take a mortgage, unless he is disqualified by any special law from doing so. A minor may be a mortgagee, but as he cannot enter into any contract, the mortgage should not involve any covenant by him.⁸

Property to be Mortgaged

Any interest in any property, which is capable of being transferred may be the subject of mortgage. The Transfer of Property Act however deals only with immovable property. According to the definition in General Clauses Act as modified by Transfer of Property Act "immovable property" includes "land, benefits to arise out of land and things attached to the earth" but does not include "standing timber, growing crops or grass." All other property is included in movable property according to General Clauses Act. Annual allowance charged on land, right to collect dues at a fair held on land, a *hat* or market, right to collect rent of land, life interest in the income of land, right of way, ferry, fishery, lessee's interest in land have all been held to be "immovable property". If the mortgage of any property or interest in it is forbidden by law it cannot be mortgaged, e.g., lessee's right, the mortgage of which is forbidden by terms of the lease.

Only 'specific property' can be mortgaged (Sec. 58). 'Specific' and 'Specified', which amount to the same thing, include property which is 'clearly defined and capable of identification'. As per Latin maxim *certiem est quod certiem reddi potest*, property must be regarded as certain if it can be ascertained.⁹

Where a mortgage deed purported to encumber properties X and Y and assured that the mortgagor shall not transfer or assign X and Y in future and

7 See also Preliminary Note on NEGOTIABLE INSTRUMENTS, *post*.

8 *Raghav Chariar v. Srinivas*, 40 Mad 308, 26 IC 921; *Zafar Ahsan v. Zubaida*, 27 ALJ 1114, 121 IC 398, A 1929 All 604.

9 *Miran Bakhsh v. Emperor*, A 1945 Lah 69 (SB), at 74 (holding that a works contractor who had completed some work and was to complete the rest could mortgage the amount that had already accrued due to him by then, though not ascertained. He could not however mortgage amounts that might fall due in future. So far as the latter are concerned, they were not amounts in existence, hence were not property, and only an agreement could be executed in respect of the same. Pledge was ruled out as there was no transfer of possession, actual or constructive, which is necessary in case of a pledge within the meaning of Sec. 172 Contract Act).

further recited that property Z had not been transferred or encumbered till then and that should any cause of action arise the mortgagee would be competent to realise the full amount by selling X, Y and Z, it was held that not only X and Y but Z also stood mortgaged by the deed.¹⁰

Movable Property

Mortgage of movables is permitted. (See note "Mortgage of movables" below).

How Mortgage is made

Under the Transfer of Property Act, a simple mortgage of immovable property must always be made by a registered instrument, and all other kinds of mortgage (except mortgage by deposit of title deeds) must be made by a registered deed if the principal money secured is Rs.100 or more, but if the principal money is less than Rs.100, the mortgage may be made either by a registered instrument or by delivery of the property. In any case, the mortgage deed must be signed by the mortgagor and attested by at least two witnesses (Sec. 59). Where the Transfer of Property Act does not apply, the mortgage can be made in any way, unless a particular mode is prescribed by any special or local law governing the mortgage. Equitable mortgage is made by deposit of title deeds with the creditor with an agreement (oral or written) that the property covered by the deed would be security for the debt. If this is a written agreement it would amount to a mortgage deed, but if it is only a memo written after the oral agreement of mortgage, it will not be a mortgage deed. In England a memo always accompanies deposits of title deeds and in this country too it is better to adopt this practice. Care should be taken to draft it so as to show that it does not constitute the bargain between the parties but is merely the record of an already completed transaction. In that case it would not require registration otherwise it will require registration if for Rs.100 or more.¹¹

Mortgage Deed

A deed of mortgage may be drafted either as a deed poll on behalf of the mortgagor in favour of the mortgagee or as a deed between mortgagor and mortgagee as parties, though even in the latter case it need not be signed by the mortgagee unless it contains any covenants by him (in which case a deed poll will always be unsuitable). In the case of equitable mortgage, a memorandum is usually executed by the mortgagor recording the deposit of title deeds to secure the specified mortgage money. The general requirements of a deed of transfer mentioned in Part II of the Introduction apply to mortgage also and they should therefore be carefully read. A deed of mortgage ordinarily consists of the same parts as any other deed of transfer. (See Introduction Part II).

¹⁰ *Monimala Devi v Indu Bala*, A 1964 SC 1295.

¹¹ *Vee amachennu Gangadhara Rao v. The Andhra Bank Ltd.*, A 1971 SC 1613; *Pentala Githavardhana Rao v. The Andhra Bank Ltd.*, A 1973 AP 245.

Requirements of a Mortgage Deed

In the form of a deed poll, the loan or the existing liability intended to be secured is mentioned in the beginning as consideration, and then follows the covenant to repay the loan or discharge the liability and to pay interest. In a purely usufructuary mortgage, there is no personal covenant to pay but the debt alone may be recited. This is followed by the operative words creating the mortgage, and then any special covenants entered into by the mortgagor. In the form of a bilateral deed, after the description of the deed (which should be described as a "Mortgage") date, and parties (usually called "mortgagor" and "mortgagee" or "borrower" and "lender") follow recitals, if any, though in a simple deed of mortgage recitals are hardly necessary. The recitals would be necessary in the case of a joint Hindu family or an owner acting through manager or guardian, or a trustee or *mutawalli*. It is further necessary to mention the circumstances under which the mortgagor is competent to make the mortgage. If the property consists of leasehold or mortgagee rights or any other right short of absolute ownership, the lease or earlier mortgage or the particulars and extent of the right, as the case may be should be mentioned. Then follow the witnessing clauses. The first witnessing clause contains the covenant to repay the loan or discharge the liability, which would be unnecessary in a purely usufructuary mortgage, and the contract about payment of interest. The fact of the loan having been taken or of the existence of liability is stated in the beginning of the covenant as a consideration of the covenant, unless it is mentioned in the recitals. In the second witnessing clause, the operative words of transfer, the parcels or description of the mortgaged property, and the nature and extent of the interest transferred should be mentioned. In the subsequent clauses, covenants describing the rights and liabilities of the parties may be entered, and at the end an interpretation clause.

Covenant to Pay

The date fixed for payment, or, if the payment is to be in instalments, the amount and date of each instalment, the place (if any) fixed for payment and any other manner agreed upon for making the payments, the rate of interest stipulated, the dates fixed for payment of interest, and the condition about compound interest should be clearly specified in the same way as is done in the case of a bond.

Consideration

If the consideration is a loan or existing liability, it should be sufficiently indicated by the first witnessing clause, but if the consideration is a future advance or the performance of a future obligation, it should be stated clearly in the recitals. In such cases the maximum amount to be secured should be stated,

as the mortgagee cannot get priority for a larger amount than that stated in the mortgage deed against a subsequent mortgagee (Sec. 79).

Operative Words

As a mortgage is a transfer of interest in property, words importing transfer should be used, and it is better to say "transfer by way of simple mortgage (or usufructuary mortgage)", etc. The exact interest transferred is indicated after the parcels by expressing the "intent", or by adding a "habendum". In the case of simple mortgage it is sufficient to say "to the intent that the said property shall remain and be charged as security for the payment to the mortgagee of, etc.". In the case of a usufructuary mortgage, the transfer should be "to the intent that the said property shall remain in possession of the mortgagee until the principal sum of Rs.——and interest has been paid off in the manner hereinafter mentioned." In the case of an *English mortgage*, a habendum is added providing that the mortgagee is "to hold the said property absolutely" with a proviso "that if the mortgagor pays, etc.——the mortgagee shall reconvey the said property to the mortgagor". In a *mortgage by conditional sale* the conveyance is either as in an English mortgage or, "subject to the conditions that the aforesaid transfer will be void if the mortgagor pays, etc." or, "to the intent that if the mortgagor fails to pay the said sum, etc., as hereinafter provided the transfer hereby made shall be regarded as an absolute transfer by way of sale".

Mortgagor's Title

The interest of the mortgagor in the property which he mortgages should be disclosed either by a recital of his title or, if there are no recitals, in the operative part by the addition of suitable words to the word "mortgagor" in the beginning, such "as owner" or an "absolute owner", after the parcels. The only statutory contract implied by a mortgage is that the interest which the mortgagor professes to transfer subsists and that the mortgagor has power to transfer it [Sec. 65(a)], and all that is necessary to be indicated is the interest which is professed to be mortgaged.

Covenants

The rights and obligations intended to be created in the parties should be provided for in the covenants. There are certain rights and liabilities which are expressly provided in Sec. 65 (implied contracts by the mortgagor), Sec. 65-A (mortgagor's power of lease), Sec. 66 (waste by mortgagor in possession), Sec. 67 (mortgagee's right to foreclosure or sale), Sec. 67-A (mortgagee when bound to bring one suit on several mortgages), Sec. 68 (right to sue for mortgage money), Sec. 69 (power of sale without the intervention of court), Sec. 69-A (right to appoint Receiver), Sec. 70 (right to accession to

mortgaged property), Sec. 71 (right to renewal of lease), Sec. 72 (right of mortgagee in possession to spend money), Sec. 73 (right to proceeds of revenue sale or compensation on acquisition), and Sec. 76 (liabilities of mortgagee in possession) of the Transfer of Property Act. These matters need not be expressly provided in the mortgage deed, (except perhaps in places in which the Transfer of Property Act is not in force, though even in these territories, as the principles underlying the Act will apply) as the rights and liabilities prescribed in the Transfer of Property Act will be implied in the absence of a contract to the contrary. It is, however, safe in the territories, where the Act is not in force, to insert a general clause providing that the mortgagor and the mortgagee will have the rights and be subject to the liabilities respectively provided in the Transfer of Property Act, 1882 and that this deed shall be deemed to be a deed of—mortgage as defined therein. Even in the territories where the Transfer of Property Act applies, it would be better to indicate precisely the nature of the transaction by making some such provision as "that the deed shall be read and construed as a simple (*or*, usufructuary) Mortgage as defined in the Transfer of Property Act". If any special covenants are entered into as in an anomalous mortgage, they should be expressly mentioned. No covenant which has the effect of operating as a clog on redemption will be valid¹².

Covenant for title

This is generally always entered in all deeds, but in view of Sec. 65(a) which, in the absence of a contract to the contrary, implies such a contract in all mortgages, it is unnecessary to insert it in territories where the Transfer of Property Act is in force. This implied covenant is of the same kind as the implied covenant of title by the vendor. It is to the effect that the interest which the mortgagor professes to transfer subsists, and that the mortgagor has power to transfer it.

Interpretation Clause

As in the case of leases, it is proper to insert an interpretation clause either in the heading along with the names of parties, or at the end as a covenant, although for the purpose of enforcement of rights under the Transfer of Property Act this is not, strictly speaking, essential, as the rights and liabilities of a mortgagor and mortgagee as specified in Chapter IV of the Transfer of Property Act can be enforced by or against persons deriving title through them (Sec. 59A, Sec. 65, para 2), unless it is otherwise expressly mentioned, e.g., the transferee of a mortgagor is not bound personally by the mortgagor's covenant to pay [proviso to Sec. 68 (I)]. For the purpose of enforcing special covenants not covered by the Transfer of Property Act, and in territories where the Transfer of Property Act is not in force, it is safer to insert an interpretation clause. The simple form of such clause is as follows:

¹² *Shivdev Singh v. Sucha Singh*, A 2000 SC 1935

"The expressions "the mortgagor" and "the mortgagee" shall, where the context so admits, include the persons deriving title under the mortgagor and mortgagee respectively," *or*

"Unless there is anything repugnant in the context, the expressions "the mortgagor" and "the mortgagee" heretofore used include their respective heirs, representatives, successors and assigns."

The former is simpler and is recommended.

In the case of corporations, the words "heirs" and "representatives" should be omitted. Where the person making the contract is doing so in a representative character, e.g., as guardian, manager, etc., the expression denoting such persons should include "all persons, and the heirs, representatives, successors and assigns of every person upon whose behalf he is entitled to contract or to accept the benefit of a contract in relation to the subject-matter of the transaction." The words "Wherever such an interpretation would be requisite in order to give the fullest scope and effect legally possible to any covenant or contract herein contained", recommended for interpretation clause in the case of leases, are recommended in mortgage deeds also.

Reconveyance

Reconveyance of the mortgaged property to the mortgagor is not absolutely necessary to complete the redemption of a mortgage. If the mortgage money is repaid, the debt is wiped off, its security automatically vanishes, but the mortgage deed must be returned preferably along with an endorsement of repayment.

A reconveyance may be endorsed on the mortgage deed itself or may be made by a separate deed. If it is made by endorsement there need be no recitals but if it is made by a separate deed, the mortgage deed must be recited. If the person redeeming is not the original mortgagor, his title should be traced to show how he has a right to redeem, and similarly, derivation of the mortgagee's title should be recited, if he is not the original mortgagee. In the operative part the mortgagee "conveys" or "transfers" or, if the property is leasehold "assigns" the same to the mortgagor to hold it freed and discharged from his claims under the mortgage. Sometimes the word "releases" and "surrenders" are also used.

*Mortgage of Movables*¹³

The Transfer of Property Act is not exhaustive on the subject of mortgage or charge. While it deals with the mortgage of immovable property it does not deal with mortgage of movables at all. It cannot, therefore, be regarded as

¹³ See also "Pledge and Hypothecation", *post*.

create a charge,¹¹ though a suit for specific performance may lie on the contract. If "all the property" of a person "movable or immovable" is mentioned the description is not vague but is sufficiently specific and it is not necessary that every item of the property should be specified.¹² Sometimes a mortgage in which the words of conveyance are not effective is reduced to a mere charge.

If the deed creating charge recites an earlier equitable mortgage by deposit of title deeds in respect of some of the immovable property charged and further provides for reconveyance of the properties then it will be construed as a deed of mortgage even if it is described as one of hypothecation.¹³

Further Charge

Sometimes the same mortgagee advances further sums of money to the mortgagor on the same security and on the same conditions. The deed to secure this is called "a deed of further charge." Usually a separate deed is executed, reciting the first mortgage, the new loan, terms of its repayment and making the principal and interest a further charge on the same security to be enforced in the same way. When a usufructuary mortgagee advances a further loan on interest and the parties agree that the amount due for principal and interest on the latter bond should be added to the mortgage money payable on redemption of the usufructuary mortgage, in such a case, the usufructuary mortgage cannot be redeemed without payment of the money due on account of the later loans, but such loans should be definitely secured by hypothecation of the mortgaged property.

Floating Charges

While a specific charge is one that fastens on ascertained and definite property, or property capable of being ascertained and defined, (with the consequence, as in case of a mortgage, that the debtor cannot dispose of the specified assets covered by the charge except subject to the charge) a floating charge is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect (which may be both present and future) until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp.¹⁴ Thus a floating charge is generally executed in respect of work in

11 *J.K Ltd. v. New Kaiser-e-Hind Spinning and Weaving Co.*, (1969) 2 SCR 866.

12 *Narasimhamurthi v. Satyanandan*, A 1941 Mad 794.

13 *Chittavalsa Jute Mills v. Commissioner*, A 1985 AP 391 (SB).

14 *Illingworth v. Houldsworth*, 1904 AC 355; *In re, Yorkshire Woolcombers Association*, (1903) 2 Ch 284; *Imperial Bank v. B.N. Bank*, A 1931 Cal 223; *G. Bhor & Co. v. U.B.I.*, A 1961 Cal 308; *George Barker v. Eynon*, (1974) 1 All ER 900 (CA); See *Re. ELS Ltd.*, (1994) 2 All ER 833 (for difference between charge before crystallisation and its operation after crystallisation).

deed is drafted very much in the form of an English mortgage, i.e., the shares are transferred to the mortgagee absolutely subject to the right of redemption.

A mortgage of movables is distinct from a pledge, inasmuch as in the former, the mortgagee acquires general property in the goods mortgaged subject to the right of redemption, while in the latter case the pledgee has only the special property, i.e., right to retain goods as a security.³ Ordinarily, when possession is relinquished the right of the pledgee is extinguished or waived, while a mortgagee's rights subsist even without possession. Delivery of a possession of goods is necessary in pledge but not in hypothecation.⁴ A subsequent pledge has priority over a previous hypothecation.⁵ The facts and circumstances determine whether the transaction is a mortgage or a pledge.⁶

CHARGE

Here we are concerned only with a charge created by act of parties and not with charge created by operation of law or by a decree.

A mortgage is a transfer of an interest in specific immovable property, while in a charge there is no such transfer but only the creation of a right of payment out of certain property.⁷ A mortgage is good against subsequent transferees while a charge is good only against a transferee with notice of the charge, or a volunteer with or without notice.⁸ A subsequent mortgagee with notice of a prior charge takes the mortgage subject to the charge.⁹

Distinguished from Mortgage

In a charge, property of one person is made security for the payment of money to another (section 100, Transfer of Property Act). No particular words are necessary to create a charge but the property should be specified and also the payment to be secured, but there is no transfer of an interest in the property. In order that a charge may be created there must be evidence of intention disclosed by the deed that a specified property or fund belonging to a person was made liable to satisfy the debt due by him.¹⁰ A mere agreement to mortgage certain property in future for satisfaction of certain dues does not however

3 *T. Radhakrishnan Chettiar v. The Official Liquidator Madras, Peoples Bank Ltd.*, A 1943 Mad 13, *Raja Kakarlappudi Venkata Sudarsana Sundra Narasayamma Guru v. Andhra Bank Ltd., Vijayawada*, A 1960 AP 273.

4 *Jammu & Kashmir Bank Ltd. v. Tek Chand*, A 1959 J & K 67 (69).

5 *Co-operative Hindustan Bank v. Surendra Nath*, A 1932 Cal 524 : ILR 59 Cal 667.

6 *Jageshwar Thakur v. Maha Bharat Thakur*, A 1950 Pat 32 (37).

7 *U.P. Govt v. Mammohan Das*, A 1941 All 345, 196 IC 425.

8 *Kishan Lal v. Ganga Ram*, (1891) ILR 13 All 28.

9 *D. Shanker Mote v. A.C. Datar*, 1975 (2) SCR 224.

10 *M.C. Chacko v. State Bank of Travancore*, (1969) 2 SCC 343; See also *Dattatreya Mote v. Anand Datar*, (1974) 2 SCC 799.

for a pledge but the bailment may be accompanied by a memorandum or a collateral agreement containing the terms of the pledge. In such a memorandum or agreement the articles pawned, the payment to be secured by the pledge, the conditions of such payment, and any special terms of the pledge should be given. The power of sale is statutory and need not be provided in the agreement. In the case of share certificates, in order to constitute a valid pledge there should be such delivery of possession to the pledgee by virtue of which he can effectively exercise the power of sale for realizing the debt. Assignment would therefore be necessary.¹ Under Sec. 176, a pawnee may in case of pawner's default, either, bring a suit for recovery of the debt retaining the goods as a collateral security, or may sell the goods after notice and realise any balance by suit. Hypothecation as such is not referred to in the Transfer of Property Act or in the Contract Act. The position of a pawn broker or pawnee has been explained by the Supreme Court in a recent case on sales tax.²

Unlike a mortgage, a pledge or hypothecation does not have the effect of transferring the property in favour of the pledgee or hypothecatee.³ The pledge or hypothecation, however, creates a special property in the goods in his favour. In the case of pledge, the special property is the right to keep possession of the pledged goods and to dispose them of for the realisation of the debt for which it is held as security. In the case of hypothecation, possession remains with the hypothecator but the hypothecatee has the right to take possession of the hypothecated property and to sell it for the realisation of the debt secured by hypothecation either on its own or through court.⁴

While transfer of actual or constructive possession over goods to the lender is essential in a pledge, the possession remains with the borrower in the case of hypothecation. Thus pledge may not be possible where the goods are in the temporary custody of a third party⁵ or where they are so stored in the borrower's own warehouse that they cannot be sealed off in such a way as to enable the bank to become a pledgee,⁶ or where the goods are such as must be

1 *Krishna v. Kunhuni*, A 1941 Mad 394.

2 *Karnataka Pawnbroker Association v. State of Karnataka*, A 1999 SC 201.

3 *Balkrishna Gupta v. Swedeshi Polytex Ltd.*, (1985) 2 SC 167 (para 33) (relying on the Court's earlier decisions).

4 *Syndicate Bank v. Official Liquidator*, A 1985 Del 256; *Miran Baksh v. Emp.*, A 1945 Lah 69 (SB), *Board of Revenue v. Hindustan Construction Co.*, A 1985 Ker 2 86 (SB) relg. on *Harish Chandra v. Punjab National Bank*, A 1958 All 864 (DB).

5 *In re, Hemilton Young & Co.*, (1905) 2 KB 772 (Borrower's cloth was with bleachers. Borrower gave to the bank "letters of lien" accompanied by the bleacher's receipts for the goods. Bank gave notice of the lien to the bleachers. Held, effective as hypothecation, though subsequently borrower adjudicated bankrupt).

6 Chorley's Law of Banking, 6th edn., p. 329.

progress, stock-in-trade or book debts, while a specific (or fixed) charge covers land, building and installed machinery, etc. The debtor executant of a floating charge can continue to dispose of its stock-in-trade as if the charges did not exist, but as soon as the charge crystallises, it will fix upon whichever specific assets comprise the executant's stock-in-trade at the moment of crystallisation.¹⁵ The floating charge crystallises or becomes fixed on any of following events happening, namely, (a) default on the part of the debtor, (b) debtor ceasing business, becoming bankrupt or commencing of liquidation proceedings against debtor company, (c) debenture-holder appointing a receiver or applying to the court to appoint a receiver over the property or business of debtor.

A floating charge may be created over the entire undertaking of the debtor, *i.e.*, all assets, whether fixed or current, or over "all the property now belonging to or hereafter acquired by" the executant.¹⁶

It is possible in law for a mortgagor, by way of continuing security for further advances, to grant to a mortgagee a charge on future book debts in a form which creates in equity a specific charge on the proceeds of debts or other like assets as soon as received. In that case the mortgagor will be prevented from transferring such assets except subject to the encumbrance. A clause providing that "during the continuance of this security the company shall pay into its account with the bank all moneys which it may receive in respect of book debts and other debts hereby charged and shall not without the prior consent of the bank (creditor) in writing purport to charge or assign the same", has thus been upheld. Unless the floating charge contains a prohibition against the creation of subsequent charge ranking in priority or *pari passu*, and the fixed chargee has notice of such prohibition, a subsequent fixed charge will have priority over an earlier floating charge.¹⁷ Notice of such prohibition can be ensured by getting a special resolution of the debtor company passed in respect of the creation of the floating charge including such prohibition¹⁸ and/or by the floating chargee taking possession of the title deeds and other documents of title to the assets charged¹⁹ where it be possible to do so.

PLEDGE (PAWN) AND HYPOTHECATION²⁰

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" (Sec. 172, Contract Act). No writing is required

15. Sheldon and Fidler's Practice and Law of Banking, 11th Edn. (ELBS), p. 435; Chorely's Law of Banking, 6th Edn., p. 312; Reedday's Banking, 4th Edn., pp. 142-147.

16. *In re, Panama, New Zealand, etc. Co.*, 1870 LR 5 Ch 318.

17. Sheldon and Fidler's Practice and Law of Banking 11th edn. (ELBS), pp. 441-442.

18. Milnes Holden's Law of Banking, 5th edn., Vol. 2, p. 359.

19. Sheldon and Fidler, *op. cit.*, p. 442.

20. See also "Mortgage of Movables", *ante*

legitimately to the conclusion that it constitutes the agreement between the parties, it will require registration.¹⁰

A reconveyance requires registration if the consideration is Rs.100 or more (Sec. 17).

A receipt for mortgage money whether separate or endorsed on the mortgage deed does not require registration unless it by itself purports to extinguish the mortgage of the value of Rs.100 or more [Sec. 17 (2) (X1)],

A deed creating a charge over immovable property requires registration if the amount of the charge is Rs.100 or more.

It may be noted here that the condition of "Rs.100 or more" has, due to inflation, now become meaningless, and has therefore been omitted in U.P. by U.P. Act No. 57 of 1976.

A mortgage of movables does not require registration.

A charge or a mortgage by a company requires also to be registered with the Registrar of Companies under section 125 Companies Act 1956, failing which it shall be void against the liquidator and any creditor of the company. However, when the charge or mortgage so becomes void under that section the money secured thereby becomes immediately payable.

¹⁰ *Obla v. Narayanna*, A 1931 PC 36.

used constantly by the borrower in order to enable him to make his living and repay the loan (as in the case of a taxi or a truck purchased out of the loan). Security over the goods may be created by the execution either of a letter of hypothecation, also called a letter of lien⁷ or of a formal deed.

It may be noted here that although the expression "hypothecation bond" is now used in respect of movables only, there is nothing in the legal meaning of the word 'hypothecate' to confine its use to movables or to inhibit its use in respect of immovable property.⁸ It is thus that the word 'hypothecates' has been used in some of the precedents in deeds relating to immovable property also (See for Instance precedents No. 4, 5, 6, 16).

Stamp Duty

The duty on a mortgage deed is payable by the mortgagor (Sec. 29). Pledge and Hypothecation are chargeable under Article 6 and not under the Article relating to Mortgage.⁹ In the Central Schedule it is Article 40 (but see local Amendments). In Maharashtra even a memorandum, such as in Forms 31 and 32, *post*, may require to be stamped: See Article 6, Bombay Stamp Act 1958.

Registration

Under the Transfer of Property Act, a simple mortgage deed and all other mortgage deeds (except mortgage by deposit of title deeds) securing Rupees one hundred or more should always be registered (Sec. 59). Even in territories where that Act is not in force registration is necessary when the money secured is Rs. 100 or more (Sec. 17 Registration Act). If an equitable mortgage (*i. e.* mortgage by deposit of title deeds) which can be made orally is made by a deed, the deed needs registration if the money secured is Rs. 100, or more (Sec. 17), but a memorandum of deposit of title deeds drafted in such a way as to be merely the record of an already completed transaction does not require registration, that is, if the writing is merely a statement that the mortgage has been effected or a statement of facts from which the contract of mortgage can be inferred. But if the memo embodies such terms and is signed and delivered at such time and place and in such circumstances as to lead

⁷ Sheldon and Fidler's Practice and Law of Banking, 11th edn., p. 481.

⁸ According to Black's Law Dictionary (6th, 1990 edn.), p. 742, "hypotheca" was a term of Roman law denoting a mortgage, whether of lands or of goods, in which the subject of mortgage remained in the possession of the mortgagor. The expression "hypothecation bond" is however "a bond in the contract of *bottomry* or *respondentia*", which contracts relate to hypothecation of a ship or its cargo as security for the repayment of a loan.

⁹ *Board of Revenue v. Hindustan Construction Co.*, A 1985 Ker 286 (SB), relg. on *Harish Chandra v. Punjab National Bank*, A 1958 All 864 (DB).

4. Partly as Owner, Partly as Lessee

WHEREAS by a lease dated _____ one AB, etc., demised to the mortgagor the land described in the schedule hereto from the day of _____ for the term of _____ years subject to payment of rent thereby reserved and the covenants by the lessee and the conditions therein contained;

AND WHEREAS the lessee has built on the said land a dwelling house with out-houses, garage and guest house.

5. Derivation of Title to Leasehold Property

WHEREAS by a lease, etc., (as in No. 3, substituting the words "CD etc.", for the word "mortgagor");

AND WHEREAS on the death of the said CD his rights and interest in the said land under the said lease devolved on his son EF who sold the same by a deed of sale dated the _____ to one GH and on the death of the said GH the same were inherited by his nephew JK who by a Will dated the _____ bequeathed the same to the mortgagor;

AND WHEREAS the said JK has died on the _____ and since then the mortgagor has been in possession of the said property under the said will.

Or;

WHEREAS by a lease, etc., (as in No. 3, substituting the words "CD, etc.," for the word "mortgagor");

AND WHEREAS by diverse transfers, operation of law and events and ultimately by a Will dated the _____ and made by one JK, etc., the rights and interests of the lessee in the said land under the said lease have become vested in the mortgagor.

6. Title as Mortgagee

WHEREAS by a mortgage deed dated _____ one AB, etc., transferred to one CD, etc., by way of usufructuary mortgage the property described in the schedule hereto to secure a debt of Rs. _____ on certain conditions therein mentioned;

AND WHEREAS on the death of the said CD his rights under the aforesaid mortgage devolved on his son EF who has transferred the same

GENERAL FORMS OF DIFFERENT PARTS OF A MORTGAGE DEED

Formal Parts¹

Recitals

1. Title to Mortgaged Property as Owner²

WHEREAS the mortgagor is absolute owner of the property described in the schedule hereto,

2. Derivation of Title

WHEREAS the property described in the schedule hereto originally belonged to one AB, etc., on whose death in (year) -----it devolved on his sons CD and EF as his heirs.

AND WHEREAS in a partition made between the said CD and EF by a deed of partition dated----- the said property was allotted exclusively to the said EF;

AND WHEREAS the said EF sold the same to GH by a deed of sale dated the -----;

AND WHEREAS one JK brought a civil suit for pre-emption of the said sale and obtained a decree against the said GH and in execution of the said decree obtained possession;

AND WHEREAS the said JK has by a deed dated ----- made a gift of the said property to the mortgagor and the mortgagor has been in possession as absolute owner since the date of the said deed of gift.

3. Title as Lessee

WHEREAS by a lease dated the ----- made between AB, etc. as lessor and the mortgagor as lessee the property described in the schedule hereto was demised to the mortgagor from the ----- day of ----- for the term of ----- years subject to the payment of the rent thereby reserved and the covenants by the lessee and conditions therein contained.

1 See also, GENERAL FORMS (immediately after Introduction, pp. 52-64, *ante*).

2 Recitals of title are not always necessary (covenant as to title being implied), but should always be given when the mortgagor is not the absolute owner.

AND WHEREAS by an order dated _____ the said District Judge has granted to the mortgagor permission to make the mortgage hereby intended to be made;

11. Mortgagor's Right as Manager of Joint Hindu Family

WHEREAS the mortgagor and AB, CD and EF form a joint Hindu family governed by the Mitakshara School of Hindu Law of which the mortgagor is the manager;

AND WHEREAS the property described in the schedule hereto belongs to the said Joint Hindu family.⁴

12. Agreement for Loan

WHEREAS the mortgagee has agreed with the mortgagor to lend to him the sum of Rs. _____ upon having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing.

13. Agreement to Secure Old Debts

WHEREAS the mortgagor owes to the mortgagee the sum to Rs. _____ on account of a loan taken by him under a promissory note (or, bond) dated _____, and it has been agreed that the repayment thereof with interest at the rate hereinafter mentioned shall be secured in the manner hereinafter appearing.

14. Agreement to Secure Old and Present Debts

WHEREAS the mortgagor owes the mortgagee the sum of Rs. _____ as per details given in the First Schedule hereto and the mortgagee has agreed to advance a further sum of Rs. _____ on having the repayment of the total sum of Rs. _____ with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing.

15. Agreement to Secure Present and Future Advances

WHEREAS the mortgagee has agreed with the mortgagor to lend to him the sum of Rs. _____ upon having the repayment thereof and of

⁴ In such a case details of legal necessity or benefit to the estate are also to be recited in justification of the mortgage (See recitals No. 17, 18 post).

to the mortgagor by a deed of sale dated _____ and the mortgagor is thus now in possession of the said property as mortgagee under the aforesaid mortgage.

7. Title to Life Policy

WHEREAS the mortgagor is entitled to the policy or several policies of assurance on his life hereby mortgaged (*or*, mentioned in the schedule hereto) and has handed the same to the mortgagee.

8. Mortgagor's Right as Executor

WHEREAS by his Will dated the _____ day of _____ XY, etc., deceased appointed the mortgagors to be executors thereof and *inter alia* devised the property described in the schedule hereto to them upon the trust therein declared;

AND WHEREAS the said XY died on the _____ without having altered or revoked the said will which was duly proved by the mortgagor in the Court of District Judge of _____ and a probate of the same was duly obtained¹ on the _____.

9. Mortgagor's Right as Administrator

WHEREAS XY, the owner of the property described in the schedule hereto by his Will dated the _____, devised and bequeathed the said property in the manner herein set forth but did not thereby appoint any executor of his said Will;

AND WHEREAS the said XY died on the _____ without having revoked or altered his said Will and on the _____ letters of administration with the said Will annexed were granted to the mortgagor by the Court of the District Judge of _____.

10. Mortgagor's Right as Guardian

WHEREAS the said AB minor is owner of the property described in the schedule hereto;

AND WHEREAS by an order of the District Judge of _____ dated the _____ the mortgagor has been appointed guardian of the property of the said AB.

¹ See Preliminary Note on WILLS, *post*, on when probate is required and when it is not.

to the said AB and Rs. ——— to the said CD on account of the aforesaid loans;

AND WHEREAS in order to pay off the aforesaid debts the mortgagor desired to raise a loan of Rs. ——— and the mortgagee agreed to advance the said loan on having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing.

19. Transfer of Shares Mortgaged

WHEREAS in pursuance of the said agreement the mortgagor has transferred to the mortgagee the shares specified in the schedule hereto and as deposited with him the share scrips of the said shares together with duly executed transfers thereof enabling the mortgagee to have his name registered as a shareholder in respect thereof and to deal with the said shares.

20. Agreement for Reconveyance

WHEREAS the principal sum of Rs. ——— secured by the aforesaid deed of mortgage (or, a sum of Rs. ——— is now due under the aforesaid deed of mortgage) and the mortgagor is desirous of paying the same and obtaining a reconveyance of the mortgaged property.

21. Agreement for Release of Part of Property

WHEREAS the mortgagor having paid Rs. ——— to the mortgagee, the mortgagee has agreed to release from the mortgage the property specified in the schedule hereto from the charge created by the hereinbefore recited deed of mortgage.

Consideration, Receipt

1. Present Debt (when no Recitals)

In consideration of the sum of Rs. ——— now advanced by the mortgagee to the mortgagor (the receipt of which the mortgagor hereby acknowledges).

2. Consideration to be Paid at Registration

In consideration of the sum of Rs. ——— to be paid by the mortgagee at the time of the registration of the deed.

every other sum which may be advanced in pursuance of the covenant by the mortgagee hereinafter contained with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing;

Or

WHEREAS the mortgagee has agreed to lend to the mortgagor the further sum of Rs. _____ (*or*, such further sums of money as may be required by the mortgagor not exceeding the total sum of Rs. _____) upon having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing;

Or

WHEREAS the principal sum secured by the aforesaid deed of mortgage still remains due to the mortgagee;

AND WHEREAS the mortgagee on the application of the mortgagor has agreed to lend to the mortgagor a further sum of Rs. _____ upon having the same and the interest thereon at the rate hereinafter mentioned secured by a further charge on the property comprised in the aforesaid deed of mortgage.

16. *Joining of Surety*

WHEREAS the surety has agreed to join this deed as surety for the mortgagor in the manner hereinafter appearing.

17. *Recitals of Legal Necessity*

WHEREAS the mortgagor requires a loan of Rs. _____ to meet the expenses of his daughter's marriage (*or*, to pay land revenue of the villages _____, *or*, to meet the expenses of his/her technical education of his son).

WHEREAS the mortgagee, after making bona fide inquiries has satisfied himself as to the existence of the said legal necessity.

18. *Recitals of Antecedent Debts of Father*⁸

WHEREAS the mortgagor's deceased father had borrowed Rs. _____ from AB, etc., on a bond dated _____ and Rs. _____ from CD, etc., on a promissory note dated _____ and a sum of Rs. _____ is now due

⁸ See note under recital No. 11 *ante*.

No.1) and of the mortgagee's covenant hereinafter contained for the advance of a further sum of Rs. _____ on the conditions hereinafter mentioned.

Parcels⁶

A. Covenant to Pay

1. Repayment of Principal

- (i) The Borrower shall pay to the lender the principal sum on ————(date).
- (ii) The Borrower shall repay to the lender the principal sum in instalments of Rs. _____ each on the 1st January every year, commencing from 1st January, 2001.

2. Repayment of Interest

- (i) The Borrower shall pay to the lender interest at 12% per annum on the principal sum or so much as remains owing in half yearly instalments on 1st January and 1st July every year.
- (ii) Where the Borrower pays on the dates specified in sub-clause (i) interest at the rate of 9% per annum, the lender shall accept the interest so paid in satisfaction of the Borrower's liability to pay interest.⁷

3. Principal with Interest

The mortgagor will pay to the mortgagee the said sum of Rs. _____ with interest at ———— percent per annum on the _____ day of _____ (or, within ———— years from the date hereof) (or, on demand).

4. Repayment of Principal on Fixed Date and Interest Meantime⁸

The mortgagor will pay the mortgagee the said sum of Rs. _____ on the ———— and will in the meantime pay interest thereon or on such sum as may for the time remain unpaid at the rate of ———— percent per annum from the date hereof (or, from the ————) by yearly payment (or, by half yearly payments) on the _____ day of _____ and on the

6 See INTRODUCTION, Part II, *ante*.

7 An alternative form is given in Covenants and Provisos, No. 5, *post*.

8 Such mortgages are popularly called "Interest Only or Standing Mortgages" in England.

3. Partly Paid before and Partly to be Paid at Registration

In consideration of the sum of Rs. _____ out of which Rs. _____ has been paid to the mortgagor before the execution hereof (the receipt of which is hereby acknowledged), Rs. _____ has been left in the mortgagee's hands for payment to the various creditors named in the first schedule hereto and Rs. _____ agreed to be paid by the mortgagee at the time of registration hereof.

Or

In consideration of the sum of Rs. _____ out of which a sum of Rs. _____ has already been paid to the mortgagor on _____ (the receipt of which the mortgagor hereby acknowledges) and the balance is to be paid as follows:

Rs. _____ on the _____ day

Rs. _____ on the _____ day

4. Payments Detailed in Schedule

In consideration of the sum of Rs. _____ particulars of the payments of which are given in the schedule hereto.

5. Present and Past Debts

In consideration of the sum of Rs. _____ due to the mortgagee on account of, etc., (from which the mortgagor hereby releases the mortgagor) and of the further sum of Rs. _____ advanced by the, etc., (as in No. 1)

6. To Pay off Old Creditors

In consideration of the sum of Rs. _____ left in the hands of the mortgagee to pay off the various creditors of the mortgagor named in the first schedule hereto, which sum the mortgagee hereby agrees to pay to the said creditors.

7. Present and Past Debts with Recitals

In pursuance of the aforesaid agreement and in consideration of the sum of Rs. _____ due as aforesaid and of Rs. _____ now advanced by the mortgagee, etc., (as in No. 1)

8. Present and Future Advance

In consideration of the sum of Rs. _____ advanced etc., (as in

- (3) The said AB or his father having been unable to deposit the said amount, the said Government by G.O. No. _____ dated _____ have waived the said condition of deposit provided that CD the father of the said AB secured the payment of the said sum of Rs. 15,000 for the maintenance of the said AB on return to India by hypothecation of immovable property; and
- (4) The mortgagor has in consideration of the said Government granting a State technical scholarship to the said AB agreed to furnish the required security in the manner hereinafter appearing;

NOW THIS DEED WITNESSES as follows:

1. *Covenant to Pay a Maximum Sum*

The mortgagor hereby agrees that in the event of the said AB not securing any employment on his return to India after completion of the training for which the State technical scholarship shall be awarded to him the mortgagor will pay to the mortgagee such sum not exceeding Rs. 15,000 as may be requisite for the maintenance of the said AB at the rate of Rs. 1,500 per mensem for such period as the said AB may remain out of employment during the ten months following his arrival in India;

2. *Mortgage to Secure Sum Due*

For the consideration aforesaid and as a security for the payment to the mortgagee of the said sum of Rs. _____ according to the terms and conditions hereof the mortgagor hereby transfers to the mortgagee ALL that property described in the schedule hereto to the intent that the same shall remain and be charged by way of mortgage in the manner following, namely that for the purpose of recovering the said sum of Rs. _____ or any lesser sum as may become due by the mortgagor to the mortgagee by virtue of these presents the mortgagee may at his option either sell the said property or any part thereof without the intervention of any court or take the rents and profits thereof for his own use until he shall have thereby or otherwise recovered any sum which may be due to him by the mortgagor by virtue of these presents.

3. The mortgagor hereby covenants that the said premises are free from encumbrances.

4. PROVIDED ALWAYS and it is hereby agreed that unless there is any thing repugnant in the context the expression "the mortgagor"

immense benefit to the estate resulting therefrom the said EF has agreed to give his consent to the said mortgage and to join in this mortgage deed as a token of such consent;

NOW THIS DEED WITNESSES as follows :

I. Covenant for Payment

In pursuance of the said agreement and in consideration of the sum of Rs. _____ out of which a sum of Rs. _____ has been retained by the mortgagee for payment to the various creditors hereinbefore mentioned and Rs. _____ has been paid by the mortgagee to the mortgagor (the receipt of which the mortgagor hereby acknowledges) the mortgagor with the consent and concurrence of the said EF hereby testified hereby transfers by way of usufructuary mortgage (*Rest as in clause I of Form 25*).

II, III and IV (*as in Form 25*).

V. Covenant to Pay Creditors

The mortgagee hereby covenants that he will pay and discharge the various debts specified in para 4 of the recitals hereof and will always indemnify and save harmless the mortgagor and her property from all claims, demands and costs in respect of the said debts or under the bonds, promissory notes or mortgage deeds by which they are secured.

VI. *Interpretation clause—(as in Form 3).*

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

**27—Usufructuary Mortgage, with a Personal Covenant to Pay
by the Manager of a Joint Hindu Family, all Members
Joining¹⁰**

THIS DEED OF MORTGAGE is made etc., (*as in Form 10*).

Recitals (as in Form 10).

NOW THIS DEED WITNESSES as follows;

¹⁰ This is 'an anomalous mortgage' being a combination of simple and usufructuary mortgage.

hereunder on account of principal and interest shall immediately become payable.

9. *Covenant by Surety*

The surety hereby covenants with the mortgagee that if default shall at any time be made in payment of any sum becoming payable by the mortgagor in accordance with the mortgagor's covenants hereinbefore contained then the surety will on demand pay the said sum to the mortgagee.

B. *Covenants and Provisos*

1. *Against Redemption within a Term*¹⁰

The mortgagor shall not be entitled to pay off the said sum of Rs. --- or any part thereof (*or*, to redeem this mortgage) within --- years, (*or*, before the --- day of ---) unless the mortgagee takes any steps to enforce this security.

2. *Mortgagee for a Term*

Neither the mortgagor shall be entitled to redeem nor the mortgagee shall be entitled to call for any part of his mortgage money within --- years of the date hereof.

3. *Option to Pay within Time*

Provided always that the mortgagor may at any time pay to the mortgagee any sum of not less than Rs. --- on account of the moneys hereby secured and that all sums so paid shall be applied first in reduction or payment of the interest and costs then due under these presents and then in reduction or payment of the principal money hereby secured.

10 The period should not be unreasonably long, so that it may not be regarded as amounting to a clog on the equity of redemption : Sec. 60, *Shivdev Singh v. Sucha Singh*, A 2000 SC 1935 (redemption stipulated after 99 years); *Seth Ganga Dhar v. Shanker Lal*, A 1958 SC 770; See also *Jayasingh Dnyanu Mhuprekar v. Krishna Bahji Patil*, A 1985 SC 1646 (Right to redemption can come to an end only in a manner known to law : either by a contract between the parties or by merger or by a statutory provision debarring redemption); folld. in *Ch. Sambaiiah v. Marapaka*, 1998 AIHC 3635 (AP) (Right to redemption lost by acquiescence: allowing mortgagee to make constructions over a period of 26 years).

day of _____ in each year and also so long as any part of the said principal money or sum to be treated as such remains unpaid.

5. *Compound Interest*

Any sums due on account of interest not paid on due date (*or*, within _____ days after due date) shall be treated as principal and added to the principal sum hereby secured and bear interest at the rate and payable on the yearly (half yearly) dates aforesaid.

6. *To Pay Principal and Interest in Instalments*

The mortgagor will pay to the mortgagee the said principal sum of Rs. _____ in annual instalment of Rs. _____ each on the _____ day of _____ in each year beginning from the _____ day of _____ next (*or*, by the instalments and on the dates mentioned below *or*, in the first schedule hereto) and will pay interest on the said sum or on so much thereof as shall from time to time remain unpaid at the rate of _____ percent per annum from the date hereof on the _____ day of _____ in each year along with the instalment of the principal (*or*, on the dates hereinafter fixed for payment of the instalments of the principal) so that upon each such day the interest up to that day shall be paid together with the instalments of the principal then payable as aforesaid.

7. *To Pay by Equated Instalments of Principal and Interest⁹*

The mortgagor will pay the said principal sum of Rs. _____ with interest at _____ percent per annum in annual (half yearly) equated instalments of (Rs. _____ of the principal and interest combined on the _____ day of _____ and the _____ day of _____) in each year.

8. *Whole to become due on Default*

If any interest or any instalment of the principal is not paid within _____ days of due date, the sum then due to the mortgagee

⁹ Such mortgages are popularly called "Fixed Instalment Mortgages" in England. A recent innovation adopted by Building Societies in England is Retail Prices Index Linked Mortgages, under which the capital outstanding on a mortgage is increased to reflect any movement in the retail prices index: see *Nationwide Bldg. Society v. Registrar of Friendly Society*, (1983) 3 All ER 296; *Multiservice Bookbinding Ltd. v. Marden*, (1979) Ch 84.

mortgagee shall have power without the intervention of court to take possession of the mortgaged property and to sell or concur with any other person in selling the mortgaged property or any part thereof either together or in lots and either by public auction or by private contract subject to such conditions concerning title or evidence of title or any other matter as the mortgagee thinks fit, with power to vary any contract for sale and to buy in or at any auction or to rescind contract for sale and to resell without being liable for any loss occasioned thereby, and to realize the amount due to the mortgagee from such sale proceeds after defraying the necessary expenses properly incurred by him as incidental to the sale or any attempted sale and after discharging any prior encumbrance to which the sale is not made subject. Provided that such power of sale shall not be exercised unless and until notice in writing requiring payment of the money in arrears has been served on the mortgagor and default has been made in payment for three months after such service.

9. Power of Sale (where Transfer of Property Act Applies)''

If the mortgagor fails to pay the principal sum with interest after it has become payable under the provision of this deed, the mortgagee shall, in addition to any other remedy available to him under the law, have power to sell without the intervention of court, the mortgaged property or any part thereof for realization of the money due to him hereunder.

10. Appointment of Receiver (where Transfer of Property Act does not Apply)

In lieu of exercising the power of sale hereinbefore conferred the mortgagee may appoint _____ or any other person he considers proper as receiver of the income of the mortgaged property or any part thereof with power to realize the said income and out of it to discharge all rents, taxes, and land revenue, rates and outgoings whatever payable in respect of such property or part, to pay interest on all prior mortgages of the

12 Sec. 69 : This power is available to a mortgagee in the following cases :

- (a) English mortgage : Where neither party is a Hindu, Muslim or Buddhist, etc
(Note : A company or corporation has no religion or caste).
- (b) Where power expressly conferred and the mortgagee is Government;
- (c) Where power expressly conferred and the property or any part thereof is situate in a Presidency town or Delhi, New Delhi or Ahmedabad or any other notified town.

4. *Covenant to make Further Advances*

The mortgagee will from time to time advance to the mortgagor such further sum or sums as he may require not exceeding in all the sum of Rs. ----- by monthly instalments of Rs. ----- each payable on the ----- day of each calendar month (or, by the instalments at the time and in the manner provided in the schedule) (or, at such time and in such instalments as the mortgagor shall require provided that in no one calendar month shall the mortgagee be bound to advance more than Rs. -----).

5. *Reduction of Interest in case of Punctual Payment*¹¹

Provided that the mortgagee shall accept interest at the rate of ----- percent per annum in lieu of the higher rate hereby appointed for any year (half year) in respect of which the mortgagor shall pay interest at such reduced rate not later than the due date (or, ----- days after due date) as to which time is to be of the essence of the contract.

6. *Surety to be Liable to Mortgagee as Principal Debtor*

Although as between the surety and the mortgagor the surety is only a surety, yet as between the surety and the mortgagee, the surety shall be considered to be the principal debtor for the moneys hereby secured so that the surety shall not be released by time being given to the mortgagor or by any other variation in the provisions of this deed or any other act, omission, matter or thing whatsoever whereby the surety as surety only would have been discharged.

7. *Limiting Surety's Liability*

The surety shall not be liable hereunder to pay a larger sum than Rs. ----- in all, with further interest on the same at the rate herein provided from the date of demand for payment being made upon him until payment.

8. *Power of Sale (where Transfer of Property Act does not Apply)*

If the mortgagor fails to pay the principal sum hereby secured with interest when the same shall become payable under the terms of this deed or if and whenever interest for ----- months remains unpaid, the

¹¹ An alternative form is given in Parcels No. 2 (ii) *ante*.

by fire in the name of the lender with _____ Insurance Company or with an insurance office nominated by the lender in a sum of Rs. --- ---; and

(b) deliver to the lender the policy of insurance and deliver to him three days before the policy expires a receipt for the payment of the premium to renew that policy.

(2) Where a sum of money is receivable under a policy effected under the last preceding sub-clause the lender may apply the money

(a) in repairing or rebuilding the building damaged; or

(b) towards payment of the principal and interest; or

(c) partly for purpose specified in para (a) and partly for purpose specified in para (b).

(3) The Borrower appoints the lender his attorney --

(a) to demand, sue for, and receive money payable under the policy; and

(b) to settle and compromise all claims in relation to the policy.

(4) The Borrower shall not do any thing that makes or may make the policy of insurance void or voidable.

13. Mortgagor's Covenant to Repair

During the continuance of the mortgage the mortgagor will keep the mortgaged buildings in good and substantial repair and if he shall neglect to do so the mortgagee may at his discretion (either recall the moneys due hereunder and realize the same by enforcement of this mortgage or otherwise, or), enter upon the said premises from time to time in order to repair and keep in repair the said buildings without thereby becoming liable as a usufructuary mortgagee and the expenses of his so doing shall be paid by the mortgagor on demand and until so repaid shall be added to the principal moneys hereby secured and bear interest accordingly and be secured in the like manner as the said principal.

14. Covenant to give Possession to Usufructuary Mortgagee after Redeeming Prior Mortgage

The mortgagor will pay off the said prior mortgage of _____ and redeem the mortgaged property and deliver the same into the possession

property of which he is the receiver, to pay his own commission at the rate of _____ percent on gross realization, to pay all premia on insurance policies on such property or part and the cost of necessary repairs, and to expend the balance first in liquidation or payment of the interest due under this deed and then in liquidation or payment of the principal money due hereunder, and to pay the residue, if any, to the mortgagor;

11. Appointment of Receiver (where Transfer of Property Act Applies)¹³

In case the mortgagee shall have power under the law to appoint a receiver of the mortgaged property or any part thereof, he shall appoint Shri _____ as such receiver provided he is then alive and is able and willing to act as such.

12. Mortgagor's Covenant to Insure

During the continuance of the mortgage the mortgagor will keep the mortgaged buildings insured against damage by fire in the name(s) of the mortgagor (and mortgagee) in the sum of Rs. _____ with the _____ Insurance Company or such other company as the mortgagee may approve and will punctually pay all premia on such insurance and will produce to the mortgagee on demand the policy of such insurance and the receipt for the last premium so paid. Provided always that if the mortgagor shall make default in any of the above matters, the mortgagee may in his discretion insure and keep insured all or any of the said buildings to the amount aforesaid and that the expenses of so doing shall be repaid to him by the mortgagor on demand and until so paid shall be added to the principal money hereby secured and bear interest accordingly and be secured in the like manner as the said principal.

Provided also that any money received under any such insurance as aforesaid shall at the option of the mortgagee be applied either in and towards payment of the moneys hereby secured or the replacing or reinstating the property in respect of which the moneys have been paid.

Or

(1) The Borrower shall

(a) insure and keep insured the mortgaged buildings against damage

¹ Sec. 69 A.

21. *Covenant to Reconvey*

Where the Borrower

- (a) repays to the lender the principal sum;
- (b) until the date of payment of the principal sum, pays to the lender interest at the rate specified in clause———; and
- (c) complies with the covenants specified in this deed, the lender, shall, at the request and cost of the Borrower, execute a statutory discharge as a reconveyance of the property.

of the mortgagee and get the mutation of names effected in the revenue/municipal records in favour of the mortgagee.

15. Covenant to Pay Mortgagor's Creditors and Indemnity

The mortgagee will pay to all the creditors hereinbefore mentioned (or, mentioned in the schedule hereto) the moneys hereinbefore mentioned (or, mentioned in the said schedule) as being payable to them respectively and will indemnify and save harmless the mortgagor from all claims and demands of the said creditors and each of them in respect of the said moneys.

16. Mortgagee not to Cut Trees

The mortgagee may cut from the mortgaged properties such trees as may be needed for agricultural purposes or the cutting of which may be necessary for the management of the property but will not be entitled to cut any other trees.

17. Purchase of Arrears of Rent by Mortgagor at the Time of Redemption

Any rent of the mortgaged property for the period of the mortgage remaining unrealized but being legally recoverable at the date of redemption shall be purchased by the mortgagor from the mortgagee at a price equal to - percent of the total amount of such unrealized rents.

18. Covenant against Encumbrances

The mortgaged property is free from encumbrances (except those specified in the schedule hereto, subject to which this mortgage is made).

19. Taxes

The Borrower shall pay all rates, taxes, assessments and outgoings (whether apportionable or not), imposed or to be imposed on the mortgaged property.

20. Restrictions on Lease

The Borrower shall not lease the property except with the written consent of the lender.

**2— Ditto (Consideration mentioned in the Schedule,
Payment by Instalments)**

I, AB, etc., being indebted to CD, etc., in the sum of Rs. _____ as per details in the first schedule hereto hereby agree to repay the said sum of Rs. _____ without interest in monthly instalments of Rs. _____ each payable on the _____ day of each month commencing from the day of _____ next, and also agree that in case of default in the payment of any two of the aforesaid instalments, the whole money then remaining due hereunder shall become payable at once and interest at _____ percent per annum will be charged on such money from the date of its so becoming payable at once.

AND for the consideration aforesaid, etc., (as in Form 1).

The first schedule herein referred to

(Details of liability)

(1) Due to the mortgagee on account of price of cloth purchased by mortgagor on the _____	Rs. _____
(2) Due to the mortgagee from the mortgagor on account of <i>bahi khata</i> account _____	Rs. _____
(3) Due to the mortgagee on account of bond dated _____	Rs. _____
(4) Borrowed from the mortgagee at the time of execution of this deed _____	Rs. _____
	Total Rs.

The second schedule herein referred to

(Details of mortgaged property)

Dated this the _____ day of _____

Witnesses 1.

2.

sd -
(Mortgagor)

PRECEDENTS

1—Simple Mortgage Deed for a Cash/Loan, with variation for Old Debt or Partly Old Debt and Partly Cash Loan (in the Form of Deed Poll)

I, AB son of CD, resident of _____ having borrowed Rs. _____ from EF, son of GH, resident of _____ (or, being indebted to the said EF in the sum of Rs. _____ due to him on account of _____), (or, being indebted to the said EF in the sum of Rs. _____ due on a bond dated _____ and having borrowed to pay Rs. _____ from him) hereby promise to pay to the said EF the said sum of money (or, the sum of Rs. _____) on demand (or, on the _____ or within _____ years from this date) with interest thereon from this date at the rate of _____ percent per annum (compoundable half yearly).

AND for the consideration aforesaid and as security for the aforesaid loan I hereby transfer by way of simple mortgage to the said EF, ALL that property described in the schedule hereto to the intent that in case default is made in the payment of any sum due hereunder, the said EF may enforce against the said premises all or any of the remedies of a simple mortgagee.

The schedule herein referred to
(Description of the mortgage property)

Dated this the _____ day of _____.

Sd. _____

(Mortgagor)

Witnesses 1.

2.

sum hereby secured and bear interest at the rate and payable on the half-yearly dates aforesaid provided that this provision for the payment of compound interest shall in no way prejudice or affect the exercise by the mortgagee of any of rights or remedies vested in him by law or by this deed;

(3) *Costs*

That the mortgagor will on demand pay all reasonable costs incidental to this mortgage;

(4) *Whole to become due in Case of Default*

That in case any interest or any sum payable on account of costs shall be in arrear for thirty days, the whole sum secured by these presents shall thereupon become payable at once.

II. Mortgage Clause

For the consideration aforesaid the mortgagor hereby transfers by way of simple mortgage to the mortgagee all that property described in the first schedule hereto belonging to the mortgagor TO THE INTENT that the said premises shall remain and be charged as security for the payment to the mortgagee of the said principal money, interest and costs, in accordance with the covenants hereinbefore contained.

III. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee as follows :

(i) *Free from Encumbrances*

That the said premises are free from encumbrances (except those specified in the second schedule hereto, subject to which this mortgage is made).

(ii) *Mortgagee's Remedy*

That in case of default either in payment of the sum becoming payable under Clause 1 (4) or in payment thereof on the date hereinbefore provided (whether such default may have been made before or not) the mortgagee may forthwith enforce against the said premises or any part thereof all or any of the remedies of the holder of a simple mortgage, as provided in the Transfer of Property Act, 1882 and this deed shall be read and construed as a simple mortgage as defined by the said Act.

3—Simple Mortgage Deed (Ordinary Form without Recitals) with Several Variations of the Consideration

THIS DEED OF MORTGAGE made on the _____ day of _____
BETWEEN AB, etc., (hereinafter called "the mortgagor") of the one part
AND CD, etc., (hereinafter called "the mortgagee") of the other part.

WITNESSES as follows :

1. Consideration

In consideration of the sum of Rs. _____ borrowed by the mortgagor from the mortgagee (the receipt of which the mortgagor hereby acknowledges) (*or*, in consideration of the sum of Rs. _____ due from the mortgagor to the mortgagee under a bond dated _____ and of the sum of Rs. _____ due to the mortgagee on account of a decree obtained by him in suit No. _____ of _____ from the Court of the _____ on the _____, and of Rs. _____ borrowed in cash by the mortgagor from the mortgagee) (*or*, in consideration of a cash loan of Rs. _____ to be advanced by the mortgagee to the mortgagor at the time of the registration of this deed and of Rs. _____ agreed to be paid by the mortgagee to the several creditors of the mortgagor named in the schedule hereto on account of the debts specified in the said schedule) (*or*, in consideration of the sum of Rs. _____ due to the mortgagee as per details given in the schedule hereto) the mortgagor hereby covenants with the mortgagee as follows :

(1) *Covenant to Pay Principal and Interest*

That the mortgagor will pay to the mortgagee the said sum of Rs. _____ on the _____ day of _____, and in the meantime interest thereon or on so much thereof as shall, for the time being, remain unpaid at the rate of _____ percent per annum by half yearly payments on the _____ day of _____ and the _____ day of _____ in each year, and also so long as any part of the said principal money or sum to be treated as such remains due under this deed;

(2) *Compound Interest*

That any interest not paid on (*or*, within _____ days after) due date shall be treated as principal and added to the principal

The second schedule herein referred to

(Particulars of encumbrances)

The third schedule herein referred to

(Particulars of consideration) *as in the first schedule to Form 2*

IN WITNESS WHEREOF the parties hereto have hereunder put their signatures (*or*, the mortgagor has signed this deed) the day and year first above written (*or*, on the dates respectively mentioned against their signatures).

4—Simple Mortgage Deed in Lieu of Rent Decree with Agreement to pay the Sum due with Interest in Instalments, with Debtor and Surety Jointly Mortgaging their Property

THIS DEED OF MORTGAGE is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called “the mortgagor”) of the first part AND CD, etc., (hereinafter called “the mortgagee”) of the second part AND EF, etc., (hereinafter called “the surety”) of the third part.

WHEREAS

(1) Debt

The aforesaid AB is indebted to the mortgagee to the extent of Rs. _____ due under a rent decree dated _____ passed by the court of _____;

(2) Agreement to pay in Instalments

The aforesaid AB not being in a position to pay the aforesaid decretal debt requested the mortgagee for permission to pay the same in ten equal annual instalments with interest at _____ percent per annum;

(3) Agreement for surety

The aforesaid EF in consideration of the mortgagee agreeing to accept payment in such instalments agreed to stand surety for payment of the aforesaid amount by the said AB to the mortgagee; and

(4) Hypothecation of the Property

The mortgagee agreed to accept the payment of the aforesaid decretal amount in ten equal annual instalments on the payment thereof being

II. Mortgagor's Right to Pay before Time

PROVIDED ALWAYS that the mortgagor may, at any time, pay to the mortgagee any sum of not less than Rs. _____ on account of the moneys hereby secured, and that all sum so paid shall be applied first in reduction or payment of the interest and costs then due under these presents and then in reduction or payment of the principal money hereby secured.

Reduced Interest

[Provided also that the mortgagee shall accept interest at the reduced rate of _____ percent per annum in lieu of the normal rate hereby appointed for any half year in respect of which the mortgagor shall pay interest at such reduced rate not later than the due date (or, _____ days after due date) as to which time is to be of the essence of the contract.]¹

[The mortgagee hereby covenants with the mortgagor that he will duly pay to the several creditors of the mortgagor hereinbefore named (or, named in the schedule hereto) the several sums of money left with him for payment out of the mortgage money and will always indemnify and save harmless the mortgagor and his property from all claims and demands of the said creditors or any of them in respect of such moneys or part thereof].²

V. Interpretation Clause

It is hereby agreed that wherever 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 expressions "the mortgagor" and "the mortgagee" hereinbefore used include their respective heirs, executors, administrators and assigns.

The first schedule herein referred to

(Description of property or properties mortgaged by this deed).

1. Where parties agree that in case of non-payment of interest on due date a higher rate shall be payable it is preferable in order to take the case out of Sec. 74, Contract Act (*ie.*, in order that the higher rate may not be deemed to be penal) to adopt this device of providing the higher rate in the beginning and adding a proviso for acceptance of the lower rate.
2. To be added if any part of the mortgaged money has been left for payment to creditors.

grant and transfer by way of simple mortgage to the mortgagee A.I. that property described in the schedule hereto and jointly belonging to them TO the intent that the said premises shall remain and be charged by way of simple mortgage as security for the payment to the mortgagee of the said decretal debt and costs in accordance with the covenants hereinafter contained.

IV. Mortgagee's Remedy

The mortgagor hereby covenants with the mortgagee as follows:

(i) The said premises are free from encumbrances.

(ii) If the mortgagors shall make default in payment of any sum when becoming due as hereinbefore provided then the mortgagee may forthwith enforce against the said premises or against any portion of them all or any of the remedies of a holder of a simple mortgage and these presents shall be read and construed as a simple mortgage as defined by the Transfer of Property Act, 1882.

V. Interpretation clause—(as in Form 3).

IN WITNESS WHEREOF, etc.

5—Simple Mortgage of Property Purchased with a Loan Advanced on a Simple Money Bond on Condition of such Mortgage (the Simple Bond remaining Operative)

THIS DEED OF MORTGAGE is made, etc., (*an in Form 3*).

WHEREAS the mortgagee advanced to the mortgagor the sum of Rs.——— for the purchase of——— on the terms and conditions mentioned in the bond dated the —— of —— executed by the mortgagor (hereinafter referred to as the said “bond”);

AND WHEREAS one of the conditions on which the said loan was advanced was that the mortgagor would within one month of the advance purchase the said property for the purchase of which the said loan was advanced and would hypothecate the same in favour of the mortgagee as security for repayment of the said loan with interest in accordance with the covenants contained in the said “bond”;

AND WHEREAS the mortgagor has purchased the said property fully described in the schedule hereto.

heretofore used shall include his heirs, representatives, successors and assigns, and the expression "the mortgagee" heretofore used shall include his successors and assigns.

IN WITNESS WHEREOF, etc.

7—Consolidation of Several Simple Mortgages into One

THIS DEED OF MORTGAGE is made, etc., (*as in Form 3*).

WHEREAS

Recitals of Old Mortgages

(1) By deed dated the _____ the mortgagor mortgaged to the mortgagee the property described in Part A of the schedule hereto to secure the payment of a sum of Rs. _____ lent to the mortgagor by the mortgagee with compound interest thereon at the rate of _____ with half yearly rests;

(2) By a second deed dated the _____ the mortgagor mortgaged to the mortgagee the property described in Part B of the schedule hereto to secure the payment of another sum of Rs. _____ lent by the mortgagee to the mortgagor with compound interest thereon at the rate of _____ with half yearly rests;

(3) By a third deed dated the _____ the mortgagor mortgaged to the mortgagee the property described in Part C of the schedule hereto to secure the payment of a third sum of Rs. _____ with compound interest thereon at the rate of _____ with half yearly rests;

Sum Due

No part of the principal sums secured by the aforesaid three mortgages has been repaid;

The mortgagor on _____ paid to the mortgagee a sum of Rs. _____ (as the mortgagee hereby admits) on account of interest leaving a sum of Rs. _____ now due for interest, making in all the sum of Rs. _____ now due for principal and interest;

Agreement to Mortgage

The mortgagee has agreed with the mortgagor to abstain from taking legal proceedings to realize the said sum of Rs. _____ upon having the repayment of the same with interest thereon at the rate of _____ secured in the manner hereinafter appearing;

NOW THIS DEED WITNESSES as follows:

(Rest as in Form 4).

The Schedule herein referred to.

IN WITNESS WHEREOF, etc.

8—Simple Mortgage Deed by a Pardanashin Lady in Pursuance of the Terms of a Compromise

THIS DEED OF MORTGAGE is made, etc., (as in Form 3).

WHEREAS—

(1) In suit No. 27 of 1995 pending in the Court of the Civil Judge at _____ a joint decree was passed on the _____ in favour of the mortgagee and EF, etc., GH, etc., and JK, etc., against the mortgagor and her deceased husband XY for Rs. _____ with costs and interest from the date of suit upto the date of realisation;

(2) By virtue of the consent decree passed in suit No. 26 of 1996 in re : EF and four others *versus* CD, the mortgagee became solely and wholly entitled to realize the money due under the decree passed in suit No. 27 of 1995 as aforesaid;

(3) XY the husband of the mortgagor died and the mortgagor became the heir and owner of the the property left by the aforesaid XY;

(4) On the _____ mortgagee applied for execution of the decree in suit No. 27 of 1995 aforesaid against the mortgagor for Rs. _____;

(5) The mortgagee after consultation with her near relations and legal advisers and after fully understanding the transaction and realizing its effect on her interest and considering it to be for her benefit entered into a compromise with the mortgagor whereby the aforesaid decree was agreed to be satisfied by the mortgagor executing in favour of the mortgagee (1) a sale deed in respect of certain lands in village— _____ for a price calculated at 25 times the annual net profits, and (2) this mortgage deed on the terms and conditions hereinafter contained for the balance of the money due to the mortgagee under the aforesaid decree;

AND WHEREAS in pursuance of the agreement in the aforesaid compromise and in part satisfaction of the aforesaid decree the mortgagor

executed a sale deed of the said lands in village ----- for a consideration of Rs.-----

NOW THIS DEED WITNESSES as follows :

1. In further pursuance of the aforesaid agreement and in consideration of the said sum of Rs. ----- remaining due to the mortgagee from the mortgagor on account of the aforesaid decree, the mortgagor hereby covenants with the mortgagee (a) that the mortgagor will pay to the mortgagee the said sum of Rs. ----- by six monthly instalments of Rs.----- each payable on the ----- and the ----- in each year commencing from the ----- and the last instalment of the remaining Rs.----- payable on the ----- ; and (b) that in case any two consecutive instalments hereinbefore mentioned be in arrears in whole or in part, then the whole sum secured by this deed then remaining unpaid shall become payable at once.

[Rest as in Form 3 with necessary modifications in III(ii)].

9--Simple Mortgage of Joint Family Property by Father for Legal Necessity and Antecedent Debt³

THIS MORTGAGE is made, etc., (as in Form 3).

WHEREAS--

Recitals of Status of Family

(1) The mortgagor and his sons, EF, GH and JK (minor) form a joint Hindu family governed by the Mitakshara School of Hindu law;

(2) The property mentioned in the schedule hereto is the joint ancestral property of the said family;

(3) The mortgagor's family carries on the ancestral business of -----

(4) For the purpose of the said business the mortgagor borrowed Rs.----- from the mortgagee on a pronote dated the----- and the amount of the said loan with interest now due to the mortgagee comes to Rs.-----

Necessity for the Loan

(5) The mortgagor is now in need of Rs.----- for the following

³ See Preliminary Note. Though a father may have power under the law to make the mortgage, it is always safer to join all the members of the family as mortgagors.

[*Rest as in Nos. (2), (3), (4) etc. of Form 9*]

12—Mortgage to Secure an Annuity (Giving Option of Sale or of Taking Possession and Providing for Appointment of Trustees)

THIS DEED OF MORTGAGE is (*as in Form 3*).

WHEREAS—

Liability of Mortgagor

(1) The mortgagor and XY deceased brother of the mortgagor and husband of the mortgagee formed a joint Hindu family governed by the Mitakshara School of Hindu law;

(2) The whole joint ancestral property of the said family is now in possession of the mortgagor as the sole surviving male member and the mortgagor is therefore under a legal obligation to maintain the mortgagee;

Agreement to give Annuity

(3) The mortgagee has been living separately from the mortgagor and at the suggestion and on the advice of relations and friends of the family, the mortgagor has agreed to pay the mortgagee a maintenance allowance of Rs. ————— per annum and to secure the same in the manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :

I. Covenant to Pay

In pursuance of the said agreement and in fulfilment of his legal obligation to provide for the maintenance of the mortgagee, the mortgagor hereby covenants with the mortgagee to pay to the mortgagee a monthly allowance of Rs. ——— on or before the ——— day of each month during the life of the mortgagee;

II. Mortgage Clause

The mortgagor hereby transfers by way of simple mortgage to the mortgagee the property described in the Schedule hereto together with all rights, easements and appurtenances thereto belonging, to the intent that the same shall remain and be charged in the manner hereinafter appearing as security for the payment of the said monthly allowance to the mortgagee in the manner herein mentioned;

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

10— Simple Mortgage of Joint Family Property, All Members of the Family Joining

THIS MORTGAGE is made on the _____ day of _____ BETWEEN AB, etc., EF, etc., GH, etc., and JK, etc., a minor acting through his father and natural guardian the said AB (hereinafter called "the mortgagors") of the one part AND CD, etc., (hereinafter called "the mortgagee") of the other part.

WHEREAS—

(1) The mortgagors form a joint Hindu family governed by the Mitakshara School of Hindu Law;

(2) *(As in Form 9);*

(3) The said family also own and carry on through the said AB an ancestral cloth business;

(4) *(As in Form 9, Substituting "the said AB" for "the mortgagor");*

(5) *(As in form 9, substituting "mortgagors" for "mortgagor" and "the said AB's daughter" for "his daughter", and "the said GH" for "his son GH").*

Rest as in Form 9, substituting "mortgagors" for "mortgagor".

11— Simple Mortgage by Manager of a Joint Hindu Family, Other Members also Joining

THIS MORTGAGE, etc., *(as in Form 10)*, substituting for "acting through the said AB, the manager of his joint family" for the words "acting through his father, etc.")

WHEREAS—

(1) The said AB, EF, GH and JK form a joint Hindu family governed by the Mitakshara School of Hindu Law and the said AB is the manager of the said family.

(2) LM was the common ancestor. He had two sons, X and Y both now dead. The said AB and EF are the sons of the said X and the said GH and JK are the sons of the said Y.

The schedule herein referred to.

IN WITNESS WHEREOF, ETC.

13—Simple Mortgage Deed for Loan Partly Advanced and Partly to be Advanced, with Promise to give Usufructuary Mortgage when Full Loan Advanced

THIS DEED OF MORTGAGE is made, etc., (*as in Form 3*).

WHEREAS—

Agreement for Loan

(1) The mortgagor desired to raise a loan of Rs. ——— bearing interest at the rate of ——— percent per annum on the usufructuary mortgage of the property mentioned in the first schedule hereto in order to pay off the debts shown in the second schedule hereto with which the said property is encumbered;

(2) The mortgagee has agreed to lend the said sum of Rs. ——— on the terms aforesaid;

(3) The mortgagee not finding it convenient to advance the aforesaid loan of Rs. ——— in a lump sum it was agreed between the mortgagor and the mortgagee that the mortgagee should advance the aforesaid loan of Rs. ——— piecemeal on the execution by the mortgagor of pronotes pending the execution and registration of the deed of usufructuary mortgage for the aforesaid loan of Rs. ——— after the said loan has been advanced in full and as soon as the loans referred to in the second schedule have been paid off and the property in the first schedule hereto redeemed from their charge;

(4) The mortgagee has up to date advanced to the mortgagor Rs. ——— only as part of the said loan of Rs. ———.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the aforesaid agreement and for the consideration aforesaid the parties hereto hereby agree as follows :

(1) Agreement of Future Advances

The mortgagee will advance to the mortgagor the balance of Rs. ——— of the aforesaid loan of Rs. ——— piecemeal on the execution of pronotes by the mortgagor.

III. Enforcement of Mortgage

It is hereby agreed that if and whenever the said monthly allowance or any part thereof shall be in arrear or unpaid for the space of three months after the same shall have become due the mortgagee may for the purpose of recovering the same either, (i) enter into possession of and hold all or any part of the said property and take the rents and profits thereof for her own use until she shall have thereby or otherwise realized all arrears of the said monthly allowance after having first taken for her own use out of such rents and profits the said allowance of Rs. _____ for every month during which she is so in possession or (ii) may at her option enforce against the said property the remedy available to a mortgagee;

IV. Sale Proceeds, to be Paid to Trustees

It is hereby agreed that if the mortgagee elects to sell the said property then after all arrears of the said monthly allowance have been first paid to the mortgagee the proceeds of such sale or so much thereof as the court ordering such sale may deem to be necessary for the purpose hereinafter appearing shall be paid to such trustees as such court may appoint to be applied by them under the directions of such court in paying out of the capital or income thereof (if invested by order of such court) the said monthly allowance to the mortgagee during her life and the balance, if any, of the proceeds of such sale shall be paid to the mortgagor and on the death of the mortgagee any money or investments in the hands of such trustees for the purpose aforesaid shall be held by them in trust for the mortgagor.

V. Interpretation Clause

PROVIDED ALWAYS and it is hereby agreed that wherever 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 mortgagor" hereinbefore used includes the owner or owners for the time being of the property mortgaged and the expression "the mortgagee" hereinbefore used includes her heirs, executors, administrators and assigns.⁴

⁴ As the maintenance is personal and is for the life of the mortgagee it cannot be assigned [Sec. 6 (*old*), Transfer of Property Act], but as arrears of maintenance can be assigned and can also be claimed on the death of the widow by her personal heirs, the interpretation clause is necessary to provide for the case of arrears.

mentioned in the second schedule hereto the simple mortgage hereby contained shall be deemed to be extinguished.

The first schedule herein referred to.

* * * * *

The second schedule herein referred to.

* * * * *

IV. Interpretation clause (as in Form 3).

IN WITNESS WHEREOF, etc.

(For security bonds hypothecating property—see under BOND)

14—Simple Mortgage with an Option to turn it into Usufructuary Mortgage in case of Default in Payment on Due Date

THIS MORTGAGE made, etc., *(as in Form 3)*.

WITNESSES as follows :

I and II. *(as in Form 3)*.

III. (i) *(as in Form 3)*.

(ii) *(as in Form 3)* with the following addition :

“Or may at his option take possession of the said premises and remain in possession as a usufructuary mortgagee until the said sum and interest due hereunder are fully paid off by the usufruct of the said property in the manner hereinafter mentioned or otherwise and in that case the mortgagee shall have all the rights of a usufructuary mortgagee and this mortgage shall thenceforth be deemed to be a usufructuary mortgage.”

IV. The mortgagee hereby covenants with the mortgagor that he will on entering into possession of the mortgaged property collect the rents and other moneys accruing due and payable upon the said property with all care and diligence and out of the rents and moneys thus collected will pay the Government revenue, cesses and taxes assessed, imposed and charged on the mortgaged property and defray the cost of collection and management (which shall in no case exceed _____ percent of the total rents to be collected) and the cost, if any, incurred in any suit relating

to the said premises in a civil or revenue court and will apply the balance first in the reduction or payment of the interest due hereunder and then in the reduction or payment of the principal money hereby secured.

V. *Interpretation clause* (as in Form 3)

IN WITNESS WHEREOF, etc.

15—Simple Mortgage of Leasehold Land with House Built by the Mortgagor

THIS MORTGAGE is made, etc., (as in Form 3).

WHEREAS

(1) By a deed of lease dated the _____ day of _____ XY, etc., demised the land described in the schedule hereto to the mortgagor for the term of _____ years on the terms and conditions mentioned in the said lease.

(2) After obtaining the aforesaid lease the mortgagor built a *pucca* house with garage, outhouse and tubewell on the demised land and has since been in possession of the same.

(3) The mortgagee has agreed with the mortgagor to lend to him the sum of Rs. _____ upon having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :

I. In pursuance of the said agreement and in consideration of the sum of Rs. _____ etc., (as in Form 4).

II. For the consideration aforesaid the mortgagor as lessee under the aforesaid lease in respect of the said land and as owner in respect of the said house hereby assigns and transfers by way of simple mortgage ALL that land and house described, etc., (Rest as in Form 3).

16—Hypothecation Bond Giving Additional Security

THIS DEED is made, etc., (as in Form 3).

Recitals of Mortgage

WHEREAS the mortgagor borrowed Rs. _____ from the mortgagee

and executed a simple mortgage deed in favour of the mortgagee on the———under which all the property described in the——— Schedule to the aforesaid mortgage deed was transferred by way of simple mortgage to the mortgagee to the intent that the said premises should remain and be charged by way of simple mortgage as security for the payment to the mortgagee of the said principal sum and interest and costs, in accordance with the covenants contained in the aforesaid mortgage deed:

Insufficiency of Security

AND WHEREAS owing to a general fall in the market value of property (or, owing to non-payment of interest by the mortgagor and consequent swelling up of the amount due to the mortgagee) the said property described in the——— schedule to the aforesaid mortgage deed is no longer sufficient as security for the said debt;

(or, owing to a wrong calculation of the market value due to the non-exclusion of remissions from the rents the properties described in the——— schedule to the aforesaid mortgage deed were then considered to be sufficient as security for the amount of the aforesaid mortgage deed but on a correct calculation having now been made on the basis of rents after excluding the remissions it has now transpired that the said properties are not sufficient as such security as aforesaid);

Agreement for Additional Security

AND WHEREAS it is now agreed between the mortgagor and the mortgagee that the mortgagor shall hypothecate the property specified in the schedule hereto by way of additional security for the amount due to the mortgagee under the aforesaid mortgage deed.

NOW THIS DEED WITNESSES as follows :

1. Mortgage of Additional Property

In pursuance of the said agreement and in further consideration of the said loan of Rs.——— the mortgagor hereby transfers by way of simple mortgage to the mortgagee ALL that property described in the schedule hereto with all rights, easements and appurtenances thereto to the intent that the said premises shall remain and be charged by way of

simple mortgage as further security in addition to the property described in the _____ schedule to the aforesaid mortgage deed for the payment to the mortgagee of the moneys payable under aforesaid deed of mortgage in accordance with the covenants therein contained;

2. Covenant against Encumbrance

The mortgagor hereby covenants with the mortgagee that the property described in the schedule hereto is free from encumbrances;

3. Remedy of Mortgagee

IT IS HEREBY AGREED and declared that in all cases in which the mortgagee becomes entitled under the terms of the aforesaid mortgage deed of the _____ to enforce the remedies of the holder of a simple mortgage against the property described in the _____ schedule to the aforesaid mortgage deed he will also be entitled to enforce all or any of such remedies against the property described in the schedule hereto in the same way as if the said property had been entered in the _____ schedule to the aforesaid mortgage deed;

The schedule herein referred to.

4. Interpretation clause (as in Form 3).

IN WITNESS WHEREOF, etc.

**17—Simple Mortgage or Hypothecation of
Machinery with Provision for Insurance**

THIS DEED OF MORTGAGE is made, etc.

WITNESSES as follows

I. Consideration (as in Form 3).

II. Hypothecation

For the consideration aforesaid he mortgagor hereby hypothecates and charges ALL that machinery, plant, engines, etc., described in the schedule hereto of which he is the absolute owner to the intent that all such property shall remain and form additional security in the manner hereinafter

appearing for the payment to the mortgagee of the said principal money, interest and costs in the manner aforesaid.

III. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee as follows :

(1) Covenant against Encumbrance

The said property described in the schedule hereto is free from encumbrances;

(2) To Keep in Repairs and Working Order

The mortgagor will at all times during the continuance of this security maintain and keep in good and working order and repair, and if necessary, replace the machinery described in the schedule hereto and all plants, engines and machinery which shall at any time during the continuance of the security be brought upon or used in the premises described in the schedule hereto, whether in addition to or in place of any existing plants, engines and machinery shall, if the property of the mortgagor, become included in the schedule hereto, remain part of the security hereby created, and be subject to the powers, provisions and covenants herein contained and relating to the said security;

(3) To Insure

The mortgagor will at all times during the continuance of this security at his own expense insure and keep insured in the name of the mortgagee with an insurance company all the property described in the schedule hereto against fire to the amount of Rs.

(4) To Pay Premia

During the continuance of this security the mortgagor will pay all premia and sums of money necessary for keeping such insurance in force and will deliver to the mortgagee the receipt of every such payment within seven days after the same shall have become due;

(5) In case of Default Mortgagee may Insure

If the mortgagor shall neglect or refuse to effect such insurance as aforesaid or to keep the same in force by making such payments as

aforesaid or to deliver such receipt as aforesaid, to the mortgagee, it shall be lawful for the mortgagee to insure all such property as aforesaid to the amount aforesaid or to the amount of any deficiency and to pay all premia on such insurance;

(6) To Reimburse Expenses

The mortgagor will, on demand, repay to the mortgagee all moneys expended by the mortgagee in or about such insurance as aforesaid and all other costs and expenses properly incurred by him hereunder and will pay interest at ----- percent per annum upon any such sum until the same shall have been repaid by the mortgagor to the mortgagee;

(7) Security for the Expenses Incurred by Mortgagee

Until the amount of any such premia, costs, charges and expenses have been paid by the mortgagor to the mortgagee the same shall be secured upon all the property enumerated in the schedule hereto in like manner as the principal sum of Rs. _____ is hereby secured;

(8) Application of Money Received for Insurance

All money received under any insurance of any part of the property enumerated in the schedule hereto shall at the option of the mortgagee be applied either in or towards the payment of the moneys hereby secured or in or towards replacing or reinstating the property in respect of which such insurance money is paid by the company; AND

(9) Default Clause

In case of default either in payment of the sum becoming payable under Clause 1 (4) or in payment of the principal money hereby secured with interest on the date hereinbefore mentioned (whether such default may have been made before or not) the mortgagee shall have power without the intervention of any court to take possession of the hypothecated property and to sell or concur with any other person in selling the same or any part thereof either together or in lots and either by public auction or by private contract subject to such conditions concerning title or evidence of title or other matter as the mortgagee thinks fit with power to vary any contract for sale and to buy it at any auction or to rescind any contract for sale and to re-sell without being liable for any loss occasioned thereby,

and to realize the amount due to the mortgagee from such sale proceeds after defraying the necessary expenses.

IV. Provisos— (as in Form 3).

V. Interpretation clause— (as in Form 3).

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

18—Simple Mortgage or Hypothecation of all Stock in Trade (Present and Future), Goodwill and Takings of Business

THIS DEED OF MORTGAGE is made on the———day of——— between AB, etc., CD, etc., and EF, etc., carrying on business as photo-engravers, block-makers, printers and stationers under the name and style of AB and Sons at the premises No,———, Aminabad Park, Lucknow (hereinafter called “the mortgagors”) of the one part AND XY, etc., (hereinafter called “the mortgagee”) of the other part.

“WITNESSES as follows :

I. *Consideration (as in Form 3).*

II. For the consideration aforesaid, the mortgagors hereby hypothecate and charge ALL the goodwill of the business carried on by the mortgagor at the said premises No. —— Aminabad Park or at any other premises to which the said business may hereafter be shifted AND the whole stock in trade of the said business including all plants, machinery, fittings, furniture, etc., which at present is or which may hereafter be brought on the premises at which the said business is carried on for the purpose of the said business AND ALSO all moneys to be received by or to become owing to the mortgagors in respect of the said business to the intent that all such property shall remain and form additional security in the manner hereinafter appearing for the payment to the mortgagee of the said principal money, interest and costs in the manner aforesaid.

III. Mortgagors' Covenant

The mortgagors hereby covenant with the mortgagee as follows :

- (1) The said property described in the schedule hereto is free from encumbrances.

- (2) *as in III (2) of Form No. 17 with the following modifications:*
For "machinery described in the schedule hereto" substitute "machinery hereby mortgaged," for "premises described in the schedule hereto" substitute "premises at which the mortgagors' said business is for the time being carried on," omit the words "included in the schedule hereto."
- (3) to (6) *as in III (3) to (6) of Form No. 17.*
- (7) and (8) *as in III (7) and (8) of Form No. 17* substituting "hereby mortgaged" for "enumerated in the schedule hereto."
- (9) During the continuance of this security the mortgagors will carry on the said business and will keep proper books of account of the said business and make full entries therein of all the dealings and transactions of the said business and will keep such books and all letters, papers and documents belonging or relating to the said business upon the premises at which the said business is for the time being carried on and will at any time if required produce the same for the inspection of the mortgagee and allow him or any person appointed in writing by him to have free access thereto and to take copies and extracts of and from the same.
- (10) *as in III (9) of Form 17.*

IV. Mortgagor's Right to Pay before Time—(as in Form 3).

V. Interpretation Clause—(as in Form 3)

IN WITNESS WHEREOF, etc.

19—Ditto, When Loan is Agreed to be Repaid in Monthly Instalments and Receiver is Appointed

THIS DEED OF MORTGAGE is made on the day of _____
BETWEEN AB, etc., (hereinafter called "the mortgagor") of the first part,
XY, etc., (hereinafter called "the mortgagee") of the second part, AND
GH, etc., (hereinafter called "the Receiver") of the third part.

WITNESSES as follows :

I. In consideration of the sum of Rs. _____ borrowed by the mortgagor from the mortgagee (the receipt of which the mortgagor hereby

acknowledges), the mortgagor hereby covenants with the mortgagee as follows :

(1) That the mortgagor will pay to the mortgagee within a term of _____ months the said principal sum of Rs. _____ by equal monthly instalments of Rs. _____ each, the first of such instalments to be paid on the first day of _____ until the whole principal sum has been fully paid off and shall along with each said instalments of the principal pay interest at the rate of _____ percent per annum on the said principal sum or on so much thereof as shall from time to time remain unpaid.

(2) If at any time any of the aforesaid instalments or interest or any part thereof respectively shall be in arrears and unpaid for the period of thirty days after due date, then the whole of the said principal and interest remaining unpaid shall forthwith become payable and shall be paid with interest at the aforesaid rate by the mortgagor to the mortgagee on demand.

II. (*as in Form 18*),

III. (1—8) (*as in Form 18*).

(9) In case of default in payment of the sum becoming payable under clause I (2) the mortgagee shall have power, etc., (*as in clause III (9) of Form 17*).

(10) In consideration of the premises the mortgagee with the concurrence of the mortgagor hereby appoints the Official Receiver to be receiver of the profits and income of the said business of the mortgagor and of all moneys becoming due to the mortgagor in respect of the said business from the persons liable to pay the same. PROVIDED ALWAYS that the receiver shall out of the moneys received by him in each month, after deducting his own remuneration at the rate of 5 percent of total income received and other reasonable costs and expenses, pay the instalment of the moneys hereby secured which is payable on the first day of the next month and all other moneys for the time being owing under this security.

IV and V (*as in Form 3*).

IN WITNESS WHEREOF, etc.

20—Mortgage of Shares for Securing Past and Future Trade Debts

(When only blank transfer is given)

THIS MORTGAGE, etc., *(as in Form 3)*.

WHEREAS the mortgagor is indebted to the mortgagee in several sums of money amounting to Rs. _____ for goods sold, moneys advanced and otherwise, and in order to induce the mortgagee to continue his dealing with the mortgagor and for the purpose of securing the payment of all such moneys as are or shall at any time hereafter be due or owing from the mortgagor to the mortgagee with interest thereon as hereinafter mentioned the mortgagor has agreed to mortgage the shares specified in the schedule hereto to the mortgagee and has deposited with the mortgagee the said share certificates together with transfer deeds in blank to the said shares and has agreed to execute this deed.

NOW THIS DEED made in consideration of the mortgagor being indebted as aforesaid and of the recited agreement WITNESSES as follows:

1. The mortgagor hereby agrees with the mortgagee to pay to him or any person authorised by him in this behalf on demand all and every sum or sums of money which are now or shall at any time hereafter be owing from the mortgagor to the mortgagee in respect of goods sold, advances made or deemed to have been made or on any other account whatsoever together with interest on the same respectively at the rate of _____ percent per annum from the time or respective times of the same having becoming due.
2. The mortgagor hereby charges all the shares specified in the schedule hereto with the repayment to the mortgagee of the moneys hereinbefore covenanted to be paid by the mortgagor to the mortgagee PROVIDED that on payment of all moneys due to the mortgagee from the mortgagor with interest thereon as aforesaid on demand or without any demand before the mortgagee sells such shares or completes the blank transfer deed under the power hereinafter reserved, the mortgagee shall deliver back to the mortgagor the said certificates of the shares mentioned in the schedule hereto with the blank transfer deeds relating to them.

the market price then current and to pay himself the amount due to him with proper costs and expenses of realisation and other proper and usual charges.

(6) *Covenant to Pay Call Money*

That the mortgagor will duly pay all sums which may during the continuance of this security become payable by reason of any call in respect of the said shares and any money which the mortgagee shall notwithstanding this agreement be called upon to pay and shall pay in respect of any such call shall be repaid by the mortgagor with interest at the rate aforesaid on demand and until so repaid shall be a charge on the shares hereby mortgaged.

22—Mortgage by Conditional Sale⁵

THIS MORTGAGE made, etc., (*as in Form 3*).

WITNESSES as follows :

1. In consideration of the sum of Rs. ———— borrowed by the mortgagor from the mortgagee (the receipt of which the mortgagor hereby acknowledges) the mortgagor hereby transfers to the mortgagee ALL that property described in the schedule hereto TO HOLD the same to the mortgagee absolutely for ever subject to the conditions hereby expressly declared by the parties hereto that if and when the mortgagor repays the said sum of Rs. ———— to the mortgagee with interest thereon at the rate of ———— percent per annum compoundable annually (half yearly) on the ——— day of ——— (and the ——— day of ———) the transfer hereby made shall become null and void (*or*, the mortgagee will at the request and cost of the mortgagor re-transfer the said property to the mortgagor) [*or*, transfers by way of mortgage by conditional sale the property described in the schedule hereto on the condition that if the mortgagor shall fail to repay the said sum of Rs. ———— with interest thereon at the rate of ——— percent per annum compoundable annually (half yearly) on the ——— day

⁵ This is a form suitable for a simple case. In case of mortgage by the guardian, manager of joint Hindu family, etc., the necessary recitals as given in Forms 9, 10 and 11 should be inserted with necessary verbal changes. [Compare this with Form No. 33 (English Mortgage), *post*, and see footnote thereto explaining the difference between the two].

hereinafter appearing and on having the repayment thereof with interest secured by the mortgage of the shares when purchased by the mortgagor.

2. The mortgagor has purchased _____ ordinary shares numbered _____ to _____ inclusive in _____ Company Limited and has transferred them to the mortgagee and delivered the same with transfer deed duly executed.

NOW THIS DEED WITNESSES and the parties hereto hereby agree as follows :

(1) *Covenant for Payment of Principal*

That the mortgagor will repay the aforesaid sum of Rs. _____ in _____ monthly instalments of Rs. _____ each payable on the _____ day of each month beginning from the _____ day of _____ next.

(2) *Covenant for Payment of Interest*

(a) That the mortgagor will pay interest on the sum of Rs. _____ or on so much thereof as shall remain unpaid at the rate of _____ percent per annum;

(b) That the whole amount of interest due hereunder on the date of each monthly instalment of the principal hereinbefore fixed shall be paid along with such instalment.

(3) *Costs*

That the mortgagor will on demand pay all reasonable costs incidental to this mortgage.

(4) *Transfer of Shares*

That the aforesaid transfer of the said shares has been made by the mortgagor to the mortgagee as a security for repayment of the said sum of Rs. _____ with interest and costs in the manner hereinbefore stated and on the express condition that upon payment of all sums due to the mortgagee hereunder the mortgagee will at the request and cost of the mortgagor re-transfer the said shares to the mortgagor or as the mortgagor shall direct.

(5) *Right of Sale to Mortgagee*

That whenever any money becomes payable hereunder and the same is not paid, it shall be lawful for the mortgagee to sell and transfer all or any of the shares hereby mortgaged without the consent of the mortgagor at

IV and V (*as in Form 3*).

IN WITNESS WHEREOF, etc.

24—Usufructuary Mortgage⁷—Profits Liquidating Interest only

THIS MORTGAGE made, etc., (*as in Form 3*).

WITNESSES as follows :

I. Mortgage Clause

In consideration of the sum of Rs. _____ borrowed by the mortgagor from the mortgagee (the receipt of which the mortgagor hereby acknowledges), the mortgagor hereby transfers by way of usufructuary mortgage to the mortgagee ALL that property described in the schedule hereto TO the intent that the said premises shall remain in possession of the mortgagee as security for the repayment to the mortgagee of the said sum of Rs. _____ in accordance with the provisions hereinafter contained.

II. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee as follows :

(i) *Covenant against Encumbrances*

The said property hereby mortgaged is free from encumbrances (except the encumbrances mentioned in the second schedule hereto);

(ii) *Appropriation of Income*

All the rents and profits of the mortgaged property collected by the mortgagee will after paying the Government revenue and cesses and other taxes assessed, imposed or charged on the said property and defraying the cost of collection and management and the costs, if any, incurred in any suit relating to the said property in the civil or revenue court, be appropriated by the mortgagee in lieu of interest on the said sum of Rs.

⁷ This is an 'anomalous mortgage' and takes effect both as a simple mortgage as well as a conditional sale, the remedy of the mortgagee being both sale as well as foreclosure.

of— (and the— day of—) within— years from this date (*or, on or before the— day of—*) then the transfer hereby made shall become an absolute sale in favour of the mortgagee].

2. The mortgagor hereby covenants with the mortgagee that the said property is free from encumbrances.

3. *Interpretation clause—(as in Form 3).*

IN WITNESS WHEREOF, etc.

23—Mortgage by Conditional Sale by Father of Joint Hindu Family, with a Personal Covenant to Pay⁶

THIS MORTGAGE is made (*as in Form 3*).

Recitals (as in Form 9).

NOW THIS DEED WITNESSES as follows:

I. (*as in Form 3*).

II. In further pursuance of the said agreement and for the consideration aforesaid the mortgagor hereby transfers to the mortgagee ALL that property described in the schedule (or, first schedule) hereto TO THE INTENT that the said premises shall remain and be charged as security in the manner hereinafter mentioned for the payment to the mortgagee of the principal money, interest and costs in accordance with the covenant hereinafter contained.

III. (*as in Form 3*) substituting for the words “may forthwith enforce and this deed shall be read, etc.,” at the end of (ii) the following words:

“may foreclose the mortgage hereby made and convert the same into an absolute sale in the mortgagee’s favour.” and add :

“(iii) If the mortgagor pays the principal and interest due hereunder on the date hereinbefore fixed the transfer hereby made shall become null and void (*or, the mortgagee shall re-transfer the said property to the mortgagor.*)”

⁶ This is a form suitable for a simple case. In cases of mortgages by father or manager of joint Hindu family, the recitals should be taken *mutatis mutandis* from Forms 9, 10, 11. In this form the mortgagee has no right to sue for the mortgage money.

II. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee as follows :

(1) *Covenant against Encumbrances.* (as in Form 24).

(2) *Covenant to Pay Interest*

Interest at the rate of _____ percent per annum shall be payable from the date hereof on the said sum of Rs. _____ or on so much thereof as shall for the time being remain unpaid on the _____ day of _____ and the _____ day of _____ in each year, and any interest not paid by the mortgagor on due date and not realized from the profits of the mortgaged property in the manner herein provided will be added to the principal and shall bear interest at the said rate and be payable on the half yearly dates aforesaid.

III. Mortgagee's Covenants

The mortgagee hereby covenants with the mortgagor as follows :

(1) *Appropriation of Income*

He will on entering into possession of the mortgaged property collect the rents and other moneys accruing due and payable upon the said property with all care and diligence and out of the rents and moneys thus collected will pay the Government revenue, cesses and taxes assessed, imposed and charged on the mortgaged property and defray the costs of collection and management (which shall in no case exceed _____ percent of the total rents to be collected) and the costs if any incurred in any suit relating to the said premises in a civil or revenue court and will apply the balance first in the reduction or payment of the interest due hereunder and then in the reduction or payment of the principal money hereby secured.

(2) *Payments by Mortgagor*

The mortgagor may at any time after five years from the date hereof pay to the mortgagee any sum of money not less than Rs. _____ on account of the moneys hereby secured and all sums so paid shall be applied first in reduction of the interest then due hereunder and then in reduction or payment of the principal.

(3) *Redemption*

On the principal moneys and interest hereby secured being paid off in the manner hereinbefore mentioned or otherwise, the mortgagee will

re-transfer the mortgaged property to the mortgagor and will put him in possession (provided that nothing herein contained shall entitle the mortgagor to be put in possession before the end of the *Fasli* year in which the said moneys and interest have been paid off).⁸

IV. *Parties' Covenants*—(as in clause IV (1) of Form 24).

V. *Interpretation clause*—(as in Form 3).

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

**26—Usufructuary Mortgage by a Hindu Widow⁹,
Reversioner Consenting
(Mortgage Money Left with Mortgagee
to pay off Old Debts)**

THIS MORTGAGE is made on the——day of——
BETWEEN AB, etc., (hereinafter called “the mortgagor”) of the first part,
AND EF, etc., (hereinafter called “the reversioner”) of the second part
AND CD, etc., (hereinafter called “the mortgagee”) of the third part.

WHEREAS—

Recital about Mortgagor's Estate

(1) XY, the deceased husband of the mortgagor was the owner of the property described in the schedule hereto; *

(2) The said XY who was a HINDU governed by the Mitakshara

⁸ Necessary if property is agricultural.

⁹ A Hindu widow who has not become absolute owner under section 14 of the Hindu Succession Act, 1956, can mortgage the property inherited by her only in case of legal necessity or for the benefit of her estate. This is so only if any property is acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award which prescribes only a restricted estate for her, vide section 14(2). When after her death a mortgage made by her is impeached by the reversioners the mortgagee can succeed only on proof of actual legal necessity or benefit to the estate or of the fact that he had made proper and *bona fide* inquiry as to the existence of such necessity. Consent of the next reversioner is not by itself sufficient to bind other reversioners but would be good evidence of the existence of a necessity justifying the mortgage. In a mortgage by her all circumstances showing the necessity for the mortgage should be recited, as in a mortgage by the manager of a joint family. If the next reversioner agrees he should be made party to the mortgage.

school of Hindu Law died leaving the mortgagor as his widow and legatee under a will dated—— which laid down that the mortgagor shall have in the property only a Hindu widow's estate as understood in Hindu Law prior to the enactment of the Hindu Succession Act and not full ownership;

(3) The said EF is the brother's son and is the present next reversioner of the said XY;

Necessity for the Mortgage

(4) The said XY was at the time of his death indebted to the several persons whose names with particulars of their debts are mentioned below:

- (a) GH, etc., for a loan taken on a bond dated—— at an interest of 15 percent per annum, total sum due till date being Rs. —;
- (b) JK, etc., for a loan taken on a simple mortgage deed dated — at an interest of 12 percent per annum, total sum due till date being Rs.——;
- (c) LM, etc., for a loan taken on a promissory note dated—— at an interest of 18 percent per annum, total sum due till date being Rs.——;
- (d) NP & Co. for Rs.——being the balance of the price of a motor car purchased by the said XY carrying interest at 12 percent per annum, total sum now due being Rs.

(5) The total annual income of the property left by the said XY is Rs.—— which is barely sufficient for the maintenance of the mortgagor and the burden of interest on the aforesaid debts is increasing day by day;

(6) A part of the residential house of the mortgagor has fallen during the recent rains and a sum of Rs.—— is needed for its repair and prevention of further damage;

Agreement for Loan

(7) The mortgagee has agreed to advance to the mortgagor a sum of Rs.—— to liquidate the aforesaid debts and to meet the expenses of the said repairs on the repayment thereof with interest at 9 percent per annum being secured by a usufructuary mortgage of the property described in the schedule hereto in the manner hereinafter appearing and on the said EF also consenting to the said mortgage;

Consent of Reversioner

(8) Having regard to the necessity for raising the said loan and to the

mortgagee or partly so liquidated and partly so paid the said property shall at the request and cost of the mortgagors be transferred to them, AND (SECONDLY) that if the said sum of Rs. -----with interest thereon shall not be liquidated in the manner herein provided or paid to the mortgagee within the aforesaid period of ten years the mortgagee may forthwith enforce against the said premises all or any of the remedies of the holder of a simple mortgage and these presents shall in that case be read and construed also as a simple mortgage as defined by the Transfer of Property Act, 1882.

F. Mortgagee's Covenant—

The mortgagee hereby covenants with the mortgagor as follows :

VI. Parties' Covenants—

It is hereby agreed between the parties as follows :

VII. Interpretation Clause (As in Form 9).

The Schedule herein referred to.

IN WITNESS WHEREOF, etc.

**28—Usufructuary Mortgage for a Fixed Term, on
Condition that the Principal and Interest
would be Satisfied by the Usufruct**

THIS MORTGAGE is made, etc., (*as in Form 3*).

WITNESSES as follows :

I. Mortgage Clause

(*As in Form 24*) with the addition of the words "for the term of----- years" before the parcels.

II. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee that the said property is free from encumbrances (except those mentioned in the second schedule hereto, to which this mortgage is subject).

III. Mortgagee's Covenants

It is hereby agreed as follows:

- (1) The mortgagee will collect the rents and profits of the mortgaged property and after paying the land revenue, cesses and other taxes assessed, imposed or charged on the said property and defraying the cost of collection and management and all other costs and expenses incurred by the mortgagee in suits in connection therewith appropriate the balance in liquidation of his aforesaid debt.
- (2) The expiry of———years from the date hereof, the whole of the aforesaid debt shall be deemed to have been fully paid off by the usufruct of the mortgaged property and the mortgagee will at the cost of the mortgagor re-transfer the said property to the mortgagor discharged from the aforesaid debt and all claims and demands in respect thereof.

IV. Parties' Covenants—(as in IV (1) in Form 24).

V. Interpretation clause (as in Form 3).

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

29—Usufructuary Mortgage of Leasehold Land and House¹¹

THIS MORTGAGE is made, etc., (as in Form 3).

Recitals—(as in Form 15).

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the aforesaid agreement and in consideration of

-
- ¹¹ Sometimes the landlord may execute a usufructuary mortgage in favour of the tenant, stipulating that the rent payable by the tenant was to be adjusted against the interest payable by the mortgagor. It has been held that in such cases the rights of the lessee and those of the mortgagee are not automatically merged, unless the deed specifically provides for relinquishment of his rights under lease. In the absence of such specific provision the redemption of the mortgage does not entitle the mortgagor to get possession, as the ex-mortgagee will continue to have rights as tenant : *Chambangi Applaswamy Naidu v. Behara*, (1984) 4 SCC 382; *Nand Lal v. Sukhdev*, 1987 (Supp) SCC 87.

the sum of Rs. ———— borrowed by the mortgagor from the mortgagee (the receipt of which is hereby acknowledged) the mortgagor hereby (i) assigns to the mortgagee ALL the said leasehold land described in the schedule hereto TO HOLD the same to the mortgagee for the unexpired residue of the term of the said lease, and (ii) transfers to the mortgagee ALL that house, garage, outhouses, stables and well standing on the said land and described in the schedule hereto TO HOLD the same to the mortgagee, in both cases as a usufructuary mortgagee in possession on the terms and conditions hereinafter mentioned.

(Rest as in Form 25).

30—Memo to Accompany Deposit of Title Deeds (to Secure a Loan, or Further Advances, or Current Account, or Money to be due in Business Transaction) (Requiring Registration)¹²

THIS MEMORANDUM made by me AB, etc., WITNESSES as follows:

The title deeds mentioned in the schedule hereto relating to the property fully described in the second schedule hereto have been delivered and deposited by me today to and with CD, etc., for securing the payment to him on the day of of the sum of Rs. ———— borrowed by me today with interest thereon at ———— percent per annum and (also, for the payment to him of any further sum that I may borrow from him from time to time with interest thereon at the aforesaid rate) (or, the payment to him of all such sums of money as are now due or shall from time to time or at any time be due to the said CD from me either on current account or for money advanced or paid or in respect of bills, drafts, or notes accepted paid or discounted, interest, commission or any other usual or lawful charges together with all cost and expenses which may be incurred in respect of the premises).

The schedule referred to herein, . . .

Dated the ————

Signed ————

¹² This is also popularly called Equitable Mortgage, though the Transfer of Property Act does not use that expression. See next two precedents in which the need for registration is obviated. (See also Preliminary Note, *ante*.)

31—Memo of Deposit of Title Deeds in Pursuance of an Equitable Mortgage already Effected (not Requiring Registration)

Modify the preceding precedent in the following manner:

1. Between the words "CD, etc.", and "for securing" add the words "in pursuance of oral agreement previously made with him."
2. Omit the words "at -----percent per annum" and "at the aforesaid rate."
3. After the words "payment to him" wherever they occur, add "in accordance with the aforesaid oral agreement."

32—Memorandum to Accompany Deposit of Title Deeds to Secure a Loan (Short Form which will not require Registration)¹³

I, AB, etc., hereby declare that, as agreed upon in person, I have this day deposited the title deeds specified in the sub-joined list with you to secure the repayment to you on demand (*or, on the -----*) of the sum of Rs. ----- already lent by you to me together with interest thereon (*or, to secure the repayment with interest of the sum of Rs. ----- borrowed by me from you this day on the execution of a promissory note*).

The list referred to hereinabove.

33—English Mortgage¹⁴

THIS MORTGAGE made, etc., (*as in Form 3*).

¹³ *V.G. Rao v. Andhra Bank*, A 1971 SC 1613 : (1971) 1 SCC 874 (para 17), relying on *Rachpal v. Bhagwan Das*, A 1950 SC 272 and other cases; *United Bank of India v. Lakharam & Co.*, A 1965 SC 1591; *Deb Dutt Seal v. Ramanlal*, (1969) 3 SCC 821 : A 1970 SC 659, relying on *United Bank of India*, *supra*

¹⁴ This form of mortgage is in vogue mainly in the three Presidency towns. It is apt to be confused with a mortgage by conditional sale. But there is a basic difference between the two. In an English mortgage there is an immediate transfer of ownership, and on repayment the property has to be reconveyed to the mortgagor. In a mortgage by conditional sale, on the other hand, there is a present transfer of interest in the property, and the ownership is transferred only subsequently on default in repayment of debt, thus on repayment no deed of reconveyance is necessary, only a release or receipt should suffice.

WITNESSES as follows :

I. Consideration

(as in Form 3).

II. Mortgage Clause

For the consideration aforesaid the mortgagor hereby transfers to the mortgagee ALL that property described in the schedule (first schedule) hereto belonging to the mortgagor TO HOLD the same to the mortgagee absolutely subject to the condition that if the said sum of Rs. _____ with interest shall be paid on the day hereinbefore mentioned in accordance with the covenant hereinbefore contained the said premises shall at the request and cost of the mortgagor be reconveyed to him.

III. Mortgagor's Covenant.

(1) The mortgagor hereby covenants with the mortgagee that the said premises are free from encumbrances (except those specified in the second schedule hereto subject to which this mortgage is made).

(2) Add, if necessary, a clause giving *power of sale* (as in clause 8 or 9 of the *General Forms of Covenants and Provisos* on pages 529 and 530 *ante*).

(3) Add, if necessary a clause for *appointment of receiver* (as in clause 10 or 11 of the *General Forms of Covenants and Provisos* on page 530 and 531 *ante*).

IV. Interpretation Clause— (as in Form 3)

34—English Mortgage of an Insurance Policy¹⁵

THIS MORTGAGE, etc., (as in Form 3).

WHEREAS the mortgagor is entitled to the policy of life insurance hereinafter described;

AND WHEREAS at the request of the mortgagor the mortgagee has agreed to lend him the sum of Rs. _____ upon having the repayment thereof with interest secured by a mortgage of the said policy in the manner hereinafter appearing.

¹⁵ Also see precedent No.7 and 8 under ASSIGNMENT OF ACTIONABLE CLAIMS *ante*, and also footnotes thereunder, and precedent No.49 *post*.

NOW THIS DEED WITNESSES as follows :

I. Covenant to Pay

In pursuance of the said agreement and (*as clause I of Form 3*).

II. Mortgage Clause

In further pursuance of the said agreement and for the consideration aforesaid the mortgagor hereby assigns to the mortgagee ALL that policy of assurance (hereinafter called the "said policy") effected with the Life Insurance Corporation dated the _____ day of _____ and numbered _____ whereby the life of the mortgagor is insured in the sum of Rs.-----and all moneys including bonuses accrued and to accrue hereafter which shall become payable under the said policy TO HOLD the same to the mortgagee absolutely subject to the condition that if the said sum of Rs. _____ with interest shall be paid on the day hereinbefore mentioned in accordance with the covenant hereinbefore contained the said policy shall at the request and cost of the mortgagor be re-assigned to him.

III. Mortgagor's Covenants

The mortgagor hereby covenants with the mortgagee as follows :

(i) Covenant to Pay Premia

That he will duly pay the premia and other moneys payable for keeping up the said policy or any substituted policy in force and produce the receipts for the same to the mortgagee on demand and will not do or suffer anything whereby the said policy may become voidable or void;

(ii) Covenant to Renew Void Policy

That if any such policy is or shall become voidable or void the borrower will immediately at his own cost do all things necessary for restoring or renewing the same and will deliver any substituted policy to the mortgagee and such substituted policy and the moneys to become payable under the same shall be subject to the covenant hereinbefore contained in the same manner and to the same extent as the policy hereby mortgaged and the moneys to become payable thereunder;

(iii) Mortgagee's Right in Case of Default

That in case of default on the part of the mortgagor in the performance

of any of the above covenants the mortgagee may at the cost of the mortgagor do what is necessary to make good such default, and all costs and expenses incurred in so doing with interest at _____ percent per annum from the date they are incurred to that of payment by the mortgagor shall be charged on the said policy or renewed policy.

IV. Interpretation clause (as in Form 3).

IN WITNESS WHEREOF, etc.

35—Mortgage of Share in a Partnership Business

THIS MORTGAGE is made, etc., *(as in Form 3)*.

WHEREAS—

(1) The mortgagor and certain other persons are carrying on in partnership the business of manufacture of ice and running of Cold Storage at Hapur in the District of Ghaziabad under the firm name of Indian Cold Storage and the said partnership has been formed under a deed of partnership dated the _____ on the terms and conditions mentioned therein.

(2) The mortgagor is indebted to the mortgagee in the sum of Rs.5,000 under a bond dated _____ ;

(3) The mortgagor has requested the mortgagee to lend to him the further sum of Rs.10,000 to enable him to bring an additional capital of Rs.10,000 into the said partnership business which the mortgagee has agreed to do on having the repayment of the said sum of Rs.5,000 so owing to him as aforesaid as well as the said sum of Rs.10,000 to be advanced by him with interest secured in the manner hereinafter appearing.

NOW THIS DEED made in pursuance of the said agreement and in consideration of the sum of Rs.5,000 so owing to the mortgagee as aforesaid and of the sum of Rs.10,000 now paid by the mortgagee to the mortgagor (the receipt of which the mortgagor hereby acknowledges) WITNESSES as follows:

The mortgagor covenants with the mortgagee as follows :

1. *Covenant about payment of Rs.15,000 with interest [as in 1 (1) and (2) of Form 3].*

2. The mortgagor hereby assigns to the mortgagee ALL his interest in the capital of the said partnership business of Indian Cold Storage

including the sum of Rs. 7,000 now standing to the credit of the mortgagor in the books of the said partnership business, the said sum of Rs. 10,000 so to be brought in by him as an additional capital as aforesaid and all such further moneys as from time to time hereafter be brought into the said partnership business by the mortgagor whether by accumulation of profits or otherwise AND all the interest due or to accrue due in respect of such capital AND all the share and interest of the mortgagor in all and every one of the debts, property and effects of every description, present as well as future, payable or belonging to the said partnership TO HOLD to the mortgagee absolutely subject to redemption on payment of the said sum of Rs. 15,000 with interest on the day hereinbefore mentioned in accordance with the covenants hereinbefore contained.

3. The mortgagee hereby covenants with the mortgagor that upon payment by the mortgagor of all sums due to the mortgagee hereunder in the manner hereinbefore stipulated the mortgagee shall, at the request and cost of the mortgagor, re-assign the mortgaged share to the mortgagor.

4. The mortgagor hereby covenants with the mortgagee that he will at all times during the continuance of this security give to the mortgagee all such information as to business and assets of the said partnership firm of Indian Cold Storage as he shall reasonably require and as it shall be lawful for the mortgagor to give and also if all the partners in the said firm shall consent will allow the mortgagee to inspect the partnership books and to make copies and extracts from them.¹⁶

IN WITNESS WHEREOF, etc.

36—Sub-Mortgage (Simple Mortgage of Usufructuary Mortgage)¹⁷

THIS MORTGAGE, etc., (as in Form 3)

¹⁶ Consent of other partners is necessary because a mortgagee of a partner's interest is not entitled to interfere in the conduct of the business or to require accounts, or to inspect the books of the firm: Section 29 of the Partnership Act.

¹⁷ Sub-mortgage means a mortgage of the mortgagee rights. The sub-mortgagee acquires all the rights and remedies of the original mortgagee who cannot exercise those rights so long as the sub mortgage subsists. The sub mortgagee can enforce the original mortgage against the original mortgagor, the original mortgagee remaining only in the position of a surety.

WHEREAS

By a deed of usufructuary mortgage dated the -----XY, etc., owner of the property described in the schedule hereto mortgaged the same to the mortgagor for Rs. ----- and agreed *inter alia* that the usufruct of the said property should be taken by the mortgagor in lieu of interest on the said sum of Rs. ----- and that the mortgage should be redeemable at any time after ----- years on payment of the said sum of Rs. ----- ;

The mortgagor has since been in possession of the said property and the said principal sum of Rs. ----- is still due to him on the said mortgage;

The mortgagee has agreed to lend to the mortgagor a sum of Rs. ----- upon having the repayment thereof with interest secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSES as follows :

I. Covenant to Pay

In pursuance of the aforesaid agreement and in consideration of the sum of Rs. ----- advanced by the mortgagee (the receipt of which the mortgagor hereby acknowledges) the mortgagor hereby covenants, etc., [as in Form 3 clause 1 (1) & (2)].

II. Sub - Mortgage

In further pursuance of the aforesaid agreement and for the consideration aforesaid the mortgagor hereby assigns to the mortgagee ALL that debt secured by the aforesaid deed of usufructuary mortgage and all the rights, remedies and securities expressly or impliedly contained in or conferred upon the mortgagor by the aforesaid deed of usufructuary mortgage TO THE INTENT, etc.,

(Rest as in Form 3).

37— Sub-Mortgage (Usufructuary Mortgage of Usufructuary Mortgage)

Commencement and recitals— (as in Form 36).

NOW THIS DEED WITNESSES as follows :

I. In pursuance of the aforesaid agreement and in consideration of the sum of Rs. ----- advanced by the mortgagee (the receipt of which the mortgagor hereby acknowledges) the mortgagor hereby (i) assigns to

the mortgagee ALL that debt secured by the aforesaid deed of usufructuary mortgage and all the rights, remedies and securities expressly or impliedly contained in or conferred upon the mortgagor by the aforesaid deed of usufructuary mortgage TO HOLD the same to the mortgagee subject to the right of redemption hereinafter provided, and (ii) transfers to the mortgagee ALL that property comprised in the aforesaid deed of usufructuary mortgage TO HOLD the same to the mortgagee as usufructuary mortgage on the terms and conditions hereinafter contained and subject to such right of redemption as subsists by virtue of the aforesaid deed of usufructuary mortgage and to the right of redemption by the mortgagor hereinafter provided.

II. *Covenants as in Form 25 or any other covenants agreed upon.*

38—Agreement of Pledge of Movables

MEMORANDUM OF AGREEMENT made the -----
— day of ----- BETWEEN AB, etc., (hereinafter called “the borrower”) of the one part AND CD, etc., (hereinafter called “the lender”) of the other part.

WHEREBY IT IS AGREED as follows:

1. *Pledge Clause*

The lender has lent the sum of Rs. ----- (the receipt of which the borrower hereby acknowledges) and the borrower has delivered to the lender the articles belonging to the borrower and specified in the schedule hereto (*or*, the goods specified in the schedule hereto stored in the godown at ----- the key of which has been handed over by the borrower in token of such delivery) by way of pledge for securing the payment on or before the ----- day of -----.

(a) *Loan*

The said loan of Rs. ----- ;

(b) *Interest*

Interest thereon from this date at the rate of ----- percent
per annum, compoundable half yearly on the ----- and the
----- in each year;

- (c) *Expenses of Warehousing*
The expenses of warehousing the said goods;
- (d) *Expenses of Repairs*
The expenses of keeping the said articles in a good state of repair and in proper working order.¹⁸
- (e) *Other Costs*
All other costs, charges and expenses (if any) which the lender may be entitled by law to add to his security.

2. *Covenant to Pay*

In consideration of the said loan the borrower hereby personally promises to repay the said several items specified in the last preceding clause;

3. *Lender's Liability for Losses*

The lender shall not be liable to the borrower for any involuntary losses which may occur during his custody of the said articles (goods) or by reason of the sale thereof.

4. *Power of Sale*

(a) The power of sale conferred by law on the lender shall be exercisable by public auction or private contract in respect of the entire articles (goods) in one lot or in several lots at the discretion of the lender;

(b) Before exercising such power of sale as aforesaid the lender shall give at least one month's notice to the borrower.¹⁹

IN WITNESS WHEREOF, etc.

39—Agreement of Pledge of Movable, of a Printing Press (Another Form)

THIS DEED made, etc., (as in Form 38).

WITNESSES as follows:

¹⁸ As may be applicable.

¹⁹ In the absence of such a contract, the borrower is entitled to a reasonable notice under section 176, Contract Act. It is better to make a definite contract to avoid disputes as to what is a "reasonable" notice.

1. Covenant to Pay

In consideration of the loan of Rs.----- advanced by the lender to the borrower, the borrower hereby covenants with the lender that he will repay the said loan on or before-----, with interest at----- percent per annum from the date hereof in half yearly payments on the----- and the----- in each year and interest at the rate and payable on the dates aforesaid.

2. Pledge Clause

For the consideration aforesaid the borrower hereby delivers to the lender by way of pledge as defined in section 172 of the Indian Contract Act, 1872, ALL that Printing Press and other connected movable property set forth in the schedule hereto to be held by him as security for the repayment of the aforesaid loan with interest in the manner herein provided.

3. Borrower Permitted to use the Pledged Article

The lender hereby permits the borrower to use the said property and the borrower hereby covenants that during the continuance of this security so long as he will use the said property he will at his own expense maintain and keep the same in substantial order and repair, and will from time to time during the continuance of this security replace all such of the plant, engines, machinery, type, utensils and implements of trade set forth in the schedule hereto as may from decay, destruction or other cause become useless or unsuitable for the purpose for which they were intended with new substitutes or proper plant, engines, machinery, type, utensils and implements respectively so that the work of the printing press hereby pledged continues to be carried on as efficiently as it is carried on now.

4. Insurance

Provision for insurance [as clause III (3 to 5) of Form 17.]

5. Addition to be Included in Security

The borrower hereby covenants that all plants, engines, machinery, type, utensils and implements of trade which shall at any time during the continuance of this security be brought upon and used in the said printing press shall become included in this security and be subject to the powers and covenants herein contained.

6. *Right of Pawnee*

The borrower further covenants with the lender that in case any interest payable hereunder is not paid within 30 days after the due date, the whole sum hereby secured shall become payable at once, and in case of default in the payment of the whole sum becoming so payable or in the payment of the principal money hereby secured with interest thereon on the date aforesaid or in the performance of any of the covenants by the borrower hereinbefore contained the lender may enforce all or any of the remedies of a pawnee provided by law provided that in case of sale of any part of the pledged property a previous notice of two months shall be given to the borrower.

7. *Interpretation clause (as in Form 3).*

The schedule herein referred to.

IN WITNESS WHEREOF etc.

40—**Reconveyance (Mortgagee Foregoing His Claim to Arrears of Rent)**²⁰

THIS RECONVEYANCE is made on the _____ day of _____ BETWEEN AB, etc., (hereinafter called "the mortgagee") of the one part AND CD, etc., (hereinafter called "the mortgagor") of the other part.

WHEREAS the mortgagor usufructually mortgaged in favour of XY deceased husband of the mortgagee the property described in the schedule hereto by a mortgage deed dated the _____ for a sum of Rs. _____

AND WHEREAS the said XY has died and the mortgagee being his widow and the sole heir has agreed to accept the sum of Rs. _____ only in full discharge of all her claims under the aforesaid mortgage deed and also to forego her claim to the amount of the arrears of rent which the mortgagor is under the terms of the aforesaid mortgage deed bound to pay to the mortgagee at the time of redemption.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. _____ paid by the mortgagor (the receipt of which the mortgagee hereby acknowledges) the mortgagee

²⁰ Such reconveyance can be effected also by an endorsement on the mortgage deed itself (see page 30, *ante*)

hereby reconveys to the mortgagor ALL the said mortgaged property described in the schedule hereto TO HOLD the same to the mortgagor forever freed and absolutely discharged from all principal moneys and interest secured by the said deed of mortgage dated the --- --- and all claims and demands on account thereof.

2. The mortgagee hereby covenants with the mortgagor that she or her deceased husband XY has not done or knowingly suffered or been party or privy to any act, deed or thing whereby the said property or any part thereof is, can, or may be encumbered.

3. For the consideration aforesaid the mortgagee hereby assigns to the mortgagor all the arrears of rent of the mortgaged property particulars of which are detailed in the second schedule hereto.

4. *Interpretation clause* (as in Form 3).

The schedule herein referred to.

IN WITNESS, etc.

41—Release of Part of the Mortgaged Property in Favour of a Purchaser from the Mortgagee (Mortgagor joining)¹

THIS RELEASE is made on the --- day of --- BETWEEN AB, etc., (hereinafter called "the mortgagee") of the first part AND EF, etc., (hereinafter called "the mortgagor") of the second part AND CD, etc., of the third part.

WHEREAS by a deed of mortgage dated the --- the mortgagor mortgaged to the mortgagee ALL that property described in the schedule hereto together with other property belonging to him to secure a loan of Rs. --- with interest;

AND WHEREAS the mortgagor has by a deed of sale dated the --- sold the property described in the schedule hereto to the said CD;

AND WHEREAS at the request of the mortgagor the mortgagee has agreed to release the said property from his security on the said CD paying to the mortgagee the sum of Rs. --- in part payment of the debt due to him on the aforesaid deed of mortgage.

¹ In such cases it is safer to join the mortgagor to avoid future dispute about apportionment of the mortgage debt on the remaining property.

NOW THIS DEED WITNESSES as follows:

1. In pursuance of the said agreement and in consideration of the sum of Rs. ----- paid by the said CD to the mortgagee (the receipt of which the mortgagee hereby acknowledges and which the mortgagee will credit to the debt payable to him under the aforesaid deed of mortgage) the mortgagee hereby assigns and releases to the said CD ALL that property described in the schedule hereto TO HOLD the same to the said CD absolutely freed and discharged from the aforesaid deed of mortgage and from all moneys secured thereby and all claims and demands in respect thereof.

2. It is hereby declared that nothing herein contained shall prejudicially affect the security of the mortgagee under the aforesaid deed of mortgage upon the remaining property for the balance of the debt now payable and interest hereinafter to accrue due.

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

42—Agreement Reducing Rate of Interest and Extending Time of Payment

AN AGREEMENT made on the ----- day of ----- BETWEEN AB, etc., (hereinafter called "the mortgagor") of the one part AND CD, etc., (hereinafter called "the mortgagee") of the other part.

WHEREAS by a deed of mortgage dated the ----- to which this deed is supplemental (and which is hereinafter called "the Principal Deed") the mortgagor mortgaged the property therein specified to secure a loan of Rs. ----- and agreed to repay the same with interest at 12 percent per annum within ten years.

AND WHEREAS owing to a general fall in the rate of interest, the parties have agreed to reduce the rate of interest stipulated in the Principal Deed to 9 percent per annum compoundable annually instead of half yearly as therein provided, and also to extend the time of payment by another two years.

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree as follows :

(1) With effect from the ——— the interest payable under the Principal Deed shall run at the rate of 9 percent per annum; instead of 12 percent per annum as therein provided, and shall be compoundable yearly instead of half yearly as therein provided.

(2) The principal and interest secured by the Principal Deed shall be payable within twelve years of the date of the Principal Deed instead of within ten years as therein provided.

(3) Save as varied as aforesaid, all the conditions and covenants of the Principal Deed shall remain in full force and effect.

IN WITNESS WHEREOF, etc.

43—Agreement Extending Time of Payment, Mortgagor Agreeing to Pay Higher Rate of Interest

AN AGREEMENT made on the ———, etc.

WHEREAS by a deed of mortgage dated ——— the mortgagor mortgaged certain property specified therein in favour of the mortgagee for a sum of Rs. ——— payable within fifteen years of the date of the said deed of mortgage, and bearing interest at five percent per annum;

AND WHEREAS the mortgagor finding it difficult to liquidate the said debt of Rs. ——— within the aforesaid period of fifteen years requested the mortgagee to extend the time of payment by two years. *i.e.* up to the ——— in consideration of the mortgagor paying interest at the rate of six percent per annum instead of five percent per annum as provided in the aforesaid deed of mortgage dated the ——— and the mortgagee has agreed to do the same.

NOW THESE PRESENTS WITNESS as follows :

1. In consideration of the mortgagor paying interest at the rate of six percent per annum from and after the date of these presents the mortgagee hereby extends the time for payment of the said loan secured by the aforesaid deed of mortgage dated ——— from the ——— to the ———.

2. In consideration of the extension of time granted as aforesaid the mortgagor hereby agrees to pay interest on the said loan secured by the

aforesaid mortgage deed at the rate of six percent per annum from the date of these presents instead of five percent per annum as mentioned in the aforesaid mortgage deed.

3. It is hereby agreed and declared that save and except so far as the same is expressly varied by these presents the aforesaid mortgage deed dated the _____ and everything contained therein shall remain in full force and effect.

IN WITNESS WHEREOF, etc.

44—Charge Clause

After providing for an agreement to pay money in the appropriate deed relating to any transaction, add the following clause—

“The _____ hereby declares that the property described in the schedule hereto shall henceforth be a security for and be charged with the payment of the said sum (annuity) of Rs. _____ hereinbefore agreed to be paid.”

Or

“To secure the payment of the money (annuity) hereinbefore agreed to be paid, the _____ hereby charges the land described in the schedule hereto.”

45—Deed of Further Charge (With Variation for Security for Future Advances)

THIS DEED OF FURTHER CHARGE is made, etc., (*as in Form 3*).

(1) By a deed of mortgage dated the _____ day of _____ the mortgagor mortgaged by way of simple mortgage to the mortgagee the property described in the schedule hereto to secure a loan of Rs. _____ with interest at the rate and on the conditions mentioned in the said deed of mortgage.

(2) The said sum of Rs. _____ still remains due to the mortgagee on the aforesaid deed of mortgage but all interest thereon has been paid up to date (*or*, the sum of Rs. _____ is now due on account of principal and interest on the aforesaid deed of mortgage).

(3) The mortgagee has agreed to lend to the mortgagor a further sum of Rs. — upon the same security and on the terms hereinafter expressed.

(4) It has also been agreed between the parties hereto that security should at the same time be given for any future advances the mortgagee may make to the mortgagor up to the limit of Rs. —.

NOW THIS DEED WITNESSES as follows :

1. In pursuance of the said agreement and in consideration of the sum of Rs. — advanced by the mortgagee (the receipt of which the mortgagor hereby acknowledges) the mortgagor hereby covenants, etc. (*Covenant to Pay - as in clause 1 of Form 3 on page 537*).

2. The mortgagor hereby declares that all the property comprised in the aforesaid deed of mortgage shall henceforth be a security for and be charged with the payment of the said sum of Rs. — now lent with interest due hereunder (and all such further sums of money not exceeding in the aggregate the sum of Rs. — as may be hereafter lent by the mortgagee to the mortgagor with interest thereon) as well as the payment of the sums secured by the aforesaid deed of mortgage (and that no part of the said property shall be redeemable until both the said sums have been fully paid to the lender).²

3. All the powers, provisions and covenants contained or implied in the aforesaid deed of mortgage in relation to the moneys secured thereby shall be applicable to the said sum of Rs. — hereby secured and the interest thereon (and also to all such further sums as may be advanced under the covenant hereinbefore contained with interest thereon) and to this security as fully as if the same had been herein set out and specifically made applicable thereto.

IN WITNESS, etc.

46—Memorandum of Further Charge Endorsed on the Mortgage Deed

I, the within named AB hereby charge the within mortgaged property with the payment of the further sum of Rs. — this day advanced to me by the within-named CD with interest thereon at the rate of

2 Necessary in case of English mortgage or mortgage by conditional sale.

percent per annum AND I declare that all the covenants, powers, and provisions contained in the within-written deed shall operate and take effect in like manner for securing payment of the moneys hereby secured as if the same moneys had formed part of the moneys secured by the within-written mortgage.

IN WITNESS WHEREOF I the said AB have signed this endorsement on the _____ day of _____.

47—Further Charge on a Usufructuary Mortgage (when Interest Stipulated)

THIS DEED, etc. (as in Form 3).

WHEREAS—

(1) By a deed of mortgage dated _____ the mortgagor has mortgaged by way of usufructuary mortgage the property described in the schedule thereto for Rs. _____ on condition that he will appropriate the usufruct of the said property in lieu of interest on the said sums.

(2) The mortgagee has agreed to lend to the mortgagor a further sum of Rs. _____ upon the same security and on the terms hereinafter expressed.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. _____ now borrowed by the mortgagor from the mortgagee (the receipt of which is hereby acknowledged) the mortgagor hereby covenants with the mortgagee that he will pay the said sum with interest thereon at _____ percent per annum at the time of redemption of the usufructuary mortgage hereinbefore mentioned.

2. The mortgagor hereby declares that all the property comprised in the aforesaid usufructuary mortgage shall henceforth be a security for and be charged with the payment of the said sum of Rs. _____ and interest due hereunder as well.

3. It is hereby agreed that the said usufructuary mortgage shall not be redeemed without payment of the moneys due hereunder along with the mortgage money due under the said usufructuary mortgage.

IN WITNESS, etc.

48—Further Charge on a Usufructuary Mortgage (when no Interest is Agreed to be Paid on the Further Advance)

THIS DEED, etc., (as in Form 3).

WHEREAS

(1) (as in Form 47)

(2) The mortgagee has agreed to lend to the mortgagor a further sum of Rs. ——— on the security of the aforesaid mortgage and on condition that the usufruct of mortgaged property shall be deemed to liquidate the interest on the said sum of Rs. ——— also.

NOW THIS DEED WITNESSES as follows :

1. In consideration of the sum of Rs. ——— now advanced by the mortgagee to the mortgagor, the mortgagor declares that the said sum of Rs. ——— shall be a further charge on the property comprised in the aforesaid usufructuary mortgage, and shall be added to the principal sum secured by the aforesaid mortgage so that the said mortgage shall not be redeemed without payment of the total sum of Rs. ———.

2. It is hereby agreed that the mortgagee shall appropriate the usufruct of the said mortgaged property as well in lieu of interest on the sum now lent by him as on the sum secured by the aforesaid deed of usufructuary mortgage and that no further interest shall be payable on the sum now lent by him.

IN WITNESS, etc.

49—Memo Creating a Charge on Life Policy to Secure a Loan taken from an Insurance Co.³

To,

The _____ Co.

I, AB, etc., hereby declare and agree that you have this day advanced to me the sum of Rs. ——— on account of the sum insured by the Policy No. ——— dated ——— and that the said sum has been advanced on compound interest at ——— percent per annum payable every year on the ——— with annual rests on the condition that any

³ Also see precedent No.34 *ante*.

sum on account of principal and interest remaining unpaid on the date on which the sum insured by the said policy become payable may be deducted from the said sum insured AND I hereby charge all moneys to become payable under the said policy with the payment of the principal and interest due on account of the said loan under the terms aforesaid AND I further agree that any sum which may hereafter be added as bonus or profits to the said policy shall remain as an addition to the sum insured until all sums due to you on this security shall have been fully paid and satisfied.

50—Memorandum Creating a Charge on Property to Secure a Current or Cash Credit Account with a Bank

To

The _____ Bank.

I, AB, etc., hereby charge my interest in the property described in the schedule hereto (*or*, in the deeds mentioned below which I have deposited with you) with the payment to you, on demand, of the balance which on my current cash credit account with you shall for the time being be in respect of bills, notes or drafts, accepted, paid or discounted or advances made to me or for my use or accomodation and for interest, commission or other usual banker's charges or otherwise, together with interest on the said balance from the date of such demand being made or left till the date of payment at the rate of _____ percent per annum.

Dated _____

(Sd.)AB

The schedule referred to above

* * * * *

**51—Deed of Appointment of Receiver by Mortgagee
(Section 69A, Transfer of Property Act)
(if Receiver named in the Mortgage Deed)**

THIS DEED OF APPOINTMENT is made by me AB, etc., on the day of _____

WHEREAS by a deed of mortgage dated the _____ day of _____ and made between CD, etc., of the one part AND me, of the other part, the said CD mortgaged to me the property described in the schedule hereto.

AND WHEREAS XY, etc., was named in the aforesaid mortgage deed as the person to be appointed a receiver of the income of the mortgaged property and the said XY has signified his willingness and is able to act as such receiver.

AND WHEREAS the mortgage money due under the aforesaid mortgage deed has not yet been fully paid and a large sum is still owing to me thereunder.

NOW THIS DEED WITNESSES that in exercise of the power conferred on me in that behalf by law (*or*, by the terms of the said mortgage deed) and of every other power vested in me in that behalf I hereby appoint the said XY to be the receiver of the property described in the schedule hereto with all the powers of a receiver appointed under and by virtue of Sec. 69A of the Transfer of Property Act, 1882 and with all the rights, duties and obligations and remuneration as are therein mentioned (*or, if Transfer of Property Act does not apply*, "under the terms of the aforesaid mortgage deed").

IN WITNESS WHEREOF, etc.

52—Deed of Appointment of Receiver by Mortgagee (if Receiver is not Named in the Mortgage Deed)

THIS DEED is made on the——day of——BETWEEN AB, etc., (mortgagor) of the first part, CD, etc., (mortgagee) of the second part AND XY, etc., (receiver) of the third part.

WHEREAS (*recite the mortgage and the power of sale that is given therein*).

AND WHEREAS the mortgagee considers it expedient to appoint a receiver of the mortgaged property and the mortgagor has consented to the appointment of the said XY as such receiver.

NOW THIS DEED WITNESSES that the mortgagee with the consent and concurrence of the mortgagor hereby appoints the said XY as receiver of the property mentioned in the said mortgage deed with the following powers and duties :

etc.,

etc.,

etc.,

53—Deed of Hypothecation of Construction Plant

THIS DEED made on this --- day of --- 20--- BETWEEN AB, etc., (hereinafter called "the Contractor" which expression shall unless the context otherwise requires include its successors and assigns) of the one part AND the Governor of the State of----- (hereinafter called "the Government" which expression shall unless the context otherwise requires include his successors and assigns) of the other part.

Recitals

WHEREAS the parties hereto entered into an agreement No.— (hereinafter called the Principal Agreement) for the construction of—.

AND WHEREAS under clause----- of the Principal Agreement, the Contractor has applied to the Government for an interest free loan of Rs.----- as advance for the construction of the plant and for the equipment described in the Schedule hereto specifically acquired by the Contractor for the works and brought to site.

AND WHEREAS one of the conditions on which the said loan of Rs.----- is to be granted by the Government to the contractor is that the Contractor shall hypothecate the plant and equipment described in the Schedule hereto in favour of the Government until such time as the work under the Principal Agreement is completed and accepted by the Government.

AND WHEREAS the Contractor has represented that he is the owner of the plant and equipment described in the schedule hereto.

NOW THIS INDENTURE WITNESSES as follows :—

1. Hypothecation

In pursuance of the said Principal Agreement and in consideration of the premises the Contractor hereby hypothecates, assigns and transfers to the Government the plant and equipment described in the schedule hereto to the intent that the same shall remain and form security for repayment to the Government of the said loan of Rs.-----.

2. Contractor's Covenants

The Contractor hereby agrees, declares and covenants with the Government as follows :—

(a) *Repayment*

The Contractor shall repay to the Government the said loan of Rs. ———— and agrees that the said loan be recovered by the Government by making deductions in the manner provided in clause ———— of the Principal Agreement and other conditions of the Principal Agreement from the claims made by the Contractor against the Government for “on account” payment.

(b) *Absolute Owner*

The Contractor has paid in full the purchase price of the plant and equipment described in the Schedule hereto and each and every one of them and that the same are the absolute property of the Contractor and that the same have not been sold, pledged, mortgaged or transferred or in any way dealt with by the Contractor.

(c) *Not to Transfer*

So long as the plant and equipment described in the Schedule hereto remain assigned and hypothecated to the Government, the Contractor shall not sell, pledge, hypothecate, transfer, part with or in any way deal with the plant and equipment described in the Schedule hereto.

(d) *Default*

If the said loan of Rs. ———— shall not be repaid by the Contractor or recovered in the manner described in clause ———— of the Principal Agreement due to any reason whatsoever or the said Principal Agreement has been determined earlier or cancelled or if the Contractor shall sell, pledge, mortgage, transfer, part with or in any way deal with the said plant and equipment or any part thereof or shall remove the same or any part thereof without the written permission of the Engineer-in-charge, or the Contractor or any of its partners is adjudged insolvent [or liquidation or winding up proceedings (*applicable in case the contractor is a Company*) are apprehended or commenced against the Contractor Company] or makes any composition or arrangement with its creditors or the Contractor shall commit breach of any of the terms and conditions or covenants as herein contained or in any of the said plant and

equipment or if any other property whatsoever belonging to the Contractor has been sold or attached for a period of not less than 21 days in execution of the decree of any Court for payment of money, or if the Contractor abandons the said work the whole of the said loan of Rs. ——— or such part thereof as may have remained unpaid or unrecovered shall forthwith become due and payable.

(e) *Sale of Plant and Equipment*

The Government may on the happening of any of the events mentioned in the preceding sub-clause(d) or if the said loan or any part thereof becomes due and payable and the same has not been repaid or recovered or cannot be recovered as provided in the said conditions, seize and take possession of the said plant and equipment (and either remain in possession thereof without removing the same or else may remove the same) and sell the said plant and equipment or any of them either by public auction or private contract and may, out of the sale proceeds, retain the balance of the said loan then remaining unpaid and unrecovered and all costs, charges and expenses and payments incurred or made in maintaining, defending or protecting the rights of the Government hereunder and shall pay over the surplus, if any, to the Contractor.

(f) *Insurance*

The Contractor shall at all times during the continuance of the security and at his expense insure and keep insured the plant and equipment described in the Schedule hereto for the full value thereof in the joint names of the Contractor and the Government with an insurance company against the risk of loss or damage from whatever cause as provided in the Principal Agreement. During the continuance of the security the Contractor shall pay all premia and sums of money necessary for keeping such insurance in force and the insurance policy and receipts in original for premia paid shall be deposited with the Engineer-in-charge. The Contractor shall assign all his rights, title and interest in the policy to the Government.

(g) *Prevent Damage*

The Contractor shall not permit or suffer the said plant and equipment or any part thereof to be destroyed or damaged or used or to be used or to deteriorate in a greater degree than it would deteriorate by reasonable wear and tear thereof in the performance of the Principal Agreement.

(h) *Replacment*

In the event of any damage or loss happening to the said plant and equipment or any part thereof the Contractor shall forthwith have the same repaired or replaced as the case may be or arrange for the payment of the entire amount recovered or to be recovered from the insurance company to the Government towards the payment of the said loan of Rs.———.

(i) *Recovery of Loan*

If the sale proceeds realised under sub-clause (c) above or the insurance money recovered shall not be sufficient to repay the entire outstanding amount of the loan or if the said hypothecated property or any part thereof shall be removed or the Government shall be precluded from seizing the same whether by destruction, theft or otherwise, the Government shall be at liberty to recover the amounts due as arrears of land revenue.⁴

3. Upon repayment or recovery in full of the amount secured on account of this hypothecation deed and on completion of the work under the contract mentioned above and its acceptance by the Government, the said plant and equipment, (unless the Government has exercised its right to take over the plant and equipment for the construction of the said works at thirty percent of its original cost as per provisions of the Principal Agreement), shall stand released from the hypothecation but this is without prejudice to the right of the Government under any other conditions of the Principal Agreement

4 Such a clause will be legally effective only if there is statutory backing for it, such as that contained in section 3(1) (d), U.P. Public Moneys (Recovery of Dues) Act, 1972.

The schedule referred to above :

Sl. No.	Particulars of plant & equipment	No.	Purchase price/ price considered reasonable by Engineer-in-charge	Total	Advance price
1	2	3	4	5	6

IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year first above written.

54—Deed Creating Floating Charge

THIS DEED made on the _____ day of _____ BETWEEN AB, etc., of the one part AND CD, etc., of the other part;

WITNESSES as follows :—

1. In consideration of the sum of Rs. _____ advanced by CD to AB (receipt of which AB hereby acknowledges), AB hereby covenants with CD as follows:

(a) *Repayment*

That AB will pay to CD the said sum of Rs. _____ together with interest at _____ percent per annum in seven instalments of Rs. _____ each of principal with interest on the outstanding sum up-to-date on the _____ day of _____ in each year, the first of such payments to be made on the _____ day of _____.

(b) *Utilization*

That AB shall utilise the aforesaid sum of Rs. _____ for _____ alone and shall not utilise it for any other purpose whatsoever.

(c) *Earlier Repayment*

That notwithstanding the stipulation regarding payment of annual instalments and interest contained in sub-clause (a) above,

AB may repay the whole amount of the loan or a portion thereof or interest thereon at any time before the date on which the loan or any instalment thereof or its interest falls due for payment.

PROVIDED ALWAYS that if there shall be a breach on the part of AB of any of the terms of this deed or any instalment or interest is in arrears for three months after the due date or if there is a reasonable apprehension that AB is unable to pay his debts or that (applicable in case of a company) liquidation or winding up proceedings may be commenced against AB, CD may, notwithstanding anything to the contrary said in this deed, order AB to repay in full forthwith the outstanding amount of the loan and interest.

2. Floating Charge

For the consideration aforesaid and in pursuance of the said agreement AB hereby assigns to CD by way of floating charge **ALL THAT** the property of AB, fully described together with approximate value in the Schedule hereto and such other assets as may be created from the said loan **TO HOLD** the same upto CD absolutely subject only to the proviso for redemption hereinafter contained.

3. Free from Encumbrances

That the property hereby charged is free from encumbrances and AB will at all times during the continuance of this deed maintain and keep in good state of repairs and in proper working order the said property.

4. Discharge

That if AB shall pay to CD the said principal sum with interest thereon in accordance with the covenants hereinbefore contained, CD will at the request and cost of AB duly discharge their security.

5. When Charge becomes Fixed

That the said floating charge will become fixed and immediately enforceable upon the happening of any of the following events :

- (a) If AB having received in writing notice under the proviso to clause 1 aforesaid to pay all principal money with interest, makes default in payment of the same.

(b) If AB, being a company, goes into liquidation except for the purpose of reconstruction or amalgamation.

6. *Insurance clause.*

7. *Arbitration clause.*

8. *Interpretation clause.*

The schedule herein referred to.

IN WITNESS WHEREOF etc.