

FORM No.4

Form of Mortgage Deed to be executed when the Property is Leasehold

[Rule 5 (a)]

The indenture made this _____ day of _____ two thousand and between Shri/Smt/Km/Dr. _____ son of _____ of _____ at _____ present employed as _____ in the O/o DC(MSME), Ministry of Micro Small & Medium Enterprises, Govt. of India at _____ (hereinafter called 'THE MORTGAGOR' which expression shall unless excluded by or repugnant to the subject or context include his/her heirs, executors, administrators and assigns) of the ONE PART and THE PRESIDENT OF INDIA (hereinafter called "THE MORTGAGEE" which expression shall unless excluded by or repugnant to the subject or context include his successors in office and assigns) of the OTHER PART.

¹WHEREAS by a lease, dated and made between. the Lessor. demised to the Mortgagor the property situated at and more particularly described in the Schedule hereunder written for a term of.....years commencing from at the yearly/monthly rent of Rs. and subject to the performance and observance of the covenants and conditions therein mentioned.

AND WHEREAS the MORTGAGOR applied to the MORTGAGEE, for an advance of Rs. _____ (Rupees _____ only) for the purpose of enabling the MORTGAGOR.

¹(1) to purchase land and ¹to construct a house *thereon* or ¹(to enlarge living accommodation in the existing house on the said hereditaments).

¹
(2) to construct a house on the said hereditaments, or ¹(to enlarge living accommodation in the house on the said hereditaments). ¹ (3) to purchase a ready-built aforesaid house.

AND WHEREAS the Mortgagee agreed to advance to the Mortgagor the said sum of Rs. _____ (insert full amount) *vide* the Ministry/Office Letter No No. G26029/ /200, dated _____, a copy of which is annexed to these presents for the purpose aforesaid on the terms and conditions set forth therein, etc.

AND WHEREAS one of the conditions for the aforesaid advance is that, the Mortgagor should secure the repayment of the said advance and on observance of all the terms and conditions contained in the "Rules to regulate the grant of advances to Central Government servants *for* building, etc., of houses" issued by the Government of India, Ministry of Works, Housing and Supply with their O.M. No. H-II-27 (5)/54, dated the 12th April, 1956 (hereinafter referred to as the "said Rules" which expression shall, where the context so admits include any amendment thereof or addition thereto *for* the time being in force) by a mortgage of the property described in the schedule hereunder written.

AND WHEREAS THE MORTGAGEE

¹ In the case of sub-lease title holders, this para. is to be revised as per order, dated the 15th September, 1969, reproduced below Rule 9.

² (1) has sanctioned to the MORTGAGOR an advance of Rs. (Rupees

_____ only) payable by such instalments and in the manner as hereinafter appearing.

¹(2) has paid to the MORTGAGOR an advance of Rs. _____ (Rupees _____ only) on _____ and in the manner provided in the said Rules upon having the repayment of the loan with interest and observance of all the terms and conditions contained in the said Rules as hereinafter mentioned secured in the manner hereinafter appearing.

AND WHEREAS THE MORTGAGOR is to receive from the Mortgagee the aforesaid advance in the following instalments:

³Rs. _____ already received on _____ ¹ Rs. _____ on the execution of this indenture by the Mortgagor in favour of the Mortgagee.

¹ Rs. _____ when the construction of the house reaches plinth level.

¹Rs. _____ when the construction of the house reaches roof level, provided the Mortgagee is satisfied that the development of the area in which the house is built is complete in respect of amenities such as water supply, street lighting, roads, drainage and sewerage.

² AND WHEREAS the Lessor of the said premises has given his approval for the mortgage on the condition that if the property be sold under the powers herein contained, or otherwise he will be paid first, after the cost of such sale, his share of the unearned increase as provided in the said lease.

NOW THIS INDENTURE WITNESSETH as follows:

(i) (a) In pursuance of the said Rules and in consideration of the said advance sanctioned/paid by the MORTGAGEE to the MORTGAGOR pursuant to the provisions contained in the said Rules, the MORTGAGOR DOETH hereby covenant with the MORTGAGEE that the Mortgagor shall always duly observe and perform all the terms and conditions of the said Rules and shall repay to the MORTGAGEE the said advance of Rs. (Rupees _____ only) ⁴ by monthly instalments of Rs. (Rupees _____) from the pay of the Mortgagor commencing from the month of Two thousand and or from the month following completion of the house, which ever is earlier and the Mortgagor hereby authorizes the Mortgagee to make deduction from his monthly pay/leave salary/subsistence allowance of the amount of such instalments and the Mortgagor shall after paying the full amount of the advance also pay interest due thereon in ⁵ _____ monthly installments in the manner and on the terms specified in the said Rules. Provided that the Mortgagor shall repay the entire advance with interest in full before the date in which he/she is due to retire from service, failing which the Mortgagee shall be entitled to enforce this security of the mortgage at any

² In the case of sub-lease title holders, this para. is to be revised as per order, dated the 15th September, 1969, reproduced below Rule 9.

³ The language will be modified if the mode of payment..of advance is different from what is prescribed in Rule 5.

⁴ This will not be more than 180.

⁵ This will not be more than 60.

time thereafter and recover the balance of the advance then due together with interest and costs of recovery by sale of the mortgaged property or in such other manner as may be permissible under the law. It will, however, be open to the Mortgagor to repay the amount in a shorter period.

(i) (b) In pursuance of the said Rules and in consideration of the said advance sanctioned/paid by the MORTGAGEE to the MORTGAGOR pursuant to provisions contained in the said Rules, the

MORTGAGOR DOTH hereby covenant with the MORTGAGEE that the Mortgagor shall always duly observe and perform all the terms and conditions of the said Rules and shall repay to the MORTGAGEE the said advance of Rs. _____ (Rupees _____ only) by monthly installments of Rs. from the pay of the Mortgagor commencing from the month of 20____, or from the month following the completion of the house, whichever is earlier, till the date of his superannuation and the balance then remaining outstanding on his superannuation together with the interest on the amount advanced from the date of the advance to the date of repayment from his Gratuity /Death-cum-Retirement Gratuity and the Mortgagor hereby authorizes the Mortgagee to make deductions from his monthly pay/leave salary/subsistence allowance of the amount of such instalments and from his Gratuity/Death-cum-Retirement Gratuity of such of the balances remaining unpaid at the date of his death/retirement/superannuation as hereinbefore mentioned, failing which the Mortgagee shall be entitled to enforce the security of the mortgage at any time thereafter and recover the balance of the advance then due together with interest and costs of recovery by sale of the mortgaged property or in such other manner as may be permissible under the law. It will, however, be open to the Mortgagor to repay the amount in a short period.

NOTE.-*Delete* Clause (i) (a) or (i) (b), whichever is inapplicable.

(ii) If the MORTGAGOR shall utilize the advance for a purpose other than that for which the advance is sanctioned, or if the MORTGAGOR shall become insolvent or shall cease to be in service for any reason other than normal retirement/superannuation or if he/she dies before payment of the advance in full, or if the MORTGAGOR shall fail to observe or perform any of the terms, conditions and stipulations specified in the said Rules and on his/her part to be observed and performed then and in any such case the whole of the principal amount of the advance or so much thereof as shall then remain due and unpaid shall become payable forthwith to the MORTGAGEE with interest thereof at ⁶ per cent, per annum calculated from the date of the payment by the MORTGAGEE of the first instalment of the said advance. Notwithstanding anything contained herein, if the Mortgagor utilizes the advance for a purpose other than that for which the advance is sanctioned, it shall be open to the Mortgagee to take such disciplinary action against the Mortgagor as may be appropriate under the rules of service applicable to the Mortgagor.

(iii) In further pursuance of the said Rules and for the consideration aforesaid and to secure repayment of the aforesaid advance and interest as shall at any time or times hereinafter be due to the Mortgagee under the terms of these presents, the Mortgagor doth hereby grant, convey, transfer or assure unto the Mortgagee, ALL AND SINGULAR the said property comprised in the said Lease, dated and more particularly described in the Schedule hereunder written together with buildings erected or to be erected by the Mortgagor on the said property (hereinafter referred to as the Mortgaged property) or materials for the time being thereon with all rights, easements and appurtenances to the said Mortgaged property or any of them belonging subject to covenants by the lessee and to the conditions therein contained to HOLD the same unto the Mortgagee absolutely but,

⁶ Normal rate of interest to be charged under the Rules.

subject to the terms and covenants of the said lease and subject nevertheless to the proviso for redemption hereinafter contained PROVIDED ALWAYS AND it is hereby agreed and declared by and between the parties hereto that if the MORTGAGOR shall duly pay to the MORTGAGEE the said principal sum and interest hereby secured in the manner herein provided and also the other moneys (if any) determined to be payable by the MORTGAGOR to the MORTGAGEE under the terms and conditions of the said Rules, then the Mortgagee will at any time thereafter upon the request and at the cost of the MORTGAGOR recovery, retransfer and reassure the said Mortgaged property unto and to the use of the Mortgagor or as he may direct.

(iv) AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that if there shall be any breach by the MORTGAGOR of the covenants on his/her part herein contained or if the MORTGAGOR shall become insolvent or shall cease to be in service for any reason other than normal retirement, superannuation or if he/she dies before all the dues payable to the Mortgagee under these presents together with interest

thereon shall have been fully paid off or if the said advance or any part thereof becomes payable forthwith under these presents or otherwise then and in any of such cases it shall be lawful for the MORTGAGEE TO SELL without the intervention of the Court, the said Mortgaged property or any part thereof either together or in parcels and either by public auction or by private contract with power to buy in or rescind any contract for sale and to resell without being responsible for any loss which may be occasioned thereby and to do and execute all such acts and assurances for effectuating any such sale as the MORTGAGEE shall think fit and IT IS HEREBY declared that the receipt of the MORTGAGEE for the purchase money of the premises sold or any part thereof shall effectually discharge the purchaser or purchasers therefrom AND IT IS HEREBY declared that the MORTGAGEE shall hold the moneys to arise from any sale in pursuance of the aforesaid power UPON TRUST in the first place thereout to pay all the expenses incurred on such sale ⁷ [and in the next place to pay to the Lessor of the mortgaged property 50 per cent of the unearned increase pursuant to Clause of the said lease] and then to pay moneys in or towards the satisfaction of the moneys for the time being owing on the security of these presents and the balance, if any to be paid to the Mortgagor.

⁸ (V) In the event of the sale or foreclosure of the mortgaged or charged property, the Lessor (President of India) shall be entitled to claim and recover fifty per cent of the unearned increase in the value of the residential plot as aforesaid and the amount of the Lessor's share of the said unearned increases shall be the first charge, having priority over the said mortgage or charge. The decision of the Lessor in respect of the market value of the said residential plot shall be final and binding on all parties concerned, provided that the Lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty per cent of the unearned increase as aforesaid.

(vi) The MORTGAGOR hereby covenants with the MORTGAGEE as follows:

(a) That the Mortgagor now hath in himself/herself good right and lawful authority to grant, convey, transfer, assign and assure the MORTGAGED property unto and to the use of MORTGAGEE in manner aforesaid.

⁹ (b) That the Mortgagor shall carry out the construction of the house/additions to living

⁷ In case of Nazullands in Delhi and in similar cases, wherever applicable.

⁸ In the case of plots purchased from Delhi Development Authority only. *vide* a.M. No. I/17011/3/81-H-III, dated the 5th September, 1981.

⁹ *Clauses (b) and (c) are not applicable when the advance is for the purchase of ready-built house.*

accommodation in the aforesaid house exactly in accordance with the approved plan and specifications on the basis of which the above advance has been computed and sanctioned unless a departure therefrom is permitted by the Mortgagee. The Mortgagor shall certify, when applying for instalments of advance admissible at the plinth/roof level, that the construction is being carried out in accordance with the plan and estimates furnished by him to the Mortgagee, that the construction has reached plinth/roof level and that the amount already drawn out of the sanctioned advance has actually been used on the construction of the house. He/She will allow the Mortgagee to carry out either by himself, or through his representative an inspection to verify, the correctness of the aforesaid certificate. If a false certificate is furnished by the Mortgagor, he/she will be liable to pay to the Mortgagee forthwith the entire advance received by her/him together with interest thereon at ¹⁰ per cent per annum and further will also be liable to appropriate disciplinary action under the rules of service applicable to the Mortgagor.

¹¹ (c) That the Mortgagor shall complete the construction of the house/additions to living accommodation in the aforesaid house within eighteen months of ¹² unless an extension of time

is allowed in writing by the Mortgagee. In case of default, the Mortgagor shall be liable to repay forthwith the entire amount advanced to him together with interest calculated under the said Rules, in one lumpsum. The Mortgagor shall report to the Mortgagee the date of completion of the house and furnish a certificate to the Mortgagee that the full amount of the advance has been utilized for the purpose for which it was sanctioned.

(d) That the MORTGAGOR shall immediately insure the house at his own cost, with the Life Insurance Corporation of India for a sum not less than the amount of the aforesaid advance and shall keep it so insured against loss or damage by fire, flood and lightning as provided in the said Rules till the advance is fully repaid to the Mortgagee and deposit the policy of insurance with the Mortgagee. The Mortgagor shall pay regularly the premium in respect of the said insurance from time to time and will when required produce to the MORTGAGEE the premium receipts for inspection. In the event of failure on the part of the MORTGAGOR to effect the insurance against fire, flood and lightning, it shall be lawful but not obligatory for the MORTGAGEE to insure the said house at the cost of the MORTGAGOR and add the amount of the premium to the outstanding amount of the advance and the MORTGAGOR shall thereupon be liable to pay interest thereon as if the amount of the premium had been advanced to him as part of the aforesaid advance of _____ till the amount is repaid to the Mortgagee or is recovered as if it were an amount covered by the security of these presents. The Mortgagor shall give a letter to the Mortgagee as often as required addressed to the Insurer, with which the house is insured with a view to enable the Mortgagee to notify to the Insurer the fact that the Mortgagee is interested in the insurance policy secured.

(e) That the Mortgagor shall maintain the aforesaid house in good repair at his own cost and shall pay all the Municipal and other local rates, taxes and all other outgoing in respect of the mortgaged property regularly, until the advance has been repaid to the Mortgagee in full. The Mortgagor shall also furnish to the Mortgagee an annual certificate to the above effect.

¹⁰ Normal rate of interest to be charged under the Rules.

¹¹ Clauses (b) and (c) are not applicable when the advance is for the purchase of ready-built house.

¹² Here mention the date on which the first instalment of the advance is paid to the Mortgagor.

(f) The Mortgagor shall afford full facility to the Mortgagee for carrying out inspections after completion of the house to ensure that it is maintained in good repair until the advance has been repaid in full.

(g) The Mortgagor shall refund to the Mortgagee any amount together with interest, if any, due thereon drawn on account of the advance in excess of the expenditure incurred, for which the advance was sanctioned.

(h) That the said lease, dated, is now valid and subsisting lease of the said Mortgaged property and are in nowise void or voidable and the rents and the covenants and conditions in and by the indenture of Lease referred have been paid, performed and observed up to the date of these presents and that the same is assignable in the manner hereinbefore stated.

(i) That the MORTGAGOR will so long as any money shall remain owing on security of the said Mortgaged property hereinbefore expressed to. be hereby assigned and in any case for the period of the said agreement, duly observe all the covenants by the Lease and conditions contained in the said Indenture of Lease referred to in the Schedule hereunder written and keep the Mortgagee indemnified against all actions, suits, proceedings, costs, charges, claims and demands which will be incurred or sustained by reason of the nonpayment of the said rent or the breach, non-performance or non-observance of the said covenants and conditions or any of them.

(j) That the Mortgagor shall not during the continuance of these presents charge, encumber, alien or otherwise dispose of the Mortgaged property, However, if the Mortgagor covenants to create a second mortgage in favour of any other financial institution, he shall not do so without obtaining the prior permission of the mortgage and on the consent being given, the draft of the second mortgage will be submitted to the Mortgagee for approval:

Provided, always that in the event of the Mortgagor creating a second mortgage on the same premises only by deposit of title deeds in favour of a financial institution including HDFC or a Bank, the Mortgagee may, at the written request of the Mortgagor and the financial institution concerned to this Mortgagee, hand over such documents of title to the said premises as are in possession of this Mortgagee, to the said financial institution for the sole purpose of creating the said proposed second mortgage.

It is a strict condition that before the said documents of title are handed over by the Mortgagee to the said financial institution as hereinbefore provided, that the said financial institution and the Mortgagor shall assure and undertake to the Mortgagee in writing in such form as may be determined by this Mortgagee that

(i) the said documents of title shall be held and retained by the financial institution concerned only as a second Mortgage subject and subordinate to the rights of this Mortgagee hereunder;

(ii) the said financial institution shall not at any time or for any reason part with such title deeds without written consent of this Mortgagee first had and obtained and on such conditions as may be imposed by this Mortgagee at its discretion.

(iii) after at any time, the said financial institution ceases to be second Mortgagee of the said premises, the said financial institution shall be obliged to return the said title deeds to this Mortgagee only whether or not any demand in this behalf is made by this Mortgagee;

(iv) the said financial institution shall produce or cause to be produced the said title deeds as and when required by this Mortgagee for any reason whatsoever regardless of whether the said proposed second mortgage due to be in existence or otherwise discharged; this will be in the understanding that as soon as the purpose is served, the same shall be returned by the Mortgagee to the financial institution, to be dispensed subject to these conditions;

(v) nothing in these provisions shall be construed to create any financial or other obligations or liabilities in this Mortgagee *vis-a-vis* the said financial institution or shall in any manner alter, abridge or abrogate the rights of this Mortgagee hereunder, who shall always be and continue to be the paramount Mortgagee.

(k) Notwithstanding anything contained herein, the Mortgagee shall be entitled to recover the balance of the advance with interest remaining unpaid at the time of his retirement or death preceding retirement from the whole or any specified part of the gratuity that may be sanctioned to the Mortgagor.

SCHEDULE ABOVE REFERRED TO (To be filled in by Mortgagor)

IN WITNESS WHEREOF THE MORTGAGOR has hereunto set his hand and Shri _____, _____ Director in the **O/o DC(MSME), Ministry of Micro, Small & Medium Enterprises, Govt. of India** for and on behalf of the President of India has hereunto set his hand.

Signed by the said Mortgagor(_____)

In the presence of

1st witness :

Address :

Occupation :

2nd

witness :

Address :

Occupation :

Signed by Shri _____, _____ Director in the **O/o DC(MSME),
Minitry of Micro,Small & Medium Enterprises, Govt. of India** for and on behalf and by order
and direction of the President of India.

In the presence of

1st witness : Address : Occupation :

2nd witness : Address : Occupation :