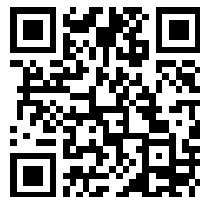

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LEGAL AND BUSINESS FORMS

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(OTHER THAN COURT FORMS AND FORMS PECULIAR TO
CORPORATIONS)

INCLUDING FORMS OF

DEEDS, WILLS, MORTGAGES, LEASES, BILLS OF
SALE, PLEDGES, COLLATERAL SECURITIES,
CHattel MORTGAGES, ACKNOWLEDG-
MENTS, RELEASES, POWERS OF
ATTORNEY, BONDS, BUILDING
CONTRACTS, AND OTHER
INSTRUMENTS

WITH EXPLANATIONS AND NOTES

BY
FRANCIS B. TIFFANY

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KANSAS CITY, MO.
VERNON LAW BOOK COMPANY

1915

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PREFACE

THE object of this volume is to provide a collection of practical forms relating to conveyances, contracts, wills, and other instruments which a lawyer in general practice may have occasion to prepare. Forms relating to the formation and management of corporations, and with some exceptions to matters which are peculiar to the business of corporations, court forms, and forms relating to proceedings before officers, are not included.

The forms are grouped in chapters under titles which indicate the general subject to which they relate. For example, contracts and agreements are distributed under various titles, such as Building Agreements, Party Walls, Sale and Purchase of Land, Sale of Goods, etc. Each chapter is preceded by a note defining its subject-matter. The chapters on Acknowledgments, Chattel Mortgages, Deeds, and Wills contain synopses of such of the related statutory provisions of the several states as it may be desirable for the draftsman to have in mind. The statutory provisions for deeds are generally applicable to real estate mortgages and, where necessary, are supplemented in the chapter on Real Estate Mortgages by further reference to the statutes. Where forms are provided by statute, they have been included.

The longer forms are divided into short numbered paragraphs, each preceded by catchwords in brackets indicating its scope, thus enabling the draftsman to see at a glance what matters are covered by the particular form, and to select and discard according to his needs. The parentheses in the body of the forms indicate that the words included between them are either alternative or may be describable as additional. Except in the case of the more stereotyped forms, like deeds, a form or precedent can seldom be used as a whole, but serves

rather by way of suggestion of matters which it may be desirable to cover, and as a repository from which the draftsman may draw, and a number of forms relating to one subject may thus contribute to the desired end. The catchwords also co-operate with the index. They will, of course, be omitted by the draftsman.

Many forms have been drawn from the Encyclopedia of Forms and Precedents, in seventeen volumes, London, Butterworth & Co. To the publishers of this work the editor desires to express his indebtedness and his thanks for permission to draw therefrom. Where these forms have been followed, care has been taken to make such changes as may be demanded by differing rules of law and business usages prevailing in this country. The standard forms of building contract and of the related documents of the American Institute of Architects are included by permission of the Institute and of the publisher, E. G. Soltman.

ST. PAUL, July 30, 1915.

F. B. T.

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(v)†

FORM BOOK

CHAPTER I

ACKNOWLEDGMENTS

Acknowledgment is a proceeding provided by statute whereby a person who has executed an instrument declares it to be his act before a competent officer, who certifies thereto, and the term is also used to designate the certificate itself. The usual effect of an acknowledgment is to entitle the instrument to be received in evidence without further proof of execution, and, in case of a deed of land or other instrument proper for record, to entitle it to be recorded. Under some statutes proof of execution made by a subscribing witness before a competent officer, who certifies thereto, is given the effect of an acknowledgment. Usually an acknowledgment is not essential to the validity of an instrument, even of instruments which must be acknowledged before record, but by some statutes an acknowledgment is made essential, more particularly in cases of conveyances by married women and conveyances of homestead. When a deed is executed without the state where the land lies, the requirements of acknowledgment of that state must of course be complied with.

The requirements of the different states differ in respect to: (1) Who must acknowledge, usually all the grantors being required to acknowledge, while in a few states acknowledgment by one is sufficient; (2) the officers who may take acknowledgments; (3) the form of the certificate; and (4) the authentication of the official character of the officer. As a rule, the certificate may be upon a separate paper attached to the instrument, but in some states it must be written upon the instrument itself.

Usually the certificate of acknowledgment should state or contain: (1) The venue; (2) the date; (3) the official char-

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acter of the person taking the acknowledgment, which may generally be stated either in the body of the instrument or in the subscription; (4) the fact that the person executing the instrument appeared before the officer and acknowledged it to be his free act and deed; (5) the signature of the officer; and (6) his seal, if any. Other formal requirements which may be prescribed, such as a requirement that it be stated that the person appearing was personally known to the officer, that such person was proved on satisfactory evidence to be the person who executed the instrument, that the grantor was informed of the contents of the instrument, etc., should be exactly followed, although substantial compliance is ordinarily sufficient. Under some statutes, an acknowledgment by a married woman being essential to the validity of the instrument, the certificate must affirmatively show that all the statutory requirements have been complied with.

The requirement of the different states in respect to acknowledgment and the statutory or customary forms are given in this chapter. The requirements in respect to the execution of conveyances are given under the title of Deeds. Post, p. 466.

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I

Forms Recommended by Commissioners on Uniform State Laws

In view of the diversity of the law in the different states, the Commissioners of Uniform State Laws in 1892 adopted a draft of an act relating to acknowledgments, and recommended it for adoption in all the states and territories. The forms of acknowledgment recommended have been substantially adopted in Hawaii, Iowa, Massachusetts, Michigan, Minnesota, Missouri, and New Mexico, and the form of authentication has been adopted in several of those states.

The proposed act provides as follows:

Section 1. Either the forms of acknowledgment now in use in this state, or the following, may be used in the case of conveyances or other written instruments, whenever such acknowledgment is required or authorized by law for any purpose:

1. Forms of Acknowledgment

(Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.)

(1. *In the case of natural persons acting in their¹ own right:*)

On this —— day of ——, 19——, before me personally appeared A. B. (*or*, A. B. and C. D.), to me known to be the

¹ Several of the states which have adopted these forms require that, if husband and wife join in the instrument, they be described as such in the certificate of acknowledgment.

person (*or*, persons) described in and who executed the foregoing instrument, and acknowledged that he (*or*, they) executed the same as his (*or*, their) free act and deed.

(2. *In the case of natural persons acting by attorney:*)

On this ——— day of ———, 19—, before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

(3. *In the case of corporations or joint-stock associations:*)

On this ——— day of ———, 19—, before me appeared A. B., to me personally known, who, being by me duly sworn (*or*, affirmed), did say that he is the president (*or*, other officer or agent of the corporation or association) of (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or*, association), and that said instrument was signed and sealed in behalf of said corporation (*or*, association) by authority of its board of directors (*or*, trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (*or*, association).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [*or*, association], and that," and add at the end of the affidavit clause the words "and that said corporation [*or*, association] has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

The recommended act further provides as follows:

Sec. 2. The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband.

Sec. 3. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this state, and within any other state, territory or district of the United States, may be

made before any officer of such state, territory or district authorized by the laws thereof to take proof and acknowledgment of deeds, and when so taken and certified as herein provided, shall be entitled to be recorded in this state and may be read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments and whose authority so to do is not intended to be hereby affected.

Sec. 4. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section to be read in evidence and recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory or the certificate of the clerk of a court of record of such state, territory or district, in the county in which said officer resides, or in which he took such proof or acknowledgment, under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take acknowledgments and proofs of deeds of lands in said state, territory or district, and that said secretary of state, or clerk of court, is well acquainted with the handwriting of such officer, and that he verily believes that the signature attached to such certificate of proof or acknowledgment is genuine.

Sec. 5. The following form of authentication of the proof or acknowledgment of a deed or other written instrument when taken without this state and within any other state, territory or district of the United States, or any form substantially in compliance with the foregoing provisions of this act, may be used.

2. Form of Authentication

(Begin with a caption specifying the state, territory, or district and county or place where the authentication is made.)

I, ———, clerk of the ——— in and for said county, which court is a court of record, having a seal (*or*, I, ———, the secretary of state of such state or territory), do hereby certify that ———, by and before whom the foregoing acknowledgment (*or*, proof) was taken, was at the time of taking the same

a notary public (*or other officer*) residing (*or, authorized to act*) in said county, and was duly authorized by the laws of said state (territory *or* district) to take and certify acknowledgments or proofs of deeds of land in said state (territory *or* district), and, further, that I am well acquainted with the handwriting of said ———, and that I verily believe that the signature to said certificate of acknowledgment (*or, proof*) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (*or, state*) this ——— day of ———, 19—.

Sec. 6. The proof or acknowledgment of any deed or other instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without the United States may be made before any officer now authorized thereto by the laws of this state, or before any minister, consul, vice consul, chargé d'affaires, consular or commercial agent, vice consular or vice commercial agent, of the United States, resident in any foreign country or port, and when certified by him under his seal of office it shall be entitled to be recorded in any county of this state and may be read in evidence in any court of this state, in the same manner and with like effect as if duly proved or acknowledged within this state.

II

Statutory Provisions and Forms and Other Forms in Use in the States

ALABAMA

In General

Acknowledgment dispenses with the necessity of witnesses. Civ. Code 1907, § 3357. Other provisions with respect to conveyances, post, p. 514.

Before Whom Taken

Within state: Acknowledgments and proofs of conveyances may be taken by judges and clerks of the supreme and cir-

cuit courts, chancellors, registers in chancery, judges of the courts of probate, justices of the peace, and notaries public. Ibid. § 3358.

Elsewhere within United States: By judges and clerks of any federal court, judges and clerks of any court of record in any state, notaries public, or commissioners appointed by the Governor of Alabama. Ibid. § 3359.

Without United States: By the judge of any court of record, mayor, or chief magistrate of any city, town, borough, or county, notaries public, or by any diplomatic, consular, or commercial agent of the United States. Ibid. § 3359.

Forms

The following forms are given by statute. The form of the wife's separate and apart acknowledgment of homestead is sufficient to relinquish or pass her dower right. Ibid. § 3818.

General Form of Acknowledgment

THE STATE OF ———, }
 County. }

I (*name and style of the officer*) hereby certify that ———, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand, this ——— day of ———, A. D. ———.

A. B., Judge, etc. (*or as the case may be*).

Ibid. § 3361.

Acknowledgment for Corporation

THE STATE OF ALABAMA, }
 County. }

I, ———, a ——— in and for said county in said state, hereby certify that ———, whose name as ——— of the ———, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day

that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this _____ day of _____, 19—.

Ibid. § 3361.

Proof by Subscribing Witness

THE STATE OF _____, }
_____ County. }

I (*name and style of the officer*) hereby certify that _____, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and, being sworn, stated that _____, the grantor, voluntarily executed the same in his presence, and in the presence of other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor, and of the other witness; and that such other witness subscribed his name as a witness in his presence. Given under my hand this _____ day of _____, A. D. _____.

A. B., Judge, etc. (*or as the case may be*).

Ibid. § 3362.

Acknowledgment by Wife in Conveyance of Husband's Homestead

STATE OF ALABAMA, }
_____ County. }

I, _____, judge of _____ (*or other officer, as the case may be*), do hereby certify that on the _____ day of _____, 19—, came before me the within-named _____, known to me (*or, made known to me*) to be the wife of the within-named _____, who, being examined separate and apart from the husband touching her signature to the within _____, acknowl-

edged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of the husband. In witness whereof I hereto set my hand this ——— day of ———, 19—.

———, Judge (*or other officer, as the case may be*).

Ibid. § 4161.

ALASKA

Other provisions with respect to conveyances, post, 517.

Execution and Acknowledgment of Deeds

Within district: Deeds executed within the district of lands therein must be executed in the presence of two witnesses, who shall subscribe their names as such; and the persons executing may acknowledge the execution before any judge, clerk of the district court, notary public, or commissioner within the district, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment and the true date of making the same under his hand. Civ. Code, § 82.

Elsewhere within United States: A deed executed in any state, territory, or district of the United States may be executed according to the laws thereof, and the execution may be acknowledged before any judge of a court of record, justice of the peace, or notary public or other officer authorized by the laws thereof to take the acknowledgment of deeds therein, or before any commissioner appointed for such purpose. Ibid. § 83. Unless the acknowledgment be before a commissioner appointed for that purpose, or a notary public certified under his notarial seal, or the clerk of a court of record certified under the seal of the court, such deeds shall have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory, or district. Ibid. § 84.

Without United States: A deed executed in a foreign country may be executed according to the laws of such country,

and the execution may be acknowledged before any notary public therein, or any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, or consul of the United States, appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same under his hand; and, if taken before a notary public, his seal of office shall be affixed to such certificate. Ibid. § 85.

The officer must know or have satisfactory evidence that the person making the acknowledgment is the individual described in and who executed the conveyance. Ibid. § 88.

Acknowledgment by Married Woman

When a married woman residing in the district joins with her husband in a deed of conveyance she must acknowledge that she executed such deed freely and voluntarily. Ibid. § 86. When a married woman not residing in the district joins with her husband, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole. Ibid. § 87.

Proof of Execution by Subscribing Witnesses

Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgment of deeds by a subscribing witness, who shall state his own place of residence, and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such witness or has satisfactory evidence that he is such. Ibid. § 89.

Form

No forms of acknowledgment are prescribed. Those recommended by the Commissioners on Uniform Laws (ante, p. 6) would doubtless be sufficient.

ARIZONA

Before Whom Taken

Within state: Clerks of a court having a seal; notaries public; county recorders; and justices of the peace. Civ. Code, Rev. St. 1913, par. 2070.

Elsewhere within United States: A clerk of some court of record having a seal; a commissioner of deeds duly appointed under the laws of Arizona; or a notary public. Ibid. par. 2071.

Without United States: A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the acknowledgment is made; a consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States, resident in the country where the acknowledgment is made; or a notary public. Ibid. par. 2072.

Form

The acknowledgment of an instrument for the purpose of being recorded shall be made as follows: (1) If by a natural person or persons, by such person or persons appearing before some officer authorized to take such acknowledgment, and stating that he or they executed the same for the purpose and consideration therein expressed. (2) If by an executor, administrator, guardian, trustee, or other person acting in a representative capacity, by such person appearing before such officer, and stating that he, as such executor (or in such other representative capacity), executed the same for the purpose and consideration therein expressed. (3) If by a sheriff, deputy sheriff, commissioner or other person acting in an official capacity, by such person appearing before such officer and stating that he, as such sheriff (or in such other official capacity), executed the same for the purpose and consideration therein expressed. (4) If by a person acting under a power of attorney, by such person appearing before such officer and stating that he, as attorney in fact for his principal, executed such instrument for the purpose and consideration therein expressed. (5) If by corporation, by the authorized officer or officers of such corporation appearing before such officer, stating that he or they executed such instrument on behalf of such corporation, for the purpose and consideration therein expressed. Ibid. par. 2073.

No acknowledgment shall be taken unless the officer knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who executed and is described in the instrument. Ibid. par. 2074.

An officer taking an acknowledgment must place thereon his official certificate, signed by him and given under his seal of office substantially in form as hereinafter described. Ibid. par. 2075.

The acknowledgment of a married woman may be in the same form as if she were sole, and without examination separate and apart from her husband, and no separate certificate of acknowledgment is required. Ibid. par. 2069.

The form of an ordinary certificate of acknowledgment shall be substantially as follows:

Ordinary Acknowledgment

STATE OF ARIZONA, }
County of ———. } ss.

This instrument was acknowledged before me this —— day of ——, 19——, by (*if by a natural person or persons here insert name or names; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney in fact, or other capacity; if by an officer or officers of a corporation, then insert name or names of such officer or officers as the president or other officer of such corporation, naming it*).

A——— B———,

Notary Public (*or other officer*).

Ibid. par. 2076.

ARKANSAS

Before Whom Taken, Etc.

The proof or acknowledgment of every deed or instrument of writing for the conveyance of any real estate shall be taken by some one of the following courts or officers:

Within the state: Before the Supreme Court, the circuit

court, or either of the judges thereof, or the clerk of any court of record, or before any justice of the peace or notary public.

Elsewhere within or in any of the colonies or possessions or dependencies of the United States: Before any court of the United States, or of any state or territory, or Indian Territory, or colony, possession, or dependency, having a seal, or the clerk of any such court, or any notary public, or mayor or chief officer of any incorporated city or town having a seal, or commissioner appointed by the Governor of Arkansas.

Without United States: Before a United States consul, or court of any state, kingdom, or empire having a seal, or mayor or chief officer of any city or town having an official seal, or any officer of any foreign country who by its laws is authorized to take probate of the conveyance of real estate of his own country, if he has an official seal.

Kirby's Dig. 1904, § 743.

Forms

The following forms are prescribed. Ibid. pp. 1672, 1673. See, also, Ibid. §§ 741, 747-751, 3901. They must, of course, be varied where the acknowledgment is before an officer other than a justice of the peace.

Within the United States or territories thereof the official character of the officer must be attested under his seal of office, if he have one, and, if he have none, then under his official signature. Ibid. § 744. Without the United States his official character must be attested under his official seal. Ibid. § 745. See, also, Ibid. § 746.

Acknowledgment by One Grantor

(Ibid. § 748.)

STATE OF ARKANSAS, }
County of ____.

On this ____ day of ____, 19__, before me ____
____, a justice of the peace within and for the county of
____, in the state of Arkansas, appeared in person ____
____, to me personally well known as the person² whose

² If the grantor is unknown to the justice, instead of the words "to me personally well known as the person," say, "who, being un-

name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof I have hereunto set my hand as such justice of the peace, in the county of ———, on the ——— day of ———, 19—. SAM EDMUNDSON, J. P.

Acknowledgment of Deed Executed by Single Man, or Married or Single Woman

(*Ibid.* §§ 748, 740.)

STATE OF ARKANSAS, }
County of Miller. } ss.

Before me, J. O. Reeves, a justice of the peace within and for said county and state, personally appeared on this eighteenth day of May, 1904, Ursula Halifax, to me well known (*or, made known, as in preceding form*)³ as the party grantor in the foregoing deed, and acknowledged that she (*or, he*) executed the same for the consideration and purposes therein mentioned and set forth. And I do so certify.

Given under my hand this eighteenth day of May, 1904.

J. O. REEVES, J. P.

known to me, was proven to my satisfaction to be the identical ———, whose name appears upon the within and foregoing deed as the party grantor, by the oath of ——— and ———, witnesses, sworn and examined by me as to such identity, and stated," etc. See *Ibid.* § 747.

³ See note, p. 16, *supra*.

Acknowledgment by Husband and Wife with Relinquishment of Dower and Homestead ⁴

(Ibid. §§ 748, 751, 3901.)

STATE OF ARKANSAS, } ss.
County of Miller. }

Be it remembered that on this day came before me, the undersigned, a justice of the peace within and for the county aforesaid, duly commissioned and acting, Josiah Allen, to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth. And on the same day also voluntarily appeared before me the said Samantha Allen, wife of the said Josiah Allen, to me well known, and in the absence of her said husband declared that she had, of her own free will, executed said deed and signed and sealed the relinquishment of dower and homestead in the said deed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand as such justice of the peace on this fifth day of November, 1904. W. J. SMITHER, J. P.

Proof of Deed by Subscribing Witness

(Ibid. § 749.)

STATE OF ARKANSAS, }
County of _____. }

Be it remembered that on this _____ day of _____, 19____, before me, _____, a justice of the peace in and for the county aforesaid, personally appeared _____, one

⁴ Same form of acknowledgment for relinquishment of dower to be used in all cases, but the joining in the execution of the deed and acknowledging the same, except as to dower, is unnecessary, unless the property conveyed is the homestead of the grantor. Post, p. 521.

of the subscribing witnesses to the foregoing deed, to me personally well known,⁵ who, being by me first duly sworn, on his oath stated that he saw ———, grantor in said deed, subscribe said deed on the day of its date (*or*, that the said ———, grantor in said deed, acknowledged in his presence, on the ——— day of ———, 19—, that he had subscribed and executed said deed), for the uses, purposes, and consideration therein expressed, and that he and ———, the other subscribing witness, subscribed the same as attesting witnesses at the request of said grantor.

In testimony whereof I have hereunto set my hand as such justice of the peace, at the county aforesaid, this ——— day of ———, 19—.

JAMES HUTCHINS, J. P.

**Proof of Handwriting of Grantor and Subscribing
Witness**

(*Ibid.* § 750.)

STATE OF ARKANSAS, }
County of ———. }

Be it remembered that on this third day of May, 1904, before me, Timothy Kavanaugh, a justice of the peace in and for the county aforesaid, came ——— and ———, and upon their oaths stated that the signatures of ———, the grantor in the within and foregoing deed, and of ———, a witness thereto, are genuine, and are in the handwriting of the said ——— and ———, respectively.

In testimony whereof I have hereunto set my hand as such justice of the peace, at the county aforesaid, this third day of May, 1904.

TIMOTHY KAVANAUGH, J. P.

⁵ See note ante, p. 16.

CALIFORNIA

Before Whom Taken, Etc.

The proof or acknowledgment of an instrument may be made:

Within the state: Before a justice or clerk of the supreme court, or judge of a superior court, and within the city, county, city and county, or township for which the officer was elected or appointed before either a clerk of a court of record, county recorder, court commissioner, notary public, or justice of the peace. Civ. Code, §§ 1180, 1181.

Elsewhere within United States: Within the jurisdiction of the officer, before a justice, judge, or clerk of any court of record of the United States; or a justice, judge, or clerk of any court of record of any state; or a commissioner appointed by the Governor of California for that purpose; or a notary public; or any other officer of the state where the acknowledgment is made authorized by its laws to take such proof or acknowledgment. Ibid. § 1182.

Without United States: Before a minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or a consul, vice consul, or consular agent of the United States, resident therein; or a judge of a court of record of such country; or commissioners appointed for such purposes by the Governor of California pursuant to special statutes; or a notary public. Ibid. § 1183.

When any such officer is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal. Ibid. § 1184.

Forms

An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereafter set forth (Ibid. § 1188); but an acknowledgment taken without the state is sufficient if in accordance with the laws of the place where it is made. The certificate of the clerk of a court of record of the county or district where such acknowledgment is taken that the officer certifying is authorized by law to do so, that the signature of such officer is his true and genuine signature, and that such ac-

knowledge is taken in accordance with the laws of the place where made, is prima facie evidence of the facts stated in the certificate of said clerk. Ibid. § 1189.

The acknowledgment must not be taken, unless the officer knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person acknowledging is the individual described in and who executed the instrument, or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf. Ibid. § 1185.

The officer must authenticate his certificate by his signature, the title of his office, and his seal of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which he is acting he is required to have an official seal. Ibid. § 1193.

The certificate of a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine. Ibid. § 1194

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert name and quality of the officer*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person whose name is subscribed to the within instrument, and acknowledged that he (*she or they*) executed the same.

Ibid. § 1189.

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*), personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the president (*or, the secretary*) of the corporation that executed the within instrument (*where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary, insert, known to me, or proved to me on the oath of ———, to be the person who executed the within instrument*), on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Ibid. § 1190.

Acknowledgment by Attorney in Fact

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact.

Ibid. § 1192.

COLORADO

Before Whom Taken

Within state: Before any judge of a court of record, or the clerk of any such court or his deputy, such judge, clerk, or deputy clerk certifying such acknowledgment under the seal of such court; before the clerk and recorder of any county, or his deputy, such clerk or deputy certifying under the seal of such county; before any notary public, certifying under his notarial seal; or before any justice of the peace within his county: Provided, that if the conveyance be of lands situate beyond such county, there shall be affixed to his certificate a certificate of the county clerk and recorder of such county, under his hand and the seal of such county, to the official capacity of such justice, and that the signature to such certificate of acknowledgment is the true signature of such justice.

Elsewhere within United States or any territory thereof: Before the secretary of any such state or territory, he certifying such acknowledgment under the seal of such state or territory; before the clerk of any court of record of such state or territory, or of the United States therein, having a seal, such clerk certifying the acknowledgment under the seal of such court; before any notary public of such state or territory, he certifying the same under his notarial seal; before any commissioner of deeds for any such foreign state or territory appointed under the laws of Colorado, he certifying such acknowledgment under his hand and official seal; before any other officer authorized by the laws of any such state or territory to take and certify such acknowledgment: Provided, there shall be affixed to the certificate of such officer, other than those above enumerated, a certificate by the clerk of some court of record of the county, city, or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be, that he has the authority by the laws of such state or territory to take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer.

Without United States: Before any court of record of any foreign republic, kingdom, empire, state, principality, or province having a seal, the acknowledgment being certified by the judge or justice of such court to have been made before such

court, and such certificate to be attested by the seal of such court; before the mayor or other chief officer of any city or town having a seal, such mayor or other chief officer certifying such acknowledgment under such seal; before any consul of the United States within such foreign country, he certifying the same under the seal of his consulate. Rev. St. 1908, §§ 684, 685.

Forms

A certificate substantially in accordance with the following general form before a proper officer is prima facie evidence of the proper execution of a deed or other instrument affecting the title of real property. No mortgage or other conveyance of a homestead is binding against the wife of any married man who may be occupying the premises with him, unless she shall "freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking the acknowledgment shall fully apprise her of her rights and the effect of signing the said mortgage or other conveyance." If the owner of the homestead be the wife of a man occupying the premises with her, no such mortgage or conveyance is binding against him, unless he sign and acknowledge the same. Ibid. § 2955. The form given for the wife's separate acknowledgment should be used when it is not known that the property is not homestead.

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

I (*name and official character*) in and for said county, in the state aforesaid, do hereby certify that ———, who is personally known to me to be the person whose name is subscribed to the foregoing deed (*or other instrument*), appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and ——— seal this ——— day of ———, A. D. 19—.

Wife's Separate Acknowledgment

STATE OF ———, }
County of ———. } ss.

I (*name and official character*), in and for said county, in the state aforesaid, do hereby certify that ———, who is personally known to me to be one of the persons whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein specified. And I do further certify that on this day personally appeared before me ———, personally known to me to be the wife of the said ———, and to be one of the persons who signed the foregoing deed (*or other instrument*), and, being by me duly sworn, and separate and apart from her husband, fully apprised of her rights in the premises and of the effect of signing the foregoing instrument, did then and there, so separate and apart from her husband, sign the same and acknowledge that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and seal this ——— day of ———
19—.

Ibid. § 692.

CONNECTICUT**Before Whom Taken**

Within state: Before a judge of a court of record of the state or of the United States, a clerk of the superior court, court of common pleas or district court, justice of the peace, commissioner of the school fund, commissioner of the superior court, notary public, either with or without his official seal, town clerk, or assistant town clerk.

Elsewhere within United States: Before a commissioner

appointed by the Governor of Connecticut and residing in the state or territory, or any officer authorized to take the acknowledgment of deeds in such state or territory.

Without United States: Before any ambassador, minister, chargé d'affaires, consul, vice consul, deputy consul, consul general, vice consul general, deputy consul general, consular agent, vice consular agent, commercial agent, or vice commercial agent of the United States, representing or acting as agent of the United States in such foreign country, or before any notary public, or justice of the peace, in such foreign country; but no officer shall have power to take such acknowledgment, except within the territorial limits in which he may perform the proper duties of his office.

Gen. St. 1902, § 4029, as amend. Pub. Acts 1905, c. 63.

Forms

None are provided by statute. Conveyances of real estate situated in the state, and powers of attorney therefor, executed and acknowledged in any other state or territory in conformity with its laws relative to the conveyance of lands therein situated, are valid. Ibid. § 4031.

Acknowledgment by Husband and Wife

STATE OF CONNECTICUT, }
County of ———. } ss.

Personally appeared ——— and ———, his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed before me.

(Signature and title.)

DELAWARE

Before Whom Taken

Within state: In the superior court, or before the chancellor, or any judge or notary public, or before two justices of the peace for the same county. A deed may also be acknowledged in the superior court by attorney, by virtue of a power contained in it or separate from it; the power being first proved in the said court. Also such deed may be proved in the said

court by one or more of the subscribing witnesses. Rev. Code 1852, amend. to 1893, c. 83, § 3.

Without state: Before any consul general, consul, vice consul, consular agent, or commercial agent of the United States, duly appointed in any foreign country at the places of their respective official residence; or before the judge of any district or circuit court of the United States, or the chancellor or any judge of a court of record of any state, territory, or country, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor, or officer and the seal of his office, court, city, or borough, or in any such court, and certified under the hand of the clerk and seal of the court; or before a commissioner of deeds appointed by the Governor; or before a notary public of any state or territory or of the District of Columbia. Ibid. § 10, as amend. Laws 1901-1903, c. 82; Laws 1883, c. 212 (Rev. Code 1852, as amend. to 1893, p. 627, c. 83).

Forms

The certificate, when the acknowledgment is before two justices of the peace, may be according to the form given below. Rev. Code 1852, as amended to 1893, c. 83, § 3. It must, of course, be varied when the acknowledgment is before another officer, and his seal should be affixed.

The deed of a married woman is valid and effectual as if she were sole, if she, upon private examination, apart from her husband, acknowledge that she executed said deed willingly, without compulsion or threats, or fear of her husband's displeasure; but such deed shall not bind her to any warranty except a special warranty against herself and her heirs, and all persons claiming by or under her; and no covenant on her part, of a more extensive or different effect in such deed, shall be valid against her. Nor shall such conveyance by her divest, abrogate, or in any manner interfere with the husband's estate by the courtesy should such estate attach. Ibid. § 4, as amend. Laws 1901-1903, c. 443.

Acknowledgment by Husband and Wife

THE STATE OF DELAWARE, }
County of ———. } ss.

Be it remembered that on the ——— day of ———, in the year of our Lord one thousand nine hundred and ——— personally came before the subscribers two of the justices of the peace for ———, county aforesaid (*or*, before the subscriber, *adding title*), ——— and ——— his wife, parties to this indenture, known to us (*or*, me) personally (*or*, proved on the oath of ———) to be such, and severally acknowledged said indenture to be their act and deed respectively, and that the said ———, being at the same time privately examined by us (*or*, me), apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure. Witness our hands (*or*, my hand and official seal) the day and year aforesaid.⁶

(*Signature and title.*)

Rev. Code 1852, as amend. to 1893, c. 83, § 3.

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

Be it remembered that on this ——— day of ———, in the year of our Lord ———, personally came before me ——— (*title*), ———, president (*or*, vice president) of the ——— Company, a corporation of the state of Delaware, party to the foregoing indenture, known to me personally (*or*, proved on the oath of ———) to be such, and acknowledged the said in-

⁶ If the instrument be not under seal, the words "and deed" must be omitted. If an acknowledgment only, or private examination only, be taken, the form must be varied according to the case; and so of other cases requiring a variance, the form being given for general direction.

denture to be his free act and deed and the act and deed of the said company; that the signature of the said president (*or*, vice president) is his own proper handwriting; that the seal affixed is the common or corporate seal of the said company; and that his act of sealing, executing, and acknowledging and delivering the said indenture was duly authorized by resolution of the directors (*or*, trustees, *or other managers*) of the said company.

Witness my hand and official seal the day and year aforesaid.
(Signature and title.)

DISTRICT OF COLUMBIA

Before Whom Taken

Within district: Before a judge of any of the courts, the clerk of the Supreme Court of the District, a justice of the peace or notary public, or the recorder of deeds. Code 1901, as amend. to 1911, § 493.

Elsewhere within the United States: Before any judge of a court of record and of law, or any chancellor of a state, any judge or justice of the Supreme, circuit, or territorial courts of the United States, any justice of the peace or notary public. The certificate of acknowledgment made by any officer not having a seal shall be accompanied by the certificate of the register, clerk, or other public officer that the officer taking the acknowledgment was, in fact, the officer he professed to be. Ibid. § 495.

An acknowledgment may also be before a commissioner appointed by the President of the United States. Code 1901, as amend. to 1911, § 557.

Without United States: Before any judge or notary public, or any secretary of legation or consular officer or acting consular officer of the United States, as such consular officer is described in section 1674 of the Revised Statutes of the United States. When the acknowledgment is before any other officer than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in the last preceding section. Ibid. § 496.

Acknowledgment by Attorney—Corporation

No deeds of conveyance by individuals can be executed or acknowledged by attorney. Ibid. § 498. The deed of a corporation shall be executed by having the seal of the corporation attached and being signed with the name of the corporation, by its president or other officer, and acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed. Ibid. § 497.

Forms

A general form is given by statute. Ibid. § 493. It is sufficient for a wife's release of dower. Ibid. § 494.

General Form of Acknowledgment

I, A. B., a justice of the peace (*or other officer authorized*) in and for the District of Columbia, do hereby certify that C. D., party to a certain deed bearing date on the —— day of ——, and hereto annexed, personally appeared before me in said District, the said C. D. being personally well known to me as (*or, proved by the oath of credible witnesses to be*) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this —— day of ——.

Ibid. § 493.

A. B. (*Seal*)

FLORIDA

Other provisions with respect to conveyances, post, p. 534.

Acknowledgment or Proof, Before Whom Taken

Within state: Before any judge, clerk, or deputy clerk of any court of record, or a United States commissioner, notary public, or justice of the peace.

Elsewhere within United States: Before a commissioner of deeds appointed by the Governor of Florida, or before a judge

or clerk of any court of the United States or of any state, territory, or district having a seal, or before a notary public or justice of the peace of such state, territory, or district having an official seal.

Without United States: Before any commissioner of deeds appointed by the Governor of Florida to reside in such country, or before any notary public of such foreign country having an official seal, or before any minister, chargé d'affaires, consul general, consul, vice consul, commercial agent, or vice commercial agent of the United States appointed to reside in such country. Gen. St. 1906, § 2481. In all such cases the certificate of acknowledgment or proof shall be under the seal of the court or officer, as the case may be. Ibid. § 2481.

Forms

The particular forms are not prescribed. The certificate of the officer before whom the acknowledgment or proof is taken shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment of proof effectual. Ibid. § 2482. No acknowledgment or proof shall be taken by any officer unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make proof is one of the subscribing witnesses to such instrument. Ibid. § 2486. To render a sale, conveyance, mortgage, or relinquishment, whether of separate estate or of dower, effectual to pass a married woman's estate or right, she must acknowledge, separately and apart from her husband, that she executed the same freely and voluntarily and without compulsion, constraint, apprehension, or fear of or from her husband, and the officer's certificate shall set forth all the foregoing requirements. Ibid. § 2462.

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

I (*name and designation of officer*) hereby certify that on this day personally appeared before me ———, to me well known and known to be the person described in and who exe-

cuted the foregoing instrument, and acknowledged that he executed the same.

Witness my hand and official seal this ——— day of ———,
A. D. 19—.

(Signature and title of officer.) (Seal.)

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

I (*name and designation of officer*) hereby certify that on this day personally appeared before me A. B. and C. B., his wife, to me well known and known to be the persons described in and who executed the foregoing instrument and severally acknowledged that they executed the same; and the said C. B., on a private examination before me, separately and apart from her said husband, did acknowledge that she executed the same for the purpose of relinquishing, alienating, and conveying all her right, title, and interest, whether of dower, homestead, or of separate property, statutory or equitable, in and to the lands described therein, and that she executed same freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness, *etc.*

GEORGIA

In General

A deed to lands must be in writing, signed by the maker, and attested by at least two witnesses. Civ. Code 1910, § 4179. One of the witnesses may be one of the officials mentioned below, and otherwise the execution should be acknowledged before such official, and his attestation or certificate of acknowledgment, as the case may be, entitles the deed to record. Ibid. §§ 4202, 4203. As to other provisions in respect to conveyances, *post*, p. 536.

By or Before Whom Attested or Acknowledged

When executed in state: A judge of a court of record of the state, or a justice of the peace, or notary public, or clerk of the superior court, in the county in which the three last mentioned officers respectively hold their appointments. Ibid. § 4202.

When executed out of state: A commissioner of deeds for Georgia, or a consul or vice consul of the United States (the certificate of these officers under their seal being evidence of the fact), or a judge of a court of record in the state where executed, with a certificate of the clerk under the seal of such court of the genuineness of the signature of such judge, or a clerk of a court of record under the seal of the court, or a notary public of the state and county where executed, with his seal of office attached, and, if such notary has no seal, then his official character shall be certified by a clerk of any court of record in the county of the residence of such notary. Ibid. § 4203.

Probate by Witness

If a deed is neither attested by nor acknowledged before such official, it may be admitted to record upon the affidavit of a subscribing witness, before any such official, testifying to the execution of the deed and its attestation according to law. Ibid. § 4205.

Forms

General forms for certificates of attestation and acknowledgment are not specifically provided. "Signed, sealed and delivered in the presence of," followed by the name and official title of the witness, is sufficient in case of attestation. A form of declaration or acknowledgment for a married woman who joins with her husband in a conveyance is provided. Ibid. § 4204.

Acknowledgment of Married Woman

I, A. B., the wife of C. D., do declare that I have freely and without any compulsion signed, sealed, and delivered the above instrument of writing, passed between D. E. and C. D.; and I do hereby renounce all title or claim of dower that I might claim or be entitled to, after the death of C. D., my

TIFF. FORMS—3

said husband, to or out of the lands or tenements therein conveyed. In witness whereof I have hereunto set my hand and seal.⁷

Ibid. § 4204.

Proof by Subscribing Witness

Before me (*name and title*) personally came ———, to me known to be the individual whose signature is affixed to the foregoing deed as one of the witnesses thereto, who, being sworn, says that he was present at the time when said deed was executed; that he saw the same signed, sealed, and delivered by ———, whose signature is thereto affixed as grantor; that ———, the other subscribing witness thereto, was likewise present at said time and witnessed said execution of said deed; and that he, the said ———, and the said ———, then and there signed the same as attesting witnesses.

(*Signature of affiant.*)

Sworn to and subscribed before me this ——— day of ———, 19—.

(*Signature and title.*)

HAWAII

Before Whom Taken

Within territory: Before the registrar of conveyances, or his deputy, or a judge of a court of record or a notary public.

Elsewhere within United States: Before any officer of the state, territory, or district authorized by the laws thereof to take proof and acknowledgments of deeds. There must be indorsed, subjoined, or attached to the certificate of acknowledgment or proof, signed by such officer, a certificate of the secretary of state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which such officer resides or in which he took

⁷ The said officer shall indorse upon the deed the acknowledgment of the said feme covert made before him, and sign the same. Ibid. § 4204.

such proof or acknowledgment, under the seal of such court, stating that such officer was at the time of taking such proof or acknowledgment duly authorized to take acknowledgments and proofs of deeds of land in such state, territory, or district, and that such secretary of state or clerk of court is well acquainted with the handwriting of such officer, and that he verily believes that the signature affixed to such certificate is genuine. The form of authentication is the same as that recommended by the Commissioners on Uniform State Laws. Ante, p. 8.

Without United States: Before any officer now authorized thereto by the laws of Hawaii, or before any minister, consul, vice consul, chargé d'affaires, consular or commercial agent, vice consular or vice commercial agent of the United States, resident in any foreign country or port, certified by him under his seal. Laws 1909, Act 69.

Forms

Forms of acknowledgment and of authentication are provided by Laws 1909, Act 69, which are the same as those recommended by the Commissioners on Uniform State Laws. Ante, p. 6. Forms formerly provided may also be used. The acknowledgment of a married woman may be in the same form as if she were sole, without separate examination.

No acknowledgment of any conveyance or other instrument, whereby real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment is personally known to the officer taking the same to be the person whose name is subscribed to such conveyance or instrument as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness known to the officer. Every officer who shall take the acknowledgment or proof of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by himself, on the instrument. Every judge who shall take the proof of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by himself, on the instrument, giving the names of the witnesses examined before him, their places of residence, and the substance of the evidence by them given. Laws 1909, Act 69. If there are any interlineations, erasures, or changes in the instrument, the officer taking the acknowledgment shall call the attention thereto of the person offering to acknowledge, and if they are approved by such person, the officer shall place his initials in the margin of the instrument opposite each such interlinea-

tion, erasure, or change, and shall note at the foot of the instrument, before the acknowledging clause, what each such interlineation, erasure, or change consists of, and the number of the page and line on which it occurs. Rev. Laws 1905, § 2370.

IDAHO

Before Whom Taken

Within state: At any place within the state, before a justice or clerk of the Supreme Court; within the city, county, or district for which the officer was elected or appointed, before either a judge or clerk of a court of record, a county recorder, a notary public, or a justice of the peace. Rev. Codes, §§ 3123, 3124.

Elsewhere within United States: Within the jurisdiction of the officer, before either: A justice, judge, or clerk of any court of record of the United States; a justice, judge or clerk of any court of record of any state or territory; a commissioner appointed by the Governor of this state for that purpose; a notary public; or any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. Ibid. § 3125.

Without United States: Before either: A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the acknowledgment is made; a consul or vice consul of the United States resident in the country where the acknowledgment is made; a judge of a court of record of the country where the acknowledgment is made; commissioners appointed for such purposes by the Governor of the state pursuant to statute; or a notary public. Ibid. § 3126.

When any of the officers above mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal. Ibid. § 3127.

The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed, the instrument, or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation. Ibid. § 3128.

Forms

The acknowledgment of a married woman to any instrument in writing shall be taken and certified to in the same manner and form as that of a single person, and must be substantially in the form prescribed by section 3131. Ibid. § 3129.

An officer taking the acknowledgment of an instrument must indorse thereon a certificate substantially in the forms hereinafter prescribed. Ibid. § 3130.

Officers taking and certifying acknowledgments of instruments for record must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Ibid. § 3134.

The certificate, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the recorder of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the recorder is acquainted with his handwriting, and believes that the signature to the original certificate is genuine. Ibid. § 3135.

Ordinary Acknowledgment

STATE OF IDAHO, }
County of ———. } ss.

On this ——— day of ———, in the year of ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (*or, they*) executed the same. .

Ibid. § 3131.

Acknowledgment by Corporation

STATE OF IDAHO, }
County of _____. } ss.

On this _____ day of _____, in the year _____, before me (*here insert the name and quality of the officer*) personally appeared _____, known to me (*or*, proved to me on the oath of _____) to be the president (*or*, the secretary) of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

Ibid. § 3132.

Acknowledgment by Attorney in Fact

STATE OF IDAHO, }
County of _____. } ss.

On this _____ day of _____, in the year _____, before me (*here insert the name and quality of the officer*) personally appeared _____, known to me (*or*, proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument as the attorney in fact of _____, and acknowledged to me that he subscribed the name of _____ thereto as principal, and his own name as attorney in fact.

Ibid. § 3133.

ILLINOIS

Acknowledgment or Proof, before Whom Taken

Deeds, mortgages, conveyances, or other writings relating to the disposition of real estate may be acknowledged or proved before some one of the following:

Within state: Before a master in chancery, notary public, United States commissioner, county clerk, justice of the peace, or any court of record having a seal, or any judge, justice, clerk, or deputy clerk of any such court. When taken before a notary public or United States commissioner, the same shall be attested by his official seal; when taken before

a court or the clerk or a deputy clerk thereof, the same shall be attested by the seal of such court; and when taken before a justice of the peace, there shall be added the certificate of the county clerk under his seal of office that the person taking such acknowledgment or proof was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands mentioned in the instrument are situated, no such certificate shall be required.

Without state and within United States or any of its territories or dependencies or District of Columbia: Before a justice of the peace, notary public, master in chancery, United States commissioner, commissioner to take acknowledgments of deeds, mayor of city, clerk of a county, or before any judge, justice, clerk, or deputy clerk of the supreme, circuit, or district court of the United States, or before any judge, justice, clerk, or deputy clerk, prothonotary, surrogate, or registrar of the supreme, circuit, superior, district, county, common pleas, probate, orphans' or surrogate's court of any of the states, territories, or dependencies of the United States. In any dependency of the United States such acknowledgment or proof may also be taken or made before any commissioned officer in the military service of the United States. When such acknowledgment or proof is made before a notary public, United States commissioner, or commissioner of deeds, it shall be certified under his seal of office. If taken before a mayor of a city, it shall be certified under the seal of the city; if before a clerk, deputy clerk, prothonotary, registrar or surrogate, then under the seal of his court; if before a justice of the peace or a master in chancery, there shall be added a certificate of the proper clerk under the seal of his office setting forth that the person before whom such proof acknowledgment was made was a justice of the peace or master in chancery at the time of taking such acknowledgment or proof. An acknowledgment or proof of execution may be made in conformity with the laws of the state, territory, dependency, or district where it is made: Provided, that if any clerk of any court of record within such state, territory, dependency, or district shall, under his hand and the seal of such court, certify that such acknowledgment or proof was made in conformity with the laws of such state, territory, dependency, or district, or it shall so appear by the laws of such state, territory, dependency, or district, such instrument or a duly proved or certified copy of the record of such deed, mortgage,

or other instrument relating to real estate heretofore or hereafter made and recorded in the proper county may be read in evidence as in other cases of such certified copies.

Without the United States: Before any court of any republic, dominion, state, kingdom, empire, colony, territory, or dependency having a seal, or before any judge, justice, or clerk thereof, or before any mayor or chief officer of any city or town having a seal, or before a notary public or commissioner of deeds, or any ambassador, minister, or secretary of legation or consul of the United States, or vice consul, deputy consul, commercial agent, or consular agent of the United States in any foreign republic, dominion, state, kingdom, empire, colony, territory or dependency, attested by his official seal, or before any officer authorized by the laws of the place where such acknowledgment or proof is made to take acknowledgments of conveyances of real estate or to administer oaths in proof of the execution of conveyances of real estate; such acknowledgments to be attested by the official seal, if any, of such court or officer, and if before a court or officer having no official seal, a certificate shall be added by some ambassador, minister, secretary of legation, consul, vice consul, deputy consul, commercial agent, or consular agent of the United States residing in such republic, dominion, state, kingdom, empire, colony, territory, or dependency under his official seal, showing that such court or officer was duly elected, appointed, or created and acting at the time such acknowledgment or proof was made.

Hurd's Rev. St. 1911, c. 30, § 20.

Where a deed, conveyance, or power of attorney is acknowledged or proved in a foreign state or country, the certificate of any consul or minister of the United States in said country, under his official seal, that the instrument is executed in conformity with such foreign law, shall be deemed and taken as prima facie evidence thereof: Provided, that any other legal mode of proving that the same is so executed may be resorted to in any court in which the question of such execution or acknowledgment may arise. Ibid. § 22.

All deeds, conveyances, and powers of attorney, for the conveyance of lands in the state, acknowledged or proved and authenticated as aforesaid, or in conformity with the laws of any foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of the state. Ibid. § 23.

No judge or other officer shall take an acknowledgment un-

less the person offering to make it is personally known to him to be the real person who and in whose name such acknowledgment is proposed to be made, or shall be proved to be such by a credible witness, and the judge or officer shall, in his certificate, state that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness (naming him), and on taking proof of any deed or instrument of writing, by the testimony of any subscribing witnesses, the judge or officer shall ascertain that the person who offers to prove the same is a subscribing witness, either from his own knowledge, or from the testimony of a credible witness; and, if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate stating that the person testifying as subscribing witness was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness (naming him), and stating the proof made by him; and where any grantor or person executing such deed or writing and the subscribing witnesses are deceased or cannot be had, the judge or officer, as aforesaid, may take proof of the handwriting of such deceased party and subscribing witness or witnesses (if any), and the examination of a competent and credible witness, who shall state on oath or affirmation that he personally knew the person whose handwriting he is called to prove, and well knew his signature (stating his means of knowledge), and that he believes the name of such person subscribed to such deed or writing, as party or witness (as the case may be), was there subscribed by such person; and when the handwriting of the grantor or person executing such deed or writing, and of one subscribing witness (if any there be), shall have been proved, as aforesaid, or by proof of signature of grantor, where there is no subscribing witness, the judge or officer shall grant a certificate thereof stating the proof aforesaid. Ibid. § 24.

Forms

A certificate of acknowledgment, substantially in the following form, is sufficient:

A deed or other instrument, in order to release or waive the right of homestead, must contain a clause expressly releasing or waiving such right. And in such case the certificate of acknowledgment must contain a clause substantially as follows: "Including the release and waiver of the right of homestead"—or other words which shall expressly show that the parties executing the deed or other instrument intended to release such right. And no release or waiver by the husband shall bind the wife unless she join in such release or waiver. Ibid. § 27.

An acknowledgment by a married woman may be made and certified the same as if she were a feme sole. Ibid. c. 30, § 19.

Acknowledgment

STATE OF (*name of state*),
County of (*name of county*). }

I (*here give name of officer and his official title*) do hereby certify that (*name of grantor, and, if acknowledged by wife her name, and add "his wife"*), personally known to me to be the same person whose name is (*or, are*) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he (*she or they*) signed, sealed, and delivered the said instrument as his (*her or their*) free and voluntary act for the uses and purposes therein set forth.⁸

Given under my hand and (*private or official, as the case may be*), seal, this (*day of the month*) day of (*month*) A. D. (*year*).
(*Signature of officer.*) (Seal.)

Ibid. c. 30, § 26.

⁸ If the deed releases the right of homestead, add: "Including the release and waiver of the right of homestead." Ante, p. 42.

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

I (*name and official title*) do hereby certify that ———, president (*or other officer*) of the above-named (*name of corporation*), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such president (*or other officer*), appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as the free and voluntary act of said (*name of corporation*), and as his own free and voluntary act as such president (*or other officer*), for the uses and purposes therein set forth.

Given under my hand and official seal, *etc.*

Proof of Subscribing Witness

STATE OF ———, }
County of ———. } ss.

I (*name and official title*), hereto duly appointed and commissioned, do hereby certify that on this ——— day of ———, 19—, before me personally appeared ———, personally known to me (*or, proved by* ———, a credible witness under oath) to be the person whose name appears subscribed to the foregoing deed as a witness of the execution thereof, who on oath testified that ———, whose name appears subscribed to said deed as grantor, is the real person who executed the same as grantor, and that he, the said ———, subscribed his name as witness thereto in the presence and at the request of said (*grantor*), which is satisfactory proof to me of the due execution of said deed.

In witness whereof I have hereunto set my hand and seal this ——— day of ———, 19—.

(*Signature, title, and seal.*)

INDIANA

Before Whom Taken

Within Indiana or other state: To entitle any conveyance, mortgage, or instrument of writing to be recorded, it shall be acknowledged by the grantor or proved before any judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, or mayor of a city in this or any other state, or before any commissioner appointed in any other state by the Governor of this state, or before any minister, chargé d'affaires, or consul of the United States in any foreign country. *Id.* Burns' Ann. St. 1908, § 3965. When an instrument is acknowledged in any county in this state other than the one in which the same is required to be recorded, the acknowledgment must be certified by the clerk of the circuit court of the county in which such officer resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by such seal, is sufficient without such certificate. *Ibid.* § 3966. Conveyances acknowledged out of this state and within the United States must be certified by the clerk of a court of record of the county in which the officer receiving the acknowledgment resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by such seal, is sufficient without such certificate. *Ibid.* § 3967. All deeds may be proved, according to the rules of common law, before any officer authorized to take acknowledgments, and, being so proved, shall be entitled to record. *Ibid.* § 3968.

Within foreign country: Conveyances and other instruments to be recorded, when executed in a foreign country, shall be acknowledged by the grantor or person executing the same, or proved before any minister, chargé d'affaires, or consul of the United States in such foreign country, or before any officer of such country who, by the laws thereof, is authorized to take acknowledgments or proof of conveyances; and, if such acknowledgment or proof is in the English language, and attested by the official seal of such officer, it shall be sufficient to admit such instrument to record; but if in some other language, or not attested by such official seal, then such instrument must be accompanied by a certificate of an officer of the United States, as aforesaid, to the effect that it is duly executed according to the laws of such foreign country, that the officer certifying to the acknowledgment or proof had legal

authority so to do, and the meaning of his certificate, if the same is made in a foreign language. Ibid. § 3970. See, also, Ibid. § 3965.

Whenever the grantor signs with his or her mark, and in other cases in which the officer has good cause to believe that the contents and purport of the deed are not fully known to the grantor, it is the duty of the officer, before signature, fully to explain the contents and purport of the deed; but his failure so to do does not affect the validity of the deed. Ibid. § 3983.

Forms

The following, or any other form substantially the same, is a good and sufficient form of acknowledgment of any deed or mortgage. Ibid. § 3982.

It is not necessary for a married woman to acknowledge in any form other than that required by unmarried persons. Ibid. § 3971.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

Be it remembered that on this ——— day of ———, A. D. ———, before me (*here insert name and title in full of the official taking the acknowledgment*), duly commissioned and qualified, personally appeared ——— and ———, his wife, the grantors in the foregoing deed, and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

(Seal.)

(Signature and title.)

IOWA

Before Whom Taken

Within state: Before some court having a seal, or some judge or clerk thereof, or some county auditor or his deputy, or justice of the peace within the county, or notary public within the county of his appointment or in an adjoining county

in which he has filed with the clerk of the district court a certified copy of his certificate of appointment. Code Supp. 1907, § 2942.

Elsewhere within United States: Before a judge of some court of record or officer holding the seal thereof, or some commissioner appointed by the Governor of this state to take the acknowledgment of deeds, or some notary public or justice of the peace; and when made before a judge or justice of the peace, a certificate under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of his office, of the official character of said judge, or justice, and of the genuineness of his signature, shall accompany said certificate of acknowledgment. Ibid. § 2943.

Without United States: Before any ambassador, minister, secretary of legation, consul, vice consul, chargé d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. Said instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of his signature, and seal, if he have any. Code 1897, § 2947.

Forms

Forms of acknowledgment and of authentication are given by statute. They are the same as the forms recommended by the Commissioners on Uniform State Laws (ante, p. 6), except for the substitution of "voluntary" for "free" where in the later the words "free act and deed" occur.

The acknowledgment of a married woman, when required by law, may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. Ibid. § 2960.

KANSAS

Before Whom Taken

Within state: Before some court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace, notary public, county clerk, or register of deeds, or mayor or clerk of an incorporated city. Gen. St. 1909, § 1660.

Without state: Before some court of record, or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgments of deeds, appointed by the Governor of this state, or before some notary public or justice of the peace, or before any consul of the United States resident in any foreign port or country. If taken before a justice of the peace, the acknowledgment shall be accompanied by a certificate of his official character, under the hand of the clerk of some court of record, to which the seal of said court shall be affixed. Ibid. § 1661. Instruments affecting the title to real estate executed and acknowledged or proved in any state, territory, or country in conformity with the laws thereof or of this state are valid in this state. Ibid. § 1676.

Form

The court or officer taking the acknowledgment must indorse upon the deed a certificate showing, in substance, the title of the court or officer before whom the acknowledgment is taken; that the person making the acknowledgment was personally known to the court, or to the officer taking the acknowledgment, to be the same person who executed the instrument; and that such person duly acknowledged the execution of the same. Ibid. § 1662.

As to acknowledgment by corporation, post, p. 47.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

Be it remembered, that on this ——— day of ———, A. D. 19—, before me, the undersigned, a (*title of officer*), duly commissioned, in and for the county and state aforesaid, came A. B. and C. B., his wife, who are personally known to me to be

the same persons who executed the within instrument of writing as grantors, and such persons duly acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my ——— seal the day and year last above written.

(*Signature and title.*)

(*Term expires ———, 19—.*)

KENTUCKY

Before Whom Taken

Within state: Before a clerk of a county court or notary public. Acts 1910, c. 82, § 1.

Elsewhere within United States: Before the clerk of a court or his deputy, or a notary public, mayor of a city, or secretary of state, or commissioner to take the acknowledgment of deeds, under seal of office, or by a judge, under seal of court. Ibid. § 2.

Without United States: Before any foreign minister or consul or secretary of legation of the United States, or the Secretary of Foreign Affairs, under his seal of office, or the judge of a superior court of the nation where the deed shall be executed. Ibid. § 3.

Forms

The officer may simply certify that the deed was acknowledged before him, and when it was done. Ibid. § 5.

By Acts 1910, c. 82, married women are put on the same footing as other persons.

The certificate of a notary must state the date of the expiration of his commission. Ky. St. 1909, § 3721.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

I, ——— (*give title of officer*), do certify that this instrument of writing from ——— and ———, wife, was this day produced to me in my county by the parties, and acknowledg-

ed by the said ——— and ———, his wife, to be their act and deed, respectively.

Given under my hand and seal this ——— day of ———, 19—.

(Signature and title.)

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

I, ——— (*give title of officer*), do certify that on this ——— day of ———, 19—, the foregoing instrument of writing was produced to me in my county by the parties thereto, and acknowledged and delivered before me by ———, as president, and ———, as secretary, of (*name of corporation*) a corporation party thereto, to be the act and deed of said corporation by them, as president and secretary, respectively, and the seal of said corporation as affixed to said deed was attested and proved before me by the said ———, as secretary of said corporation.

Given under my hand and seal, *etc.*

LOUISIANA

In General

The forms of conveyancing are peculiar. Post, p. 550. Acknowledgments must be witnessed by two witnesses over 14 years. The officer before whom the acknowledgment is made should not be a witness.

Before Whom Taken

Within state: Notaries public, parish recorders, and their deputies.

Elsewhere within United States: Notaries public and other officers authorized to administer oaths and commissioners for Louisiana (in case of persons residing within the state in which the commissioner resides or for which he is appointed). In case of a notary or commissioner his seal is sufficient, but in case of another officer his capacity should be certified to by the secretary of state.

TIFF. FORMS—4

Without United States: Ambassadors, ministers, chargés d'affaires, secretaries of legation, consuls general, consuls, vice consuls, and commercial agents. See Rev. Laws, §§ 596-599; Acts 1894, p. 119; Acts 1896, p. 219; Acts 1898, p. 321.

Form

No form is prescribed. The following may be used:

Acknowledgment

STATE OF _____,
County of _____, }
City of _____.

Before me, the undersigned authority, and in the presence of the undersigned witnesses personally came and appeared _____, wife of _____, herein duly aided, authorized, and assisted by her said husband, who also appears in his own behalf, who, being severally sworn, did depose and declare that they signed the foregoing act of sale in the presence of said subscribing witnesses, that their signatures thereto are their true and genuine signatures, and the same was signed as their voluntary act and deed, and for the purposes therein mentioned.

(Signatures.)

Sworn to and subscribed before me this _____ day of _____, 19—, in the presence of the undersigned witnesses.

(Signature.)

Witnesses:

Notary Public. *(Seal.)*

(Signatures of the two witnesses.)

MAINE

Before Whom Taken

Deeds shall be acknowledged by the grantors, or one of them, or by their attorney executing the same, before a justice of the peace, or notary public having a seal, or women otherwise eligible under the Constitution and appointed for the purpose by the Governor with the advice and consent of the

council in the state, or any clerk of a court of record having a seal, notary public, justice of the peace, or commissioner appointed by the Governor of Maine for the purpose, within the United States, or before a minister or consul of the United States or notary public in any foreign country. The seal of such court or the official seal of such notary, if he have one, shall be affixed to the certificate of acknowledgment, but, if such acknowledgment is taken outside the state before a justice of the peace, or notary public not having a seal, a certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment and the genuineness of his signature, must be annexed thereto. Rev. St. 1903, c. 75, § 20, as amend. Laws 1909, c. 41.

General Form of Acknowledgment

STATE OF MAINE, }
County of _____. } ss.

May 1, 1900, personally appeared the above-named _____, and acknowledged the above instrument to be _____ free act and deed.

Before me,

_____,

Justice of the Peace.

MARYLAND

Before Whom Taken

Within state: If acknowledged in the county or city within which the real estate or any part of it lies, before: A justice of the peace for such city or county; a judge of the orphans' court of such county or city; a judge of the circuit court for the county; a judge of the supreme bench of Baltimore city; a notary public. Code Pub. Civ. Laws 1910, art. 21, § 2. If acknowledged out of such county or city, before: A notary public; any judge of the circuit court for the circuit in which grantor may be, or any judge of the orphans' court of the county in which the grantor may be; any judge of the supreme bench of Baltimore city or any judge of the orphans'

court of said city; any justice of the peace for the county or city where the grantor may be at the time of the acknowledgment, the official character of the justice being certified to by the clerk of the circuit or superior court under his official seal. Ibid. § 3.

Elsewhere within United States: Before: A notary public; a judge of any court of the United States; a judge of any court of any state or territory having a seal; a commissioner of Maryland to take acknowledgments of deeds. Ibid. § 4.

Without United States: Before: Any minister, consul general, consul, deputy consul, vice consul, consular agent, or consular officer of the United States; any notary public; a commissioner of Maryland to take acknowledgments of deeds. Ibid. § 5.

Forms

The officer before whom an acknowledgment is made shall indorse on or annex to the deed a certificate of acknowledgment. Ibid. § 6. To every certificate of acknowledgment taken without the state before the judge of any court having a seal the seal of such court shall be affixed. Ibid. § 7. The certificate shall contain: The name of the person making the acknowledgment; the official style of the officer taking it; the time when it was taken; a statement that the grantor acknowledged the deed to be his act, or made an acknowledgment to the like effect. Ibid. § 8. Any form of acknowledgment containing, in substance, the following forms is sufficient. Ibid. § 71.

Acknowledgment of mortgage, post, p. 905.

Acknowledgment Taken Within State

STATE OF MARYLAND, }
——— County. } to wit:

I hereby certify that on this —— day of ——, in the year ——, before the subscriber (*here insert style of the officer taking the acknowledgment*) personally appeared (*here insert the name of the person making the acknowledgment*), and acknowledged the foregoing deed to be his act.

Ibid. § 68.

Acknowledgment of Husband and Wife

STATE OF ———, }
———— County. } to wit:

I hereby certify that on this ——— day of ———, in the year ———, before the subscriber (*here insert the official style of the person taking the acknowledgment*) personally appeared (*here insert name of the husband*) and (*here insert name of the married woman making the acknowledgment*), his wife, and did each acknowledge the foregoing deed to be their respective act.

Ibid. § 69.

Acknowledgment Taken Out of State

STATE OF ———, }
———— County. } to wit:

I hereby certify that on this ——— day of ———, in the year ———, before the subscriber (*here insert the official style of the officer taking the acknowledgment*) personally appeared (*here insert the name of the person making the acknowledgment*); and acknowledged the foregoing deed to be his act.

In testimony whereof I have caused the seal of the court to be affixed (*or, have affixed my official seal*) this ——— day of ———, A. D. ———.

Ibid. § 70.

(*Seal of the Court.*)

MASSACHUSETTS**Before Whom Taken**

Within state: Before a justice of the peace, special commissioner, or notary public.

Elsewhere within United States: Before a justice of the peace, notary public, magistrate, or commissioner appointed for the purpose by the Governor of Massachusetts, or before any officer authorized by the law of the state where made to take proofs and acknowledgments of deeds.

Without United States: Before such a justice, notary, magistrate, or commissioner, or before an ambassador, minister, or consul of the United States or a consular officer of the United States accredited to such country. R. L. 1902, c. 127, § 8; Acts 1902, c. 289; R. L. 1902, c. 127, § 19.

Forms

The acknowledgment of a deed shall be by the grantors or one of them, or by the attorney who executes the deed. R. L. 1902, c. 127, § 8, as amend. Acts 1902, c. 289. The acknowledgment by a married woman may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. R. L. 1902, c. 127, § 9.

Forms that may be used in certifying acknowledgments and a form of authentication, which are the same as those recommended by the Commissioners on Uniform State Laws (ante, p. 6), are provided. R. L. 1902, c. 127, §§ 18, 20, 21.

MICHIGAN

Before Whom Taken

Within state: Before a judge or commissioner of a court of record, notary public, justice of the peace, or master in chancery within the state. C. L. § 8962, as amend. Pub. Acts 1905, No. 103.

Elsewhere within United States: A deed may be executed according to the laws of the state, territory, or district where executed, and the execution may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory, or district to take the proof and acknowledgment of deeds therein, or before any commissioner appointed by the Governor of Michigan for such purpose. Comp. Laws 1897, §§ 8963, 9022. Unless the officer be a commissioner, he shall attach his seal of office, and unless he be a commissioner or a notary public with seal, it seems that the acknowledgment must be authenticated. Ibid. §§ 8964, 9023, 9024.

Without United States: Before a notary public, or any minister, consul, vice consul, chargé d'affaires, or consular agent of the United States resident in any foreign country or port, under his seal of office. Ibid. §§ 8965, 9025.

Forms

The acknowledgment of a married woman may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. Ibid. § 9021. See, also, Ibid. §§ 8966, 8968. Forms that may be used in certifying acknowledgments and a form of authentication, which are the same as those recommended by the Commissioners on Uniform State Laws (ante, p. 6), are provided. C. L. §§ 9020, 9022-9024.

MINNESOTA**Before Whom Taken**

Within state: Members of the Legislature; judges and the clerks and deputy clerks of all courts of record residing within the state, including those of the district court of the United States, and resident United States commissioners; notaries public, justices of the peace, clerks or recorders of towns, villages, boroughs, and cities; and court commissioners, registers of deeds, and county auditors, and their several deputies, and county commissioners, all within their respective counties. Gen. St. 1913, § 5743.

Elsewhere within United States or in any territory belonging thereto: Any judge or justice of the supreme or district courts of the United States, or of a court of record of any state, territory, or district therein, or the clerk or deputy clerk of any of such courts, or any notary public or justice of the peace, or any commissioner appointed by the Governor of this state for that purpose; but no such acknowledgment shall be valid unless taken within the place or territory for which such officer was chosen or to which the jurisdiction of the court of which he is an officer shall extend. Ibid. § 5744. In such cases, if the certificate of acknowledgment is signed by a commissioner appointed by the Governor of Minnesota, or by a notary public, clerk of court, or other officer having a seal of office, an impression whereof is affixed, no other authentication shall be required. If by an officer appointed by the Governor of such other state or territory, and having no official seal, it shall be sufficient if accompanied by the declaration of the secretary of such state or territory, or his assistant or deputy, under the seal thereof, that at the purported date of said acknowledgment the person certifying held the office under which he assumed to act; or, in lieu thereof, the mode of authentication herein-

after prescribed may be used. In all other cases there shall be attached to such certificate a declaration of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, that he knows the handwriting of the person who signed the same, that at the time of said purported acknowledgment such person held the office under which he then assumed to act, and that he believes the signature subscribed to said certificate to be genuine. Ibid. § 5745.

Without United States: Any notary public therein, or any minister, chargé d'affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officers authorized to perform their duties; and the fact of such acknowledgment shall be certified by the officer taking the same, under his official signature, and his seal of office, if there be one. Ibid. § 5746.

Any person enlisted or employed in the military or naval service of the United States, and being at any place not within the boundaries of a state thereof, may acknowledge before any commissioned officer of the United States army or navy, which officer shall certify thereto under his official signature, and, in addition to the other facts required to be stated therein shall state that the person so acknowledging, at the time thereof, was employed in such military or naval service, either as an enlisted man, or in some other capacity therein named. Ibid. § 5749.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws shall be proved: If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof; if in a foreign country, by the certificate of an officer of the United States authorized as above stated to take acknowledgments therein, under his seal of office, if there be one. Ibid. § 5748.

Forms

Forms that may be used in certifying acknowledgments, which are the same as those recommended by the Commissioners on Uniform State Laws (ante, p. 6), are provided. Ibid. § 5740.

Every acknowledgment by a corporation or joint-stock association substantially in the form prescribed is prima facie evidence of the facts recited, and that the instrument was executed by authority of its board of directors or trustees, and the execution and delivery authorized by law. Ibid. § 5741.

No separate acknowledgment of a married woman is required, but if husband and wife join and acknowledge, they must be described in the certificate as husband and wife, and if they acknowledge before different officers or the same officer at different times, each must be described in such certificate as the spouse of the other. Ibid. § 5742.

A notary public within the state must add, following his signature: "My commission expires ———, 19—." Ibid. § 5712.

MISSISSIPPI**Before Whom Taken**

Within state: May be acknowledged or proved before any judge of a United States court, any judge of the supreme court, any judge of the circuit court, or any chancellor, or before any clerk of a court of record or notary public, who shall certify such acknowledgment or proof under the seal of his office, or before any justice of the peace, or police justice, or mayor of any city, town, or village, or member of the board of supervisors, whether the property conveyed be within his county or not. Code 1906, § 2798.

Elsewhere within United States: Before any United States judge, or any judge or justice of the supreme or superior court of any state or territory, or any justice of the peace whose official character shall be certified under the seal of some court of record in his county, or before any commissioner appointed by the Governor of Mississippi, or a notary public or a clerk of a court of record having a seal of office. Ibid. § 2800.

Without United States: Before any court of record, or the mayor or chief magistrate of any city, borough, or corporation,

or any commissioner appointed by the Governor of Mississippi, or any ambassador, foreign minister, secretary of legation, or consul of the United States; the certificate to show that the party or party and witness were identified before the officer, and that the party acknowledged or that the execution was duly proved by the witness. Ibid. § 2801.

Forms

The following forms may be used. (Begin in all cases by a caption specifying the state and county, and it would be well to state the place, where the acknowledgment is taken. The signature and title of the officer taking the acknowledgment should be added; and his official seal, if any, should be affixed. Ibid. § 2799.)

In Case of Natural Persons Acting in Their Own Right

Personally appeared before me, ———, a judge of the Supreme Court of said state (*or*, a judge of the circuit court, chancellor, clerk of the ——— court of the county of ———, *or*, a justice of the peace of the county of ———, *or*, a member of the board of supervisors of the county of ———, *as the case may be*), the within-named A. B., who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand this the ——— day of ———, A. D. ———.

In Case of Witnesses

(In case the proof of execution of the instrument be made by a subscribing witness, follow the above form to and including the word "appeared," and then as follows, to wit:)

C. D., one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposeth and saith that he saw the within (*or*, above) named A. B., whose name is subscribed thereto, sign and deliver the same to the said E. F. (*or*, that he heard the said A. B. acknowledge that he signed and de-

livered the same to the said E. F.); that he, this affiant, subscribed his name as a witness thereto in the presence of the said A. B.

In Case of Married Women

When a married woman unites with her husband in the execution of an instrument, and acknowledges the same in one of the forms above sanctioned, she should be described in the acknowledgment as his wife; but in all other respects, and when she executes any instrument affecting her separate property, her acknowledgment shall be taken and certified as if she were sole. A separate examination is not required, nor does the failure to describe her as the wife of a grantor affect the acknowledgment. Ibid. § 2799.

MISSOURI

Before Whom Taken

The proof or acknowledgment of every conveyance or instrument in writing affecting real estate shall be taken by some one of the following:

Within state: Some court having a seal, or some judge, justice, or clerk thereof, notary public, or some justice of the peace of the county in which the real estate conveyed or affected is situated.

Elsewhere within United States: Any notary public or any court of the United States, or of any state or territory having a seal, or the clerk of any such court, or any commissioner appointed by the Governor of Missouri to take the acknowledgment of deeds.

Without United States: Any court of any state, kingdom, or empire having a seal, or the mayor or chief officer of any city or town having an official seal, or by any minister or consular officer of the United States, or notary public having a seal.

Rev. St. 1909, § 2794.

Forms

A certificate of acknowledgment, when granted by a court, shall be under the seal of the court; when granted by the clerk of the court, under the hand of the clerk and seal of the court of which he is clerk; when granted by an officer who

has a seal of office, under the hand and official seal of such officer; when granted by an officer who has no seal of office, under the hand of such officer. Ibid. § 2797. A notary within the state must in his certificate give the date when his commission expires.

The certificate shall state the act of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least two witnesses, whose names and places of residence shall be inserted in the certificate. Ibid. § 2799.

Forms that may be used in certifying acknowledgments, which are the same as those recommended by the commissioners on Uniform State Laws (ante, p. 6), are provided. Ibid. § 2799.

When a married woman unites with her husband in the execution of an instrument, and acknowledges the same in one of the forms sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release of dower or other instrument affecting real estate is required. Ibid. § 2799.

In lieu of acknowledgment, a deed, if attested, may be proved by a subscribing witness.

Proof by Subscribing Witness

STATE OF ———, }
County of ———. } ss.

I (*name, official title, and place of office*), duly commissioned and qualified, do hereby certify that on this ——— day of ———, 19—, came before me at the county aforesaid ———, who is personally known to me (*or, who was proved before me by the testimony on oath of ———, residing at ———, and ———, residing at ———, two good and credible witnesses*) to be the same person whose name is subscribed to the foregoing instrument of writing as a witness to the same, and, be-

ing by me first duly sworn, said that he was present and saw ———, who is named in said deed as a party thereto, and whose name is thereto subscribed, execute the same, and heard him acknowledge the same to be his act and deed for the purposes therein mentioned, and that thereupon he, the said ———, subscribed his name to said instrument as a witness thereof.

In witness whereof I have hereunto set my hand and seal of office the day and year aforesaid.

(Signature, title, and seal.)

MONTANA

Before Whom Taken

Within state: Before a justice or clerk of the Supreme Court or a judge of the district court; within the city, county, or district for which the officer was elected or appointed, before a clerk of a court of record, a county clerk, a notary public, or a justice of the peace. Rev. Codes 1907, §§ 4654, 4655.

Elsewhere within United States: Within the jurisdiction of the officer, before: A justice, judge, or clerk of any court of record of the United States; or a justice, judge, or clerk of any court of record of any state or territory; or a commissioner appointed by the Governor of this state for that purpose; or a notary public; or any other officer of the state or territory where the acknowledgment is made authorized by its laws to take such proof or acknowledgment. Ibid. § 4656.

Without United States: Before a minister, commissioner, or chargé d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made; or a consul, vice consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made; or a judge of a court of record of the country where the proof or acknowledgment is made; or commissioners appointed for such purposes by the Governor of Montana, pursuant to special statutes; or a notary public. Ibid. § 4657.

When any of the officers above mentioned is authorized to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal. Ibid. § 4658.

Forms

A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. Ibid. § 4661. The certificate of acknowledgment by a married woman must be substantially in the form prescribed in section 4663. Ibid. § 4665.

The following forms are provided:

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or*, proved to me on oath of ———) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (*or*, they) executed the same.

Ibid. § 4663.

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or*, proved to me on the oath of ———) to be the president (*or*, secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Ibid. § 4664.

Acknowledgment by Attorney in Fact

STATE OF ———, }
 County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert name and quality of the officer*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact.

Ibid. § 4666.

Officers must authenticate their certificates by affixing their signatures, followed by the names of their offices; also their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Ibid. § 4667. The certificate, if of a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of making such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine. Ibid. § 4668.

NEBRASKA

Before Whom Taken

Within state: Before a judge or clerk of any court, or some justice of the peace or notary public therein; but no officer can take any such acknowledgment or proof of his territorial jurisdiction. Cobbey's Ann. St. 1911, § 10802.

Elsewhere within United States: Must be executed and acknowledged or proved either according to the laws of the state, territory, or district or in accordance with the law of Nebraska; and, if acknowledged out of the state, must be before some court of record or clerk or officer holding the seal

thereof, or before some commissioner to take the acknowledgment of deeds appointed by the Governor of Nebraska or before some notary public or justice of the peace. If taken before a justice of the peace, the acknowledgment must be accompanied by a certificate of his official character under the hand of the clerk of some court of record, to which the seal of said court shall be affixed. Ibid. § 10803. The official seal of commissioner appointed by the Governor, notary public, or other officer having an official seal is sufficient authentication. In other cases the deed or other instrument shall have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the county, district, or state within which the acknowledgment or proof was taken, under the seal of his office, showing that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine; and that the deed or other instrument is executed and acknowledged according to the laws of such state, district, or territory. Ibid. § 10805.

Without United States: May be executed according to the laws of the country, and the execution may be acknowledged before any notary public therein, or any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and, if taken before a notary public, his seal of office shall be affixed to such certificate. Ibid. § 10806.

Forms

The grantor must acknowledge the instrument to be his voluntary act and deed. Ibid. § 10801.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, A. D. 19—, before me, ———, a ———, duly ——— and qualified for and residing in said county, personally appeared ——— and ———, his

wife, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they severally acknowledged to same to be their voluntary act and deed.

In witness whereof I have hereunto set my hand and official seal at ———, in said county, the day and year last above written.

NEVADA

Before Whom Taken

Within state: Before some judge or clerk of a court having a seal, or some notary public or justice of the peace; if before a justice of the peace in any other county than that in which the real estate is situated, must be accompanied with the certificate of the clerk of the district court of such county as to the official character of the justice taking the proof or acknowledgment and the authenticity of his signature.

Elsewhere within United States: Before some judge or clerk of a court having a seal, or any commissioner appointed by the Governor of Nevada for that purpose, or a notary public, or a justice of the peace, accompanied with the certificate of the clerk of a court of record of the county having a seal as to the official character of the justice and the authenticity of his signature.

Without United States: Before some judge or clerk of any court of any state, kingdom, or empire having a seal, or any notary public therein, or any minister, commissioner, or consul of the United States appointed to reside therein. Rev. Laws, §§ 1020, 1096.

Forms

The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate. Ibid. § 1024.

The certificates shall be in substantially the following forms; but an acknowledgment and certificate made without the state

TIFF. FORMS—5

in accordance with the laws of the place where the acknowledgment is taken are sufficient. Ibid. § 1025.

A married woman may acknowledge as if unmarried. Ibid. § 2188.

Acknowledgment by Individual

STATE OF NEVADA, }
County of _____. }

On this _____ day of _____, A. D. _____, personally appeared before me, a notary public (*or, judge, or other officer, as the case may be*) in and for _____ county, A. B., known (*or, proved*) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he (*or, she*) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Acknowledgment by a Corporation

STATE OF NEVADA, }
County of _____. }

On this _____ day of _____, A. D. _____, personally appeared before me, a notary public (*or, judge, or other officer, as the case may be*), in and for _____ county, A. B., known (*or, proved*) to me to be the president (vice president *or* secretary) of the corporation that executed the foregoing instrument, and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

Acknowledgment by Attorney in Fact

STATE OF NEVADA, }
County of _____. }

On this _____ day of _____, A. D. _____, personally appeared before me, a notary public (*or, judge, or other officer, as the case may be*) in and for _____ county, A. B., known (*or, proved*) to me to be the person whose name is subscribed to the within instrument as the attorney in fact of _____, and acknowledged to me that he subscribed the name of the said _____ thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

Acknowledgment when Grantor is Unknown to Officer

STATE OF NEVADA, }
County of _____. }

On this _____ day of _____, A. D. _____, personally appeared before me, a notary public (*or, judge, or officer, as the case may be*) in and for the said county, A. B., satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Ibid. § 1026.

NEW HAMPSHIRE**Before Whom Taken**

Within state or elsewhere within United States: Before a justice, notary public, or commissioner.

Without United States: Before a minister or consul of the United States in a foreign country. Pub. St. 1901, c. 137, § 3.

Form**Acknowledgment by Husband and Wife**

STATE OF ———, }
 County of ———. } ss.

Personally appeared the above-named ——— and ———,
 his wife, and acknowledged the foregoing instrument to be
 their voluntary act and deed, this — day of ———, 19—.
 Before me: *(Signature and title.)*

NEW JERSEY**Before Whom Taken**

Within state: Before the chancellor, a justice of the Supreme Court, master in chancery, attorney at law, judge of the court of common pleas, commissioner of deeds appointed for any county, clerk of the court of common pleas, deputy county clerk, surrogate or deputy surrogate, or a register of deeds. Comp. St. 1910, p. 1542, § 22.

Elsewhere within United States: Before any justice of the Supreme Court of the United States, any master in chancery, or any attorney at law of New Jersey, any circuit or district judge of the United States, or any judge or justice of the supreme or the superior courts, or the chancellor of any state or territory, or District of Columbia, or any foreign commissioner of deeds for New Jersey, duly certified, under the official seal of such commissioner, or before any mayor or other chief magistrate of any city, borough, or corporation, duly certified under the seal thereof, such circuit or district judge, judge or justice of such supreme or superior court, or chancellor of such state, foreign commissioner of deeds, mayor or other chief magistrate being anywhere within the circuit, district, state, territory, city, borough, or corporation for which he was appointed; or before any judge of any court of common pleas of such state, territory, or district, such judge being within the county or district in and for which he is such judge, duly certified that he was or is such judge under the great seal of such state, or under the seal of the county court of the county or district in which it is made and in and for which he was or is such judge; or before any officer in any such state, territory, or District of Columbia authorized at the time

by the laws of such state, territory, or district to take the proofs and acknowledgments of deeds or conveyances of lands lying therein: Provided in such case the certificate of acknowledgment or proof be accompanied by a certificate under the great seal of such state, territory, or district, or under the seal of some court of record of the county in which it was made, that the officer before whom such acknowledgment or proof was made was at the time of the taking of said proof or acknowledgment authorized by the laws of such state, territory, or district to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, or hereditaments in such state, territory, or district. Ibid. p. 1543, § 23.

Without United States: Before any master in chancery of New Jersey, or any public ambassador, minister, consul, vice consul, consular agent, chargé d'affaires, or other representative of the United States for the time being at any such foreign kingdom, state, nation, or colony; or before any court of law, notary public, or mayor or other chief magistrate of any city, borough, or corporation of such foreign kingdom, state, nation, or colony in which such party or witnesses may happen to be, certified in such cases by such court of law, notary public, mayor or chief magistrate in the manner in which such acts are usually authenticated by them: Provided in cases where the acknowledgment or proof is made before any such court of law, notary public, or mayor or other chief magistrate the certificate of acknowledgment or proof shall be accompanied by a certificate under the great seal of such foreign kingdom, state, nation, or colony, or under the seal of some court of record of the same that the officer before whom such acknowledgment or proof was made was at the time of the taking of said acknowledgment or proof authorized by the laws of said foreign kingdom, state, nation, or colony to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, hereditaments in such kingdom, nation, state, or colony. P. L. 1912, c. 239.

Forms

The officer must first make known the contents of the instrument to the party acknowledging, and be satisfied that he is the grantor, and must so certify. Comp. St. 1910, p. 1542, § 22. As to acknowledgment by married woman, post, p. 586.

The deed of a corporation must be proved by the oath or affidavit of the subscribing witness in the form of a certificate

of proof, made by an officer authorized to take the same, which oath or affidavit sets forth that the person making, signing, and swearing to such certificate of proof is a subscribing witness, and that he well knows the corporate seal of the grantor named in and which executed such deed, and that the seal thereto affixed was the proper corporate seal of such company, and that the same was affixed thereto, and said deed signed and delivered by the proper officer of the company (naming him and giving his official title), in the presence of the person making, signing, and swearing to such proof as the voluntary act and deed of said company. Ibid. p. 1573, § 114.

Acknowledgment by Husband and Wife

STATE OF NEW JERSEY, }
County of ———. } ss.

Be it remembered that on this ——— day of ———, A. D. 19—, before me, the subscriber (*insert name and title of officer*), personally appeared ——— and ———, his wife, who, I am satisfied, are the grantors mentioned in and who executed the within indenture, and to whom I first made known the contents thereof, and thereupon, they severally acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said ———, wife of the said ———, being by me privately examined, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

(*Signature and title.*)

Acknowledgment by Corporation

STATE OF NEW JERSEY, }
County of ———. } ss.

Be it remembered that on the ——— day of ———, A. D. 19—, before me (*name and title of officer*) personally appeared ———, to me known, who, being by me duly sworn according to law, on his oath doth depose and say that he is (the secretary, *or*, is acquainted with the seal) of the corporation, the grantor in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said (*name of corporation*); that it was so affixed by order of the said (*name of corporation*); that ——— is the (president, *or other executive officer*) of the said (*name of corporation*); that he saw the said ———, as such ———, sign the said deed, and heard him declare that he signed, sealed, and delivered the same as the voluntary act and deed of the said (*name of corporation*) by its order; and that this deponent signed his name thereto at the same time as a subscribing witness.

Subscribed and sworn before me the day and year above written.

NEW MEXICO**Before Whom Taken**

Within state: Before a clerk of the district court, a judge or clerk of the probate court using the probate seal, a notary public, or a justice of the peace. Laws 1901, c. 62, § 14.

Elsewhere within United States: Before a clerk of some court of record having a seal, commissioner of deeds appointed under the laws of New Mexico, or notary public having a seal. Ibid. § 15.

Without the United States: Before a minister, commissioner, or chargé d'affaires of the United States resident and accredited in the country where the acknowledge is made; a consul general, consul, vice consul, deputy consul, or consul or agent of the United States resident in the country where

the acknowledgment is made having a seal; or a notary public having a seal. *Ibid.* § 16.

Forms

Forms that may be used in certifying acknowledgments, which are the same as those recommended by the Commissioners on Uniform State Laws (*ante*, p. 6), are provided. *Comp. Laws* 1897, § 3945.

When a married woman unites with her husband, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination is required. *Ibid.* § 3946.

NEW YORK

Before Whom Taken

Within state: Before a justice of the Supreme Court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds. *Consol. Laws* 1909, c. 50, § 298.

Elsewhere within United States: Before any of the following officers acting within his jurisdiction, or of the court to which he belongs: A judge of a court of the United States; a judge of the supreme, superior, or circuit court of a state; a mayor of a city; a commissioner appointed for the purpose by the Governor of New York; any officer of the state or territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein; any officer of the District of Columbia authorized by the laws of the United States to take the acknowledgment or proof of deeds to be recorded in said district. *Ibid.* § 299.

In Porto Rico, the Philippine Islands, Cuba, or in any other place over which the United States exercises sovereignty, control, or a protectorate: Before: (1) A judge or clerk of a court of record thereof, acting within his jurisdiction; (2) a mayor or other chief officer of a city, acting in such city; (3) a commissioner appointed for the purpose by the Governor of New York, and acting within his jurisdiction; (4) an officer of the

United States regular army or volunteer service of the rank of captain or higher, or an officer of the United States navy of the rank of lieutenant or higher, while on duty at the place where such party or parties are or reside. The certificate of an acknowledgment taken before any of the officers mentioned in subdivisions 1, 2, or 3 shall have attached thereto the seal of the court or officer if he have a seal, and, if such officer have no seal, then a statement to that effect. The certificate of an acknowledgment taken before an officer of the army or navy mentioned in subdivision 4 shall state his rank, the name of the city or other political division where taken, and the fact that he is on duty there, and shall be authenticated by the secretary of war or the secretary of the navy, as the case may be, of the United States. Ibid. § 300.

In foreign countries: Before: Any of the following officers: An ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, or a chargé d'affaires of the United States accredited to and residing in the country; a consul general, a vice consul general, a deputy consul general, a consul, a vice consul, a deputy consul, a consular agent, a vice consular agent, a commercial agent, or a vice commercial agent of the United States, if residing within the country to which he is appointed, or a secretary of legation at the post, port, place or within the limits of his legation; a commissioner appointed for the purpose by the Governor, and acting within his own jurisdiction; a person specially authorized for that purpose by a commission, under the seal of the Supreme Court of this state, issued to a reputable person residing in, or going to, the country; if within the Dominion of Canada, it may also be made before any judge of a court of record, or before any officer of a province or territory of such Dominion authorized by the laws of such province or Dominion to take the acknowledgment or proof of deeds to be recorded therein; if within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, it may also be made before the mayor, the provost or other chief magistrate of a city or town therein, under his hand and the seal of such city or town; if within the states comprising the empire of Germany, it may also be made before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office and the seal of the city or town in which the notary resides. Ibid. § 301.

Authentication

In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively: Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the Governor, by the secretary of state; where made by a judge of a court of record in Canada, by the clerk of the court; where made by an officer of a state of the United States, or of any province or territory of the Dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, the provincial secretary, deputy provincial secretary, or assistant provincial secretary of the province, or commissioner of the territory of the Dominion of Canada, or the clerk, register, recorder, or prothonotary of the county, city, or parish in which the officer making the original certificate resided, when the certificate was made, or in which such acknowledgment or proof was taken, or by the clerk of any court in or of that county, city, or parish having by law a seal. The word "county" applies to the District of Columbia for the purpose of this section. *Ibid.* § 311.

An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that at the time of taking the acknowledgment or proof the officer taking it was duly authorized to take the same, that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer, and that he verily believes the signature to the original certificate is genuine; and, if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine. A clerk's certificate, authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledg-

ment of proof was taken was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine. Ibid. § 312.

As to authentication of certificates made within the state by commissioners of deeds, justices of the peace, and notaries public, Ibid. § 310.

Forms

The acknowledgment or proof may be made by a married woman as if unmarried. Ibid. § 302.

An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence that the person making it is the person described in and who executed such instrument. Ibid. § 303.

An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto a certificate, signed by himself, stating all the matters required to be done, known, or proved on the taking of such acknowledgment or proof, together with the name and substance of the testimony of each witness examined before him, and, if a subscribing witness, his place of residence. Ibid. § 306.

When the acknowledgment or proof is taken by a commissioner appointed by the Governor for a city or county within the United States and without the state, the certificate must also state the day on which and the town and county or the city in which the same was taken. Ibid. § 307.

When a certificate is made by a commissioner appointed by the Governor, or by the mayor or other chief magistrate of a city or town without the United States, or by an ambassador, a minister, a chargé d'affaires, a consul general, a vice consul general, a deputy consul general, a consul, a vice consul or a deputy consul, a consular or a vice consular agent, a commercial or a vice commercial agent, or a secretary of legation of the United States, it must be under his seal of office, or the seal of the consulate or legation to which he is attached. Ibid. § 308.

General Form of Acknowledgment

STATE OF _____,
County of _____. } ss.

On this _____ day of _____, in the year _____, before me personally came _____, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon _____ acknowledged to me that he executed the same. *(Signature and title.)*

The acknowledgment of a conveyance or other instrument by a corporation must be made by some officer thereof authorized to execute the same by the board of directors. The certificate must be in substantially the following form (Ibid. § 309):

Acknowledgment by Corporation

STATE OF NEW YORK, }
County of _____. } ss.

On the _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is the (president, or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

NORTH CAROLINA

Before Whom Taken

Within state: Before justices of the Supreme Court, judges of the superior court, commissioners of affidavits appointed by the Governor, the clerk of the Supreme Court, clerks and deputy clerks of the superior court, clerks of the criminal courts, notaries public, and justices of the peace. Revisal 1905, § 989.

Without state: Before a judge or clerk of a court of record, notary public, mayor or chief magistrate of an incorporated town or city, ambassador, minister, consul, vice consul, vice consul general, or commercial agent of the United States, or a justice of the peace of any state or territory of the United States. If the certificate of such justice shall be accompanied by a certificate of the clerk of some court of record of the county in which such justice resides, under the hand and official seal of such clerk, to the effect that such justice of the peace was at the time the certificate of such justice bears date an acting justice of the peace of such county and state or territory, and that the genuine signature of such justice of the peace is set to such certificate. Ibid. § 990.

A commission to take the acknowledgment of a nonresident may be issued by the clerk of the superior court of any county. Ibid. § 991.

If the proof of acknowledgment is before a justice of the peace of any county in the state other than the county in which the instrument is offered for registration, the certificate of acknowledgment must be accompanied by a certificate under the hand and seal of the clerk of the superior court of the county in which such justice resides that he was at the time his certificate bears date an acting justice of the peace of such county, and that his genuine signature is set to his certificate. Ibid. § 992.

Forms

The following forms are given by statute, which provides that they shall be in substance as prescribed.

As to the provisions concerning acknowledgments by married women, and their separate examination, post, p. 600.

Acknowledgment by Grantor or Maker

NORTH CAROLINA, }
 _____ County. }

I (*here give the name of the official and his official title*) do hereby certify that (*here give the name of the grantor or maker*) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (*where an official seal is required by law*) official seal this, the _____ day of _____ (year).

(Official seal.)

(Signature of officer.)

Ibid. § 1002.

When the instrument purports to be signed by a married woman, the form of certificate shall be, in substance, as follows:

Acknowledgment and Private Examination of Wife

NORTH CAROLINA, }
 _____ County. }

I (*here give name of the official and his official title*) do hereby certify that (*here give name of the married woman who executed the instrument*), wife of (*here give husband's name*), personally appeared before me this day and acknowledged the due execution of the foregoing (*or, annexed*) instrument; and the said (*here give married woman's name*), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (*when an official seal is required by law*) official seal this _____ (day of month), A. D. _____ (year).

(Official seal.)

(Signature of officer.)

Ibid. § 1003.

Where the instrument is acknowledged by both husband and wife or by other grantor before the same officer, the form shall be, in substance, as follows:

Acknowledgment by Husband and Wife

NORTH CAROLINA, }
——— County. }

I (*here give name of official and his official title*) do hereby certify that (*here give names of the grantors whose acknowledgment is being taken*) personally appeared before me this day and acknowledged the due execution of the foregoing (*or, annexed instrument*), and the said (*here give name of the married woman or women*), wife (*or, wives*) of (*here give name of husband or husbands*), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (*when an official seal is required by law*) official seal this ——— (*day of month*), A. D. ——— (*year*).

(*Official seal.*)

(*Signature of officer.*)

Ibid. § 1004.

The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law. If the instrument is executed by the president or presiding member or trustee and two other members of the corporation, and sealed with the common seal, the following form shall be sufficient:

Acknowledgments by Corporation

NORTH CAROLINA, }
 _____ County. }

This _____ day of _____, A. D. _____, personally came before me (*here give the name and official title of the officer who signs this certificate*) A. B. (*here give the name of the subscribing witness*), who, being by me duly sworn, says that he knows the common seal of the (*here give the name of the corporation*), and is also acquainted with C. D., who is the president (*or, presiding member, or, trustee*), and also with E. F. and G. H., two other members of said corporation, and that he, the said A. B., saw the said president (*or, presiding member, or, trustee*) and the two said other members sign the said instrument, and saw the said president (*or, presiding member, or, trustee*) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence. Witness my hand and (*when an official seal is required by law*) official seal, this _____ day of _____ (year).

(Official seal.)

(Signature of officer.)

Ibid. § 1005.

If the deed or other instrument is executed by the president, presiding member or trustee of the corporation, and sealed with its common seal, and attested by its secretary or assistant secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient:

(1)

NORTH CAROLINA, }
 _____ County. }

This _____ day of _____, A. D. _____, personally came before me (*here give name and official title of the officer who signs the certificate*) A. B. (*here give the name of the attesting*

secretary or assistant secretary), who, being by me duly sworn, says that he knows the common seal of (*here give the name of the corporation*), and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary (*or, assistant secretary*) of the said corporation, and saw the said president sign the foregoing (*or, annexed*) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (*or, that he, the said A. B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument*), and that he, the said A. B., signed his name in attestation of the execution of said instrument, in the presence of said president of said corporation. Witness my hand and (*when an official seal is required by law*) official seal this, the _____ day of _____ (year).

(Official seal.)

(Signature of officer.)

(2)

NORTH CAROLINA, }
 _____ County. }

This is to certify that on the _____ day of _____, 19—, before me personally came _____ (president, vice president, secretary, *or assistant secretary, as the case may be*), with whom I am personally acquainted, who, being by me duly sworn, says that _____ is the president (*or, vice president*), and _____ is the secretary (*or, assistant secretary*), of the _____, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the following instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (*or, vice president*), and that said president (*or, vice president*) and secretary (*or, assistant secretary*) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said

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corporation; and that the said instrument is the act and deed of said corporation. Witness my hand and (*when an official seal is required by law*) official seal this, the ——— day of ——— (year).

(Official seal.)

(Signature of officer.)

If the deed or other instrument is executed by the signature of the president, presiding member, or trustee of the corporation, and sealed with its common seal and attested by its secretary, the following form of proof and certificate thereof shall be deemed sufficient:

This ——— day of ———, A. D. ———, personally came before me (*here give name and official title of the officer who signs the certificate*) A. B., who, being by me duly sworn, says that he is president (presiding member or trustee) of the ——— Company, and that the seal affixed to the foregoing (*or, annexed*) instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A. B. acknowledged the said writing to be the act and deed of said corporation. (Signature of officer.)

If the officer before whom the same is proven be the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration, he shall add to the foregoing certificate the following: "Let the instrument with the certificate be registered." Ibid. § 1005.

NORTH DAKOTA

Before Whom Taken

Within state: At any place within state before a justice or clerk of the Supreme Court or notary public (Rev. Codes 1905, § 5011); within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before either a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, United States circuit or district court commissioner, or county auditor (Ibid. § 5012).

Elsewhere within United States: Within the jurisdiction of the officer, before either: A justice, judge, or clerk of any court of record of the United States; a justice, judge, or clerk of any court of record of any state or territory; a notary public; any other officer of the state or territory where the acknowledgment is made authorized by its laws to take such proof or acknowledgment; a commissioner appointed for the purpose by the Governor of North Dakota pursuant to the Political Code. Ibid. § 5013.

Without United States: Before either: A minister, commissioner, or chargé d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made; a secretary of legation, consul, vice consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made; a judge, clerk, register, or commissioner of a court of record of the country where the proof or acknowledgment is made; a notary public of such country; an officer authorized by the laws of the country where the proof or acknowledgment is taken to take proof or acknowledgments; or, when any of the officers above mentioned in this article are authorized by law to appoint a deputy, before such deputy in the name of his principal, as deputy, or by such deputy as deputy. Ibid. § 5014.

The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who is described in and who executed the instrument, or, if executed by a corporation, that the person making such acknowledgment is authorized to make it as provided in Rev. Codes, §§ 4969, 4970. Ibid. § 5015; post, p. 602.

Forms

As to acknowledgment by married women and by corporations, post, p.602.

The officer must indorse on the instrument or attach thereto a certificate substantially in the following forms. Ibid. § 5022. He must authenticate his certificate by his signature followed by the name of his office, and must affix his seal of office if required to have one. Judges and clerks of court must affix the seal of the court, and mayors of cities the seal of the city. A notary within the state must append the date

of expiration of his commission. The certificate of a justice of the peace of the state, when used in a county other than that in which he resides, must be authenticated by a certificate of a court of record of his county.

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me personally appeared ———, known to me (*or*, proved to me on the oath of ———) to be the person who is described in and who executed the within instrument, and acknowledged to me that he (*or*, they) executed the same.

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or*, proved to me on the oath of ———) to be the president (*or*, the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

Acknowledgment by Attorney in Fact

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, in the year ———, before me (*here insert the name and quality of the officer*) personally appeared ———, known to me (*or*, proved to me on the oath of ———) to be the person who is described in and whose name

is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact.

Ibid. § 5022.

OHIO

Before Whom Taken

Within state: Before a judge or clerk of a court of record, county auditor, county surveyor, notary public, mayor, or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name. Gen. Code 1910, § 8510.

Without state: Before a commissioner appointed by the Governor of Ohio, or a consul general, vice consul general, deputy consul general, consul, vice consul, deputy consul, commercial agent, and consular agent of the United States resident in any foreign country. Ibid. § 8515.

Forms

As to acknowledgments within the state, see preceding paragraph.

Instruments for the conveyance or incumbrance of lands, including powers of attorney, executed and acknowledged or proved, in and in conformity with the laws of any other state, territory, or country, or in conformity with the laws of Ohio, are valid. Ibid. § 8516. As to acknowledgments by married persons, post, p. 605.

General Form of Acknowledgment

STATE OF ———, }
County of ———. } ss.

Be it remembered, that on this ——— day of ———, before me, the subscriber, a ——— in and for ———, personally appeared ——— and ———, his wife, who executed the foregoing deed (*or*, instrument), and severally acknowledged that they

executed the same as their voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.
(*Signature and title.*)

OKLAHOMA

Before Whom Taken

Within state: Before a justice of the peace of the county where the land is situated, or before any notary public, county clerk, clerk of the district court, or county judge.

Without state: Before any notary public, clerk of a court of record, commissioner of deeds appointed by the Governor of Oklahoma for the county, state, or territory where the same is taken.

In foreign country: Before any court of record or clerk of such court, or before any consul of the United States.

Rev. Laws 1910, § 1181.

Forms

Every acknowledgment, except when taken before a justice of the peace, must be under the seal of the officer taking the same. Ibid. § 1179.

Acknowledgments must be substantially in the following forms:

Acknowledgment by Individuals

STATE OF OKLAHOMA, }
 County. } ss.

Before me, _____ in and for said county and state, on this _____ day of _____, 189—, personally appeared _____ and _____, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

_____.

Ibid. § 1179.

Deeds or other instruments affecting real estate executed by a corporation must be acknowledged by the officer or person subscribing the name of the corporation thereto, which acknowledgment must be substantially in the following form:

Acknowledgment by Corporation

STATE OF OKLAHOMA, }
——— County. } ss.

Before me, a ——— in and for said county and state, on this ——— day of ———, 189—, personally appeared ———, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its (attorney in fact, president, vice president, *or* mayor, *as the case may be*), and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

—————.

Ibid. § 1188.

OREGON

Before Whom Taken

Within state: Before a judge of the Supreme Court, county judge, justice of the peace, or notary public within the state. Lord's Ore. Laws, § 7109.

Elsewhere within United States: A deed may be executed according to the laws of the state, territory, or district where executed or of Oregon, and the execution may be acknowledged either according to the laws of such other state, territory, or district or of Oregon, before any judge of a court of record, justice of the peace, notary public, or other officer authorized by the laws of such state, territory, or district to take acknowledgment of deeds therein, or before any commissioner appointed by the Governor of Oregon for such purpose. Ibid. § 7110. In such cases, unless the acknowledgment be taken before a commissioner, or a notary public certified under his notarial seal, or the clerk of a court of record under the seal of the court, the deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a

court of record of the county or district within which the acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory, or district. Ibid. § 7111.

Without United States: A deed may be executed in a foreign country according to the laws of such country or of Oregon, and the execution may be acknowledged either according to the laws of such foreign country or of Oregon, before any notary public therein, or any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, consul, vice consul, or consul general of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and, if taken before a notary public, his seal of office shall be affixed to such certificate, and it shall not be necessary for any of said persons to state in such certificate that the deed or instrument is executed according to the laws of such country. Ibid. § 7112.

Form

As to married women, post, p. 610.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

This certifies that on this ——— day of ———, A. D. 19—, before me, the undersigned, a (*insert name and title*) in and for said county and state, personally appeared the within-named ——— and ———, his wife, to me personally known (*or, satisfactorily proven to me on oath*) to be the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and seal the day and year above written.

PENNSYLVANIA

Before Whom Taken

Within state: Before judges of the Supreme Court, judges of the courts of common pleas of the counties, the mayors and police magistrates or aldermen of Philadelphia and Pittsburg, recorders of deeds for deeds to be recorded in their counties, notaries public, and justices of the peace.

Elsewhere within United States: Before the mayor or chief magistrate of the town or place where the deed is executed with the seal thereof; a judge of the supreme or district court of the United States; a judge of the circuit or superior courts or courts of common pleas of any state or territory with the seal of the court; a commissioner appointed by the Governor of Pennsylvania; any notary public having an official seal; any officer or magistrate of any state or territory having authority by the laws thereof to take acknowledgments, with a certificate of the clerk of a court of record therein of his authority to act. A person in the military service of the United States may acknowledge before any person holding the rank of major or a higher rank in such service, under a commission from the Governor of Pennsylvania.

In possessions of United States: In Cuba, Porto Rico, the Philippine Islands, or other possessions of the United States: Before a major or officer of higher rank in the military service of the United States, or before any civil officer there in the service of the United States, under the seal of such officer if he have one, and, if not, with a certificate under the seal of any officer of the United States in any such place who has an official seal.

Without United States: Before ambassadors, ministers plenipotentiary, *chargés d'affaires*, or other persons exercising ministerial functions appointed by the United States; consuls, vice consuls, deputy consuls, commercial agents, vice and deputy commercial agents, or consulate agents exercising their functions in the place where the acknowledgment is taken, under their official seals; notaries public under their official seals; commissioners appointed by the Governor of Pennsylvania, or commissioners in chancery. It seems that, where the acknowledgment is before a notary, a consul or vice consul should certify that the notary is a proper officer, and his act in accordance with the laws of the country.

Form

The acknowledgment of any married woman shall be taken in same manner and form as though she were feme sole; and such acknowledgment has the same force and effect as if taken separate and apart from her husband. Pepper & Lewis' Dig. Laws, p. 2741, par. 7.

The form of certificate of acknowledgment of individuals, single or married, may be in the following words:

Acknowledgment of Individuals (Single or Married)

STATE OF PENNSYLVANIA, }
County of ———. } ss.

On this ——— day of ———, A. D. ———, before me, ———, came the above-named ———, and acknowledged the foregoing deed to be ——— act and deed, and desired the same to be recorded as such.

Witness my hand and ——— seal the day and year afore-said.

(Seal.)

_____,
(Official character.)

My commission expires ———.

Laws 1909, No. 53, § 8.

A corporation may acknowledge by an attorney appointed by such corporation, and such appointment may be embodied in the deed or other instrument in substantially the following form:

Appointment by Corporation of Attorney

The (*name of corporation*) doth hereby constitute and appoint (*name of appointee*) to be its attorney for it, and in its name and as and for its corporate act and deed, to acknowledge this (*name of instrument*) before any person having authority by the laws of the commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

Ibid. p. 2745, par. 15.

Acknowledgment of Corporation by Attorney

I hereby certify that on this —— day of ——, in the year of our Lord ——, before me, the subscriber (*title of officer taking acknowledgment*), personally appeared (*name of attorney*), the attorney named in the foregoing (*name of instrument*), and by virtue and in pursuance of the authority therein conferred upon him acknowledged the said (*name of instrument*) to be the act of the said (*corporation's name*). Witness my hand and —— seal the day and year aforesaid.

Ibid. p. 2745, par. 16.

RHODE ISLAND

Before Whom Taken

Within state: Before any state senator, judge, justice of the peace, mayor, notary public, town clerk, or recorder of deeds.

Elsewhere within United States: Before any judge or justice of a court of record or other court, justice of peace, mayor, or notary public of the state, District of Columbia, or territory in which the acknowledgment is made, or before any commissioner appointed by the Governor of Rhode Island: Provided that, if the instrument is acknowledged or proved in the manner prescribed by the law of the state, territory, or District of Columbia where executed, it shall be deemed to be legally executed.

Without United States: Before any ambassador, minister, chargé d'affaires, consul general, vice consul general, consul, vice consul, consular agent, or commercial agent of the United States, or before any commissioner appointed by the Governor of Rhode Island in the country in which such acknowledgment is made.

By persons in military or naval service: Within or without the limits of the state, by any person actually engaged in the military or naval service of the United States, before any colonel, lieutenant colonel, or major in the army, or before any officer in the navy not below the grade and rank of lieutenant commander. Gen. Laws 1909, c. 253, § 8.

Forms

Acknowledgment need not be in any set form, but shall be made by all the grantors, including married women, even though releasing dower only, and the certificate thereof shall express the ideas that the grantors respectively making the acknowledgment were each and all known to the magistrate taking the acknowledgment, and known by the magistrate to be the parties executing the instrument, and that they acknowledged said instrument to be their free act and deed. No other acknowledgment shall be required of married women. Ibid. c. 253, § 5.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. }

In ———, on the ——— day of ———, A. D. 19—, before me (*name and title*) personally appeared ——— and ———, his wife, both to me known, and known by me to be the parties executing the foregoing instrument, and acknowledged the said instrument, by them executed, to be their free act and deed.

In witness whereof I have hereunto set my hand and seal the day and year above written.

SOUTH CAROLINA

Affidavit of Subscribing Witness—Before Whom Taken

Before any deed or other instrument in writing can be recorded in the proper office, the execution thereof must be proved by the affidavit in writing of a subscribing witness to such instrument, taken before some officer within the state competent to administer an oath; or, if taken without the state, before a commissioner or commissioners appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded; or before a commissioner of deeds of the state of South Carolina; or before a clerk of a court of record, who shall certify the same under his official seal; or before a justice of the peace, who must

append to the certificate his official seal; or before a notary public, who shall affix thereto his official seal within the state of his appointment, which seal shall be a sufficient authentication of his signature, residence, and official character; or before a minister, ambassador, consul general, consul, vice consul, or consular agent of the United States. Where the affidavit of a subscribing witness cannot be had by reason of his death, insanity, or absence from the state, then upon proof of such fact and of the handwriting of the parties who signed the instrument, and of the subscribing witnesses, by proper affidavit, the proof in every such case to be recorded with the instrument. Code of Laws 1912, § 1352.

Affidavit of Subscribing Witness

STATE OF _____,
County of _____. } ss.

Personally appeared before me A. B., and made oath that he saw the within-named C. D. sign, seal, and as his act and deed deliver the within-written deed for the uses and purposes therein mentioned, and that he, with E. F., in the presence of each other, witnessed the due execution thereof.

A. B.

Subscribed and sworn to before me this _____ day of _____.

Witness my hand and official seal.

(Seal.)

(Signature and title.)

Affidavit of Subscribing Witness in Case of Corporation

STATE OF _____,
County of _____. } ss.

Personally appeared before me A. B., and made oath that he saw C. D., as president, sign, affix the corporate seal of the within-named _____ Company, and as the act and deed of the said corporation deliver (*concluding as in preceding form*).

Renunciation of Dower

When any feme covert shall relinquish her right of dower in any real estate and acknowledge the same in writing, if she be within this state, in open court, or before any judge of the court of common pleas, justice of the Supreme Court, judge of probate, clerk of the court of common pleas, or master, magistrate, or notary public, or, if she be without this state, before a commissioner of deeds of the state, or before a commissioner duly appointed by dedimus, or before any minister, ambassador, consul general, consul, vice consul, deputy consul, consular agent, commercial agent of the United States or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a clerk of a court of record, or before a notary public, who must each append to the certificate the official seal used by him, and such acknowledgment shall be recorded, the same shall be effectual in law to convey and pass away the right of such feme covert, although she has not executed or acknowledged any deed of conveyance for that purpose. Ibid. § 3469.

The wife of any grantor conveying real estate by deed of release may, whether she be of lawful age or a minor, release, renounce, and bar herself of her dower in all the premises so conveyed, by acknowledging, as prescribed in the preceding section, upon a private and separate examination, that she did freely and voluntarily, without any compulsion, dread, or fear of any person whomsoever, renounce and release her dower to the grantee, and his heirs and assigns, in the premises mentioned. Ibid. § 3470.

Certificate of Renunciation of Dower

A certificate, under the hand of the woman and the hand and seal of the officer or officers aforesaid, shall be indorsed upon such release, or a separate instrument of writing to the same effect, in the form, or to the purport, hereafter following, and be recorded in the office of register of mesne conveyances in the county where the land lies:

Certificate Indorsed on Release

STATE OF SOUTH CAROLINA, }
——— County. }

I, F. G. (——— judge, magistrate, *or other officer, as the case be*), do hereby certify unto all whom it may concern that E. B., the wife of the within-named A. B., did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish, unto the within-named C. D., his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal this ——— day of ———,
Anno Domini ———. (Signed) E. B.

(Seal.) F. G.

Ibid. § 3471.

SOUTH DAKOTA**Before Whom Taken**

Within state: At any place, before a justice or clerk of the Supreme Court or notary public. Civ. Code 1910, § 970. Within the judicial circuit, county, subdivision, or city for which the officer was elected or appointed, before either: A judge or clerk of a court of record; a mayor of a city; a register of deeds; a justice of the peace; a United States circuit or district court commissioner; or a county auditor. Ibid. § 971.

Elsewhere within United States: Within the jurisdiction of the officer, before either: A justice, judge, or clerk of any court of record of the United States; a justice, judge, or clerk of any court of record of any state or territory; a notary public; any other officer of the state or territory where the acknowledgment is made authorized by its laws to take such

proof or acknowledgment; or a commissioner appointed for the purpose by the Governor of South Dakota. Ibid. § 972.

Without United States: Before either: An ambassador, minister, commissioner, or chargé d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made; a consul, vice consul, or consular agent of the United States resident in the country; a judge, clerk, register, or commissioner of a court of record of the country; a notary public of such country; an officer authorized by the laws of the country to take proof of acknowledgment; or, when any of the officers above mentioned are authorized to appoint a deputy, before such deputy. Ibid. § 973.

Forms

An acknowledgment must not be taken unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument, or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation. Ibid. § 974. See, also, Ibid. § 962.

Acknowledgment by Individual

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, A. D. 19—, before me (*name and title of officer*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person who is described in and who executed the within and foregoing instrument, and duly acknowledged to me that he executed the same.

(*Seal.*)

(*Signature and title.*)

Acknowledgment by Attorney in Fact

(*Begin as in preceding*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person who is described in and whose name is subscribed to the

within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact.

(*Seal.*)

(*Signature and title.*)

Acknowledgment by Corporation

(*Begin as in preceding*) personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the president (*or, the secretary*) of the corporation which is described in and which executed the within instrument, and acknowledged to me that the said corporation executed the same.

(*Seal.*)

(*Signature and title.*)

TENNESSEE

In General

No deed of conveyance for lands shall be good and available in law, as to strangers, unless the same be acknowledged by the vendor, or proved by two witnesses upon oath, in the manner hereinafter prescribed, and registered by the register of the county where the land lies; and all deeds so done and executed shall be valid and pass estates in land, or right to other estate, without livery of seisin, attornment, or other ceremony in the law whatever. Code 1896, § 3671. To authenticate an instrument for registration, its execution shall be acknowledged by the maker, or proved by two subscribing witnesses, at least. Code 1896, § 3712.

For other provisions as to conveyances, post, p. 621.

Acknowledgments—Before Whom

Within state: Before the clerk or deputy clerk of the county court of some county in the state, or a notary public. Code 1896, §§ 3713, 3714.

Elsewhere within Union: Before (1) Any court of record, or the clerk thereof in any state; (2) a commissioner for Tennessee appointed by the Governor in any state or territory; or (3) a notary public of such state or territory. Ibid. § 3715.

Without Union: Before (1) A commissioner for Tennessee

TIFF. FORMS—7

appointed in the country where the acknowledgment is made; (2) a notary public of such country; or (3) a consul, minister, or ambassador of the United States in the country where the acknowledgment is made. Ibid. § 3716. Any deed, or other instrument which requires registration, executed in a foreign country by any officer or soldier in the regular army, or in any volunteer corps, or by any other person in the service of the United States, or by a married woman accompanying her husband in such service, may be acknowledged by the grantor or proved by two subscribing witnesses, or privy examination be taken before the colonel, lieutenant colonel, major, or commanding officer of the regiment to which such officer or soldier belongs. Ibid. § 3747.

Forms

If the acknowledgment be made before a clerk or deputy clerk of the county court of Tennessee, he shall write upon or annex to the instrument the following certificate:

Acknowledgment before Clerk of County Court

STATE OF TENNESSEE, }
——— County. }

Personally appeared before me, clerk (*or*, deputy clerk) of the county court of said county, the within-named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained. Witness my hand, at office, this —— day of ——, 19—.

Ibid. § 3717.

If the acknowledgment be before a notary, commissioner of the state, a consul, minister, or ambassador, he shall make the certificate under his seal of office. Ibid. § 3718. If it be made before a judge, he shall make the certificate under his hand, and the clerk of his court shall certify, under his seal of office, if there be a seal, or, if there be none, under his private seal, as to the official character of the judge; or the official character of the judge may be certified by the Governor of the

state or territory, under the great seal thereof. Ibid. § 3719. If it be made before a court of record, a copy of the entry of the acknowledgment on the record shall be certified by the clerk, under his seal of office, if there be a seal, or, if there be none, under his private seal; and the judge, chief justice, or presiding magistrate of the court shall certify as to the official character of the clerk. Ibid. § 3720. If the acknowledgment or probate be before a clerk of a court of record of another state of the Union, and certified by him under his seal of office, the judge, chief justice, or presiding magistrate of the court shall certify to the official character of the clerk. Ibid. § 3721.

The officer or court before whom the execution of a deed or instrument by husband and wife is acknowledged or proved shall examine the wife privily and apart from her husband touching her voluntary execution of the same and her knowledge of its contents and effect; and, if she acknowledges or states that she executed the same freely and voluntarily, and without any compulsion on the part of her husband, and the clerk or other officer is satisfied that she fully understands the same, he shall, in addition to the certificate of probate or acknowledgment, also put on the back of the deed, or annex to it, a certificate such as is embodied in the following form (Ibid. § 3753):

Acknowledgment by Husband and Wife

STATE OF ———, }
———— County. }

Personally appeared before me (*name and title of officer*), in and for ———, duly commissioned and qualified, the within-named ——— and ———, his wife, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

And ———, wife of the said ———, having appeared before me privately and apart from her husband, the said ——— (*husband's name*), acknowledged the execution of the said deed to have been done by her freely, voluntarily, and under-

standingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

Witness my hand and official seal at ——— this ——— day of ———, 19—.

(*Seal.*)

(*Signature and title.*)

Ibid. § 3753.

The authentication or acknowledgment of a deed by a corporation, whether it has a seal or not, is sufficient, when in substantially the following form:

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

Before me, ———, of the state and county aforesaid, personally appeared ———, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be president (*or other officer authorized to execute the instrument*) of the ———, the within-named bargainor, a corporation, and that he, as such ———, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as ———.

Witness my hand and seal, at office in ———, this ——— day of ———.

Code Supp. 1903, p. 642; Laws 1899, c. 187.

Proof by Subscribing Witnesses

STATE OF ———, }
——— County. } ss.

Personally appeared before me (*name and title of officer*), in and for ———, duly commissioned and qualified, ——— and ———, subscribing witnesses to the within deed, who, being first sworn, deposed and said that they are acquainted with ———, the bargainor (*or as the case may be*), and that

he acknowledged the same, in their presence, to be his act and deed upon the day it bears date (*or stating the time as proved by the witnesses*). Witness my hand and seal of office this _____ day of _____, 19—.

Ibid.

TEXAS

Before Whom Taken

The acknowledgment or proof of an instrument of writing for record may be made within this state before either:

Within state: A clerk of the district court; a judge or clerk of the county court; a notary public. Rev. Civ. St. 1911, art. 6797.

Elsewhere within United States: Before either: A clerk of some court of record having a seal; a commissioner of deeds appointed under the laws of Texas; a notary public. Ibid. art. 6798.

Without the United States: Before either: A minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; a consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made; a notary public. Ibid. art. 6799.

Forms

No acknowledgment shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. Ibid. art. 6801.

No acknowledgment of a married woman shall be taken unless she has had the instrument shown to her, and then and there fully explained by the officer taking the acknowledgment, on an examination privily and apart from her husband; nor shall he certify to the same unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. Ibid. art. 6802; post, p. 103.

The officer must place on the instrument the official certificate, signed by him and under his seal of office. Ibid. art. 6803.

The forms of certificate of acknowledgment must be substantially as given below:

The proof of any instrument for the purpose of record shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument subscribe the same, or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated, and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign, and seal the same with his official seal. Ibid. art. 6806; post, p. 103. The certificate must be substantially as given below:

Ordinary Acknowledgment

STATE OF ———, }
County of ———. }

Before me, ——— (*here insert the name and character of the officer*), on this day personally appeared ———, known to me (*or, proved to me on the oath of ———*) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ——— day of ———, A. D. ———.

(Seal.)

_____.

Ibid. art. 6804.

Acknowledgment by a Married Woman

STATE OF _____, }
County of _____. }

Before me, _____ (*here insert the name and character of the officer*), on this day personally appeared _____, wife of _____, known to me (*or, proved to me on the oath of _____*) to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this _____ day of _____, A. D. _____.

(Seal.)

_____.

Ibid. art. 6805.

Certificate of Proof by Witness

STATE OF _____, }
County of _____. }

Before me, _____ (*here insert the name and character of the officer*), on this day personally appeared _____, known to me (*or, proved to me on the oath of _____*) to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and, after being duly sworn by me, stated on oath that he saw _____, the grantor or person who executed the foregoing instrument, subscribe the same (*or, that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed*),

and that he had signed the same as a witness at the request of the grantor (*or person who executed the same*).

Given under my hand and seal of office this _____ day of _____, A. D. _____.

(Seal.) _____.

Ibid. art. 6808.

UTAH

Before Whom Taken

The proof or acknowledgment of every conveyance whereby any real estate is conveyed or may be effected shall be taken by some one of the following officers:

Within state: Before a judge or clerk of a court having a seal, or notary public, county clerk, or county recorder.

Elsewhere within United States: Before a judge or clerk of any court of the United States or of any state or territory having a seal, a notary public, or a commissioner appointed by the Governor of Utah.

Without United States: Before a judge or clerk of any court of any state, kingdom, or empire having a seal, notary public therein, or ambassador, minister, commissioner, or consul of the United States appointed to reside therein. Comp. Laws 1907, § 1985.

When any of the officers above mentioned are authorized by law to appoint a deputy, acknowledgment or proof may be taken by any such deputy in the name of his principal. Ibid. § 1986.

Forms

The certificate shall be indorsed or annexed to the conveyance, and shall be: When granted by judge or clerk, under the hand of such judge or clerk and the seal of the court; when granted by any other officer, under the hand and official seal of such officer. Ibid. § 1987.

Notaries public in the state must affix the date on which their commissions expire. Ibid. § 1672.

No acknowledgment shall be taken unless the person offering to make such acknowledgment is personally known to the officer to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such

by the oath or affirmation of a credible witness personally known to the officer. Ibid. § 1988.

Certificates of acknowledgment must be in substantially the following forms:

Acknowledgment by Individual

STATE OF ———, }
County of ———. } ss.

On the ——— day of ———, A. D. 19—, personally appeared before me A. B., the signer of the above instrument, who duly acknowledged to me that he executed the same.

Acknowledgment by Corporation

STATE OF UTAH, }
County of ———. } ss.

On the ——— day of ———, A. D. 19—, personally appeared before me A. B., who, being by me duly sworn (*or, affirmed*), did say that he is the president (*or other officer or agent, as the case may be*) of (*naming the corporation*), and that said instrument was signed in behalf of said corporation by authority of its by-laws (*or, by resolution of its board of directors, as the case may be*), and said A. B. acknowledged to me that said corporation executed the same.

Ibid. § 1989.

Acknowledgment Where Grantor Unknown to Officer

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, A. D. 19—, personally appeared before me A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same.

Ibid. § 1990.

Certificate of Proof by Subscribing Witness

STATE OF ———, }
County of ———. } ss.

On this ——— day of ———, A. D. 19—, before me personally appeared A. B., personally known to me (*or*, satisfactorily proved to me by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn) to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in ———, county of ———, and state of Utah; that he was present and saw E. F., personally known to him to be the signer of the above instrument as a party hereto, sign and deliver the same, and heard him acknowledge that he executed the same; and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said E. F.

Ibid. § 1990.

VERMONT

Before Whom Taken

Within state: Before a justice, town clerk, notary public, master in chancery, county clerk, or judge or register of probate. Such acknowledgment before a notary is valid without his official seal. Pub. St. 1906, § 2577.

Without state: Deeds and other conveyances and powers of attorney for the conveyance of lands, the acknowledgment or proof of which is taken without the state, if certified agreeably to the laws of the state, province, or kingdom in which such acknowledgment or proof is taken, shall be as valid as though the same were taken before a proper officer or court in this state; and the proof of the same may be taken, and the same acknowledged with like effect, before a justice, magistrate, or notary public within the United States or in a foreign country, before a commissioner appointed for that purpose by the Governor of this state, or before a minister, chargé

d'affaires, consul, or vice consul of the United States in a foreign country. Ibid. § 2598.

Forms

None are prescribed.

Acknowledgment by Husband and Wife

STATE OF ———, }
County of ———. } ss.

At ——— this ——— day of ———, A. D. 19—, personally appeared ——— and ———, his wife, and acknowledged the foregoing instrument by them sealed and subscribed to be their free act and deed.

Before me

(Signature and title.)

Acknowledgment by Corporation

STATE OF ———, }
County of ———. } ss.

At ——— this ——— day of ———, A. D. 19—, personally appeared ———, who has executed the foregoing instrument as the duly authorized agent of (*name of corporation*), and acknowledged the same to be the free act and deed of said corporation, and that he, as such agent, freely executed the same.

Before me

(Signature and title.)

VIRGINIA

Before Whom Taken

The circuit court of any county or the corporation court of any city (other than of Richmond) in which any writing is to be or may be recorded, and the chancery court of the city of Richmond when any such writing is to be or may be recorded in said city, or the clerk of any such court, or his deputy, in his office, shall admit to record any such writing as to any person

whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him in such court, or before such clerk, or his deputy, in his office. Code 1904, § 2500. Such court or clerk shall also admit any such writing to record as to any person whose name is signed there-to upon a certificate of his acknowledgment before the said clerk, or before the clerk of any court of record in the state, or before the clerk of any court without the state, but within the United States, or before a justice, a commissioner in chancery of a court of record, or a notary within the United States, or in the Philippine Islands, Porto Rico, or in any territory or other possession or dependency of the United States, written on or annexed to the same, or upon the certificate of acknowledgment of such person before any commissioner appointed by the Governor, within the United States, so written or annexed, or upon the certificate of the clerk of any court of record in the state, or the clerk of any court out of the state and within the United States, or his deputy, that the said writing was proved as to him by two witnesses before such clerk or before the court of which he is clerk, or upon the certificate, under the official seal of any ambassador, minister plenipotentiary, minister resident, chargé d'affaires, consul general, consul, vice consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person or proved as to him by two witnesses before any person having such appointment, or before such court, mayor, or chief magistrate. Ibid. § 2501.

Forms

The following forms of certificate, entitled, respectively, "Acknowledgment" and "Acknowledgment Before Commissioner," are prescribed. In the case of a writing signed in behalf of or by authority of any person or corporation, or in any representative capacity, a certificate in the form so entitled shall be sufficient. Ibid. § 2501. When an instrument is acknowledged before a notary within the state, the certificate must state the date of expiration of his term of office. Ibid. § 2501.

Acknowledgment

County (*or*, corporation) of ———, to wit: I ———, clerk (*or*, deputy clerk) of ——— court (*or*, a justice of the peace, *or*, commissioner in chancery of the ——— court, *or*, notary public), for the county (*or*, corporation) aforesaid, in the state (*or* territory *or* district) of ———, do certify that E. F. (*or*, E. F. and G. H., *and so forth*), whose name (*or*, names) is (*or*, are) signed to the writing above (*or*, hereto annexed), bearing date on the ——— day of ———, has (*or*, have) acknowledged the same before me, in my county (*or*, corporation) aforesaid. Given under my hand this ——— day of ———.

Acknowledgment Before Commissioner

State (*or*, territory *or* district) of ———, to wit: I, ———, a commissioner appointed by the Governor of the state of Virginia for the said state (*or*, territory *or* district) of ———, certify that E. F. (*or*, E. F. and G. H., *and so forth*), whose name (*or*, names) is (*or*, are) signed to the writing above (*or*, hereto annexed), bearing date on the ——— day of ———, has (*or*, have) acknowledged the same before me in my state (*or*, territory *or* district) aforesaid. Given under my hand this ——— day of ———.

Acknowledgment in Behalf of Corporation or in Representative Capacity

State (*or*, territory *or* district) of ———, county (*or*, corporation) of ———, to wit: I, ———, a ——— (*here insert the official title of the person certifying the acknowledgment*), in and for the state (*or*, territory *or* district) and county (*or*, corporation) aforesaid, do certify that ——— (*here insert the name or names of the persons signing the writing on behalf of*

the person or corporation, or the name of the person signing the writing in a representative capacity), whose name (*or, names*) is (*or, are*) signed to the writing above, bearing date on the _____ day of _____, has (*or, have*) acknowledged the same before me in my county (*or, corporation*) aforesaid. Given under my hand this _____ day of _____.

WASHINGTON

Before Whom Taken

Within state: Before a judge of the Supreme Court or of the superior court, a clerk of either court, or his deputy, a justice of the peace, a county auditor or his deputy, or a notary public. Rem. & Bal. Ann. Codes & St. § 8754.

Elsewhere within United States: Before any person authorized to take acknowledgments of deeds by the laws of the state or territory wherein the acknowledgment is taken, or before any commissioner appointed by the Governor of Washington. Ibid. § 8755. Unless such acknowledgment be taken before a commissioner appointed by the Governor, or by the clerk of a court of record, or by a notary public or other officer having a seal of office, the deed shall have attached a certificate of a clerk of a court of record, under the seal of said county or district, or a certificate of any other proper certifying officer of said district or county within which the acknowledgment was taken, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be, that he is authorized by law to take acknowledgments of deeds, and that he verily believes the signature of the person subscribed thereto to be genuine. Ibid. § 8756.

In a foreign country: Before a minister plenipotentiary, secretary of legation, chargé d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the government of the United States, or before any notary public, or before the proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town, or other municipal corporation therein. Ibid. § 8758. The person or officer taking such acknowledgment shall certify the same by a certificate written on or annexed to the instrument, under his official seal, if any he has, reciting, in substance, that

the instrument was acknowledged by the person or persons whose name or names are signed thereto as grantor or principal before him as such officer, with the date of acknowledgment. Ibid. § 8759.

Forms

Certificates substantially in the forms following are sufficient. Ibid. §§ 8761, 8761½.

A notary public, shall, in addition to his name and the words "notary public," add his place of residence and affix his official seal. Ibid. § 8299.

Acknowledgment by Individual

STATE OF WASHINGTON, }
County of _____. } ss.

I (*here give name of officer and official title*) do hereby certify that on this _____ day of _____, 19—, personally appeared before me (*name of grantor, and, if acknowledged by wife, her name, and add "his wife"*), to me known to be the individual or individuals described in and who executed the within instrument, and acknowledged that he (*she or they*) signed and sealed the same as his (*her or their*) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, A. D. 19—. (Signature of officer.)

Ibid. § 8761.

Acknowledgment by Corporation

STATE OF _____, }
County of _____. } ss.

On this _____ day of _____, A. D. 19—, before me personally appeared _____, to me known to be the (president, vice president, secretary, treasurer, *or other authorized officer or agent, as the case may be*) of the corporation that executed

the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and title of officer.)

Ibid. § 8761½.

WEST VIRGINIA

Before Whom Taken—Forms, etc.

The clerk of the county court of any county in which any deed or other writing is to be or may be recorded shall admit the same to record in his office as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him, before such clerk. Code 1906, § 3075.

Such clerk shall also admit any writing to record, as to any person whose name is signed thereto, upon the request of any person interested therein, upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary, or clerk of any court within the United States, or a commissioner appointed within the same by the Governor of this state, written or annexed to the same, to the following effect:

Acknowledgment

State (territory *or* district) of ———, county of ———, to wit: I, ———, a commissioner appointed by the Governor of the state of West Virginia for the said state (*or*, territory *or* district) of ——— (*or*, I, ———, a justice of the county aforesaid; *or*, I, ———, recorder of said county; *or*, I, ———, a notary of said county; *or*, I, ———, a prothonotary *or* clerk of the ——— court of said county), do certify that ———, whose name (*or* names) is (*or*, are) signed to the writing above

(*or, hereto annexed*), bearing date on the ——— day of ———, has (*or have*) this day acknowledged the same before me, in my said ———.

Given under my hand this ——— day of ———.

Or upon a certificate so written or annexed, under the official seal of any minister plenipotentiary, chargé d'affaires, consul general, consul, deputy consul, vice consul, consul agent, vice consular agent, commercial agent, or vice commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate. If the acknowledgment be before a notary without the state, he shall certify the same under his official seal. *Ibid.* § 3076.

A notary shall state the date of expiration of his commission.

When a husband and wife have signed a writing purporting to convey real estate, the wife may acknowledge the same together with, or separately from, her husband. If both acknowledge said writing at the same time, the certificate of such acknowledgments shall be in form or effect as follows:

Acknowledgment by Married Women

State (territory *or* district) of ———, county of ———, to wit: I, ———, a commissioner appointed by the Governor of the state of West Virginia for the said state of ——— (*or, territory or district of ———*) (*or, I, ———, a justice of the peace of the said county of ———; or, I, ———, a notary of the said county of ———; or, I, ———, prothonotary or clerk of the ——— court or county of ———; or other officer or person authorized to take acknowledgments, as the case may be*), *do certify that ——— and ———, his wife, whose names are signed to the writing above (*or, hereto annexed*), bearing

date the —— day of ——, 19—, have this day acknowledged the same before me in my said ——.

Given under my hand this —— day of ——, 19—.

If the wife acknowledge a deed or other writing separately from her husband, the certificate of her acknowledgment after the star in the foregoing form shall be in form or effect as follows:

do certify that ——, the wife of ——, whose names are signed to the writing above (*or*, hereto annexed), bearing date the —— day of ——, 19—, has this day acknowledged the same before me in my said ——.

Given under my hand this —— day of ——, 19—.

If the acknowledgment be before a notary without this state, he shall certify the same under his official seal. Ibid. § 3077.

When the acknowledgment of a married woman has been so taken and certified, such writing shall operate to convey from the wife her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title, and interest of every nature which, at the date of such writing, she may have in real estate conveyed thereby, as effectually as if she were at said date an unmarried woman; and such writing shall not operate any further upon the wife or her representative by means of any covenant or warranty therein contained.

If the deed be executed by a married woman, who at the time of its execution and acknowledgment is living separate, and apart from her husband, or her husband be non compos mentis, and such deed be for real estate which is her sole and separate property, such facts shall be recited in the deed, and if her husband has not joined therein, no person authorized to take such acknowledgment shall take and certify the same until it is proved to his satisfaction that such real estate is the sole and separate property of such married woman, and that she was and is living separate and apart from her husband, or that her husband is non compos mentis at the date of such deed, and the acknowledgment thereof; and it shall be stated in the certificate of such acknowledgment that all of said facts were shown to the satisfaction of the person taking the same. The certificate as to such facts shall be included in the

certificate of her acknowledgment, and may be in form or effect as follows:

And I further certify that before taking said acknowledgment it was proved to my satisfaction that the real estate in said writing mentioned was the sole and separate property of said ———, and that she was at the date of said writing, and now is, living separate and apart from her husband (*or*, that her husband is non compos mentis).

Such certificate shall, in all cases where the validity of any such deed comes in question, be prima facie evidence of the facts therein stated. Ibid. § 3079.

Acknowledgment by Corporation or Joint-Stock Association

The certificate of acknowledgment of a corporation or joint-stock association may be in form or effect as prescribed in the next preceding section down to the star, and then as follows:

do certify that ——— personally appeared before me in my said ———, and, being by me duly sworn (*or* affirmed), did depose and say that he is the president (*or other officer or agent*) of the corporation (*or*, association) described in the writing above (*or*, hereto annexed), bearing date the ——— day of ———, 19—, authorized by said corporation (*or*, association) to execute and acknowledge deeds and other writings of said corporation (*or*, association), and that the seal affixed to said writing is the corporate seal of said corporation (*or* the seal of the said association, *as the case may be*), and that said writing was signed and sealed by him in behalf of said corporation (*or*, association), by its authority duly given. And the said ——— acknowledged the said writing to be the act and deed of said corporation (*or*, association.)

Or, if the corporation has no corporate seal, or the association has no seal, omit the words "seal affixed to said writing is the corporate seal of said corporation (*or*, the seal of said association, *as the case may be*)," and say "said corporation

(or, association) has no seal." And in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the word "executed." Ibid. § 3078.

WISCONSIN

Before Whom Taken

Within state: Before any judge or clerk of a court of record, court commissioner, county clerk, notary public, justice of the peace, police justice, or United States court commissioner who has filed his certificate of appointment with the clerk of the circuit court of the county in which he resides. The officer taking an acknowledgment shall attach his certificate thereof with the date of making the same, under his hand and his official seal, if he has one. Wis. St. 1911, § 2216.

Elsewhere within United States: Before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of the state, territory, or district to take acknowledgments of deeds therein, or before any commissioner appointed by the Governor of Wisconsin; and, if executed within the jurisdiction of any military post of the United States, before the commanding officer thereof. Conveyances may be executed and acknowledged in the same manner as if within Wisconsin, or according to the laws of the state, territory, or district. Ibid. § 2218. Unless the acknowledgment be taken before a commissioner appointed by the Governor, a clerk of a court of record with its seal attached, a notary public with his seal attached, or the commanding officer of a military post, the conveyance shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which the acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and, if executed and acknowledged according to the laws of such state, territory, or district, the certificate shall state that fact, and, if the acknowledgment is taken before any such commissioner, clerk of a court of record, notary public, or commanding officer of a military post, the certificate may certify that fact in lieu of other proof thereof. Ibid. § 2219.

In foreign country: Before any notary public or other of-

ficer authorized by the laws of such country to take the acknowledgment of deeds therein, or before any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, or consul of the United States, appointed to reside therein. Conveyances may be executed and acknowledged in the same manner as if within Wisconsin, or according to the laws of such country. The acknowledgment shall be certified by the officer taking the same under his hand, and, if taken before a notary public his seal of office shall be affixed, and, if the conveyance is executed and acknowledged according to the laws of such country, the certificate of acknowledgment shall certify that fact. Ibid. § 2220.

Form

The acknowledgment of a married woman may be in the same manner as if she were sole. Ibid. §§ 2221, 2224. A certificate substantially in the following form is sufficient:

Acknowledgment

STATE OF WISCONSIN, }
——— County. } ss.

Personally came before me this —— day of ——, 19—, the above (*or, within*) named A. B. and C. B., his wife (*or, if an officer, adding the name of his office*), to me known to be the persons who executed the foregoing (*or, within*) instrument, and acknowledged the same.

(*Insert designation of officer.*)

Ibid. § 2217.

WYOMING

Before Whom Taken

Within state: Before any judge or clerk of a court of record, United States commissioner, county clerk, justice of the peace, or notary public. The officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand and seal of office, if there be one. Comp. St. 1910, § 3638.

Without state: Before any officer authorized by law to take

acknowledgments at the place where such acknowledgment is taken. If the officer has no seal, his certificate shall have attached thereto the certificate of the clerk of a court of record, or a county clerk, of the same place, having a seal, certifying that the officer taking the acknowledgment is authorized to take the same, and that he believes that the signature appended to the acknowledgment is genuine. Ibid. § 3636. A conveyance executed in any other state, territory, district, or country may be acknowledged before a clerk of a court of record, county clerk, or a commissioner appointed by the Governor of Wyoming. Ibid. § 3637.

In foreign country: Before a consul general, consul, or vice consul of the United States. The officer shall certify over his hand and official seal or the seal of the consulate to which he is attached, if there be such seal; and, if he has no official seal, and there be no seal of his consulate, that fact shall be stated in the certificate, and no other authentication shall be required. Ibid. § 3638.

Forms

A notary public, justice of the peace, or commissioner of deeds for Wyoming shall add to his certificate the date on which his commission or term of office expires. Ibid. § 3645.

As to the acknowledgments where a wife releases the right of homestead, post, p. 641.

A certificate substantially in the following form is sufficient (Ibid. § 3644):

Acknowledgment

STATE OF *(name the state)*,
County of *(name the county)*. } ss.

I *(here give the name of the officer and his official title)* do hereby certify that *(name of the grantor, and, if acknowledged by a wife, her name, and add "his wife")*, personally known to me to be the same person whose name is *(or, are)* subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he *(she or they)* signed, sealed, and delivered said instrument as his *(her or their)* free and voluntary act, for the uses and purposes therein set forth *(with*

the following addition where the right of homestead is released, including the release and waiver of the right of homestead).

Given under my hand and seal this (*day of the month*) day of (*month*), A. D. (*year*).

Ibid. § 3644.

Acknowledgment Where Wife Joins in Conveyance of Homestead

(Follow the preceding form, inserting after "waiver of the right of homestead" the following:)

And I further certify that ———, wife of the said ———, was by me first separately examined in reference to the signing and acknowledging such instrument, and by me fully apprised of her right and the effect of signing and acknowledging the same, and that she, separate and apart from her said husband, did freely and voluntarily sign and acknowledge the same for the uses and purposes therein set forth, and expressly released and waived all her right of homestead.

CHAPTER II

AGREEMENTS

The term "agreement" is here used, somewhat informally and for convenience, to designate a contract which consists of the mutual promises of the parties; the promises of the one party being the consideration for the promises of the other. Such contracts, resting merely in agreement and being based upon consideration, need not be in any prescribed form, nor need they, indeed, be in writing, or even evidenced by writing, unless a writing is required by statute, as in the case of contracts falling within certain provisions of the statute of frauds. They are distinguished from contracts under seal, usually called deeds or specialties, which derive their validity at common law from their form alone, and not from the presence of consideration.

Agreements are usually signed in duplicate, each party retaining one of the duplicates. It is not necessary, or usually desirable, to have the signatures attested by witnesses. If there is consideration for the respective promises, seals are superfluous, although if a corporation is a party it is better to have the corporate seal. Acknowledgment by the parties is, of course, unnecessary, but may be convenient as facilitating proof of execution. (See Acknowledgments, p. 1.)

Forms of agreements appropriate to common subjects of contract are elsewhere given.

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For forms of agreements appropriate to particular subjects of contract, see—

- Apprenticeship, p. 130.
- Arbitration Agreements, p. 138.
- Building Agreements, p. 261.
- Composition Agreements, p. 209.
- Easements, p. 648.
- Guaranties, p. 687.
- Hire of Goods, p. 695.
- Husband and Wife, p. 703.
- Indemnities, p. 720.
- Landlord and Tenant, p. 726.
- Novation, p. 1007.

Party Walls, p. 1063.
Partnership, p. 1011.
Patents and Inventions, p. 1074.
Pledges and Collateral Securities, p. 1118.
Publishing Agreements, p. 458 et seq.
Sale and Purchase of Land, p. 1167.
Sale of Goods, p. 1191.
Service and Agency Contracts, p. 1206.
Ships and Vessels, p. 1225.
Stock and Stockholders, p. 1257.

1. Forms of Commencement

This agreement, made this _____ day of _____, between _____, of _____, party of the first part, and _____, of _____, party of the second part,

Witnesseth, *etc.*

This agreement is made the _____ day of _____, between _____, of the one part, and _____, of the other part,

Whereas, *etc.*

Now, it is hereby agreed as follows, *etc.*

This agreement made the _____ day of _____, between _____, hereinafter called the vendor (*or*, the owner, the lessor, *etc.*), of the one part, and _____, hereinafter called the purchaser (*or*, the contractor, the lessee, *etc.*), of the other part,

Whereby it is agreed as follows, *etc.*

This agreement made this _____ day of _____, between _____ and _____, partners under the firm name and style of _____ & Co. (*or*, carrying on business in copartnership under the style of _____ & Co.), parties of the first part, and _____ the _____ Company, a corporation organized and existing under the laws of the state of (*or*, a corporation of the state of) _____, party of the second part,

Witnesseth as follows, *etc.*

Agreement made the _____ day of _____ between _____, of the one part, and _____, of the other part:

The said _____ agrees, *etc.*

The said _____ agrees, *etc.*

It is hereby mutually agreed by A. B. and C. D. as follows:

A. B. shall, *etc.*

C. D. shall, *etc.*

2. Forms of Testimonium Clause

In witness whereof the said parties (*or*, the parties to these presents) have hereunto set their hands the day and year first above written.

In witness whereof the said parties have hereunto, and to a duplicate hereof of like tenor and effect, set their hands the day and year first above written.

Witness the hands of the said parties this _____ day of _____.

In witness whereof the said _____ Company, party of the first part, has caused its corporate name to be hereunto subscribed by its president, and its corporate seal to be hereunto affixed by its secretary, and the said party of the second part has hereunto set his hand, all on the day and year first above written.

In witness whereof the parties hereto have caused their respective corporate signatures and seals to be hereunto affixed, all being done in the city of _____ and state of _____, on the day and year first above written.

CHAPTER III

APPOINTMENTS OF PROPERTY UNDER POWERS

Powers of appointment, although less common in this country than in England, are created not infrequently by wills, and sometimes by deeds of trust and settlement. A power is general where the donee of the power is at liberty to appoint whom he pleases, and special where the donee is restricted to appointment to or among particular persons or objects. A power may be to appoint by deed, or by will, or by deed or will. (For appointment by will, see p. 1345, post.)

In general, all the circumstances and formalities required by the donor to attend the execution of the instrument must be duly complied with. It is not essential to recite the power, if the intention to execute it appears; but in order to show an intention to execute a power by deed, or a special power by will, the instrument must refer either to the power or to the property subject to the power, or it must affect to deal with some property in general terms under such circumstances that it cannot have effect except upon the property comprised in the power.

Estates and interests arising by virtue of the execution of a power take effect in the same manner as if created by the instrument which contained the power, but, as a rule, from the time of its execution. If, however, the power is special, or, according to the rule very generally prevailing, if the power, although general, is to appoint by will, the rule against perpetuities is to be applied as of the time of the creation of the power, and not as of the time of the execution—a point which must not be overlooked.

In some states the common law relating to the creation and validity of trusts and powers has been changed, and trusts and powers are regulated by statute.

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1. Appointment of Part of Settled Real Estate to Son, Subject to Life Estate of Appointor

To all to whom these presents shall come, A. B., of ———, sends greeting:

[RECITAL OF POWER UNDER MARRIAGE SETTLEMENT.]

Whereas, by an indenture dated the ——— day of ———, and made between the said A. B., of the first part, B. B., of the second part, and W. X. and Y. Z., of the third part, being a settlement made in contemplation of a marriage then intended and shortly afterwards solemnized between the said A. B. and B. B., certain lands and tenements, to wit (*description*), were conveyed unto the said W. X. and Y. Z. to the use of the said A. B. for life, with remainder to the use of the said B. B. for life, and after the decease of the survivor of the said A. B. and B. B. to the use of all or such one or more of the children of the said A. B. and B. B. for such estate or estates and in such parts, shares, and proportions as the said A. B. and B. B. at any time during their joint lives by any deeds revocable or irrevocable or by will should appoint, and in default of such appointment, and in so far as such appointment should not extend, to the use of all or such one or more of the children as aforesaid for such estate or estates and in such parts, shares, and proportions as the survivor of the said A. B. and B. B. by deed or deeds revocable or irrevocable or by will should appoint, and in default of such appointment to such uses and upon such trusts and in the said recited indenture are expressed concerning the same;

[RECITAL OF DESIRE TO EXERCISE POWER.] And whereas, the said B. B. died on the —— day of ——, and the said A. B. is desirous of exercising the power of appointment so reserved to the survivor of them as aforesaid in favor of C. B., his eldest son, as to the lands and tenements hereinafter particularly described, being part of the lands and hereditaments comprised in the said recited indenture, but subject to the life estate therein of the said A. B.

[APPOINTMENT.] Now, these presents witness that, in exercise of the power vested in the said A. B. by the said recited indenture and of all other powers whatsoever enabling him in this behalf, the said A. B. hereby irrevocably limits and appoints that all those parcels, situate (*description*), shall henceforth go to and remain to the use of the said C. B., his heirs and assigns forever, subject and without prejudice to the estate for life of the said A. B. in the premises hereby appointed.

In witness whereof the said A. B. has hereunto set his hand and seal this —— day of ——.

2. Appointment of a Portion to One of Three Children to be Paid Immediately out of Real Estate under Power in Marriage Settlement

To all to whom these presents shall come, A. B., of ——, sends greeting:

[RECITAL OF SETTLEMENT.] Whereas, by an indenture dated the —— day of ——, and made between the said A. B., of the one part, B. B., of the second part, and W. X. and Y. Z., of the third part, being a settlement made on the then intended marriage of the said A. B. and B. B., shortly afterwards solemnized, the said A. B. thereby conveyed certain lands and hereditaments to the said W. X. and Y. Z. upon the trusts therein mentioned, subject nevertheless to the pow-

er therein reserved to the said A. B. of appointing any sum or sums not exceeding a total of —— dollars for the portions of all or any one or more of the children of the said A. B. and B. B. in such shares and in such manner as the said A. B. should appoint, such portions to be raised and payable out of the said lands and hereditaments as therein mentioned;

[RECITAL OF ISSUE.] And whereas, there are issue of the said marriage three children, namely, C. B., D. B., and E. B.;

[RECITAL OF DESIRE TO APPOINT.] And whereas the said A. B. is desirous of appointing the sum of —— dollars, part of the said sum of —— dollars, in favor of the said C. B.

[APPOINTMENT.] Now, these presents witness that, in the exercise of the power vested in him by the said recited indenture and of every other power enabling him in this behalf, the said A. B. hereby appoints the sum of —— dollars, part of the said sum of —— dollars provided for the portions of the children of the said A. B. and B. B. as aforesaid, with interest for the same at the rate of six per cent. per annum from the date of these presents, unto the said C. B. and her assigns.

And further directs and appoints that the same shall become vested in and be paid to the said C. B. or her assigns immediately upon the execution of these presents.

In witness, *etc.*

3. Appointment of a Reversionary Life Estate in Personality to an Intended Wife

Know all men by these presents that I, A. B., of ——, in the exercise of the power in this behalf conferred on me by the will, dated the —— day of ——, of C. D., deceased, and of every other power me hereunto enabling, hereby appoint that, in case an intended marriage between me and E. F.,

of ———, shall take effect, the trustees or trustee of the said will shall after my death pay the income of the trust estate therein comprised to the said E. F., if she shall survive me, during her life.

In witness, *etc.*

4. Appointment to Children of a Trust Fund under Power in a Will

To all to whom these presents shall come, I, A. B., of ———, send greeting :

[RECITAL OF POWER.] Whereas, C. D., late of ———, in the county of ———, and state of ———, by his will, dated the ——— day of ———, devised and bequeathed the residue of his estate unto certain trustees therein named upon trust to invest the same and to pay the income thereof unto me during my life, and thereafter to divide the same and the property and securities in which the same should be invested among all or any of my children in such shares and in such manner as I should by deed or will appoint, and in default of such appointment upon the other trusts therein declared ;

[RECITAL OF PROOF OF WILL.] And whereas, the said testator died on the ——— day of ——— without having revoked or altered his said will, which was duly proved and admitted to probate in and by the probate court of said county of ——— on the ——— day of ——— ;

[RECITAL OF CHILDREN.] And whereas, I have two children, namely, a daughter, B. B., and a son, C. B.

[APPOINTMENT.] Now, these presents witness that I, the said A. B., in exercise of the power vested in me by the said recited will and of every power me hereunto enabling irrevocably direct and appoint that from and after my decease the said property and securities and all other the residuary estate of the said testator, and all the stocks, bonds, securities, and

other property upon which the same shall be invested, shall be equally divided among the said B. B. and C. B., share and share alike.

In witness, *etc.*

**5. Reservation of Power to Revoke and Appoint Anew,
to be Inserted in an Appointment**

Provided, nevertheless, that it shall be lawful for me the said A. B. at any time during my life, by deed or by my last will and testament, to revoke all or any of the trusts herein declared, and to appoint any other trust or trusts in respect to the same as I may deem fit.

6. Revocation of Former Appointment and New Appointment

To all to whom these presents shall come, I, A. B., of _____, send greeting:

[RECITAL OF FORMER APPOINTMENT.] Whereas, these presents are supplemental to a deed of appointment, dated the _____ day of _____, under my hand and seal, whereby, in exercise of the power vested in me in that behalf by the will of _____, deceased, dated the _____ day of _____, I purported to appoint certain trust funds therein more particularly described in favor of my daughter, B. B., and also in favor of my son, C. B.;

[RECITAL OF INTENDED REVOCATION.] And whereas, in exercise of the power in this behalf reserved to me by the said deed of appointment, I am desirous of revoking the said appointment in favor of the said C. B., and of making a new appointment in manner hereinafter appearing.

[REVOCATION AND NEW APPOINTMENT.] Now, know ye that, in exercise of the said power reserved to me by the said

deed and of every other power enabling me in this behalf, I, the said A. B., hereby revoke and make void all the trusts and estates appointed by the said deed in favor of the said C. B.; and in lieu thereof, in exercise of the said power vested in me by the said will and of every other power me enabling in this behalf, I hereby direct and appoint that from and after my death all the said trust funds and property shall be paid, assigned, and transferred unto the said B. B. absolutely, but without prejudice to any further exercise by me of the power vested in me by the said will.

In witness, *etc.*

TIFF. FORMS—9

CHAPTER IV

APPRENTICESHIP

Apprenticeship is to-day comparatively rare in this country. At common law an infant is bound by articles of apprenticeship if the contract is reasonable and beneficial for him. The contract is usually by deed. The apprentice must consent to be bound, and the father or other guardian is usually a party, and may covenant that the apprentice will perform his covenants. The subject is usually regulated by statute.

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1. Apprenticeship Articles where Infant Binds Himself with Consent of Parent or Guardian

This indenture, made this —— day of ——, between ——, of ——, an infant of the age of —— years or thereabouts, hereafter called the apprentice, of the first part, and ——, of said —— (*if the mother of the apprentice, adding widow; if the guardian, the duly appointed guardian of the said ——*), hereinafter called the father (*or, mother; or, guardian*), of the second part, and ——, of ——, hereinafter called the master, of the third part, witnesseth as follows:

1. [BINDING TO SERVE.] The apprentice, of his own free will and with the consent of the father (*or, mother; or, guardian*), hereby binds himself to serve the master as his apprentice in his trade of —— for the term of —— years from the date hereof.

2. [COVENANTS BY APPRENTICE.] The apprentice covenants with the master that he will well and faithfully serve the master as his apprentice and keep his secrets and obey his lawful commands; that he will not knowingly suffer any damage to be done to the goods, moneys, or other property of the master, and will not waste or spoil the same, nor without the master's consent lend or dispose of them; and that in all things he will behave himself towards the master as a good and faithful apprentice ought.

3. [COVENANTS BY MASTER.] The master, in consideration of the sum of \$—— paid to the master by the father (*or*, mother; *or*, guardian), covenants with the apprentice and the father (*or*, mother; *or*, guardian), and each of them severally, that he will during the said term to the best of his skill and ability instruct the apprentice or cause him to be instructed in the trade of —— and in everything relating thereto; that he will provide the apprentice with good and sufficient board, lodging, clothes, medical attendance, and other necessities (*or*, that he will pay the apprentice weekly during the said term while he shall continue to be his apprentice the sum of \$—— in lieu of the board, lodging, clothes, medical attendance, and other necessities of the apprentice); that he will pay to the apprentice every week during the first year of the said term the sum of \$——, and during the second year thereof the sum of \$——, and during the third and every subsequent year thereof the sum of \$——: Provided, that the apprentice shall have observed the covenants hereinbefore contained and on his part to be performed.

In witness whereof the said parties have to this and one other indenture of the same tenor and effect interchangeably set their hands and seals the day and year first above written.

2. Same—Another Form

This indenture witnesseth:

1. [BINDING TO SERVE.] That ———, an infant of the age of ——— years, the son of ———, of ———, doth by these presents bind himself, and with the free will and consent of the said ——— he is hereby bound, an apprentice to ———, of ———, to learn the art, trade, or mystery of ———, and with him, the said ———, after the manner of an apprentice, to serve from the day of the date of these presents until the ——— day of ———, when the said apprentice will arrive at the age of ——— years.

2. [DUTIES OF APPRENTICE.] During all which time the said apprentice his said master well and faithfully shall serve, his secrets keep, and his lawful commands duly obey. He shall do no damage to his said master, nor suffer it to be done by others without giving seasonable notice thereof to his said master. He shall not waste the goods of his said master, nor lend them unlawfully to any. He shall not contract matrimony within the said term; nor shall he commit any act of vice or immorality which are forbidden by the laws of the state; but in all things, and at all times, he shall carry and behave himself toward his said master, and all others, as a good and faithful apprentice ought to do, during all the term aforesaid.

3. [COVENANTS OF MASTER.] And the said ——— doth hereby covenant and promise to teach and instruct the said apprentice or cause him to be instructed in the art, trade, or calling of ——— by the best way or means that he may or can, if said apprentice be capable to learn, and during the said term to find and provide unto the said apprentice good and sufficient board, lodging, clothes, medical attendance, and other necessities (*etc.*).

In witness, *etc.*

3. Apprenticeship Agreement Providing for Evening Classes for Manual and Industrial Training, with Bonus to Apprentice for Faithful Performance

This agreement made this —— day of —— between the —— Engineering Company, hereinafter called the company, party of the first part, and ——, of ——, hereinafter called the apprentice, party of the second part, witnesseth as follows:

1. [BINDING TO SERVE.] The apprentice hereby binds himself to serve the company as an apprentice in the various branches of trade as practiced in its shops and works for the term of —— years from the date hereof.

2. [COVENANTS OF APPRENTICE.] The apprentice covenants and agrees with the company that he will faithfully and diligently serve the company as an apprentice in the said branches of trade as he may from time to time be assigned to and employed in them or any of them by the company; that he will attend at the shops or works of the company during all hours of work appointed by the company, and will obey all the lawful commands of the company; and that he will also attend such evening classes for manual and industrial training and other studies as the company shall at its expense provide for, during the hours appointed for such classes; and that he will diligently and to the best of his ability pursue such courses of study thereat as may be required of him.

3. [COVENANTS OF COMPANY—PROVISO.] The company covenants and agrees with the apprentice that he shall during the said term have as full an opportunity as is reasonably possible of learning each and every branch of trade practiced in its shops and works; that the company will at its own expense provide for evening classes for manual and industrial training, and will permit the apprentice to attend thereat free of

charge; that the company will pay to the apprentice every month during the first year of the said term the sum of \$——, and during the second year thereof the sum of \$——, and during the third and every subsequent year the sum of \$——; and that, if at the end of the said term the apprentice shall have observed all the covenants hereinbefore contained on his part to be performed, the company will pay to the apprentice the further sum of \$——: Provided, that if at any time the apprentice shall fail to be obedient, attentive, or diligent, he shall be subject, with the approval of the president of the company, to be dismissed, and this agreement shall then at the option of the company determine and be of no further effect.

In witness, *etc.*

(*Signatures and seals.*)

I, ——, the father of the within-named apprentice, hereby consent to the within agreement of apprenticeship.

(*Signature.*)

CHAPTER V

ARBITRATION AND AWARD

In many states arbitration is provided for by statutes under which the award of the arbitrators is enforceable by means of the judgment of a court, but at common law the parties to a controversy may submit its decision to arbitrators, and the statutes referred to do not ordinarily supersede the common-law method of arbitration, under which the successful party must resort to the courts in an action on the award for its enforcement. The forms here given relate only to arbitration at common law. The following points may be noted :

A submission to arbitration is made by a contract between two or more parties whereby they agree to refer the subject in dispute to another as arbitrator, and to be bound by his award. The form of the agreement is immaterial. It is sufficient if it appears that the parties intend to arbitrate and to be bound by the award, nor need there be an express promise to abide by the award, although it is usual to include this. The subject-matter of the controversy should be so stated as to leave no reasonable doubt as to what is submitted. The award being enforceable only by action, it is a common practice for the parties to execute bonds conditioned for their respective submission to arbitration and for the performance of the award.

The arbitrators may be one or several. Sometimes by the agreement two arbitrators, one chosen by each of the parties, are appointed, and it is provided that the two so chosen shall appoint a third, or, in case of their disagreement, shall appoint a third who shall act with the others. Sometimes by the agreement two arbitrators, one chosen by each party, are appointed, and it is provided that the arbitrators shall appoint an umpire, who shall have power to arbitrate and award in case of the disagreement of the arbitrators.

Unless it is otherwise provided, the parties have a right to be heard and to introduce evidence in support of their claims. Provisions for written statements of the respective claims of the parties, for notice of hearings, and for the procedure to be followed upon the hearings may properly be inserted. Nei-

ther the arbitrators nor the witnesses need be sworn unless it is so required by the terms of submission. The proceedings, so far as provision is made therefor, are controlled by the terms of the submission. Unless restricted thereby, the arbitrators have power to decide on all questions of law and fact involved in the controversy, nor are they bound by the strict rules of law or of evidence. While it is generally held that the arbitrators have power to determine and award concerning their fees and expenses, authority to award that one party shall pay the expenses incurred by the other in the arbitration should be expressly conferred if it is intended to be granted. All the arbitrators must concur in the award unless it is provided that a less number or a majority may exercise the powers conferred.

It is usual to provide within what time the award shall be made, but, if this is not done, it seems that a reasonable time will be implied. A submission may ordinarily be revoked by either party at any time before award, but a submission by deed must be revoked by deed. A submission is revoked by the death of an arbitrator, unless provision is made for filling vacancies, and is revoked by the death of either party in the absence of express provision that the submission shall survive.

In making an award the terms of the submission should be complied with, but in the absence of special requirements no precise form need be observed.

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I

Arbitration Agreements

1. For Reference of All Disputes—Short Form

We, —— and ——, hereby refer all matters in difference between us to the determination and award of ——, who may direct which of us shall pay the costs of the reference, and whose award shall be final and binding upon us, and our respective heirs, executors, administrators, and assigns.

In witness, *etc.*

2. Same—Another Form

This agreement made this —— day of ——, between ——, of the one part, and ——, of the other part, witnesseth:

Whereas, differences have arisen between the parties hereto relating to divers matters:

Now, therefore, it is hereby agreed that all differences, claims, demands, causes of action, and actions existing, held, or pending between and by the said parties shall be, and they are hereby, referred to the award and final determination of ——, ——, and ——, with power to award the payment of the costs and expenses of this arbitration.

And the parties hereto mutually covenant and agree to and with each other that the award to be made by the said arbitrators, or any two of them, shall in all respects be well and faithfully kept and observed by each of the parties hereto: Provided, that such award shall be made in writing signed by said arbitrators, or any two of them, and delivered to the said parties or either of them on or before the —— day of ——.

In witness, *etc.*

3. For Reference of Particular Dispute to Expert Arbitrator

Agreement made this ——— day of ———, between ———, hereinafter called the seller, of the one part, and ———, hereinafter called the buyer, of the other part:

[RECITAL OF DIFFERENCES.] Whereas, the seller, on or about the ——— day of ———, ———, sold for \$—— a horse named ——— to the buyer, and on such sale warranted the said horse to be sound in wind and limb; and whereas, the buyer alleges that the horse was not at the date of said sale, and is not now, sound in wind and limb; and

[RECITAL OF PENDING ACTION.] Whereas, an action is now pending in the ——— court for the county of ——— and state of ———, wherein the buyer is plaintiff and the seller is defendant, for the recovery of \$—— damages for breach of the said warranty.

Now, therefore, it is hereby agreed as follows:

1. [REFERENCE.] All matters of dispute in the said action are hereby referred for decision to ———, hereinafter called the arbitrator, whose award shall be final and binding upon the parties hereto.

2. [DISCONTINUANCE OF ACTION.] The said action shall be forthwith discontinued by the buyer, and the seller shall consent to such discontinuance.

3. [COSTS.] The costs of said action and of the arbitration shall be borne and paid as the arbitrator shall by his award direct (*or*, shall be paid by the parties in equal shares).

4. [EVIDENCE AND HEARING.] The arbitrator, having expert knowledge of the subject, shall not be required to take the evidence of any witness unless he thinks fit, and may decide the question in dispute without hearing the parties hereto or their counsel, or otherwise than by an examination of the said horse.

5. [GENERAL POWERS OF ARBITRATOR.] The arbitrator may direct either party to pay any sum of money, or to do or submit to any act, or to execute any instrument, for the purpose of carrying his award into effect.

In witness, *etc.*

4. Agreement to Refer Matters of Account to a Single Arbitrator

An agreement made this _____ day of _____, between _____, of _____, of the one part, and _____, of _____, of the other part:

[RECITAL OF MUTUAL DEALINGS.] Whereas, the parties hereto have for some years carried on their respective businesses at _____ aforesaid, and have had mutual dealings and transactions together, and there has been no settlement of accounts between them for some years past.

Now, it is hereby agreed between the parties hereto as follows:

1. [REFERENCE.] All matters in difference between the parties hereto touching the said dealings and transactions and all accounts relating thereto are hereby referred to the award and final determination of _____.

2. [ARBITRATOR TO INVESTIGATE NOTWITHSTANDING STATUTE OF LIMITATIONS.] The arbitrator shall be at liberty, should he think fit, to investigate all the accounts and dealings between the parties from the _____ day of _____ to the present date, and to determine the true state of the accounts between the parties, notwithstanding the lapse of time and any statute of limitations.

3. [PRODUCTION AND INSPECTION OF BOOKS AND PAPERS.] The arbitrator shall have power to call for the production of any books or papers in the possession or control of either of the parties, and to order that either party shall in the mean-

time have access to and be at liberty to inspect and take copies of all or any of the same relating to the matters in difference.

4. [PARTICULARS OF CLAIMS TO BE DELIVERED.] Each of the parties shall within —— days from the date hereof deliver to the other party and to the arbitrator a full and particular statement in writing of the matters and things in respect of which he claims any relief against the other party, and only matters included or referred to in the statements shall be taken into consideration by the arbitrator.

5. [ACCOUNTANT.] The arbitrator shall be at liberty to employ an accountant to assist him and to charge the remuneration of the accountant in the costs of the award.

6. [GENERAL POWER OF ARBITRATOR.] The arbitrator shall have power to order and direct what he shall think fit to be done by either of the parties respecting the matters in difference.

7. [POWER TO PROCEED EX PARTE.] The arbitrator shall have power to proceed ex parte in case either party shall fail after reasonable notice to attend before him.

8. [PARTIES TO FACILITATE AWARD.] The parties hereto will do and cause to be done all other things necessary and convenient for enabling the arbitrator to make his award without delay.

9. [COSTS.] The costs of the arbitration shall be in the discretion of the arbitrator, who may award by and to whom they shall be paid.

10. [DEATH OF PARTY.] This submission shall not be revoked by the death of either party before the making of the award.

In witness, *etc.*

5. For Reference of Partnership Disputes to Three Arbitrators

This agreement, made this _____ day of _____, between _____, of the first part, and _____, of the second part, and _____, of the third part:

[RECITAL OF DIFFERENCES.] Whereas, the parties hereto have heretofore carried on in copartnership the business of jobbers and wholesale dealers in dry goods at the city of _____, under certain articles of partnership dated the _____ day of _____; and whereas, differences and disputes have arisen between the parties hereto as to certain alleged breaches of said articles by the said party of the first part and the said party of the second part and as to the accounts of the partnership.

Now, therefore, the parties hereto do mutually covenant and agree to and with each other as follows:

1. [REFERENCE.] There are hereby referred to the arbitration of _____, _____, and _____ the matters in dispute hereinbefore recited, and also all other matters of difference, if any, arising under the said articles of partnership of which either party shall give written notice to the other parties and to the said arbitrators _____ days at least before the day which shall be fixed by the said arbitrators for their first sitting.

2. [TO ABIDE AWARD.] The parties shall abide by, observe, and perform the directions and award to be made by said arbitrators, or any two of them.

3. [TIME OF AWARD.] The said award shall be made under the hands of the said arbitrators on or before the _____ day of _____, or within such extended time, not exceeding altogether _____ days, as the said arbitrators shall from time to time appoint by indorsement on this agreement.

4. [PARTIES TO FURNISH PARTICULARS.] Each of the parties shall within —— days at least before the day which shall be fixed by the arbitrators for their first sitting furnish to the other parties hereto and also to the arbitrators full particulars in writing of the claims and objections which they propose to submit to the arbitrators.

5. [PARTIES TO ATTEND AND PRODUCE.] Each party hereto shall attend the said arbitration personally and shall produce to the arbitrators all books, papers, accounts, vouchers, invoices, and other documents in his possession or under his control relating to the matters referred to arbitration, and shall give to the arbitrators all the information and explanation in his power relating thereto.

6. [ACCOUNTANT.] The arbitrators may submit to a competent accountant whom they may select any accounts which they consider ought to be examined for the purpose of the arbitration, and may act upon the report of such accountant without personally verifying the accuracy of such accounts or report.

7. [HEARING, WITNESSES, ETC.] The arbitrators shall hear such testimony as the parties hereto or any of them may produce, relevant to matters referred to arbitration, and the parties, if examined, and the witnesses shall be examined under oath or affirmation: Provided, that in the event of any party neglecting to attend before them after such written notice as the arbitrators may think reasonable, the arbitrators may proceed with the arbitration in the absence of and without further notice to such party. The parties may be represented in the arbitration by their respective attorneys or counsel.

8. [COSTS.] The costs of the arbitration shall follow the event of the award, unless the award otherwise directs.

In witness, *etc.*

6. For Reference of Differences under a Building Agreement to Arbitrators or Umpire

This agreement, made this —— day of ——, between ——, hereinafter called the owner, of the first part, and ——, hereinafter called the contractor, of the second part:

[RECITAL OF BUILDING AGREEMENT.] Whereas, by an agreement, bearing date the —— day of ——, ——, made by and between the parties hereto, the contractor, in consideration of the sum of \$—— to be paid to him as therein provided, agreed with the owner to build a certain building in the city of —— according to the plans and specifications in the said agreement referred to, and to complete the said building on or before the —— day of ——, ——, and it was agreed that in case of the default of the contractor to complete the said building on or before said last-mentioned day the contractor should forfeit the sum of \$—— for each and every day from and after said last-mentioned date while the said building should remain uncompleted; and

[RECITAL OF DIFFERENCES.] Whereas, differences have arisen between the parties respecting the erection of the said building, and the due performance of the said contract, and in particular in the following matters, to wit: Whether the contractor is entitled to be paid any and what sum for work alleged by him to be extra work, and whether the contractor is liable for any and what penalty or damages by reason of delay in completing said building.

Now, therefore, it is hereby agreed as follows:

1. [REFERENCE.] The matters in dispute hereinbefore recited are referred to ——, who has been appointed by the owner, and ——, who has been appointed by the contractor, as arbitrators, or, if they shall not agree in making an award, to an umpire to be appointed by them in writing before entering upon the arbitration. If either of the said arbitrators shall

die or refuse or become incapable to act in or to proceed in the arbitration, the party appointing him shall have power to appoint another in his stead, and such substituted arbitrator shall have all such powers as he would if he had been originally appointed hereby.

2. [TO ABIDE AWARD.] The parties hereto shall abide by, observe, and perform the directions and award of the arbitrators or the umpire.

3. [TIME OF AWARD.] The said award shall be made under the hands of the arbitrators or the umpire; on or before the —— day of ——, or within such extended time, not exceeding altogether —— days, as the arbitrators or the umpire shall from time to time appoint by indorsement hereon.

4. [COSTS.] The costs and expenses of the arbitration and award shall be in the discretion of the arbitrators or the umpire, who shall state in the award which of the parties hereto shall pay and bear the same.

5. [DEATH OF PARTY.] The submission hereby made shall not be affected by the death of either of the parties hereto, but the arbitrators or the umpire shall proceed as if such death had not occurred; and the executors and administrators of the party so dying shall be deemed parties to the submission hereby made.

In witness, *etc.*

7. For Reference to Three Arbitrators with Provisions in Respect to Statement of Claims and Evidence

Agreement made this —— day of ——, between ——, of ——, party of the first part, and ——, of ——, party of the second part:

Whereas (*recite explanatory facts*); and

[RECITAL OF DIFFERENCES.] Whereas, controversies have arisen between the said parties concerning the said matters, and

certain claims are made and asserted by both of the said parties as to the state of accounts between them and as to whether the said party of the second part is liable to account to the said party of the first part, or whether a balance is due to said party of the second part from the said party of the first part, and as to whether the said party of the first part is in equity and justice entitled to certain real estate standing of record in the name of the said party of the second part; and

[RECITAL OF SELECTION OF ARBITRATORS.] Whereas, it is desired to submit the said controversies to arbitration, and the parties hereto have selected as such arbitrators ———, of ———, ———, of ———, and ———, of ———, who are hereinafter referred to as the arbitrators,

Now, therefore, it is hereby agreed as follows:

1. [REFERENCE.] All the said matters in controversy shall be and the same are hereby submitted to the arbitrators, by whom all of the said controversies shall be determined and settled; and the award of the arbitrators or a majority of them shall be final and binding upon the parties hereto, and their heirs, executors, administrators, and assigns.

2. [STATEMENTS OF CLAIMS.] Each party shall in writing present to the arbitrators a statement of his claims with reference to all said matters, as follows: The said party of the first part, on or before the ——— day of ———, shall deliver a statement of his claims to the arbitrators, and a copy thereof to the said party of the second part. Within ——— days thereafter the said party of the second part shall deliver a statement of his claims to the arbitrators, and a copy thereof to the said party of the first part. The said party of the first part shall have the right within ——— days thereafter to present to the arbitrators a statement of his claims in reply to the said statement of the said party of the second part, and in that case shall deliver a copy thereof to the said party of the second part.

3. [HEARING, EVIDENCE, COUNSEL.] The parties hereto shall have the right respectively to submit to the arbitrators at a time or times and a place to be fixed by the arbitrators and under such conditions as they may impose evidence and testimony in support of their said claims so made, and shall have the right upon hearing of such evidence and testimony to be represented by their respective counsel. In the determination of the said matters the arbitrators shall not be bound by the rules of evidence prescribed in the trial of causes in court, but shall determine the said matters upon such evidence of any character as may be satisfactory to them; it being the intention of the parties that all the said matters in controversy between them shall be considered and decided in such way as to cause justice to be done between the parties. After the said statements of claims and the evidence are in the possession of the arbitrators, the parties shall have the right respectively to have the said matters argued by counsel.

4. [Cosrs.] The expenses of such arbitration, including the compensation of the arbitrators, shall be shared equally by the parties hereto.

In witness, *etc.*

8. Clause in Agreement for Reference of Future Differences Thereunder

In case any disagreement or difference shall arise between the parties hereto or any person claiming under them in relation to this agreement or arising thereout, whether as to the construction or operation thereof or the respective rights and liabilities thereunder, such disagreement or difference shall be referred to three arbitrators, one to be appointed by each party and the third to be appointed by the two so by the parties appointed; and the award in writing signed by any two of them shall be final: Provided, that such award shall be

made within —— days after the reference to the said arbitrators. And, if either party shall refuse or neglect to appoint an arbitrator within —— days after the other shall have appointed an arbitrator and served written notice thereof upon the other requiring him to appoint an arbitrator, then the arbitrator so appointed by the first party shall have power to proceed to arbitrate and determine the matters of disagreement or difference as if he were an arbitrator appointed by both the parties hereto for that purpose, and his award in writing signed by him shall be final: Provided, that such award shall be made within —— days after such refusal or neglect of the other party to appoint an arbitrator.

II

Various Provisions of Arbitration Agreements

9. Statements of Claims to be Submitted

Each of the parties shall within —— days from the date hereof (*or*, —— days at least before the day appointed by the arbitrators for their first sitting) furnish to the other party hereto, and also to the arbitrators, a statement in writing of the claims and objections which he proposes to submit to the arbitrators.

10. Pending Actions

Neither of the parties hereto shall, during the said arbitration, prosecute or commence any suit or action against the other touching any of the matters hereby referred to the arbitrators.

11. General Powers

The arbitrators shall have full power to make such regulations and to give such orders and directions in all respects, as they shall deem expedient, as well in respect to the matters and

differences referred to them as also with respect to the mode and times of executing and performing any of the acts, deeds, matters, and things which may be awarded or directed to be done.

12. Same

The arbitrators shall have full power to give such directions and to make such orders in the matters so referred to them as they shall think just.

13. Power as to Releases

The arbitrators shall have full power to order mutual releases to be executed by the parties.

14. Power as to Accountant

The arbitrators may submit to a competent accountant whom they may select any accounts which they consider ought to be examined for the purpose of the arbitration, and may act upon the report of such accountant without personally verifying the accuracy of such accounts or report.

15. Power as to Taking Advice of Counsel

The arbitrators may submit to counsel whom they may select any point of law arising in the course of the arbitration, and may accept such opinion as conclusive.

16. Parties to be Examined and to Produce

The parties and their respective witnesses shall, from time to time, when required by the arbitrators, attend and submit to be examined and cross-examined (upon oath or affirmation), relating to all or any of the matters so referred; and the parties shall, when so required, produce (upon oath or affirmation) and

deposit with the arbitrators all or any of the title deeds, writings, account books, vouchers, letters, documents, evidences, and things in their possession or under their control, respectively, touching or concerning the matters so referred; and in default thereof the arbitrators may proceed with the arbitration in their discretion as if no such evidence had ever existed.

17. Failure of Parties to Attend, etc.

In the event of either party or his witness failing to attend before the arbitrators, after such written notice as the arbitrators may think reasonable (*or, after ——— days' written notice given to such party*), the arbitrators may proceed with the arbitration in the absence of and without further notice to such party.

18. Right of Parties to Inspect Books, etc.

Each of the parties shall have the right, during the said arbitration and until the final submission to the arbitrators of the matters hereby referred, to inspect and make copies of all the books of account, vouchers, letters, and documents in the possession or under the control of the other relating to any of the said matters.

19. Power of Umpire—Award, How Made

The umpire may adopt in his award the decision of the arbitrators upon any matters as to which they have agreed, or may make a separate award upon the particular matters referred to him by the arbitrators, and the award of the umpire and the award, if any, made by the arbitrators shall for this purpose be deemed a single award.

20. Same—Evidence, How Taken

To save expense the umpire may sit and take the evidence with the arbitrators, and may from time to time examine the witnesses and decide any question as to the admissibility of evidence referred to him by the arbitrators. He may accept any finding of fact arrived at by the arbitrators, or may require fresh evidence on any point referred to him.

21. Same—Where Arbitrators Fail to Act

If the arbitrators shall not agree upon and make their award within the time hereinbefore appointed, it shall be lawful for the umpire to act with all the powers of the arbitrators and to make his award, and such award shall be binding upon the parties in all respects as if the arbitrators had disagreed and referred the same to his decision under the power for that purpose hereinbefore contained, but his award shall be made and published under his hand within —— days from the date hereof.

22. Same—Where Either Party Impedes Arbitration

If either party shall unreasonably delay or otherwise prevent or impede the arbitration or the making of the award, the arbitrator appointed by the other party or the umpire may proceed alone and make such award as he shall think fit, and his decision and determination shall be final and binding upon both the parties hereto.

23. Costs

The costs and expenses of the arbitration shall be borne and paid as the arbitrators shall by their award direct (*or*, shall abide the event of the award; *or*, shall be paid by the parties in equal shares).

24. Death of Party

The power hereby given to the arbitrators shall not be determined or revoked by the death of either of the parties hereto, but the arbitrators shall proceed with the arbitration notwithstanding such death, and their award in the premises shall be binding and conclusive upon the said parties and those claiming under them.

III

Miscellaneous Forms

25. Arbitration Bond

Know all men by these presents that, *etc.*

The condition of this obligation is such that, if the above-bounden ———, his heirs, executors, and administrators, shall well and truly submit to and abide by, observe, and perform the award which shall be made by ———, ———, and ———, arbitrators appointed to arbitrate concerning certain matters in controversy between the said obligor and the said obligee, as set forth in a certain agreement for the submission of said matters to the said arbitrators, made by the parties hereto, and bearing date the ——— day of ———, provided, that the said award shall be made within the time in the said agreement provided (*or*, shall be made on or before the ——— day of ———), then this obligation to be void; otherwise to remain in full force.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

26. Revocation of Submission

In the Matter of the Arbitration Between ——— and ———.

To ———, ———, and ———, arbitrators:

You are hereby notified that I revoke your powers as arbitrators in the matters referred to you by a certain agreement, dated the ——— day of ———, made between ——— and myself.

Dated ———.

Yours, *etc.*

27. Appointment of Umpire by Arbitrators

Whereas, by an agreement bearing date the ——— day of ———, made between ——— and ———, certain matters in dispute were referred to the undersigned ——— and ———, as arbitrators, or, if we should not agree in making an award to an umpire to be appointed by us in writing before entering upon the arbitration, we do hereby before entering upon the said arbitration appoint ——— as such umpire, provided he shall within ——— days from the date hereof consent to act.

Witness our hands this ——— day of ———.

28. Extension of Time for Award

It is hereby agreed between the parties to the within agreement for arbitration that the time for making the award is hereby extended to the ——— day of ———.

Dated ———.

(*Signatures.*)

IV

Awards

29. Award by Arbitrators

To all to whom these presents shall come, we, ———, ———, and ———, send greeting:

Whereas, by an agreement in writing, dated the ——— day of ———, made between ——— and ———, certain matters in controversy between them were referred to the undersigned ———, ———, and ———, as arbitrators, as by the said agreement more fully appears:

Now, know ye that we, the said arbitrators, having taken upon ourselves the burden of the said reference and having duly heard and considered the allegations and proofs of the parties in respect to the said matters, do make this our award in writing concerning the same, and do hereby award as follows:

1. That the said ——— shall pay to the said ——— the sum of ——— dollars in full satisfaction and discharge of all claims and demands whatsoever which have been referred to us.

2. That the costs of the reference, which we assess at the sum of ——— dollars, shall be paid by the said ———.

In witness whereof we have subscribed these presents this ——— day of ———.

30. Same—Another Form

(Following Submission under Form No. 7)

Before ———, ———, and ———, arbitrators.

In the Matter of the Arbitration Between ——— and ———.

This matter came duly on to be heard before the above-named arbitrators, under and pursuant to a written agreement of arbitration dated the ——— day of ——— and duly executed by the above-named ——— and ———, at ———, in the city of ———, on the ——— day of ———, and the hearings were continued from time to time until and including the ——— day of ———, at which time the same were concluded, and the matter finally submitted to the arbitrators for determination and award. The said ——— was present at such hearings in person, and was also represented thereat by ———, his attorneys; and the said ——— was also present at such hearings, and was also represented by ———, his attorney. The general claims of the respective parties were presented to the arbitrators in written statements signed by them. There was also offered in evidence at such hearings on behalf of both parties oral and documentary evidence. After duly considering such written statements and the evidence so offered and the arguments of the counsel of the respective parties, the arbitrators hereby make the following their decision and award in said matter, to wit:

1. It is found, determined, and adjudged that the said ——— is entitled to demand, receive, and recover from the said ——— the sum of ——— dollars, with interest at the rate of six per cent. per annum from the ——— day of ———.

2. It is further found, determined, and adjudged that the said ——— is entitled to demand, receive, and recover from the

said —— fifty shares of the capital stock of the Jones Milling Company.

3. It is further found, determined, and adjudged that the said —— shall at his own cost, by a proper deed of quitclaim convey to the said ——, his heirs and assigns, that certain parcel of land (*description*).

The fees of the three arbitrators have been fixed at —— dollars, and under the said agreement this expense is to be shared equally by the parties thereto.

Dated ——.

_____.
_____.
_____.
Arbitrators.

31. Award by Umpire

Whereas, by a certain agreement in writing, dated the —— day of ——, made between —— and ——, certain matters in controversy between them were referred to —— and ——, as arbitrators, and it was therein provided that in case the said arbitrators should not agree in making an award the said matters should be referred to an umpire to be appointed by them in writing before entering upon the arbitration, all as in said agreement more fully set forth; and whereas, the said arbitrators, before entering upon said arbitration, duly in writing appointed the undersigned —— as such umpire, and thereafter met upon said arbitration and were unable to agree in making such award, and duly notified the undersigned to that effect, and that the undersigned was at liberty to proceed as umpire forthwith, and to arbitrate and determine the said matters:

Now, I, the said umpire, having duly heard and considered the allegations and proofs of the said parties in respect to the

said matters so by the said parties referred to me, do make this my award in writing concerning the same, and so hereby award the, *etc.*

32. Award of an Umpire on Cross-Claims

'To all to whom these presents shall come, I, ———, of ———, send greeting:

[RECITAL OF AGREEMENT TO REFER TO TWO ARBITRATORS.] Whereas, by an agreement in writing, dated the ——— day of ———, and made between A. B. and C. D., it was agreed that certain disputes and differences between the said parties were referred to the award and final determination of (*arbitrators*), and in case they should not agree to the award of such person as the said arbitrators should by writing under their hands appoint as umpire, and that the decision of such umpire on the matters referred should be final (*recite time, if named, on making award, the power to enlarge, and other powers justifying the subsequent recitals and directions*);

[RECITAL OF APPOINTMENT OF UMPIRE.] And whereas, the said arbitrators took upon themselves the burden of the said reference, and by writing under their hands duly appointed me, ———, to be the umpire in accordance with the said agreement;

[RECITAL OF ARBITRATORS' FAILURE TO AGREE.] And whereas, the said arbitrators failed to agree, and gave written notice thereof to me, and thereupon the said disputes and difference stood referred to me for my award thereon as umpire;

[RECITAL OF ENLARGEMENT OF TIME.] And whereas, I, the said ———, by two several memoranda in writing under my hand indorsed on the said agreement, enlarged the time for making my umpirage and award until the ——— day of ———.

[AWARD.] Now, know ye that I, the said ———, having taken upon myself the burden of the said reference and umpirage, and having heard, examined, and considered the allegations, witnesses, and evidence of both the said parties concerning the premises, and having done and performed all things necessary to enable me to make a valid award of and concerning the same, hereby make and publish this, my umpirage and award of and concerning the same in manner following, that is to say:

1. I award that upon taking an account of the dealings between the said A. B. and C. D. there is justly due from the said C. D. to the said A. B. the sum of \$——.

2. I direct that the said C. D. pay the said sum of \$—— to the said A. B. at ———, on the ——— day of——.

3. I award that the said C. D. shall at the same time and place also pay the costs of this my award, which are assessed at \$——.

In witness, *etc.*

33. Award by Two Arbitrators and an Umpire, the Former Deciding Some Matters Only, and the Latter Matters on which the Arbitrators Differ

To all to whom these presents shall come we, (*first arbitrator*) of ———, (*second arbitrator*) of ———, and (*umpire*) of ———, send greeting:

[RECITAL OF GUARANTY, DIFFERENCES, AND AGREEMENT TO REFER.] Whereas, by an agreement dated the ——— day of ———, and made between A. B., of the one part, and C. D., of the other part, after reciting that on the ——— day of ——— the said C. D. signed and gave to the said A. B. an instrument in writing guaranteeing and promising the said A. B. that the said C. D. would be responsible to the said A. B.

for the due payment of any goods which he might after the date thereof sell and deliver on credit to E. F., and reciting that the said A. B. alleged that he had afterwards sold to the said E. F. goods in respect of which there was then due to the said A. B. a balance of \$——, and that differences had arisen between the parties thereto as to the liability of the said C. D. on the said guaranty, the said C. D. disputing the value of the goods so supplied to the said E. F., and also alleging that he was discharged by fraudulent concealment by the said A. B. before the guaranty was given, and also by reason of time given to the said E. F. after his term of credit had expired, then it was agreed between the said A. B. and C. D., the parties thereto, that all matters of difference between them should be referred to the said (*first arbitrator*) and the said (*second arbitrator*), and if and so far as to such matters only as they should be unable to agree to their umpire to be appointed by them in writing before entering upon the reference;

[RECITAL OF APPOINTMENT OF UMPIRE.] And whereas, the said (*first arbitrator*) and (*second arbitrator*), by writing under their hands dated the —— day of ——, appointed the said (*umpire*) to be the umpire in accordance with the said agreement;

[RECITAL THAT ARBITRATORS AGREED AS TO SOME MATTERS ONLY.] And whereas, the said arbitrators and umpire took upon themselves the burden of the said reference, and have heard and considered the witnesses and the evidence of both the parties, and the said arbitrators have agreed as to some of the matters so referred to them, but have been unable to agree as to other matters.

[AWARD OF ARBITRATORS.] Now, know ye that we, the said (*first arbitrator*) and (*second arbitrator*), hereby find and award as follows, that is to say:

1. We find that there is due from the said E. F. a balance of \$—— in respect of goods supplied to him on credit by the said A. B. after the date of the said guaranty.

2. We also find that the said guaranty was not void by reason of any fraudulent concealment by the said A. B. before the same were given by the said C. D.; but we are unable to agree as to whether the said C. D. was released and discharged by the said A. B. giving time to the said E. F. in pursuance of a binding agreement, and consequently we are unable to agree as to whether any sum is payable by the said C. D. to the said A. B. or as to how the costs of this reference, which are assessed at \$——, should be borne or paid.

[AWARD OF UMPIRE.] And I, the said (*umpire*), hereby find and award as follows, that is to say:

3. I find that the said C. D. has not been discharged by the said A. B. giving time to the said E. F.

4. I award that there is now due from the said C. D. to the said A. B. the said sum of \$——, and I direct the said C. D. to pay the said sum of \$—— to the said A. B. on the —— day of ——, at ——.

5. I direct the said C. D. to pay the costs of this reference.

In witness, *etc.*

(Signatures of arbitrators and umpire.)

CHAPTER VI

ASSIGNMENTS

The term "assignment," broadly speaking, signifies the transfer of all kinds of property, whether in possession or action, and is applied also to the instrument of transfer. The forms in the present chapter relate principally to assignments of choses in action.

By the rules of the common law property not in possession was incapable of transfer, and choses in action were not assignable. The practical effect of a transfer, however, was secured by means of a power of attorney whereby the owner of the claim empowered another to enforce it in the name of the owner with the right to retain what was recovered to the use of the grantee of the power. Assignments still commonly bear the form of a transfer of the claim with an express power to enforce it in the name of the assignor; but an unqualified assignment of a chose in action carries with it by implication the right to the remedies which the assignor had for its enforcement. Courts of law have long recognized and enforced assignments of choses in action by permitting the assignee to sue in the name of the assignor under an implied power held to be irrevocable, so that the inclusion of an express power is superfluous. *A fortiori* it is superfluous under the statutes now in force in most jurisdictions which permit or even require an assignee, as the real party in interest, to sue in his own name. An assignee, even under these statutes, acquires no better title than his assignor had. A release by the assignor to the debtor without notice of the assignment extinguishes the debtor's liability.

The usual words of an assignment are "sell, assign, and transfer," or "sell, assign, transfer, and set over," but any words which show the intention of the owner of the chose in action to transfer it are sufficient. It is not unusual to add words to the effect that the transfer is to the use of the assignee and "his executors, administrators, and assigns"; but, if the assignment purports to transfer the entire interest of the assignor, and there is nothing to show a different intention, this follows as an incident of the transfer, and anything more is superfluous. Covenants appropriate to the subject-matter may of course be desirable. The assignment of a written contract

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may be made by the indorsement of an assignment thereon or by a separate instrument. If the contract assigned is a specialty, the assignment in some jurisdictions must be under seal.

Many of the forms given below follow the older forms which are still in common use, and contain much that is superfluous, which may be rejected by the draftsman.

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See, also—

Bills of Sale, p. 1203.

Good Will, p. 678.

Ships and Vessels, p. 1225.

1. Assignment of Chose in Action—Short General Form

Know all men by these presents that I, ———, in consideration of ——— dollars to me by ——— paid, the receipt whereof is hereby acknowledged, hereby assign to the said ——— (*description of subject-matter of assignment with such particularity as to identify it*).

Witness my hand (*and seal*) this ——— day of ———.

2. Assignment of Contract by Indorsement

In consideration of ——— dollars to me paid by ———, I hereby assign to him the within contract (*or, bond; or, policy of insurance*) and all my right and interest therein.

(*Date.*)

(*Signature.*)

3. Same—With Power to Sue

In consideration of ——— dollars to me paid by ———, the receipt whereof is hereby acknowledged, I hereby transfer, assign, and set over to the said ———, his executors, administrators, and assigns, all my right, title, and interest in and to the within contract (*or, bond; or, policy of insurance*), and I hereby constitute the said ——— my attorney in my name, or otherwise, but at his own cost, to take all legal measures which may be proper or necessary for the recovery and enjoyment of the assigned premises.

Witness my hand (*and seal*) this ——— day of ———.

4. Assignment of an Account

Know all men by these presents that I, ——— of ———, in consideration of the sum of ——— dollars to me paid by ——— of ———, the receipt whereof is hereby acknowledged, do hereby sell, assign, and transfer to the said ———

*any and all sum or sums of money now due or to grow due to me from — upon the annexed account of sales (*or otherwise describing the account*), with full power unto the said —, his executors, administrators, and assigns, in my name, but at his or their own cost, to sue for, collect, and give acquittance for the same, to his or their own use.

In witness, *etc.*

5. Same—Another Form

Know all men by these presents, that I, —, of —, in consideration of — dollars, lawful money of the United States, to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto —, his executors, administrators, and assigns, to his and their own proper use and benefit, any and all sums of money now due or to grow due upon the annexed account, or upon the sales (*or other transactions, as the case may be*) therein mentioned.

And I do hereby give the said —, his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound, and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness, *etc.*

6. Assignment of Legacy

(*Follow Form 4, p. 163, to **) that certain legacy or sum of — dollars to which I am entitled under the last will and testament of —, who died on the — day of —, and whose said last will and testament was proved and ad-

mitted to probate in and by the probate court of the county of _____ and state of _____, on the _____ day of _____.

In witness, *etc.*

7. Assignment of Wages

(*Follow Form 4, p. 163, to **) the sum of _____ dollars now due me from _____ as wages for my services rendered in his employment (*or, all sums of money now due or to become due to me from _____ as wages for my services rendered or to be rendered in his employment between the _____ day of _____ and the _____ day of _____*), with full power to do and perform all acts and things touching the premises, in like manner to all intents and purposes as I could do if personally present.

In witness, *etc.*

8. Assignment of Claim for Damages

(*Follow Form 4, p. 163, to **), his executors, administrators, and assigns, to his and their own proper use and benefit, any and all sums of money due or owing me, and all claims, demands, and causes of action of whatsoever kind which I have or may have against _____ arising out of (*state the facts constituting the claim*). And I hereby constitute and appoint the said _____, his executors, administrators, and assigns, my true and lawful attorney or attorneys, irrevocable, with full power of substitution and revocation, for me and in my name, or otherwise, but for his and their sole use and benefit, to ask, demand, sue for, collect, receive, compound, and give acquittances for the said claim or claims or any part thereof.

In witness, *etc.*

9. Assignment of a Bond

(Follow Form 4, p. 163, to *) a certain bond, bearing date the _____ day of _____, executed by _____ to me, and all sums of money now due and to become due thereon. And I hereby covenant with the said _____ that there is now owing on said bond for principal and interest the sum of _____ dollars.

In witness whereof I have hereunto set my hand (and seal) this _____ day of _____.

10. Same—Another Form with Power to Sue and Full Covenants

Indenture made the _____ day of _____, between _____, of _____, hereinafter called the assignor, of the one part, and _____, of _____, hereinafter called the assignee, of the other part:

[RECITAL OF BOND.] Whereas, _____ of _____ in and by a certain bond became bound to the assignor in the penal sum of _____ dollars, conditioned for the payment of the sum of _____ dollars and interest on the _____ day of _____, as by said bond more fully appears; and whereas, there is now due and payable to the assignor on said bond, for principal and interest the sum of _____ dollars.

1. [ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the sum of _____ dollars paid by the assignee, the receipt whereof by the assignor is hereby acknowledged, the assignor doth hereby sell, assign, transfer, and set over unto the assignee the said bond and all the moneys now due or to become due thereon, and all the assignor's right, title, and interest therein. To have and to hold the same unto the assignee, his executors, administrators, and assigns, to his and their own proper use and benefit.

2. [POWER OF ATTORNEY.] And the assignor doth hereby irrevocably appoint the assignee, his executors, administrators, and assigns, his true and lawful attorney and attorneys, with full power of substitution and revocation, for and in the name of the assignor and in the names of his executors and administrators, or otherwise, but at the risk and cost of the assignee, his executors, administrators, and assigns, to demand, sue for, recover, and receive of the said ———, his heirs, executors, and administrators, the moneys due or to become due on said bond, and to give good and sufficient releases for the same.

3. [ASSIGNOR'S COVENANTS.] And the assignor, for himself, his heirs, executors, and administrators, doth covenant and agree to and with the assignee, his executors, administrators, and assigns, that there is owing and now payable upon the said bond the full sum of ——— dollars principal and interest secured to be paid thereby; that the assignor has good right to sell and assign the same in manner aforesaid; that he will not hereafter receive any payment of the said sums, or release or discharge the said bond, or do any other act or thing whereby the assignee, his executors, administrators, or assigns, may be hindered from enforcing the same.

4. [ASSIGNEE'S COVENANT.] And the assignee, for himself, his executors, administrators, and assigns, doth covenant and agree to and with the assignor, his executors, administrators, and assigns, that he will protect, save harmless, and keep indemnified the assignor, his heirs, executors, and administrators, of and from all costs and damages that he or they shall at any time pay or become liable to for or on account of any action that may be prosecuted in pursuance of the power herein contained.

In witness, *etc.*

11. Assignment of Book Debts in Consideration of Assignor's Debt to Assignee

Indenture made the —— day of —— (*parties as in preceding form*):

[RECITAL OF DEBTS.] Whereas, the assignor has for some time past carried on the business of —— at ——, and in connection with such business the several persons whose names are set out in the first column of the schedule hereto annexed have become and are now indebted to him in the several sums set opposite to their respective names in the second column of such schedule:

[RECITAL OF AGREEMENT.] And whereas, the assignor is indebted to the assignee in the sum of ——, and the parties hereto have agreed that the assignor shall assign the above-mentioned debts to the assignee in satisfaction of the said sum of \$——.

1. [ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the sum of \$—— so due and owing from the assignor to the assignee, from which sum and debt of \$—— the assignee hereby releases the assignor, the assignor hereby assigns unto the assignee the several debts or sums of money specified in the second column of the said schedule due and owing to the assignor as aforesaid from the several persons whose names are set opposite to such respective sums in the first column of the said schedule, and the benefit of all securities for the same and all interest due and to become due for the same. To hold the same unto the assignee absolutely.

2. [ASSIGNOR'S COVENANT.] And the assignor covenants with the assignee that the several debts hereby assigned are still due and owing to the assignor from the several persons named in the said schedule.

In witness, etc.

(Signatures and seals of assignor and assignee.)

THE SCHEDULE ABOVE REFERRED TO

Name of Debtor.	Amount of Debt.
	\$—————

12. Assignment of Part of a Debt

To ——— of ——— and all others to whom it may concern:

In consideration of the sum of \$——— due and owing from me, the undersigned, of ———, to ——— of ———, I hereby assign to the said ——— the sum of \$———, part of the money now due or hereafter to become due from you, the said ———, to me under a contract dated the ——— day of ———, on account of the several buildings and works therein contracted to be erected and executed by me.

And I authorize and request you to pay the said sum of \$——— out of any moneys which are now or hereafter may become due from you to me, for which sum the receipt of the said ——— shall be your discharge.

And if and so far as may be necessary to give effect to this assignment, I irrevocably appoint the said ——— my attorney for me and in my name or otherwise to demand, sue for, recover, receive, and give effectual discharges for the said sum of \$——— hereby assigned.

Witness my hand (*and seal*) this ——— day of ———.

13. Assignment of Debts upon Trust to Collect and Pay Sum Due to Assignee, and Surplus to Assignor

Indenture made this ——— day of ——— (*parties as in Form 10, p. 166*):

[RECITAL OF ASSIGNOR'S INDEBTEDNESS.] Whereas, the assignor is indebted to the assignee in the sum of \$———;

[RECITAL, DEBTS TO BE ASSIGNED.] And whereas, the assignor is entitled to the several debts the particulars whereof are specified in the schedule hereto annexed, and has agreed to assign them to the assignee upon the trusts hereinafter declared.

[ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the premises, the assignor hereby assigns unto the assignee all the several debts or sums of money specified in the second column of the schedule hereto, which are owing to the assignor from the several persons whose names are respectively set opposite to the sums in the first column of such schedule, and all other sums, if any, due and owing to the assignor from the said several persons, and the benefit of all securities for the same, and all interest due and to become due thereon.

[TRUST.] To hold the same unto the assignee absolutely, but upon trust nevertheless to call in, collect, and compel payment thereof, and out of the moneys to be so realized in the first place to pay the costs, charges, and expenses incurred in realization, and in the next place to retain and pay to himself the said sum of \$——, with interest thereon at the rate of —— per cent. per annum from the —— day of ——, and to pay the surplus, if any, to the assignor.

In witness, *etc.*

14. Assignment of Fire Insurance Policy by Indorsement

For value received I hereby assign, transfer, and set over to —— all my right, title, and interest in and to the within policy, and all benefit and advantage to be derived therefrom.

Dated ——.

(*Signature of insured.*)

Consent of Insurance Company to Follow Above Assignment

The —— Fire Insurance Company hereby consents that the interest of —— in the within policy be assigned to ——, subject to all the terms and conditions therein mentioned and set forth.

Dated ——. A. B., Agent (*or*, Secretary, *etc.*).

15. Assignment of Life Insurance Policy

(*Follow Form 4, p.163, to**) that certain policy of insurance on my life, issued by the —— Life Insurance Company, and numbered ——, for the sum of —— dollars, and all the moneys assured or to become payable thereby or thereunder and all the benefit and advantage to be derived therefrom; to have and to hold the same unto the said ——, his executors, administrators, and assigns.

In witness, *etc.*

16. Assignment of Contract for Sale of Land by Purchaser Therein

Indenture made the —— day of ——, between ——, of ——, of the first part, and ——, of ——, of the second part:

[RECITAL OF CONTRACT.] Whereas, by a certain agreement, bearing date the —— day of ——, between one —— and the said party of the first part, the said —— agreed to sell and convey to the said party of the first part, for the price and upon the terms therein mentioned, that certain parcel of land described as (*description*); and whereas, no part of said purchase price has been paid.

1. [ASSIGNMENT.] Now, this indenture witnesseth that

the said party of the first part, in consideration of the sum of ——— dollars to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby assign, transfer, and set over unto the said party of the second part the above-recited agreement and all the right, title, and interest of the said party of the first part in and to the parcel of land therein described, to have and to hold the same unto the said party of the second part, his heirs, executors, administrators, and assigns forever, subject, nevertheless, to the terms, conditions, and stipulations in the said agreement contained.

2. [ASSIGNEE'S COVENANTS.] And the said party of the second part hereby covenants and agrees to and with the said party of the first part that the said party of the second part will pay the said purchase price, and will observe and perform all the terms, conditions, and stipulations in the said agreement mentioned which are thereunder by the said party of the first part to be observed and performed, and will save harmless and keep indemnified the said party of the first part against all claims, demands, and actions by reason of the failure of the said party of the second part to observe and perform the said agreement.

In witness, *etc.*

17. Assignment of Life Estate in Trust Funds

Indenture made this ——— day of ———, between ———, party of the first part, and ———, party of the second part:

Whereas, ———, late of ———, who died on the ——— day of ———, by his will dated the ——— day of ———, and duly proved and admitted to probate in and by the probate court of the county of ——— and state of ———, on the ——— day of ———, gave the residue of his real and personal estate to his trustees upon trust to call in and convert the same

into money, and invest the proceeds as therein mentioned, and pay the income thereof to the party of the first part during his life.

Now this indenture witnesseth that the party of the first part, in consideration of the sum of \$—— to him paid by the party of the second part, the receipt whereof is hereby acknowledged, hereby assigns unto the party of the second part all the interest, dividends, and income hitherto accrued and unpaid and to accrue and become payable during the life of the party of the first part from or in respect of the residuary estate of the said —— . To hold the same unto the party of the second part absolutely.

In witness, *etc.*

18. Assignment of Judgment

(*Follow Form 4, p. 163, to **) that certain judgment recovered by me, rendered on the —— day of —— in the —— court for the county of —— and state of ——, against ——, for the sum of —— dollars, as by the records thereof will more fully appear, and any and all sum or sums of money or other benefit or advantage which may be had or obtained by reason of said judgment.

And I do hereby covenant with the said —— that there is now due and owing to me on said judgment the said sum of —— dollars, with interest from the date thereof.

In witness, *etc.*

19. Same—Another Form

Know all men by these presents that whereas, I, ——, of ——, did on the —— day of —— recover by judgment in the —— court in and for the county of ——, in the state of ——, against ——, of ——, —— dollars, as by the records thereof will more fully appear.

Now, I, the said ———, in consideration of ——— dollars, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, and set over unto ———, of ———, the said judgment, and any and all such sum or sums of money or other benefit or advantage that may be had or obtained by reason of said judgment.

And I do hereby make, constitute, and appoint the said ———, his executors, administrators, and assigns, to be my true and lawful attorney and attorneys, irrevocable, for me and in my name, but for their sole and proper use and benefit, and at their own costs and charges, to ask, demand, and by all lawful means recover and receive, all money due or to become due on the said judgment, and to sue out executions upon the said judgment, or to prosecute any legal proceeding upon the said judgment, which I might do for the recovery thereof, and, on payment or collection of the same, to acknowledge satisfaction or to give good and sufficient releases and discharges of the said judgment, and to substitute attorneys under them for the purposes aforesaid, and revoke the same.

And I do hereby covenant to and with the said ———, his executors, administrators, and assigns, that there is now due and owing to me on the said judgment the sum of ——— dollars, with interest thereon from the ——— day of ———.

In witness, *etc.*

20. Same—Another Form .

Indenture made the ——— day of ———, between ———, party of the first part, and ———, party of the second part:

Whereas, on the ——— day of ——— judgment was entered in the ——— court in favor of ———, and against ———, in the sum of ——— dollars.

Now this indenture witnesseth that the said party of the first part, in consideration of ——— dollars to him duly paid,

has sold and by these presents does assign, transfer, and set over unto the said party of the second part, and his assigns, the said judgment and all sum or sums of money that may be had or obtained by means thereof. And the said party of the first part does hereby constitute and appoint the said party of the second part, and his assigns, his true and lawful attorney, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand, and receive, and to sue out executions and take all lawful ways for the recovery of the money due or to become due on the said judgment, and on payment to acknowledge satisfaction, or discharge the same, and attorneys under him for the purpose aforesaid to make and substitute, and at pleasure to revoke, hereby ratifying and confirming all that his said attorneys or substitutes shall lawfully do in the premises. And the said party of the first part does covenant that there is now due on the said judgment the sum of ——— dollars, and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

In witness, *etc.*

CHAPTER VII

ASSIGNMENT FOR BENEFIT OF CREDITORS AND COMPOSITIONS WITH CREDITORS

The main purpose of an assignment for the benefit of creditors, a composition with creditors, or any other voluntary arrangement with creditors, is to secure for all the creditors the equal benefit of the debtor's property without the delay and loss incident to a proceeding in the bankruptcy or insolvency court.

An assignment for the benefit of creditors is usually a general assignment by the debtor of all his property, or of all his nonexempt property, to a trustee to convert it into money and distribute the proceeds among the creditors. Independently of insolvency and bankruptcy laws, preferences in favor of particular creditors are allowed. Assignments for the benefit of creditors are generally regulated in the different states by statutes, which are in force except as affected by the National Bankruptcy Act. An assignment should, of course, be drawn and executed with reference to the provisions of the particular statute applicable to it.

Under the National Bankruptcy Act, a general assignment for the benefit of creditors is an act of bankruptcy; and, even if the debtor transfers only a part of his property, the transfer is an act of bankruptcy, if made with intent to hinder, delay, or defraud his creditors, or if the debtor be insolvent, and the transfer is to one or more of his creditors with intent to prefer them over his other creditors. Independently of the Bankruptcy Act, indeed, a transfer made with intent to hinder, delay, or defraud creditors is fraudulent and subject to attack by the creditors. A petition may be filed by the requisite number of creditors against a person who is insolvent, and who has committed an act of bankruptcy within four months thereafter. Moreover, the debtor commits an act of bankruptcy if he suffers or permits, while insolvent, any creditor to obtain a preference through legal proceedings, provided the debtor does not at least five days before the sale or final disposition of any property affected by such preference vacate or discharge the preference. It follows that the assent of sub-

stantially all the creditors is essential to the successful operation of a general assignment.

Under a composition agreement between a debtor and his creditors, each creditor agrees to accept a certain proportion of the debt due him in discharge of the whole. Under such an arrangement payment may be made immediately out of a fund provided wholly or in part by a third person, in which case security may be given to him, or payment may be by installments, secured by the covenants of sureties or by the promissory notes of the debtor and sureties, or security may be taken in the form of an assignment to a trustee of part of the debtor's property, or the arrangement may be varied in other ways. As in the case of an assignment for the benefit of creditors, the co-operation of substantially all the creditors is essential, inasmuch as the arrangement has for its basis the insolvency of the debtor.

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I

Assignments for Benefit of Creditors

1. Assignment by an Individual Without Preferences

Indenture made this _____ day of _____, between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF DEBTS.] Whereas, the party of the first part owes divers debts, which he is unable to pay in full, and is desirous to provide for the payment of the same, so far as in his power, by an assignment of all his property for that purpose.

[ASSIGNMENT TO TRUSTEE.] Now, this indenture witnesseth that the party of the first part, in consideration of the premises, and of one dollar to him paid before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments and appurtenances, goods, chattels, stocks, promissory notes, debts, choses in action, evidences of debt, claims, demands, property, and effects of every description belonging to the party of the first part, wherever the same may be situated, except such property as is exempt by law from levy and sale under execution.

[TRUST FOR CONVERSION.] To have and to hold the same,

and every part thereof, unto the party of the second part, his successors and assigns, but in trust, nevertheless, for the uses and purposes following:

1. To take possession of the said property, and to sell and dispose of the same, with all reasonable diligence, either at public or private sale, and for the best prices that can be obtained therefor, and to convert the same into money, and also to collect all such debts and demands hereby assigned, as may be collectible.

And with and out of the proceeds of such sales and collections:

2. [EXPENSES AND CHARGES.] To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment, and of carrying into effect the trust hereby created, including the lawful commissions of the party of the second part for his services in executing the said trust.

3. [PAYMENT OF DEBTS.] To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due, or to become due, from the said party of the first part, together with all interest moneys due and to grow due thereon; and, if the residue of the said proceeds shall not be sufficient to pay the said debts and liabilities, and interest in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest, proportionately to their respective amounts.

4. [APPLICATION OF SURPLUS.] And if, after payment of all the said debts and liabilities, in full, there shall be any surplus or residue of the said property or proceeds, to repay and return the same to the party of the first part, his executors, administrators, or assigns.

5. [POWER OF ATTORNEY.] And for the better and more effectual execution of these presents the party of the first part

doth hereby make, constitute, and appoint the party of the second part his true and lawful attorney, irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the trust hereby created, to ask, demand, recover, and receive of and from all and every person and persons all the property, debts, and demands belonging and owing to the party of the first part, and to give acquittances and discharges for the same, and to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all deeds and instruments of conveyance necessary or proper for the better execution of the trust hereby created; and also for the purposes aforesaid, or for any of them, to make, constitute, and appoint one or more attorneys under him, and at his pleasure to revoke the same, hereby ratifying and confirming whatever the said party of the second part, or his substitute, shall lawfully do in the premises.

6. [ACCEPTANCE OF TRUST.] And the party of the second part doth hereby accept the trust created and in him reposed by these presents, and doth covenant and agree to and with the said party of the first part that he will faithfully and without delay execute the same according to the best of his skill, knowledge, and ability.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in presence of

(Signatures and seals.)

2. Same—Another Form

Know all men by these presents that, whereas, I, ———, of ———, am indebted to divers persons in considerable sums of money, which I am at present unable to pay in full, and

am desirous to convey all my property for the benefit of all my creditors without any preference or priority.

Now, therefore, I, the said ———, in consideration of the premises, and of one dollar to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, transfer, and set over unto the said ——— all my lands, tenements, hereditaments, goods, chattels, property, and rights in action of every name, nature, and description, wheresoever the same may be, except such property as is by law exempt from execution; to have and to hold the same unto the said ——— in trust, to sell and dispose of the said real and personal property, and to collect the said rights in action, with the power to compound for the said rights in action, taking a part for the whole, where the said ——— shall deem it expedient so to do, and then in trust to apply the proceeds of the said property and rights in action in the following manner:

1. To pay the costs and charges of these presents, and the lawful expenses of executing the trust hereby created.

2. To distribute and pay the remainder of said proceeds to the creditors of me, the said ———, for all debts and liabilities which I may be owing or indebted to any person whatever: Provided, however, that if there shall not be sufficient funds with which to pay all my said debts, then the said debts are to be paid ratably and in proportion.

3. The residue and remainder of said proceeds, if any there be, after paying all my said debts in full, the said ——— is to repay to me, or my executors, administrators, and assigns.

In witness whereof, I have hereunto set my hand and seal this ——— of ———.

In presence of

(Signature and seal.)

2a. Acceptance by Assignee

I hereby accept the trust created by the above instrument, and agree faithfully to perform the same.

Dated the —— day of ——.

(Signature.)

3. Assignment by Partners, With Preferences

This indenture made the —— day of ——, between —— and ——, partners under the name and style of A. & Co., of ——, parties of the first part, and ——, of the same place, party of the second part:

[RECITAL OF INDEBTEDNESS.] Whereas, the said partnership is justly indebted in sundry considerable sums of money, and has become unable to pay and discharge the same with punctuality or in full, and the said parties of the first part are now desirous of making a fair and equitable distribution of all their property and effects among their creditors.

1. [ASSIGNMENT TO TRUSTEE.] Now, therefore, this indenture witnesseth that the said parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, convey, assign, transfer, and set over unto the said party of the second part, and to his heirs and assigns forever, all and singular the lands, tenements, hereditaments, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of the said parties of the first part.

To have and to hold the same, and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns.

In trust, nevertheless, to and for the following uses, intents, and purposes, that is to say:

2. [TRUSTEE TO CONVERT INTO MONEY.] The said party of the second part shall forthwith take possession of all and singular the lands, tenements, hereditaments, property, and effects hereby assigned, and sell and dispose of the same for the best prices which he shall be able to obtain, and to convert the same into money, and shall also collect all and singular said debts, duebills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible, and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid.

3. [COST AND EXPENSES.] By and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the lawful expenses, costs, charges, and commissions of executing and carrying into effect this assignment.

4. [PREFERRED CREDITORS.] By and with the residue or net proceeds and avails of such sales and collections, the said party of the second part shall pay and discharge in full the debt due to the firm of ———, of ———, for the sum of \$———.

5. [OTHER PREFERRED CREDITORS.] By and with the residue and remainder of said net proceeds and avails the said party of the second part shall pay and discharge the several and respective debts, bills, notes, or sums of money due, or to grow due, from the parties of the first part to the persons designated in the schedule hereto annexed, together with such interest as may accrue thereon; and, if such net proceeds and avails shall not be sufficient to pay the same in full, then such net proceeds and avails shall be distributed pro rata among said persons, according to the amount of their respective claims.

6. [PARTNERSHIP CREDITORS.] By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay and discharge all the other partnership debts, demands, and liabilities whatsoever, now existing, whether due or hereafter to become due, provided such remainder shall be sufficient for that purpose; and, if not sufficient, then the same shall be applied pro rata to the payment of said debts, demands, and liabilities, according to their respective amounts.

7. [INDIVIDUAL CREDITORS.] By and with the residue and remainder of said net proceeds and avails, if any there shall be, the party of the second part shall pay and discharge all the private and individual debts of the parties of the first part, or either of them, whether due or to grow due, provided such remainder shall be sufficient for the purpose; and, if insufficient, then the same shall be applied pro rata, share and share alike, to the payment of said debts, according to their respective amounts.

8. [POWER OF ATTORNEY.] And for the better execution of these presents, and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate, and appoint the said party of the second part the true and lawful attorney irrevocable of them and of each of them, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises, as fully and completely as the said parties of the first part, or either of them, might or could do, were these presents not executed; and attorneys, one or more, under him, to make, nominate, and appoint, with full power of substitution and revocation, hereby ratifying and confirming all and everything that our said attorneys, or his attorneys, shall do or cause to be done in the premises.

9. [ACCEPTANCE OF TRUST.] And the party of the second part hereby accepts the trust created by these presents, and covenants that he will faithfully perform the same.

In witness, *etc.*

(*Signatures and seals.*)

SCHEDULE.

(*Names of creditors intended to be preferred in second class, with amounts of their debts.*)

4. Assignment by Partners for Benefit of Joint and Separate Creditors—Release of Debts

This indenture made the —— day of —— between A. B. and C. D., of ——, carrying on the business of —— in partnership under the name or style of B. & Co., at ——, hereinafter called the debtors, of the first part, and —— and ——, of ——, hereinafter called the trustees, of the second part, and the several persons, firms, and corporations, being creditors of the debtors, whose names (*and seals*) are subscribed and affixed, and the amount of whose debts are set out in the schedule hereto, and all other creditors of the said A. B. and C. D. or of the said firm of B. & Co. who shall assent to or agree to be bound by these presents or undertake to execute the same, all of which persons, firms, and corporations are hereinafter referred to as the creditors, of the third part:

[RECITAL OF INDEBTEDNESS.] Whereas, the debtors are jointly and severally indebted to the creditors in the third part of the said schedule hereto, and are respectively severally indebted to the creditors in the first and second parts of the said schedule, in the amounts set opposite their respective names;

[RECITAL OF INTENDED ASSIGNMENT.] And whereas, the debtors are unable to pay either to their joint or to their re-

spective separate creditors their debts in full, and have agreed to convey and assign to the trustees the property hereinafter mentioned on condition of being released from their debts as hereinafter provided;

[RECITAL OF ACCEPTANCE BY CREDITORS.] And whereas, the creditors have agreed to accept the said proposal and to take such conveyance and assignment in discharge and satisfaction of their respective debts and to grant to the debtors the joint and separate releases hereinafter contained.

Now, this indenture witnesseth as follows:

1. [CONVEYANCE AND ASSIGNMENT—EXCEPTED PROPERTY.] In pursuance of the said agreement and in consideration of the premises the said A. B. and C. D. do each of them hereby convey and assign to the trustees all the real and personal estate whatsoever and wheresoever of the debtors or either of them, excepting such property as is by law exempt from execution, all of which property hereby conveyed and assigned is hereinafter referred to as the trust property. To hold the said trust property as to such part thereof as consists of real estate to the use of the trustees in fee simple and as to such part thereof as consists of personal estate unto the trustees absolutely, but as to all the trust property subject to the trusts, powers, and provisions hereinafter contained.

2. [TRUST FOR CONVERSION.] The trustees shall at such times and in such manner as they shall think fit call in, collect, compel payment of, and receive such part of the trust property as is outstanding, and sell and convert into money such part thereof as does not consist of money.

3. [POWER TO DIVIDE IN SPECIE.] It shall be lawful for the trustees, if they shall be of opinion that it would be more advantageous to the creditors, to divide in specie among the creditors, or among such of them as are willing to take the same, any part or parts of the debtors' property, and for that

purpose to estimate and put upon such property such value as in their opinion it is worth.

4. [APPLICATION OF PROCEEDS.] The trustees shall pay and apply the net proceeds of such sale and conversion and all other moneys which shall come into their hands by virtue of the trusts hereof as follows:

(a) [COSTS, CHARGES, AND EXPENSES.] In payment of all the costs, charges, and expenses of and incidental to the preparation and execution of these presents, including the investigation of the debtors' affairs separately and as a firm, and of preparing statements of affairs of the debtors separately and of their firm, and of the several meetings held by the creditors whether separate or joint or both, and of realizing and managing the trust property or administering the trust funds and every part thereof, or otherwise relating to or arising out of the trust of these presents, including therein the remuneration of the trustees as hereinafter provided.

(b) [PREFERENTIAL CLAIMS.] In payment of all such debts as would by law be payable in full or in priority if the trust property were being administered in bankruptcy.

(c) [DIVIDENDS.] In payment to the creditors by such dividends and at such times as the trustees shall think fit of all such debts and claims as would be provable if the trust property were being administered and distributed in bankruptcy, and in such priorities and in accordance with such rules and equities as are applicable to the administration and distribution of joint and separate estates in bankruptcy.

(d) [SURPLUS.] The surplus, if any, of the trust funds shall be paid to the debtors respectively or as they shall direct in writing, according to their respective rights and interests therein.

5. [POWER TO POSTPONE CONVERSION AND CARRY ON THE BUSINESS.] It shall be lawful for the trustees, if they shall

think fit, to postpone the sale and conversion of any part of the trust property for such period as they shall think fit (but not exceeding —— months without the consent of the creditors), and until such sale and conversion to manage, lease, repair, insure, or otherwise deal with the same as they may deem best, and in the meantime, but solely for the purpose of realizing the joint estate to the best advantage, carry on and manage the business of the debtors, and employ the debtors or either of them or any other person or persons in carrying on the said business and winding up the same or in realizing, and disposing of any of the trust property or otherwise in or about the premises, and to pay to the debtors or such other persons a reasonable remuneration for such services.

6. [TRUSTEES' REMUNERATION.] The trustees shall be entitled to retain by way of remuneration a sum equal to —— per cent. upon the amount distributed in dividend among the creditors, and so long as the said business is being carried on as aforesaid the trustees shall be entitled to receive the sum of \$—— per month on account of such remuneration.

7. [PROOF OF DEBTS.] If the trustees (or either of them) shall so require, the creditors or any of them, notwithstanding that they or he may have executed or assented to these presents and the amount of their or his debts or debt may be stated in the schedule hereto, shall prove their debts or his debt with such particulars and in such manner as the trustees may in their discretion think fit to require.

8. [POWER TO SETTLE WITH DISSENTIENT CREDITORS.] The trustees may, if they shall deem it expedient, pay in full or compound for at a higher rate or give security for or otherwise settle any debt not exceeding \$—— of any separate creditor, or \$—— of any joint creditor, who may refuse to come in under and take advantage of these presents.

9. [POWER TO COMPROMISE CLAIMS OF DEBTORS.] The trustees shall have power to compromise and in case of dispute to refer to arbitration all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, existing or supposed to exist between the debtors and any person who may have incurred any liability to the debtors upon such terms as the trustees may deem expedient, including power to renounce, disclaim, or abandon the same or any of them.

10. [POWER TO PAY OFF OR REDEEM SECURITIES, ETC.] The trustees shall have power to make such arrangement with any person having any mortgage, lien, charge, pledge, or other security on the trust property as the trustees may deem expedient for the purpose of paying off, redeeming, transferring, or releasing the equity of redemption of such mortgage, lien, charge, pledge or other security, and may keep down all interest payable thereon from time to time.

11. [POWER OF ATTORNEY.] The debtors do and each of them doth hereby appoint the trustees their and his lawful attorney in their name and in the name of each of them and of the said firm of B. & Co. and on their behalf and on behalf of each of them and of the said firm of B. & Co. to do all such acts and things, and to make and execute all such deeds, instruments, and documents, as in the opinion of the trustees may be necessary or expedient for any of the purposes aforesaid and generally for more effectually executing the trusts of these presents.

12. [RELEASE.] In further pursuance of the said agreement, and in consideration of the premises, the creditors do and each of them doth hereby release the debtors and each of them from the said debts, both joint and separate, and from all actions, claims, demands, or other proceedings by the creditors or any of them in respect thereof.

13. [RESERVATION OF RIGHTS AGAINST SURETIES.] The foregoing release shall in no way affect such rights and remedies as the creditors or any of them may be entitled to in respect of the said debts against third persons, and all rights and remedies of the creditors against any and all sureties, guarantors, and indorsers are hereby expressly reserved.

14. [RESERVATION OF RIGHTS OF SECURED CREDITORS.] It shall be lawful for any creditor who holds any mortgage, lien, pledge, charge, or other security on or over any joint or separate property of the debtors or either of them to take the full benefit of such mortgage, charge, lien, pledge, or other security subject to the provisions of the federal Bankruptcy Act, so far as they refer and are applicable to proofs by secured creditors.

15. [CREDITORS' MEETINGS AND RESOLUTIONS.] The trustees may at such times and in such manner as they may think fit call a meeting of the joint or of the separate creditors or of both combined, and shall call such meetings or meeting if so requested by not less than ——— in number (representing \$——— in value) of the joint or of the separate creditors, or of the two combined, and the trustees shall have regard in the administration of the trusts hereby declared to the directions given by such joint or separate or joint and separate creditors by resolution at such meetings or meeting. Such resolutions shall not, unless the same are unanimously passed by separate resolutions at separate meetings of both joint and separate creditors specially summoned for the purpose, contravene the provisions hereinbefore contained for the administration of the joint and separate estates according to the law of bankruptcy.

16. [APPORTIONMENT OF COSTS.] The trustees shall have full power in their absolute discretion to apportion the costs, charges and expenses, including their own remuneration, of

the realization and distribution of the trust property and trust fund and of exercising any of the powers conferred on them by and in executing any of the trusts of these presents between the joint and separate estates.

17. [REMOVAL OF TRUSTEES.] The creditors in meeting assembled in accordance with the provisions hereinbefore contained shall have full power, in case it may seem expedient in the interests of the creditors to do so, to remove the trustees or either of them for any cause whatsoever (and without assigning any reasons for such removal).

18. [APPOINTMENT OF NEW TRUSTEES.] If the trustees or either of them or any trustee appointed as hereinafter provided shall refuse to act, or become incapable of acting, or shall die, or resign, or cease to be trustee, or be removed, or in any other case in which a vacancy shall occur in the office of trustee hereunder, or if the creditors shall desire to appoint an additional trustee, then and in every such case the creditors, at a meeting and by a resolution passed thereat as hereinbefore provided, shall have power to appoint a new or additional trustee of these presents. And every new or additional trustee, as well before as after all the trust property becomes by assurance or otherwise vested in him, shall have the same powers, authorities, and discretions and may in all respects act as if he had been originally appointed a trustee by these presents.

In witness, *etc.*

(Signatures and seals of partners and trustees.)

SCHEDULE.

Part I.

(Signatures and seals of the separate creditors of one partner, and the amounts of their debts.)

Part II.

(Signatures and seals of the separate creditors of the other partner, and the amounts of their debts.)

Part III.

(Signatures and seals of the joint creditors of the partnership, and the amounts of their debts.)

5. Same—Another Form

This indenture made this _____ day of _____, by and between _____ and _____, of _____, carrying on the business of _____ at _____, in partnership under the name or style of _____ & Co., hereinafter called the debtors, parties of the first part, and _____, of _____, hereinafter called the trustee, party of the second part, and the creditors of the debtors who shall assent in writing to these presents as hereinafter provided, hereinafter called the creditors, parties of the third part:

1. [ASSIGNMENT TO TRUSTEE.] Witnesseth that the debtors, and each of them, in consideration of one dollar and other valuable considerations to them paid by the trustee, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, and convey unto the trustee all the property and estate, both real and personal, wherever situate, of the debtors or either of them, excepting only such as by the laws of the said state is exempt from levy and sale under execution, to have and to hold all the said estate and property, hereinafter referred to as the trust property, to the trustee and his successors and assigns, absolutely, in trust nevertheless for the uses and purposes hereinafter set forth.

2. [CONVERSION OF TRUST PROPERTY—CONTINUANCE OF BUSINESS.] The trustee shall convert all the trust property

into money as soon as in the judgment of the trustee it can be done conveniently and to the best advantage, and for that purpose shall call in and collect such part of the trust property as is outstanding, and sell and convert into money such part thereof as does not consist of money: Provided, that the trustee may, if he shall deem best, but solely for the purpose of converting the trust property into money to the best advantage, continue and carry on the said business of the debtors for a period not exceeding —— months from the date of these presents, and for any further time to which the creditors may in writing assent to.

3. [TRANSFER TO TRUSTEE IN BANKRUPTCY, IF ANY.] In the event that the debtors or either of them shall be adjudged bankrupt upon a petition filed by or against them or either of them within four months of the recording of these presents, the trustee shall convey and transfer to the trustee in bankruptcy who shall be appointed in such bankruptcy proceedings all of the trust property and the proceeds thereof to which such trustee in bankruptcy may be entitled by law, less reasonable compensation for services of and charges and expenses reasonably incurred by the trustee hereunder.

4. [APPLICATION AND DISTRIBUTION OF PROCEEDS.] Subject to the provisions of the preceding paragraph, after deducting suitable compensation for the services of and reasonable charges and expenses incurred by the trustee, including those for the negotiation, preparation, and execution of these presents, the trustee shall pay and apply the net proceeds of the trust property as follows: First, in payment of all such debts and liabilities as would by law be payable in full and in priority to other debts if the trust property were being administered in bankruptcy; second, in payment to the creditors, equally and ratably, and by such dividends and at such times as the trustee shall think fit, of such other debts, lia-

bilities, and of liquidations of the debtors to the creditors as would be provable if the trust property were being administered in bankruptcy, and in accordance with the rules which would be therein applicable to the appropriation of the partnership property and the individual estates of the partners respectively to the payment of the partnership debts and the individual debts respectively; third, in payment of the surplus, if any, to the debtors respectively as their interest may appear.

5. [RELEASE—PROVISO IN CASE OF BANKRUPTCY.] In consideration of the premises the creditors do hereby respectively and severally release and discharge the debtors and each of them from all and singular their debts, claims, demands, and causes of action against the debtors or either of them, both joint and separate, existing at the date hereof, whether payable now or at some future time: Provided, that if the debtors or either of them shall be adjudged bankrupt upon a petition filed by or against them or either of them within four months after the recording of these presents, the foregoing releases and discharges shall be void and of no effect as to such debts, demands, and claims as may be provable against the estates of such bankrupts or bankrupt, and the dividends, if any, which shall have been paid to the creditors or any of them respectively upon said last-described debts, demands, and claims out of the trust property under these presents shall merely reduce the same pro tanto, and the said debts, demands, and claims so reduced shall be enforceable against the respective debtors or debtor, and provable in bankruptcy against their or his estates.

6. [RESERVATION OF RIGHTS AGAINST SURETIES AND OF SECURED CREDITORS.] All rights and remedies of the creditors against any surety or sureties for the debtor are hereby expressly reserved, and nothing herein contained shall prevent

the creditors or any of them from suing any third parties or persons other than the debtors who may be liable to any of the creditors for all or any part of their claims against the debtors or either of them or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien, or other security which they now hold on any property, credits, or effects of the debtor.

7. [CREDITORS TO VALUE THEIR SECURITIES.] Any creditor who may have any such mortgage, charge, lien, pledge, or other security as aforesaid shall be entitled to receive dividends hereunder in respect to the balance of his claim only after realizing or allowing for or valuing and deducting the value of such security, and any creditor who shall neglect to realize or value such security prior to receiving dividends hereunder shall be taken to have abandoned such security, and the same shall be forfeited and become part of the trust property.¹

8. [POWER TO PAY OFF OR REDEEM SECURITIES, ETC.] See *Form No. 4*, cl. 10, p. 189.

9. [POWER TO REFER TO ARBITRATION.] The trustee shall have power, upon such terms as the trustee may deem expedient, to compromise, and in case of dispute to refer to arbitration, the claims or demands of any of the creditors against the debtors or either of them, or any dispute or controversy which shall arise out of these presents and the trusts herein declared or the execution thereof: Provided, that nothing herein contained shall bind any of the creditors to refer to arbitration any such claim or demand.

10. [DEBTORS TO ASSIST TRUSTEE.] The debtors and each of them do hereby covenant with the trustee and the creditors

¹ For a provision compelling the creditor to value and entitling the trustee to redeem within a limited time, see *Form No. 11*, cl. 5, p. 219.

and each of them that the debtors and each of them will at all times give the trustee all the information and assistance in their power in order to enable the trustee to collect, get in, and realize the estates of the debtors and each of them, and for that purpose will execute and do all such instruments and things as may reasonably be required by the trustee.

11. [POWER OF ATTORNEY.] *See Form No. 4, cl. 11, p. 189.*

12. [CREDITORS, WHEN DEEMED PARTIES.] No creditors shall be deemed a party to these presents or entitled to the benefit of the provisions hereof who shall fail to assent in writing hereto within ——— days from the date hereof; but such assent may be expressed either by signing these presents or by signing and delivering to the trustee any other writing expressing an assent to the terms hereof: Provided, that any person who was a creditor of the debtors or either of them at the date hereof may become a party hereto after the expiration of the said ——— days with the consent of the trustee expressed in writing, if the trustee shall see fit to give such consent. Nothing herein shall prevent the party of the second part from becoming also a party of the third part hereunder.

13. [ACCEPTANCE BY AND ACCOUNTABILITY OF TRUSTEE.] The party of the second part hereby accepts the trusts hereby created, and hereby covenants with the debtors and the creditors and each of them that he will faithfully and impartially execute the same; but the trustee shall not be accountable or liable for any loss or damage not occasioned by his own willful neglect or gross negligence.

In witness, *etc.*

6. Short Form of Assignment to Wind up or Carry on a Small Mercantile Business

Indenture made this _____ day of _____ between _____, of _____, hereinafter called the debtor, party of the first part, and _____, of _____, hereinafter called the trustee, party of the second part, and the several persons, firms, and corporations, being creditors of the debtor, who shall in writing assent to these presents as hereinafter provided, and who are hereinafter referred to as the creditors, parties of the third part:

[RECITAL OF INDEBTEDNESS.] Whereas, the debtor has incurred debts to the creditors which he is unable to pay as they fall due;

[RECITAL OF PROPOSED ASSIGNMENT.] And whereas, it is deemed advisable by all the parties hereto that the debtor shall transfer his property, except his household furniture and wearing apparel, to the trustee to the end that the trustee may continue the mercantile business heretofore carried on by the debtor at _____, or sell and dispose of the same and all the said property for the purpose hereinafter stated;

[RECITAL OF ACCEPTANCE BY CREDITORS.] And whereas, the creditors are willing to release the debtor from their respective debts on the terms and subject to conditions hereinafter set forth;

[RECITAL OF TRUSTEE'S ACCEPTANCE.] And whereas, the party of the second part is willing to act as trustee hereunder as evidenced by his execution of these presents.

Now, therefore, this indenture witnesseth as follows:

1. [ASSIGNMENT.] The debtor, in consideration of the premises and of one dollar to him paid by the trustee, the receipt whereof is hereby acknowledged, doth hereby grant, con-

vey, assign, and transfer unto the trustee and his successor or successors all property, real and personal, whatsoever and wheresoever, of the debtor, excepting, however, the household furniture and wearing apparel of the debtor, to have and to hold the same, which is hereinafter referred to as the trust property, to the trustee and his successors and assigns absolutely, but in trust nevertheless for the uses and purposes hereinafter specified.

2. [TRUSTEE TO CONVERT INTO MONEY—POWER TO CARRY ON BUSINESS.] The trustee shall convert the trust property into money in such manner and at such time or times as in the judgment of the trustee shall be for the best interest of the creditors. The trustee is hereby authorized, if he shall deem it for the best interest of the creditors, to postpone such conversion for such period as he shall think fit, and in the meantime to carry on the said business of the debtor, and for that purpose from time to time to purchase such goods as may be necessary to keep up the stock therein and supply the demand therefor in the usual course of trade, and to employ such persons, including the debtor, in carrying on or winding up the said business, or in realizing and disposing of the trust property, as the trustee may deem necessary, and to pay for the goods so purchased, and the reasonable compensation of such persons so employed, and all the necessary current and other expenses of conducting, carrying on, winding up, protecting, disposing of, and realizing the said business and the trust property, including the rent of the premises where the said business has been or may be carried on, taxes, and insurance, from the receipts and proceeds of the said business and trust property. And the trustee is hereby authorized to do all things which he may deem necessary or advisable to be done in the successful carrying on or closing out of the said business and property.

3. [APPLICATION OF PROCEEDS—DIVIDENDS TO CREDITORS.] Whenever from time to time and so often as the trustee shall have on hand from the receipts and proceeds of the said business and the trust property moneys in his judgment sufficient, after the payment of all current bills and expenses to date, to pay a dividend to the creditors on the debts owing to them from the debtor, the trustee shall pay such dividend to and among all the creditors equally and ratably. And if and when all the said debts, with interest thereon, shall have been paid in full, the trustee shall pay and transfer to the debtor the balance and residue, if any, of the trust property.

4. [POWER OF ATTORNEY.] The debtor hereby appoints the trustee and his successor or successors his lawful attorney or attorneys on his behalf to do and execute all such acts, things, deeds, instruments, and documents as in the opinion of the trustee or his successor or successors may be necessary or advisable for any of the purposes aforesaid, and generally for more effectually executing the trusts hereby created.

5. [RELEASE.] In consideration of the premises the creditors and each of them do hereby release the debtor from their said respective debts and from all liability in respect thereof as fully as the debtor would be released by a discharge in bankruptcy.

6. [CREDITORS WHEN DEEMED PARTIES.] Every creditor shall be deemed a party hereto who shall execute these presents or who shall sign and deliver to the trustee a copy hereof or any other writing expressing an assent hereto.

7. [NEW TRUSTEES.] In case a vacancy shall occur in the office of trustee hereunder by reason of the death or resignation of the party of the second part or for any other reason, such vacancy may be filled by a majority of the creditors, representing in amount more than one-half of the debts of all the creditors.

In witness, *etc.*

7. Assent of Creditor to Deed of Assignment and Undertaking to Execute Same

In the matter of the assignment of ———.

I, the undersigned, being a creditor of the above-named ———, for the sum of \$———, hereby assent to and agree to be bound by a deed of assignment, dated the ——— day of ———, and expressed to be made between the said ———, of the first part, ———, of the second part, and the several individuals, firms, and corporations, being creditors of the said ———, whose names and addresses are contained in the schedule thereto (*or*, the creditors of the said ———, who shall assent in writing thereto as therein provided), of the third part, whereby the said ——— assigned all his estate and effects to the said ——— as trustee for the benefit of his creditors generally as therein set forth. And I hereby undertake to execute such deed of assignment.

Dated this ——— day of ———. (*Signature.*)

8. Deed Granting License to Debtor to Carry on his Business under Inspection and Control of Committee of Creditors and Providing for Assignment in Certain Events

Indenture made the ——— day of ——— between ———, of ———, hereinafter called the debtor, of the first part, ———, ———, and ———, of ———, who and the survivor of them or other the persons or person for the time constituting the committee under these presents are hereinafter referred to as the committee, of the second part, and the several persons, firms, and corporations, being creditors of the debtor, whose names and seals are subscribed and affixed to these presents, and all other creditors of the debtor who shall assent to or agree to be bound by or undertake to execute these

presents, all of which persons, firms, and corporations are hereinafter referred to as the creditors, of the third part:

[RECITAL OF INDEBTEDNESS.] Whereas, in the course of carrying on his business of ———, at ———, he has become indebted to the creditors in the amount of the debts set opposite to their respective names in the schedule hereto;

[RECITAL OF DEBTOR'S REQUEST TO CREDITORS.] And whereas, the debtor is temporarily embarrassed and unable at present to pay the said debts, and has requested the creditors to grant him time and to allow him to carry on his said business personally as heretofore, but subject to the inspection and control of the committee and to the conditions hereinafter contained;

[RECITAL OF CREDITORS' ASSENT.] And whereas, the creditors, being desirous that the said business should be carried on and the good will thereof preserved, have agreed to allow the debtor to carry on the said business as so requested for the period of ——— months (*or*, years) from the date hereof.

Now this indenture witnesseth as follows:

1. [LICENSE TO DEBTOR TO CARRY ON BUSINESS—COVENANTS NOT TO SUE, ETC.] In pursuance of the said agreement and in consideration of the premises, the creditors do and each of them doth hereby grant unto the debtor full liberty and license to carry on his said business of ———, for the period of ——— months (*or*, years) subject only to the conditions hereinafter contained; and the creditors do and each of them doth hereby covenant with the debtor, his heirs, executors, and administrators, that they the several creditors respectively will not during the continuance of these presents bring or prosecute any action or other legal proceeding at law, in equity, in bankruptcy, or otherwise, or arrest, attach, or molest the debtor or his estate or effects for or on account of any debt or demand from or upon the debtor, and that these presents may

be pleaded as a defense to any such action or other legal proceeding (*or*, and that the debt or claim of any creditor so acting in breach of his said covenant shall be void).

2. [BUSINESS TO BE CARRIED ON UNDER CONTROL OF COMMITTEE.] In consideration of the premises, the debtor shall carry on his said business with all diligence and to the best of his ability, subject to the inspection, direction, and control of the committee, and the debtor shall in carrying on the same in all matters (of doubt or difficulty) apply for and follow the advice and directions of the committee.²

3. [STATEMENT OF PRESENT AFFAIRS.] The debtor will immediately instruct ———, certified accountants, to make a statement of his affairs as of the ——— day of ———, and will give them every facility and all assistance and information in his power in preparing the same.³

4. [COMMITTEE'S APPOINTEE TO RECEIVE MONEYS, ETC.] The debtor will allow ——— or such other person or persons as the committee may from time to time appoint, including, if they shall see fit, the debtor himself, to collect and receive all debts and moneys, and all bills, notes, checks, or other securities now due or hereafter accruing in respect of the said business, and its property, credits, and effects.

5. [AGENT TO DISBURSE MONEYS AND PAY BALANCE TO COMMITTEE.] The debtor shall allow the said ——— or such other person as aforesaid, after payment out of the moneys coming to his hands of the current business expenses of the debtor in and with respect to the said business, including therein all salaries, wages, rents, taxes, assessments, interest, insurance, and other necessary expenses, and all accounts for

² While it is generally expedient that the committee should exercise the minimum of interference, it is desirable to give them full power.

³ This may be omitted if a satisfactory statement has already been submitted.

new materials or other goods necessary for successfully carrying on the said business, to pay over the balance of such moneys weekly to the committee or as they shall from time to time direct.

6. [COMMITTEE MAY RAISE MONEY ON SECURITY OF BUSINESS.] The committee may from time to time make advances to the debtor to enable him to carry on the said business, and for that purpose may raise money upon the security of the said business, its property and effects, to such amount and in such manner as they may deem fit, and the debtor will execute and do all such instruments and things as the committee may require in order to enable them to raise such money.

7. [DEBTOR NOT TO INCUMBER OR PART WITH BUSINESS OR PROPERTY.] The debtor will not mortgage, pledge, create any lien upon, or otherwise incumber, or part with the possession or control of, his said business, or any of its or his property, credits, or effects, without the consent of the committee.

8. [NEW AND OLD CONTRACTS.] The debtor will not enter into any new contracts or engagements without the consent of the committee; and the committee may, if they think fit, require the debtor to determine and put an end to any existing contract, and the debtor shall thereupon determine such contract accordingly.

9. [APPLICATION OF MONEYS.] The committee shall apply all moneys received by them under and by virtue of these presents in the payment of the costs of and incidental to these presents and the carrying out of the provisions thereof, including the actual expenses of the committee (and such sums by way of remuneration as the creditors may by resolution authorize), and in payment to the debtor monthly of such sum as the committee may from time to time think fit (*or*, in payment to the debtor monthly of the sum of \$——) by way of maintenance for himself and his family, and subject thereto

in paying ratably to all the creditors the respective amounts owing them by the debtor with interest at the rate of ——— per cent. per annum without preference or priority at such times and in such manner as the committee shall determine (provided, that no interim dividend shall be paid until the inspectors have set aside the sum of \$——— as a reserve to meet possible contingencies in connection with the further carrying on of the said business), and in the payment of the surplus, if any, to the debtor.

10. [DEBTOR TO KEEP BOOKS AND SUBMIT TO INSPECTION.] The debtor, in addition to all the books of account proper in the said business, shall keep such other books and accounts as the committee may direct; and the debtor will at all times give the committee or any one appointed by them full access to and liberty to inspect and take copies of such books and all other papers, documents, and correspondence in connection with said business, and to make all necessary and proper entries in such books, and will give all such information and explanation as the committee may require.

11. [DEBTOR TO RENDER ACCOUNTS.] The debtor will from time to time and at such times as the committee may appoint render to the committee such balance sheets and profit and loss or other accounts as the committee may require.

12. [RESERVATION OF RIGHTS AGAINST SURETIES AND OF SECURED CREDITORS.] The rights of the creditors against any surety or sureties for the debts due to them and against all persons other than the debtor and all the rights of any creditor or creditors in respect of any security or securities which they or any of them may hold for their said debts or claims are hereby expressly reserved.

13. [POWER TO SETTLE WITH DISSENTIENT CREDITORS.] If any creditor or creditors shall refuse to take the benefit of and assent to these presents, the committee shall have full power

to pay, or to authorize the debtor to pay, in full, compromise, give security for, or otherwise discharge, settle, satisfy, or arrange for the debt, claim, or demand of such creditor or creditors; and for the purposes aforesaid the committee may raise such sums of money as may be necessary under and pursuant to the provisions of clause 6 hereof.

14. [PROOF OF DEBTS.] It shall be lawful for the committee, although a creditor may have assented to these presents, and the amount of his debt appears in the schedule hereto, to require such creditor to prove his debt or claim to the satisfaction of the committee, and in case of failure to agree upon the amount of such debt the matter shall be referred to arbitration.

15. [EXTENSION OF PERIOD OF LICENSE.] If at the expiration of the said period of ——— months (*or*, years) the debtor shall not have paid all the debts of the creditors, it shall be lawful for the committee in their discretion from time to time to extend the license hereby granted to the debtor: Provided, that such extensions do not exceed altogether a period of ——— months.

16. [DEBTOR TO GIVE NOTICE OF LEGAL PROCEEDINGS.] If any writ or summons shall be served or any legal proceeding be otherwise commenced against the debtor, he will forthwith give notice to and inform the committee thereof, and act therein as the committee shall direct.

17. [DETERMINATION OF LICENSE.] If the debtor shall fail to perform any of his covenants hereinbefore contained, or if a petition in bankruptcy shall be filed by or against him, or if the debtor shall enter into any arrangement or composition with his creditors or any of them, or shall suffer anything whereby his goods or effects or any part thereof shall be taken in execution, or if at any time the committee shall certify that it is in the interest of the creditors that the license hereby

granted should determine, then and in every such case the said license shall [*unless extended by resolution of the creditors under the clause next following*]⁴ cease and determine and subject to anything lawfully done hereunder (and to any such resolution)⁵ the creditors shall be at liberty to exercise their rights and remedies against the debtor in respect of their said debts as fully and freely as if these presents had never been executed.

18. [ASSIGNMENT OR WINDING UP IN CERTAIN CASES AT ELECTION OF CREDITORS.] If any creditors remain unpaid at the expiration of the said period or any extension thereof or upon the earlier determination of the license hereby granted under any of the provisions of these presents, the committee shall forthwith call a meeting of the creditors by a three days' notice sent by registered letter to the last known address of each creditor; and a majority in number and three-fourths in value of the creditors present at such meeting shall have power to determine whether the license hereby granted shall be extended for a still further period, or whether the committee shall be authorized or the debtor shall be allowed to wind up the said business, or whether the debtor shall be called upon to make an assignment of his property for the benefit of the creditors, or whether a composition shall be accepted upon the balance of the said debts, and in each case upon what terms and conditions both as to release or discharge of the debtor and otherwise.⁶

⁴ If clauses 18, 19, and 20 are omitted and in lieu thereof clause 21 is retained, the italicized words in brackets in clause 17 should be omitted, but otherwise retained.

⁵ See note 4, *supra*, and note 6, *infra*.

⁶ Clauses 18, 19, and 20, on the one hand, and clause 21, on the other, provide for alternative methods of procedure upon a determination of the license. If clauses 18, 19, and 20 are retained, clause 21 should be omitted. See note 2, *supra*.

19. [COVENANT OF DEBTOR TO ASSIGN.] The debtor hereby covenants with the committee that in the event of the creditors passing a resolution calling upon the debtor to make an assignment of his property, of the passing of which resolution the certificate of the committee shall be conclusive, the debtor will forthwith convey and assign to the committee by deed, as they shall direct, all his real and personal property, credits, and effects, whatsoever and wheresoever, including the said business and the good will thereof, and such deed of assignment shall contain all such clauses as the inspectors shall think fit.⁷

20. [POWER OF ATTORNEY.] The debtor hereby appoints the committee his attorneys in his name and on his behalf to sue for, collect and get in, receive and enforce by any legal proceedings or otherwise, and to give good discharges for, and debts due to and claims and demands by the debtor against any person or persons, and to execute and do all instruments and things, and in particular the deed of assignment referred to in the preceding clause, as may in the opinion of the committee be necessary in the interests of the creditors for more effectually carrying out these presents.⁸

21. [ASSIGNMENT FOR CREDITORS IN ESCROW.] (The debtor, having signed and sealed a deed of assignment of his property to ——— as trustee for the benefit of the creditors and delivered the same to ——— to hold in escrow, and not to take effect during the continuance of these presents, agrees that upon the determination of these presents by the committee as provided in clause 17 hereof the said deed of assignment shall forthwith become effective, and the debtor will, if required, concur in and do all such acts, if any, as may be

⁷ See note 6, *supra*.

⁸ See note 6, *supra*.

necessary to make the assignment thereby made effective as and from the time of the determination of these presents.) *

22. [INDEMNITY TO COMMITTEE BY CREDITORS.] The committee shall be entitled to be fully indemnified out of the moneys and securities coming into their hands against all costs and expenses properly incurred by them in the execution of these presents; and the creditors do and each of them doth hereby covenant with the committee that, in the event of the moneys and securities in the hands of the committee being insufficient for the purpose, the creditors and each of them will in proportion to the amount of their respective debts save harmless and keep indemnified the committee of and from all loss or damage whatsoever which the committee may in any wise sustain or be put to by reason of anything which the committee may lawfully do or suffer in the execution of these presents.

23. [COMMITTEE LIABLE ONLY FOR PERSONAL DEFAULT.] The committee shall be accountable only for such moneys and securities as they shall have in fact received, and shall not be answerable for the neglect or default of each other, or of any bank, agent, or other person employed by them in or about the premises.

24. [CREDITORS' MEETINGS.] The committee may at any time, and shall forthwith, if so required by — or more creditors whose debts amount collectively to \$——, call a meeting of the creditors by three days' notice by registered letter sent to the last-known address of each creditor, and any resolution passed at such meeting by — in number, representing \$—— in value, of such the creditors present thereat in person or by proxy shall be valid and binding both upon the committee and the creditors.

* See note 6, supra.

(Add such clauses as to the removal and new appointment of the committee as may be desired. See Form No. 4, cls. 17, 18.)

In witness, etc.

(Signatures and seals of debtor and members of committee.)

SCHEDULE

(Signatures and seals of creditors, and amounts of their debts.)

II

Composition with Creditors

9. Deed of Composition Providing for Payment by Installments with Covenant to Pay by Debtor (and a Guarantor) ¹⁰

Indenture made the ——— day of ——— between ———, of ———, hereinafter called the debtor, of the first part [———, of ———, hereinafter called the guarantor, of the second part], and the several persons, firms, and corporations, being creditors of the debtor, whose names and seals and the amount of whose debts are subscribed, affixed, and set out in the schedule hereto, hereinafter called the creditors, of the third [or, if the guarantor be omitted, second] part:

[RECITAL OF PROPOSED COMPOSITION.] Whereas, the debtor is unable to pay the creditors in full and has proposed to pay a composition to the creditors of ——— cents in the dollar by installments as hereinafter set forth;

[RECITAL OF GUARANTEE.] [And whereas, the guarantor has agreed to join in these presents for the purpose of guar-

¹⁰ If there be no guarantor, the bracketed parts of the form in italics will be omitted.

anteeing to the creditors the due payment of the said composition;]

[RECITAL OF ACCEPTANCE BY CREDITORS.] And whereas, the creditors by a resolution passed on the ——— day of ———, resolved to accept the said composition in full discharge of their respective debts and claims against the debtor on the conditions and subject to the provisions hereinafter set forth.

Now this indenture witnesseth as follows:

1. [COVENANT TO PAY COMPOSITION.] The debtor hereby covenants [*or, the debtor and the guarantor hereby jointly and severally covenant*] with the creditors and each of them to pay to the creditors and each of them a composition of ——— cents in the dollar upon the amounts of their respective debts by ——— equal quarterly (*or, monthly*) payments, the first of such payments to be paid to each of the creditors on the ——— day of ———, and each of the subsequent payments at intervals of three calendar months (*or, of one calendar month*) from that date.

2. [GUARANTOR NOT TO BE RELEASED BY TIME, ETC.] [*The guarantor shall not be released from his liability by reason of time being given or indulgence granted to, or by reason of any compromise or composition with, the debtor by the creditors or any of them.*]

3. [COVENANT NOT TO SUE.] In consideration of the premises the creditors do and each of them doth hereby covenant that if and so long as the debtor [*or, the guarantor*] shall pay to them and each of them the said installments of the said composition in accordance with his [*or, their*] covenant in that behalf hereinbefore contained, the creditors will not bring or prosecute any action or legal proceeding whatsoever against the debtor, nor attach, molest, or impede the debtor in his goods or estate for or on account of any of the debts or claims

of the creditors in respect whereof the creditors are entitled to receive the said composition hereunder, and that these presents may be pleaded as a defense to any such action or other legal proceeding which may have been or may hereafter be brought or prosecuted against the debtor, his goods or estate, for or on account of any such debt or claim.

4. [RELEASE OF DEBTOR ON PAYMENT OF COMPOSITION.]

If and when the said composition shall have been duly paid to the creditors respectively, then the debtor and his heirs, executors, and administrators, and his estate and effects, shall be released and discharged from the several debts and liabilities now owing from or incurred by the debtor to the creditors respectively and from all actions, claims, and demands in respect or on account thereof.

5. [RESERVATION OF RIGHTS AGAINST SURETIES.] All rights and remedies of the creditors respectively against any surety or sureties or parties other than the debtor liable to the creditors or any of them are hereby expressly reserved.

6. [RESERVATION OF RIGHTS OF SECURED CREDITORS.]

The foregoing release shall be without prejudice to any mortgage, charge, pledge, lien, or other security which any of the creditors now hold or are entitled to the benefit of for or in respect of their respective debts, and it shall be lawful for such creditors to realize and enforce any such security as fully and freely in all respects as if they had not executed these presents.

7. [AVOIDANCE OF RELEASE IN DEFAULT OF PAYMENT, ETC.]

If the debtor [*or, if the debtor and the guarantor*] make default in payment of any installment of the said composition in accordance with his [*their*] covenant[s] in that behalf hereinbefore contained [*or, prior to the ——— day of ——— before the said composition shall have been duly paid to the creditors respectively the debtor shall be adjudicated a bank-*

rupt],¹¹ the foregoing release shall be void and of no effect, and the creditors and each of them shall be remitted to and entitled to exercise as regards all their respective debts all such rights and remedies as they and each of them would have been entitled to exercise if these presents had never been executed, subject only to giving due credit for any installment or installments of the said composition already paid [*but without prejudice in any way to the rights of the creditors against the guarantor or his liability under the covenant by him hereinbefore contained*].

In witness, etc.

(Signature[s] and seal[s] of debtor [and guarantor].)

SCHEDULE

(Signatures and seals of creditors and amounts of their debts.)

10. Deed of Composition Providing for Payment by Installments Secured by Assignment of Contracts and Notes of Debtor and Sureties

This indenture is made the —— day of —— between ——, of ——, hereinafter called the debtor, of the first part, —— and ——, of ——, hereinafter called the sureties, of the second part, ——, of ——, hereinafter called the trustee, of the third part, and the several persons, firms, and corporations whose names and seals and the amount of whose debts are subscribed, affixed, and set out in the schedule hereto, and all other creditors of the debtor who shall in writing or otherwise assent to and take the benefit of these presents or undertake to execute the same, hereinafter called the creditors, of the fourth part.

¹¹ If there be a guarantor, the italicized words in brackets will be omitted.

[RECITAL OF PROPOSED COMPOSITION.] Whereas, the debtor, being unable to pay to his creditors his debts in full, has made an offer to the creditors to pay to them and each of them a composition of ——— cents in the dollar on the amount of and in full satisfaction of their respective debts, payable by three installments, the first installment to be paid on the ——— day of ———, and to be secured by an assignment to the trustee of the moneys due and accruing under certain contracts more particularly hereinafter described, and the second and third installments to be payable on the ——— day of ——— and the ——— day of ———, respectively, and to be secured by the joint and several promissory notes of the sureties;

[RECITAL OF POSTPONEMENT OF SURETIES' CLAIMS.] And whereas, the sureties are also creditors of the debtor, and it was also a part of such proposal that they should consent to postpone their claims to the payment of the said composition upon the amount of their respective debts until the other creditors had been paid the whole thereof, and should on their part accept as security on the payment of the said composition the promissory notes of the debtor payable at the dates and in the manner hereinafter appearing;

[RECITAL OF ACCEPTANCE.] And whereas, the creditors by a resolution passed at a meeting held on the ——— day of ——— resolved to accept the said offer.

Now this indenture witnesseth as follows:

1. [ASSIGNMENT OF CONTRACTS BY DEBTOR TO TRUSTEE.] In consideration of the premises the debtor hereby assigns to the trustee all the right, title, and interest of him the debtor in and to all moneys which are now or may hereafter become due and payable to the debtor under two contracts dated ——— (*insert description, adding power of attorney to sue for and collect, if desired*).

2. [APPLICATION IN PAYMENT OF FIRST INSTALLMENT, ETC.] The trustee shall as soon as possible collect, receive, and compel payment of the said moneys, and shall pay and apply the same, after payment of the expenses of collection, if any, in or towards payment to each of the creditors other than the sureties of the first installment of the said composition on the amount of their respective debts, and shall hold the surplus, if any, in trust to apply the same towards the payment of the second and third installments of the said composition as and when the same become due and payable under the provisions hereinafter contained and in exoneration pro tanto of the liability of the debtor and the sureties for the second and third installments of the said composition.

3. [COVENANT BY DEBTOR AND SURETIES TO MAKE UP DEFICIENCY.] The debtor and the sureties hereby jointly and severally covenant with the trustee that, if the said moneys shall not be sufficient to pay the first installment of the said composition in manner aforesaid, the debtor or the sureties or one or the other of them will, on the demand of the trustee, or within such time as the trustee may in his discretion allow, pay to the trustee such sum as will make up the deficiency.

4. [DEBTOR'S COVENANT TO PAY SECOND AND THIRD INSTALLMENTS—NOTES OF SURETIES TO SECURE SAME.] In consideration of the premises the debtor hereby covenants with the trustee and each of the creditors that the debtor will pay to the creditors and each of them the said second and third installments of the said composition upon the —— day of —— and the —— day of ——, respectively, and as security for the payment thereof the sureties have delivered to the trustee, as the trustee hereby acknowledges, their joint and several promissory notes for and in respect of the amounts of the second and third installments of the said composition

which will become due and payable to the creditors upon their respective debts on the dates aforesaid; and the sureties hereby covenant with the trustee to deliver to him upon demand other identical notes in respect of any composition which the trustee shall hereafter certify in writing will become payable in respect of any of the debts of any creditors who may assent to these presents before the —— day of —— and duly prove their debts or claims hereunder to the satisfaction of the trustee.

5. [POWER OF CREDITORS TO GIVE TIME TO DEBTOR, ETC.] It is hereby declared that although, as between the debtor and the said —— and ——, the said —— and —— are sureties, yet, as between the creditors and each of them and the said —— and ——, the said —— and —— shall be in the position of principal debtors to the creditors and each of them, and shall not in any wise be released or discharged by any act done, or time or indulgence given, to the debtor by the creditors or any of them; and the creditors and each of them may modify or abstain from taking advantage of or enforcing any contracts, obligations, or rights to which the creditors or any of them may be entitled, and discharge any party, and accept any composition or arrangement, or realize any securities, when and in such manner as they or any of them may deem expedient.

6. [COVENANT BY DEBTOR TO PAY COMPOSITION TO SURETIES.] The debtor hereby covenants with the sureties that he will pay to the sureties the said composition upon the amount of their debts by two installments on the —— day of —— and the —— day of ——, respectively, and as security for the due payment thereof the debtor has delivered to the sureties, as they hereby acknowledge, his promissory notes for \$—— and \$——, respectively, payable at the said dates.

7. [COVENANT NOT TO SUE.] The creditors and each of them, including the sureties, hereby covenant with the debtor that if and so long as the said installments of the said composition are punctually paid in accordance with the covenants hereinbefore contained, and the said promissory notes given in respect thereof duly paid at maturity, the creditors will not nor will the sureties or either of them (*concluding substantially as in Form No. 9, cl. 3, p. 210*).

8. [RELEASE OF DEBTOR ON PAYMENT OF COMPOSITION.] If and when the said composition shall have been duly paid to each of the creditors, including the sureties (*concluding substantially as in Form No. 9, cl. 4, p. 211*).

9. [RESTRICTION ON RELEASE OF DEBTOR BY SURETIES.] The payment of the said composition to the sureties in manner aforesaid shall not operate as a release of the debtor in respect of the debts owing by him to the sureties, unless and until the debtor shall pay to the sureties, in addition to the said composition, all moneys paid by the sureties as sureties for the debtor or otherwise under the provisions of these presents.

10. [AVOIDANCE OF DEED IN CERTAIN EVENTS.] If any default be made in paying any installment of the said composition, or the said promissory notes be not duly paid at maturity, or if execution be levied upon any part of the estate of the debtor, or if the debtor make any other compromise or arrangement with his creditors or any of them, except with the consent of the creditors assenting to these presents, or if the debtor attempt to give any of his creditors a preference or advantage over the other creditors, then and in every such case these presents shall become void and of no effect, save and except as to any matter or thing lawfully done hereunder, and the creditors and each of them, including the sureties, shall, save as aforesaid, be remitted to and be entitled to exer-

cise and enforce against the debtor and his estate in respect of their respective debts all said rights and remedies as they and each of them would have been entitled to exercise if these presents had never been executed, subject only to giving due credit for any installment received on account of the said composition, but without prejudice in any way to the rights of the creditors against the sureties upon their covenants hereinbefore contained and upon their promissory notes.

11. [POWER TO PAY SMALL DEBTS IN FULL.] The debtor shall be entitled with the consent of the trustee (and of the sureties) to pay in full any creditor who may refuse to assent to these presents and whose debt does not exceed \$——, or to compound therefor at a higher rate, or to settle or compromise such debt in any manner which may be thought most expedient.

In witness, *etc.*

(Signatures and seals of debtor, sureties, and trustee.)

SCHEDULE

(Signatures and seals of creditors, and the amounts of their debts.)

11. Deed of Composition by Partners Providing for Payment of One Composition to Both Joint and Separate Creditors, Secured by Notes of Partners and Surety, with Assignment of Firm Business to Surety

Indenture made the —— day of —— between —— and ——, of ——, carrying on business under the firm name and style of ——, hereinafter called the debtors, of the first part, ——, of ——, hereinafter called the surety, of the second part, and the several persons, firms, and corporations whose names and seals are hereunto subscribed and affixed in the schedule hereto, and who are respectively credi-

tors of the debtors jointly or of one or the other of them separately, and all other joint and separate creditors of the debtors who shall execute or in writing or otherwise assent to or agree to take the benefit of these presents, hereinafter referred to as the creditors, of the third part:

[RECITAL OF PROPOSAL FOR COMPOSITION AND ACCEPTANCE.] Whereas, the debtors, being indebted to the creditors either jointly or severally in the several sums set opposite their respective names in the schedule hereto and being unable to pay the same in full, have proposed to the creditors to pay to each of them a composition of ——— cents in the dollar on the amount of their joint and several debts, and that such composition shall be accepted by the creditors in full satisfaction and discharge of the said debts, such composition to be paid by equal installments of ——— each, the first of such installments to be paid at the expiration of ——— months from the date hereof, and the second at the expiration of ——— months from the date hereof, and that the payment shall be secured by the joint and several promissory notes of the debtor and the said ——— as surety, and the creditors have agreed to such proposal and to accept such composition;

[RECITAL OF DELIVERY OF NOTES.] And whereas, the joint and several promissory notes of the debtor and the said ———, as their surety, as aforesaid, have been delivered to the creditors, as they hereby acknowledge;

[RECITAL OF AGREEMENT TO ASSIGN.] And whereas, in consideration of the said ——— becoming surety for the debtors for the payment of the said composition and of the covenant of the surety with the creditors hereinafter contained, the debtors have agreed to execute the assignment hereinafter appearing.

Now this indenture witnesseth as follows:

1. [COVENANT BY SURETY TO PAY COMPOSITION.] The surety hereby covenants with the creditors and each of them

that he will pay or cause to be paid to them the said composition of ——— cents in the dollar on the amount of their several and respective debts in the manner and by the installments hereinbefore mentioned.

2. [RELEASE OF DEBTORS.] The creditors do and each of them doth hereby absolutely release and discharge the debtors from all the said debts both joint and separate and from all actions, claims, demands, or other proceedings at law, in equity, or in bankruptcy, or otherwise in respect thereof.

3. [AVOIDANCE OF RELEASE IN CERTAIN EVENTS.] If the surety shall make default in payment of either of the said installments, or if the debtors either jointly or separately or the surety shall be adjudicated bankrupts or a bankrupt, or if they or either of them or the surety shall suffer any process of execution, or shall make any other arrangement or composition with their or his creditors or any of them, the foregoing release shall be void and of no effect, and the creditors shall be at liberty to enforce their rights and remedies in respect of their debts against the debtors or either of them as fully as if these presents had never been executed, subject only to accounting for any installment received in respect of such debt.

4. [RESERVATION OF RIGHTS AGAINST SURETIES.] *See Form No. 9, cl. 5. p. 211.*

5. [SECURED CREDITORS TO ESTIMATE VALUE OF SECURITY.] Any creditor who holds any mortgage, lien, pledge, charge, or other security over the property, whether joint or separate, of the debtors or either of them, shall within ——— days of his execution of these presents give notice in writing to the surety that he intends to surrender his security and take the said composition upon his whole debt, or shall give notice to the surety of the value at which he estimates his security, and the surety shall be entitled to redeem the same at such estimated value; but whether the surety redeems such security

or not, if such creditor so values his security, he shall be paid the said composition only upon so much of his debt as shall remain after deducting therefrom such estimated value. If such creditor fails to give such notice of his intention to surrender his said security or the value at which he estimates the same, he shall at the option of the surety be absolutely debarred from taking the benefit of these presents.¹²

6. [ASSIGNMENT OF FIRM BUSINESS TO SURETY.] In consideration of the premises and the covenants by the surety hereinbefore contained the debtors and each of them do hereby assign and transfer unto the said ——— (*surety*) all the stock in trade, goods, chattels, and effects in or upon their business premises or used or employed by them in connection therewith, and also a certain lease of the said premises (*description of lease*), and the said premises which are therein demised to the debtors, and all the book and other debts due to the debtors in connection with the said business and the full benefit of all securities for the said debts, together with the good will of the said business and the right to carry on the same under the name or style of ———, at ———.

To have and to hold the same unto the said ——— absolutely.

In witness, *etc.*

(*Signatures and seals of debtors and surety.*)

SCHEDULE

(*Signatures and seals of creditors, and amounts of their debts.*)

¹² The surety is thus enabled to redeem property of small value in the hands of a stranger which may be of great value in the hands of the person taking over the business. To allow the creditor to realize his security and prove for the balance would not meet the case.

12. Agreement Between Debtor and Principal Creditors for Composition Payable by Installments, Secured by Notes of Debtor and Third Persons, to Take Effect on Signing by Creditors and Delivery of Notes Within Limited Time

Indenture made the _____ day of _____ between _____, of _____, hereinafter called the debtor, party of the first part, and _____, _____, _____, and _____, who are creditors of the debtor in the following respective amounts, to wit (*setting out amounts*), parties of the second part:

[RECITAL OF INDEBTEDNESS AND OFFER OF COMPOSITION.]
Whereas, the debtor is unable to pay his creditors in full, and has proposed to pay to the parties of the second part, who are his largest creditors, upon the respective amounts of their respective debts and in full satisfaction and discharge of the same, a composition of _____ cents in the dollar, payable to each by three equal installments as follows (*dates of payment*), to be secured by the joint and several promissory notes of the debtor and of _____ and _____ for the respective amounts of the said installments so payable to each of the parties of the second part, such offer being conditional upon acceptance of the same by each and all of the parties of the second part, as shall be evidenced by their respectively signing these presents, on or before the _____ day of _____.

Now this indenture witnesseth as follows:

1. [COVENANT OF DEBTOR TO DELIVER NOTES AND PAY COMPOSITION.] The debtor hereby covenants with the parties of the second part and each of them that, if these presents shall have been signed by them and each of them on or before the _____ day of _____, he will immediately, upon the last of such signatures being so made, deliver to them and each of them promissory notes for the several installments of their

respective debts pursuant to and in conformity with the said recited offer, and will pay to them and each of them the several installments of the said composition upon the dates hereinbefore recited.

2. [RELEASE OF DEBTOR.] If and when the said composition shall have been duly paid to the parties of the second part respectively, then the debtor, and his heirs, executors, and administrators, shall be released and discharged from the several debts and liabilities now owing from the debtor to the parties of the second part respectively, and from all actions, claims, and demands in prospect thereof: Provided, that if said promissory notes or either or any of them shall not be duly paid at maturity, the foregoing release shall be void and of no effect, subject only to giving credit for any installment already paid.

3. [TIME OF TAKING EFFECT.] If these presents shall not have been signed by the parties of the second part and each of them, or if the debtor shall not have delivered all the said promissory notes to the parties of the second part, on or prior to the said — day of —, then in either such event these presents shall be void and of no effect whatsoever.

In witness, *etc.*

13. Agreement for Composition and Releases Although Nonexecuting Creditors be Paid in Full

Indenture made the — day of — between —, of —, hereinafter called the debtor, of the one part, and —, —, and — (*or*, the several persons, firms, and corporations whose names and the amounts of whose debts are contained in the schedule hereto), hereinafter called the creditors, of the second part:

[RECITAL OF INDEBTEDNESS AND AGREEMENT FOR COMPOSITION.] Whereas, the debtor is indebted to the creditors in

the several sums specified against their respective names in the schedule hereto, and the creditors have agreed to accept a composition of ——— cents in the dollar in full discharge of their said debts.

Now this indenture witnesseth as follows:

1. [AGREEMENT TO PAY COMPOSITION.] The debtor agrees on or before the ——— day of ——— to pay to each of the creditors who shall execute these presents before that date the composition of ——— cents in the dollar on his, her, or its debt specified in the schedule hereto.

2. [AGREEMENT TO ACCEPT—RELEASE TO BIND CREDITORS WHO EXECUTE.] Each of the creditors hereby agrees to accept such composition in full satisfaction of his, her, or its debt. If such composition be duly paid, each of the creditors hereby releases the debtor from his, her, or its said debt. This release shall be binding and effectual although not executed by all the creditors of the debtor, and although all or any of the nonexecuting creditors may be paid in full: Provided, that if the said composition shall not be paid at the time and in the manner aforesaid, or if before the ——— day of ——— the debtor shall be adjudged bankrupt, then these presents shall be void.

In witness, *etc.*

(Signatures and seals of all parties.)

CHAPTER VIII

AUCTIONS

In a sale by public auction the contract is determined by the conditions of sale fixed in advance by the vendor, which may be contained in the printed conditions of sale or in a published advertisement. If the sale is not without reserve, the vendor should reserve the right to bid, and he may, of course, insert in the conditions such other stipulations as he may desire. By the statute of frauds no action can be brought upon a contract or sale of lands unless the agreement or some note or memorandum thereof shall be in writing and signed by the party to be charged or some other person lawfully authorized. Auctioneers have implied authority to sign at the time of the sale for both purchaser and vendor. A stipulation is frequently inserted in the conditions of sale of land that the purchaser shall sign a memorandum immediately after the sale. The memorandum, which is often annexed to the conditions, may embody them by reference, and thus satisfy the statute, which requires the memorandum to show who are the parties, the subject-matter, the intention to buy and sell, the price and any other terms of the contract. In the case of a sale of goods, the requirements of the statute of frauds are satisfied by payment of a deposit, which is given in earnest to bind the bargain and in part payment.

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1. Conditions of Sale of Real Estate

1. [THE PROPERTY.] The property described as (*description*) will be sold upon the following conditions:

2. [HIGHEST BIDDER TO BE PURCHASER.] The property is offered for sale without reserve, and the highest bidder for the property shall be the purchaser. If any dispute arise as

to any bid, the property shall be immediately put up again and resold.¹

3. [DEPOSIT.] Immediately after the fall of the hammer (*or*, the conclusion of the biddings) the purchaser shall pay to the auctioneer a deposit of ——— per cent. on the amount of his purchase money and in part payment thereof, and shall sign the memorandum at the foot of these conditions.

4. [EXAMINATION OF TITLE.] The purchaser shall have ——— days after the day of sale (*or*, after the delivery to him by the vendor of an abstract of title of the property) within which to examine the title, and he shall make any objections as to the title in writing to the vendor within that time, and the vendor shall have ——— days thereafter within which to remove the same. If the title shall be unmarketable, and shall not be made marketable by the vendor within the time aforesaid, the purchaser may rescind the contract, and shall receive back his deposit.

5. [COMPLETION OF PURCHASE.] The completion of the purchase and the payment of the balance of the purchase money shall take place on or before the ——— day of ———, at the office of ———, at ———, whereupon the vendor shall deliver to the purchaser a good and sufficient (warranty) deed conveying to him the title in fee simple to the property free from all incumbrance, and the purchaser shall thereupon be let

¹ If the vendor does not desire to offer the property without reserve and desires to impose further conditions, the following provisions, or some of them, may be used:

The property is offered for sale subject to a reserve price and to the right of the vendor, by himself or his agent or the auctioneer, to bid up to or beyond such reserve, and to withdraw the property as unsold without declaring such reserve. Subject as aforesaid, the highest bidder whose bid is accepted by the auctioneer shall be the purchaser, but the auctioneer may refuse any bid. No person shall at any bid advance less than a sum to be named by the auctioneer, or retract his bid. If any dispute arise respecting a bid, the property shall be put up again at the last undisputed bid.

into possession and receipt of the rents and profits of the property. Rents and profits, taxes and insurance shall be apportioned as of that day.

6. [FORFEITURE OF DEPOSIT.] If the purchaser shall in any respect fail to comply with these conditions, his deposit may be forfeited, and the property may be resold by auction or private sale, and all expense and loss, if any, attending any resale or attempted resale shall be recoverable as liquidated damages from the defaulting purchaser, credit being given for the amount of his deposit, and any increase of price on a resale shall belong to the vendor.

Memorandum (Annexed to the Foregoing)

Memorandum that at the sale by auction, this — day of —, of the property mentioned in the foregoing conditions of sale, — was the purchaser, subject to the above conditions, at the price of — dollars, and has paid the sum of — dollars as a deposit to —, the auctioneer, and agrees to pay to —, the vendor, the balance of the said purchase money; and the vendor and purchaser agree to complete the sale in accordance with the above conditions.

(Signature by vendor or his agent and purchaser or his agent, or signature of auctioneer as agent of both.)

2. Auction Sale Agreement

(Printed advertisement of sale.)

—, 19—.

I hereby acknowledge that I have this day purchased by public auction of —, auctioneer, the premises described in the above-printed advertisement, for the sum of — dollars. And I hereby agree to comply with the terms of the sale as stated in the memorandum hereto annexed, and, having paid into the hands of said auctioneer the sum of —

dollars, agreeably to said terms of sale, to forfeit said sum to the use of the seller should I fail to comply with the residue of said terms of sale. (Signature.)

Memorandum of terms and conditions of sale: Premises to be conveyed by a good and sufficient (warranty) deed ——— days from day of sale given for examination of title.

Terms: Purchase money to be paid in cash upon delivery of deed, of which amount the deposit of ——— dollars shall be considered a part.

The sum of ——— dollars to be paid down, into the hands of the said auctioneer as a deposit to bind the bargain and in part payment, and to be forfeited to the use of the seller in case the purchaser shall fail to comply with the residue of the terms of sale, but a forfeiture of said sum shall not relieve the purchaser from his liability under this contract.

Rents and insurance to be settled to and possession given on the day of delivery of deed.

Settlement to be made at office of auctioneer at ——— o'clock ——— m., on or before the ——— day of ———.

———, 19—.

Received of ——— the sum of ——— dollars as a deposit and in part payment for the premises above mentioned this day sold by me to him at public auction, for the sum of ——— dollars, subject to the terms and conditions of sale.

———, Auctioneer.

3. Conditions on Sale of Goods by Auction

1. [HIGHEST BIDDER TO BE PURCHASER.] The highest bidder for each lot shall be the buyer, and if any dispute arise as to any bidding (*or*, between two or more bidders) the lot so disputed shall be immediately put up again (at the last undisputed bid) and resold.

(2. [AUCTIONEER MAY REFUSE BID.] The auctioneer may, without giving any reason therefor, refuse any bid.)

(3. [BIDDINGS.] No lot will be offered at a less sum than ———. No bidder shall advance less than ——— more than the preceding bid; or, if above ———, less than ——— more than the preceding bid, and so on in proportion.)

(4. [VENDORS MAY BID.] The vendors may bid for any lot or lots, either personally or through the auctioneer, or through any other person.)

5. [NAMES AND DEPOSIT.] The buyers shall give in their names and addresses, if required, and shall pay down ——— per cent. of the purchase money as earnest and in part payment; and in default of compliance with these conditions the lot so purchased shall (*or*, may, if the auctioneer sees fit) be put up again and resold. (If upon such resale a lower price is obtained for any such lot than was obtained at the first sale, the difference in price shall be a debt due from the buyer in default upon the first sale.)

6. [BUYER'S RISK—PAYMENT AND REMOVAL.] Each lot (shall be at the buyer's risk from the fall of the hammer and) shall be paid for and taken away by the buyer within ——— days from the end of the sale, and with all faults and errors of description.

7. [FAULTS OR MISDESCRIPTION.] No warranty is given with any lot; and no sale shall be invalidated by reason of any fault in any lot or by reason of any lot being incorrectly described (in the catalogue or otherwise), and no compensation shall be paid for any such fault or error of description.

8. [FAILURE TO COMPLY WITH CONDITIONS.] If default be made by any buyer in any of the above conditions, the money deposited by him in part payment shall be forfeited, and all lots not paid for and taken away within the time aforesaid shall be resold either by public auction or private sale, and the deficiency, if any, arising upon such resale, together with the expenses thereof, shall be made good by the buyer in default of this sale.

CHAPTER IX

BILLS OF EXCHANGE, CHECKS, AND PROMISSORY NOTES

These instruments are now generally governed by the so-called Negotiable Instruments Law, which has been enacted in nearly all parts of the United States, and its provisions, with some exceptions, correctly state the law prevailing in other jurisdictions. The Negotiable Instruments Law is here followed.

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For collateral notes, see Pledges and Collateral Securities, post, p. 1124.

For conditional sale note, see Sale of Goods, post, p. 1199.

For mortgage notes, see Mortgages (real estate), p. 975.

1. Bill of Exchange Payable after Sight

\$1,000. Chicago, Illinois, May 1, 1915.

Three months after sight pay to the order of —— (or, to —— or order; or, to —— or bearer; or, to bearer) the sum of one thousand dollars (value received),¹ and charge the same to account of (Signature of drawer.)

To Messrs. ——,
St. Louis, Missouri.

2. Bill of Exchange Payable after Date

\$1,000. Chicago, Illinois, May 1, 1915.

Three months after date pay to (conclude as in preceding form).

3. Bill of Exchange Payable on Demand

\$1,000. Chicago, Illinois, May 1, 1915.

Pay to the order of —— (or otherwise designating the payee, as in Form No. 1) (on demand)² the sum of one thousand dollars. (Signature of drawer.)

To Messrs. ——,
St. Louis, Missouri.

¹ These words, though usual, are superfluous.

² By the Negotiable Instruments Law, an instrument is payable on demand where it is expressed to be payable on demand, or at sight, or on presentation, or where no time for payment is expressed.

4. Foreign Bill in Set of Three

No. ———.

Chicago, Illinois, May 1, 1915.

£1000.

Three months after sight (*or*, after date) of this first of exchange (*the second and third of the set will be in the same form with necessary variations, thus* "of this second of exchange, first and third not paid," "of this third of exchange, first and second unpaid") pay to ——— or order the sum of one thousand pounds sterling (value received, and charge the same to account of) *(Signature of drawee.)*

To Messrs ———,

London, England.

5. Case of Need

In case of need apply to Messrs. ———, of ———.³

6. Acceptances

(A) General

(1) Accepted (*date*).

A. B.

(2) Accepted.

A. B.

(3) Accepted payable at ———.⁴

A. B.

³ When inserted by the drawer, usually inserted under the address of the drawee; when by an indorser, immediately below his indorsement. The Negotiable Instruments Law provides that in case of need, that is, if the bill is dishonored by nonacceptance or nonpayment, the holder may in his option resort to the person indicated, called the referee in case of need.

⁴ The Negotiable Instruments Law provides that an acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

(B) Qualified

(1) Conditional:

Accepted payable on giving up to me the bills of lading for
 ———, per ——— Ry. Co. A. B.

(2) Partial:

Accepted as to \$500 (*where bill is drawn for a larger sum*).
 A. B.

(3) Local:

Accepted payable at the ——— Bank, Chicago, only, and
 not elsewhere.⁵ A. B.

(4) As to time:

Accepted payable May 1, 1915 (*when the bill is drawn payable at a different time*).
 A. B.

(5) By some only of drawees:

Accepted.

A. B. (*where bill is drawn on A. B. and C. D.*).

7. Indorsements*(A) In Blank*

A. B.

(B) Special

Pay C. D. or order.

A. B.

or

Pay to the order of C. D.

A. B.

or

Pay to C. D.

A. B.

⁵ See preceding note.

(C) Restrictive

(1) Prohibiting further negotiation:

Pay C. D. only.

A. B.

(2) Constituting the indorsee the agent of the indorser:

Pay to the ——— Bank or order for collection.

A. B.

(3) Vesting the title in the indorsee in trust for or to the use of some other person:

Pay to C. D. or order for the use of E. F.

A. B.

(D) Qualified

Pay to C. D. or order without recourse.

A. B.

8. Check

Chicago, May 1, 1915.

The First National Bank, Chicago, Ill.

Pay to the order of ——— (*or, to bearer*) one thousand dollars.
(*Signature of drawer.*)

9. Voucher Check *

(*The body of the check as in the preceding form.*)

Received of ——— (*drawer*) the above-mentioned sum in payment of bill for ——— rendered the ——— day of ———.

(*Signature of payee.*)

* In this form, the order to pay not being conditional upon the signing of the receipt by the payee, the instrument is a check.

10. Order to Bank for Payment [†]

Chicago, May 1, 1915.

The First National Bank of Chicago, Ill.

Pay to the order of — the sum of one thousand dollars, provided the receipt form at foot hereof is signed and dated and is presented herewith. *(Signature of drawer.)*

Receipt

Received of — (*drawer*) the above-mentioned sum in settlement of account furnished.

Date —.*Signature* —.

N. B. This receipt must not be detached from the check, but the two must be presented as one document.

11. Promissory Note

\$1,000.

New York, May 1, 1915.

On demand (*or*, — months. after date; *or*, on the — day of —, 1915; *or*, on or before the — day of —, 1915) I promise to pay to — or order (*or*, to the order of —; *or*, to bearer) one thousand dollars (value received). *(Signature of maker.)*

12. Joint Promissory Note

(Beginning as in preceding form) we promise to pay to *(concluding as in preceding form)*.

(Signatures of makers.)

[†] Here the order to pay is conditional, and the instrument is not a check.

13. Joint and Several Promissory Note

(*Beginning as in Form No. 11*) we jointly and severally promise (*or, I promise*) to pay to (*concluding as in Form No. 11*).
(*Signatures of makers.*)

14. Promissory Note Payable at Particular Place, with Interest

\$1,000.

Chicago, Illinois, May 1, 1915.

Sixty days after date I promise to pay to the order of _____ the sum of one thousand dollars at the First National Bank of Chicago, Illinois, with interest before and after maturity at the rate of six per cent. per annum.

(*Signature of maker.*)

15. Promissory Note Providing that Principal shall Become Due on Default in Payment of Interest

\$1,000.

_____, 19—.

Five years after date I promise to pay to the order of _____ one thousand dollars, with interest thereon at the rate of six per cent. per annum, payable semiannually on the _____ day of _____ and the _____ day of _____ in each year: Provided, that if default be made in the payment of any installment of interest at the time aforesaid, the principal sum shall at the election of the holder at once become due and payable.

(*Signature of maker.*)

15a. Promissory Note Providing for Costs of Collection and Attorney's Fee

\$1,000.

_____, 19—.

Three months after date I promise to pay to the order of _____ one thousand dollars, with costs of collection and a reasonable attorney's fee in case payment shall not be made at maturity.

(*Signature of maker.*)

15b. Promissory Note Authorizing Confession of Judgment

\$1,000. _____, 19—.

Three months after date I promise to pay to the order of _____ one thousand dollars, and if payment shall not be made at maturity I hereby authorize any attorney of any court of record in the United States to appear for me and confess judgment against me in favor of the holder of this note for the amount then due thereon, with interest and costs (and to release all errors and the right of appeal).

(Signature of maker.)

15c. Same—With Waiver of Exemption, etc. (Pennsylvania)

\$_____. _____, 19—.

_____ after date I promise to pay to the order of _____ dollars, without defalcation, value received, with interest.

And, further, I do hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere (if this note be not paid at maturity),⁸ to appear for and to enter judgment against me for the above sum, with or without declaration, with costs of suit, release of errors, without stay of execution, and with _____ per cent. added for collecting fees; and I also waive the right of inquisition on any real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same, and authorize the prothonotary to enter upon the fi. fa. my said voluntary condemnation, and I further agree that said estate may be sold on a fi. fa., and I hereby waive and release all relief from any and all appraise-

⁸ A provision authorizing confession of judgment before maturity renders the instrument nonnegotiable.

ment, stay, or exemption laws of any state, now in force, or hereafter to be passed.

Witness.

(Signature of maker and seal.)

15d. Promissory Note of Corporation

\$1,000.

_____, 19—.

Sixty days after date the A. B. Company promises to pay to the order of _____ the sum of one thousand dollars.

The A. B. Company,

By _____, Treasurer.

16. Notice of Dishonor to Drawer of Bill *

_____, 19—.

To _____:

I hereby give you notice that a bill of exchange, dated the _____ day of _____, drawn by you on _____ of _____, for \$_____, payable to _____ or order, _____ months after date, has been dishonored by nonacceptance (*or*, by nonpayment) and protested, and that I look to you for the payment thereof.

(Signature.)

* The Negotiable Instruments Law provides that the notice may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It is usual to add that the holder looks to the party notified for payment. In the case of a foreign bill it is advisable to add that it has been protested.

17. Notice of Dishonor to Indorser of Bill

_____, 19—.

To _____:

I hereby give you notice that a bill of exchange, dated the _____ day of _____, drawn by _____ of _____, the _____ of _____, for \$_____, payable to _____ or order, _____ months after sight, and bearing your indorsement, has been dishonored by nonacceptance (*or*, by nonpayment) and protested, and that I look to you for the payment thereof.

*(Signature.)***18. Notice of Dishonor of Note by Notary to Indorser**

_____, 19—.

Please take notice that a promissory note made by _____ in favor of _____ for _____ dollars, dated the _____ day of _____, payable the _____ day of _____, and indorsed by you, having this day been by me at the request of _____, the holder thereof, presented for payment, which was duly demanded and refused, is protested for nonpayment, and that the holder will look to you for the payment thereof, with all legal costs, interest, and damages in consequence of the non-payment thereof. _____, Notary Public.

To _____.

19. Notice of Dishonor to Drawer of Check

_____, 19—.

To _____:

I hereby give you notice that a check, No. _____, dated the _____ day of _____, drawn by you on the _____ Bank for \$_____, and payable to _____ or order (*or*, to bearer), has been dishonored by nonpayment.

(Signature of holder.)

20. Protest of Bill of Exchange ¹⁰

UNITED STATES OF AMERICA, }
STATE OF ———, } ss.
County of ———.

(If the original instrument is not annexed, first set out an exact copy of the instrument, with all indorsements.)

On the ——— day of ——— at the request of ———, the holder of the original bill of exchange (*or*, promissory note) hereunto annexed (*or*, of which a true copy is hereinabove written), I, ———, of ———, a notary public in and for the county of ——— and state of ———, duly commissioned and sworn, did present said original bill of exchange (*or*, promissory note) to ———, the drawee (*or*, acceptor; *or*, maker) at ——— during the usual hours of business for such purposes and demanded payment (*or*, acceptance) thereof, to which he made answer that he would not pay (*or*, accept) the same (*or state the answer otherwise given*).

Wherefore I, the said notary, at the request aforesaid, did protest and do by these presents solemnly protest as well against the drawer and indorsers of the said bill of exchange (*or*, the indorsers of the said promissory note) as against all

¹⁰ The Negotiable Instruments Law provides that the protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify: (1) The time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; and (4) the demand made and answer given, if any, or the fact that the drawee or acceptor could not be found. It provides, also, that protest may be made by a notary public, or by any respectable resident of the place where the bill is dishonored in the presence of two or more credible witnesses. While protest is not required in the case of inland bills and promissory notes, in many states provision is made by statute for their protest by a notary who has made presentment, thus furnishing convenient evidence of their dishonor. These statutes also often provide for notice of dishonor to be given by the notary, and that his certificate thereof in the protest shall be competent evidence of the fact.

others whom it doth or may concern for exchange, re-exchange, and all costs, damages, and interest incurred or to be incurred for want of payment (*or*, acceptance) thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at ——— aforesaid the day and year first above written.
(*Signature and seal of notary.*)

21. Protest of Bill of Exchange Where no Person Authorized to Pay or Refuse Payment can be Found at Proper Place of Presentment

(*Begin as in Form No. 20*) did present the said original bill of exchange at ———, the place of payment specified in the said bill (*or*, the address of the acceptor thereof given in the said bill; *or*, the usual place of business *or* of residence of the acceptor thereof; *or*, the last known place of business *or* of residence of ———, the acceptor thereof), but after the exercise of reasonable diligence no person authorized to pay or refuse payment could be found there.

Wherefore I, the said notary, *etc.* (*as in Form No. 20*).

22. Protest by Person Other than Notary

Know all men that I, ———, a reputable resident of ———, in the county of ——— and state of ———, at the request of ———, the holder of the original bill of exchange hereunto annexed, there being no notary public available, did on the ——— day of ———, at ———, present the said bill to ———, the drawee (*or*, acceptor), and demanded payment (*or*, acceptance) thereof, to which demand he made answer (*state answer*).

Wherefore I now, in the presence of ——— and ———, credible witnesses, do protest the said bill of exchange, this ——— day of ———.

(*Signatures of person making protest and two witnesses.*)

23. Notarial Act of Honor on Payment for Honor Supra Protest ¹¹

I, ———, of ———, a notary public in and for the county of ——— and state of ———, duly commissioned and sworn, hereby certify that on the ——— day of ———, at ———, in ———, the original bill of exchange for \$——, of which a true copy is contained in (*or*, annexed to) the protest to which this act is appended (*or*, is above written), was by me exhibited to ——— (*payer for honor*), of ———, who then and there declared that he intended to pay and did pay the same for the honor of ———, the drawer (*or*, the acceptor; *or*, an indorser) of the said bill, holding the said drawer (*or*, acceptor; *or*, indorser) and all parties liable on the said bill to him and all other proper persons responsible to him the said ——— (*payer for honor*) for the said sum and for all interest, damages, and expenses.

In witness whereof I have hereunto set my hand and notarial seal this ——— day of ———.

(Signature and seal of notary.)

¹¹ The Negotiable Instruments Law provides that the payment, in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it, and that the notarial act of honor must be founded on a declaration made by the payor for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. No notarial act of honor with regard to an acceptance for honor appears to be required by the Negotiable Instruments Law.

CHAPTER X

BONDS

A bond is a contract in writing and under seal whereby one person binds himself to another to pay to him a certain sum of money, the parties being called, respectively, "obligor" and "obligee." Bonds are called "single" when the obligor merely binds himself to pay a certain sum to another at a date specified, and "double" or "conditional" when, as is usual, he adds a condition that, if he or some other person does or forbears to do some particular act, the obligation shall be void. A surety or sureties may, of course, join with the principal obligor, and there is usually a requirement for sureties in statutory bonds.

A conditional bond consists of the obligatory part or "obligation" and the "condition." Sometimes recitals are introduced after the obligation by way of explanation. The condition expresses the real object of the bond. No particular form of words is required, although if a bond is required by statute it should express, in substance, the condition required. In conditional bonds the old form was, before adding the condition, to conclude with the words "sealed with my seal" and the date; but this may, of course, be covered by the customary testimonium clause. In many states a scroll may be used in place of a seal, and in other states the use of private seals has been abolished. Unless the obligor expressly binds his heirs, they are not bound.

The term "bond" is also applied to certain negotiable obligations of municipal and other corporations, usually with interest coupons attached, which are, in effect, promissory notes. Post, p. 859.

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For other bonds, see

Arbitration Bond, p. 152.

Bottomry Bond, p. 1233.

Bond of Indemnity for Lost Certificate of Stock, p. 1267.

Mortgage Bond, p. 975.

1. Bond for Payment of Money and Interest

Know all men by these presents that I, ———, of ———, am held and firmly bound unto ———, of ———, in the sum of ——— dollars (*usually twice the amount of the principal to be secured*), to be paid to the said ———, his executors, administrators, and assigns, for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal this ——— day of ———.

The condition of the above-written obligation is such that, if the above-bounden ———, his heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the said ———, his executors, administrators, or assigns, on the ——— day of ———, the full sum of ——— dollars (*the sum secured*), with interest for the same from the date hereof at the rate of ——— per cent. per annum, then the above-written ob-

ligation shall be void and of no effect; otherwise to remain in full force.

(*Signature and seal.*)

Signed, sealed, and delivered in the presence of _____.

2. Same—Another Form

Know all men by these presents that I, _____, of _____, hereby bind myself, and my heirs, executors, and administrators, to _____, of _____, for the payment to him, his executors, administrators, and assigns, of the sum of \$_____.

Sealed with my seal this _____ day of _____.

The above-written obligation is conditioned to be void in case the above-bounden _____, his heirs, executors, or administrators, shall pay to the above-named _____, his executors, administrators, or assigns, on the _____ day of _____, the sum of \$_____, with interest for the same sum at the rate of _____ per cent. per annum from the _____ day of _____.

(*Signature and seal.*)

3. Same—Single Bond

Know all men by these presents that I, _____, am held and firmly bound unto _____ in the sum of _____ dollars, to be paid unto the said _____, his executors, administrators, or assigns, on the _____ day of _____, with interest thereon at _____ per cent. per annum; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Witness my hand and seal this _____ day of _____.

4. Joint Bond of Several for Payment of Money in Installments

Know all men by these presents that we, _____, _____, and _____, are jointly (*or*, jointly and severally) held and bound unto _____ in the sum of _____ dollars, to be paid to the

said ———, or his executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our respective seals this ——— day of ———.

The condition of this obligation is such that, if the above-bounden ———, ———, and ———, or some or one of them, or of their heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the said ———, his executors, administrators, or assigns, the full sum of ——— dollars in the manner following, to wit: The sum of ——— dollars on the ——— day of ———, the sum of ——— dollars on the ——— day of ———, and the sum of ——— dollars on the ——— day of ———, together with interest in each case at the rate of ——— per cent. per annum on the whole sum remaining due at the time of each such payment, then this obligation shall be void and of no effect; and otherwise shall remain in full force.

(Signatures and seals.)

5. Bond for Deed

Know all men by these presents that I, ———, of ———, am held and firmly bound unto ———, of ———, in the sum of ——— dollars, to be paid unto the said ———, his executors, administrators, or assigns, to which payment well and truly to be made I bind myself, my heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that whereas, the said obligor has this day bargained and sold unto the said obligee a certain lot or parcel of land situate (*description*), for the sum of ——— dollars, of which sum ——— dollars has this day been paid, and the remainder is to be paid six months from the date hereof, with interest thereon at the rate of ——— per cent. per annum, according to the terms and con-

ditions of a promissory note therefor executed by the said obligee to the order of the said obligor, and bearing even date herewith.

Now, if the said obligor shall execute and deliver to the said obligee, or to his heirs, executors, administrators, or assigns, a good and sufficient warranty deed, with full covenants, except as to such incumbrances as may arise by virtue of any tax assessed subsequent to the execution hereof, of the above-described premises, upon the said promissory note being paid according to the terms and conditions thereof, then this obligation to be null and void; otherwise to remain in full force and virtue.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

6. Same—Another Form

(Begin as in preceding form.)

The condition of this obligation is such that whereas, the said obligor has agreed to sell and convey unto the said obligee a certain parcel of real estate situated (*description*), the same to be conveyed by a good and sufficient warranty deed of the said obligor conveying a good and clear title to the same, free from all incumbrances; and whereas, for such deed and conveyance it is agreed that the said obligee shall pay the sum of ——— dollars, of which the sum of ——— dollars has been paid this day, the sum of ——— dollars is to be paid in cash upon the delivery of said deed, and the remainder is to be paid by the note of the said obligee, dated ———, bearing interest at six per cent. per annum, payable semiannually, and secured by a mortgage, in the usual form, upon the said premises, such note to be payable ———.

Now, therefore, if the said obligor shall, upon tender by the said obligee of the aforesaid cash, note, and mortgage at any

time within —— days from this date, deliver unto the said obligee a good and sufficient warranty deed as aforesaid, then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

In witness whereof, *etc.*

7. Same—Another Form

(*Begin as in Form No. 5, p. 245.*) Sealed with my seal ——, and dated the —— day of ——.

The condition of this obligation is that, if I, the said ——, upon payment of —— dollars and interest thereon, as agreed and promised by said —— agreeable to his promissory note, dated ——, and made payable as follows, to wit (*terms of payment*), shall convey to said ——, his heirs and assigns, forever, the following described real estate (*description*), by a warranty deed in common form, duly executed and acknowledged, and in the meantime shall permit said ——, his heirs and assigns, to occupy and improve said premises for his or their own use, then this obligation shall be void; otherwise it shall remain in full force. (*Signature and seal.*)

8. Bond with Surety for Performance of Building Contract

Know all men by these presents that we, ——, of ——, as principal, and ——, of ——, as surety, are held and firmly bound unto —— in the sum of —— dollars, to be paid to the said ——, his executors, administrators, or assigns, for which payment well and truly to be made we do bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that:

Whereas, the said —— (*principal*) and the said —— (*obligee*), on the —— day of ——, entered into a certain written agreement bearing that date for the erection by the

said ——— of a building upon land of the said ——— situate (*description*).

Now, if the said ———, his executors and administrators, shall in all things well and truly perform and observe all and singular the covenants, agreements, stipulations, and conditions contained in the said agreement on his part to be performed and observed, then this obligation shall be void; otherwise to be in full force.

In witness, *etc.*

9. Bond to Secure Performance of Agreement

(*Begin as in Form No. 5, p. 245.*)

Sealed with my seal this ——— day of ———.

The above-written obligation is conditioned to be void in case the above-bounden ———, his heirs, executors, and administrators, shall henceforth at all times perform and observe the stipulations, provisions, and conditions on his or their part to be performed and observed and contained in an agreement dated the ——— day of ———, and made between the said ——— and the said ———.

(*Signature and seal.*)

10. Bond for Performance of Contract

(*Begin as in Form No. 5, p. 245.*)

The condition of this obligation is such that, if the above-bounden (*principal*), his executors and administrators, shall in all things well and truly perform and observe all the covenants, agreements, and conditions on his or their part to be performed and observed which are contained in a certain agreement in writing made between the said ——— and the said ———, and bearing even date herewith, then this obligation shall be void, *etc.*

11. Bond with Sureties for Payment of Rent

Know all men by these presents that we, ———, of ———, as principal, and ——— and ———, both of ———, as sureties, are held and firmly bound unto ———, of ———, in the sum of ——— dollars, to be paid to the said ———, his executors, administrators, or assigns, for which payment well and truly to be made we do bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this ——— day of ———.

The condition of this obligation is such that:

Whereas, the said (*obligee*) by indenture of lease bearing even date herewith, in consideration of the rents and covenants therein reserved and contained on the part of the said (*principal obligor*) to be paid and performed, has leased and demised unto the said ——— certain premises (*description*), and in said indenture more fully described, for the term of ——— years from the ——— day of ———.

Now, if the said ———, ———, and ———, their executors, administrators, or assigns, during the continuance of the said lease, shall well and truly pay or cause to be paid the rent thereby reserved upon the respective days therein specified for the payment thereof, and shall duly perform and observe all and singular the covenants and conditions therein contained on the part of the lessee therein, his executors, administrators, and assigns, to be performed and observed, then this obligation shall be void; otherwise to remain in full force.

(*Signatures and seals*).

12. Bond to Indemnify Mortgagor against Liens

(Begin as in preceding form.)

The condition of this obligation is such that whereas, said ——— has loaned to said ——— the sum of ——— dollars, and has taken as security for said loan a mortgage of even date herewith on (*description*); and whereas, the buildings on said premises are not yet finished, and the time for filing liens for labor and materials performed or furnished for said buildings has not yet expired.

Now, therefore, if the above-bounden ——— shall save and keep harmless and indemnified the said obligee from and against all losses and expenses on account of such liens, and shall pay to said obligee on demand all sums he shall have paid to obtain a discharge of such liens as may effect the security under said mortgage, and all costs and expenses sustained by said obligee by reason of said liens, then this obligation shall be void; otherwise in full force.

(Signatures and seals).

13. Bond of Indemnity against Mechanics' Liens on Premises Mortgaged to Corporation

Know all men by these presents:

That we, ———, as principal, and ——— and ———, as sureties, are held and firmly bound unto the Home Building Society, a corporation organized and existing under the laws of the state of ———, in the sum of ——— dollars, to be paid to the said the Home Building Society, its successors or assigns, for which payment well and truly to be made we do bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the ——— day of ———.

The condition of this obligation is such that:

Whereas, the said Home Building Society has this day loaned to the said — the sum of — dollars; and whereas, to secure the payment of said sum, the said — has by instrument bearing even date herewith mortgaged to said society the following described real estate situate in (*description*); and whereas, there is a possibility that mechanics' liens may be filed or perfected against said real estate and become a lien, or liens prior to that of said mortgage.

Now, therefore, if the said — shall well and truly pay or cause to be paid and discharged of record any and all mechanics' liens, or liens for labor performed or material furnished, which may be filed or perfected against said real estate, and shall save and bear harmless the said society of and from all actions, damages, costs, charges, and expenses by reason of or arising from or growing out of said liens, and shall protect said society in the priority of its said mortgage lien, over and above all other liens, then this obligation to be void; else to remain of force and effect. (*Signatures and seals.*)

14. Bond to Indemnify Purchaser against Unsatisfied Mortgage

(*Begin as in Form No. 5, p. 245.*)

Whereas, by a written contract made the — day of — between the said — and the said —, the said (*principal*) agreed to sell and convey and the said (*obligee*) agreed to purchase the following described real estate (*description*) for the price of — dollars; and whereas, upon examination of the title of the said — to the above-described premises it was found that such title was unmarketable by reason that a certain mortgage made by — to —, bearing date the — day of —, and recorded in the office

of the register of deeds for the county of _____ and state of _____ in Book _____ of Mortgages, at page _____, remains unsatisfied of record; and whereas, the said (*principal*) has been unable to discover whether the said mortgage has been actually paid, and has been unable to procure a satisfaction of the same; and whereas, the said _____ is willing to accept the said title and to complete the said purchase upon the execution of these presents.

The condition of this obligation is such that, if the said _____ shall at all times save harmless and keep indemnified the said _____, his heirs, executors, administrators, and assigns, and also the above-described premises, against the said mortgage, and against all claims, demands, actions, proceedings, costs, and expenses by reason of or growing out of the same, then this obligation shall be void; otherwise the same shall remain in full force.

In witness, *etc.*

15. Bond to Indemnify Purchaser against Defect of Title

(*Begin as in Form No. 5, p. 245.*)

Sealed with my seal this _____ day of _____.

Whereas, by an agreement dated the _____ day of _____, and made between the said _____ and the said _____, the said _____ agreed to sell, and the said _____ agreed to purchase, all the following described real estate (*description*) for the sum of \$_____; and whereas, upon an examination of the title of the said _____, it appeared that his title depended upon the fact that _____, late of _____, deceased, who died on or about the _____ day of _____, died without leaving issue living at his death, and that in case the said _____ left any such issue, then the said _____ would be unable to make a good title to the said premises; and whereas, the said _____ is unable to produce any sufficient evidence that the said _____

left no issue living at his death; and whereas, nevertheless the said ——— has agreed to complete the said purchase upon the said vendor executing the above-written obligation conditioned as hereinafter expressed.

Now the above-written obligation is conditioned to be void in case the said premises shall henceforth be quietly held and enjoyed by the said ———, his heirs and assigns, without any lawful interruption or disturbance on the part of any person or persons, being issue of the said ———, who was or were living at his death, or claiming through or under such issue, or otherwise claiming title to the said premises on the ground that the said ——— left issue living at his death.

(Signature and seal.)

16. Bond of Indemnity on Payment of Lost Note or Bill

(Begin as in Form No. 11, p. 249.)

The condition of this obligation is such that:

Whereas, the said (*obligee*), on the ——— day of ———, made his promissory note (*or*, drew his bill of exchange upon ———; *or otherwise describing the instrument*) in the sum of ——— dollars, bearing that date and payable to the order of the said (*principal*) three months after the date thereof; and whereas, it is alleged that the said note (*or*, bill) is lost (*or*, destroyed); and whereas, the said ———, at the request of the said ———, has paid to him the sum of ——— dollars in full discharge of the said note (*or*, in full discharge of the liability of the said ——— as drawer of the said bill).

Now, if the said ———, ———, and ———, their heirs, executors, and administrators, shall at all times defend, save harmless, and indemnify the said ———, his executors and administrators, against all claims, demands, and actions arising from or on account of the said promissory note (*or*, bill of exchange), and against all damages, costs, and expenses by rea-

son thereof, and shall deliver or cause to be delivered up the said note (*or*, bill) to the said ———, his executors or administrators, if the same shall be found, then this obligation shall be void, *etc.* (Signatures and seals.)

17. Bond for Liquidated Damages to Preserve Trade Secret

Know all men by these presents that I, ———, hereby bind myself to ——— for the payment to him, his executors, administrators, and assigns, of the sum of \$———, as agreed as liquidated damages, and not as a penalty, for which payment well and truly to be made I bind myself, and my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal this ——— day of ———.

Whereas, the said (*obligee*) has imparted to the said (*obligor*) a certain secret method of preparing an article of food known as (*designation*), upon an express agreement that the said (*obligor*) shall enter into the above-written obligation for the payment to the said (*obligee*) of the sum of \$——— as liquidated damages, and not as a penalty, but conditioned as hereinafter expressed.

Now the above-written obligation is conditioned to be void in case the said (*obligor*) shall at all times hereafter well and truly keep the said secret, and shall not disclose the same or suffer or permit the same to be disclosed to any person or persons whatsoever, whether in the employment of the said (*obligor*) or not, without the license of the said (*obligee*) first obtained. (Signature and seal.)

19. Bond of Treasurer of Corporation

Know all men by these presents that we, ———, of ———, as principal, and ——— and ———, both of ———, as sureties, are held and firmly bound unto the ——— Company, a

corporation organized under the laws of the state of ———, in the sum of ——— dollars, to the payment of which to the said corporation, its successors and assigns, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The condition of this obligation is such that:

Whereas, the said (*principal*) has been elected treasurer of the said company for the term of one year from the ——— day of ———; and whereas, the said ——— may be re-elected to or may continue in the said office for a longer period.

Now, if the said ——— shall in all things well and faithfully perform the duties of the said office, so long as he shall hold the same or continue therein, and shall, when properly so required, fully and faithfully account to the said corporation, its successors or assigns, for all money, goods, and property whatsoever for or with which he may be in any wise accountable or chargeable to the said corporation, and shall, when so required, pay and deliver all such money, goods, and property to the said corporation, its successors and assigns, and if at the expiration of his term or continuance in office, and also in the case of his death, resignation, or removal from office, all books, papers, vouchers, money, and other property in his custody or control belonging to the said corporation shall be restored to it, then this obligation shall be void; otherwise to remain in full force.

In witness, *etc.*

20. Bond of Employé

Know all men by these presents that we, ———, as principal, and ——— and ———, as sureties, are held and firmly bound unto ——— in the sum of ——— dollars, to be paid to the said ———, his executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, and our

heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the —— day of ——, A. D. 19—.

Whereas, the above-bounden —— has been employed by the said —— as a salesman and by reason thereof will receive into his hands moneys, goods, and other property of the said ——.

Now, the condition of this obligation is such that, if the said —— shall, whenever thereunto requested by the said ——, and at the expiration of his said employment, render a true account of all moneys, goods, and other property of the said —— as have come into his hands in his said employment as salesman or otherwise, and shall, when so required by the said ——, and at the expiration of his said employment, pay and deliver to the said ——, or to any person duly authorized by the said —— to receive the same, all such moneys, goods, and other property as shall be in his custody, charge, or possession, then this obligation shall be void, otherwise to remain in full force. (*Signatures and seals.*)

21. Same—Another Form

(Begin as in preceding form.)

Whereas, the above-bounden —— is about to act as cashier of the above-named ——, and by reason thereof will have the control of sums of money, and be required to perform various acts.

Now, the condition of this obligation is such that, if the above-bounden —— shall well and truly account for, pay over, and deliver all moneys and property of said —— which may come into his possession or control, and shall well and truly discharge and perform all his duties as such cashier, then this obligation to be void; otherwise to remain in full force.

(Signatures and seals.)

22. Sheriff's Indemnity Bond

Know all men by these presents that we, A. B., of ———, as principal, and C. D., of ———, as surety, are held and firmly bound unto E. F., sheriff of the county of ———, in the sum of ——— dollars, lawful money of the United States, to be paid to the said E. F., his executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the ——— day of ———, 19—.

Whereas, the above-bounden A. B. did obtain judgment in the ——— court (*describe court*) against G. H., for the sum of ——— dollars, whereupon execution has been issued, directed and delivered to the said E. F., sheriff aforesaid, requiring him, out of the personal property of the said judgment debtor, to satisfy the judgment aforesaid; and whereas, certain personal property that appears to belong to the said G. H. is claimed by I. J.

Now, therefore, the condition of the above obligation is such that, if the above-bounden A. B. shall well and truly save harmless and indemnify the said E. F. and all and every person and persons aiding and assisting him in the premises of and from all damage, liability, costs, expenses, actions, judgments, special proceedings, and executions that shall or may at any time arise, accrue, or be brought against him, them, or any of them, as well for the levying and making sale under and by virtue of such execution of all or any personal property which he or they shall or may judge to belong to the said judgment debtor, as well as in entering any building or other premises for the taking of any such personal property, then this obligation to be void; otherwise to remain in full force.

(Signatures and seals.)

23. Attachment Bond

Know all men by these presents that we, ———, as principal, and ——— and ———, as sureties are holden and stand firmly bound and obliged unto ———, sheriff of the county of ———, in the sum of ——— dollars, to the payment of which to the said ———, or his executors, administrators, or assigns, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The condition of this obligation is such that whereas, the said ———, in his capacity of sheriff of the county of ———, in the state of ———, by virtue of a certain writ or process issued in favor of the said ——— against ———, bearing date the ——— day of ———, A. D. 19—, and returnable to the ——— court next to be holden at ——— within and for the county of ——— on the ——— day of ———, A. D. 19—, has attached, at the special request of the said ——— (*description of property*), shown to the said ——— by the said ——— as the property of the said ———, which when attached as aforesaid ———.

Now, therefore, if the said ———, their heirs, executors, or administrators, shall at all times hereafter well and truly indemnify and save harmless the said ———, his heirs, executors, and administrators, of and from all suits, damages, and costs whatsoever whereunto he or they or any of them may be liable or obliged by law to pay to any person or persons by reason of the said attachment, or if any further intermeddling of said ——— by virtue of said process, then the above obligation shall be void; otherwise it shall remain in full force and virtue.

In witness, *etc.*

24. Official Bond

Know all men by these presents:

That we, ———, as principal, and ——— and ———, as sureties, are held and firmly bound unto the state of ——— in the following penal sums, to wit, the said principal in the penal sum of ——— dollars, and the said sureties each in the following penal sums, to wit, the said ——— in the penal sum of ——— dollars, and the said ——— in the penal sum of ——— dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas, the above-bounden principal was, at a general election held in said state on the ——— day of ——— A. D. 19—, duly elected to the office of ——— in and for ——— county, and state aforesaid.

Now, therefore, if the said ——— shall well, truly, and faithfully perform all official duties now required of him by law, and shall well, truly, and faithfully execute and perform all the duties of such office of ——— required by any law to be enacted subsequently to the execution of this bond, then this obligation is to be void and of no effect; otherwise to remain in full force and effect.

In witness, *etc.*

25. Indemnity Bond of Principal to One Who has Become Surety With Him Under Former Bond

Know all men by these presents, that I, A. B., am held and firmly bound unto C. D. in the sum of ——— dollars, to be paid unto the said C. D., his executors, administrators or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal this _____ day of _____.

Whereas, the said C. D., at the request of the above-bounden A. B., is by a certain bond bearing even date herewith bound unto E. F., his executors, administrators, and assigns, in the sum of \$_____, being the sole proper debt of the above-bounden A. B., with a condition for making void the said bond on payment by the said A. B. and C. D. or either of them, their or either of their heirs, executors, or administrators, unto the said E. F., his executors, administrators, or assigns, of the sum of \$_____, with interest as in the said recited bond and condition appears; and whereas, the said A. B. has agreed to execute the above-written bond for indemnifying the said C. D. by reason and from the consequences of having executed the hereinbefore recited bond, and become surety in manner aforesaid for the said A. B.

Now the above-written obligation is conditioned to be void in either of the following cases:

1. If the above-bounden A. B., his heirs, executors, or administrators, shall pay or cause to be paid unto the said E. F., his executors, administrators, or assigns, the sum of \$_____, with interest for the same on the _____ day of _____, in accordance with the above-recited condition.

2. If the above-bounden A. B., his heirs, executors, or administrators, shall from time to time and at all times hereafter keep the said C. D., his heirs, executors, and administrators, and his and their lands, tenements, goods, chattels, estate, and effects indemnified against all claims, demands, losses, costs, charges, expenses, and damages whatsoever which he or they or any of them shall at any time hereafter sustain or incur by reason of the said recited bond having been executed or given or in any matter or thing relating thereto.

In witness, *etc.*

CHAPTER XI

BUILDING AGREEMENTS

I

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I

General Forms

1. For Building Dwelling House

This agreement, made this —— day of ——, between ——, party of the first part, hereinafter called the contractor, and ——, party of the second part, hereinafter called the owner,

Witnesseth that the parties hereto do hereby agree as follows:

1. [CONTRACTOR TO ERECT BUILDINGS—DRAWINGS AND SPECIFICATIONS.] The contractor shall erect and build in a substantial and workmanlike manner a dwelling house upon lot ———, block ——— (*description*), in accordance with the drawings and specifications signed by both parties and hereto annexed, and subject to the directions of ———, architect, or any other architect for the time being employed by the owner for the purpose of supervising and certifying the work hereby agreed to be done, hereinafter called the architect. The said drawings and specifications shall remain the property of the owner (*or*, of the architect).

2. [TIME OF COMPLETION.] The contractor shall complete the said house so as to be fit for occupation, and remove all surplus materials, plant, and rubbish off the premises on or before the ——— day of ———, unless prevented by strikes, accidents, weather, or other reasonable cause, in which case the architect shall have power to extend the time and shall certify accordingly.

3. [CONTRACTOR TO SUPPLY MATERIALS, APPLIANCES, AND LABOR.] The contractor shall provide all the materials and perform all the work mentioned in the said specifications or shown upon the said drawings, and shall provide all scaffolding, plant, tools, and appliances necessary for the performance of said work. The contractor shall also supply duly qualified and experienced artisans, workmen, and foremen to carry out the work.

4. [CONTRACTOR TO REMOVE MATERIAL AND WORK DISAPPROVED BY ARCHITECT.] The contractor, upon receiving written notice from the architect to that effect, shall remove all material brought upon the premises of which the architect disapproves, and shall take down and remove any part of the

building which is not built to the architect's satisfaction, and no certificate given by the architect under clause 7 hereof shall discharge the contractor for liability under this clause.

5. [CONTRACTOR TO OBTAIN PERMITS AND COMPLY WITH REGULATIONS.] The contractor shall give all necessary notices to and obtain the necessary permits and sanction of the proper authorities in respect of the said work, and generally comply with the building and other regulations of such authorities, and shall keep the owner indemnified against all fines, penalties, and loss incurred by reason of any breach of this stipulation.

6. [ADDITIONS AND OMISSIONS.] If the owner shall upon written order signed by the architect require any deviation from the said drawings and specifications or any additional or other work to be done to or than as described therein, or any work therein described to be omitted, the contractor will carry out such requirement and perform the additional or other work in a substantial and workmanlike manner within the time prescribed by and to the satisfaction of the architect, who shall compute and certify the value of such additional or other work and of work omitted as soon as practicable, and the amount so ascertained shall be added or deducted from the contract price.

7. [PAYMENT AND CERTIFICATES.] The owner shall pay to the contractor in respect of the said work and materials the sum of ——— dollars, subject to additions and deductions as hereinbefore provided, by installments as follows: ——— dollars so soon as the architect shall certify that the said house has been duly carried up to the first floor joists; the further sum of ——— dollars so soon as he shall have certified that the said house is duly roofed in and covered; and the residue thereof so soon as he shall have certified that the said house has been duly finished in all respects according to this con-

tract: Provided, that if at any time there shall be evidence of any lien or claim (*proceed as in Form No. 3, cl. 11*).

8. [OWNER TO PROCEED ON CONTRACTOR'S DEFAULT.] If the contractor shall in any manner neglect or fail to prosecute the work with reasonable diligence, or shall neglect or fail to perform any agreement herein on his part to be performed, it shall be lawful for the owner by written notice to the contractor to proceed with such work and to perform such agreement, and, if he shall fail to do so accordingly, and the architect shall certify that such failure is a sufficient ground for such action, to enter upon the premises and to complete or to employ any other contractor or person to complete the work comprehended under this contract, and to use or authorize such other contractor or person to use therefor any plant, tools, materials, and property of the contractor upon the premises; and in such case the contractor shall receive no further payment under this contract unless the amount of the contract price remaining unpaid shall exceed the expense incurred by the owner in completing the said work, and any damage incurred by the owner by reason of the contractor's default, in which event the contractor shall be entitled upon such completion to receive payment of the amount of such excess, but, if the expense so incurred by the owner, together with any such damage incurred by him, shall exceed such amount of the contract price remaining unpaid, the contractor shall pay the amount of such excess to the owner, the amount in either case to be computed and certified by the architect.

9. [DISPUTES AND ARBITRATION.] Any dispute or difference arising under this contract shall be determined by the architect, whose decision shall be binding and conclusive upon both the said parties, except that in case of a dispute as to the value of additional or other work or of work omitted provided for in clause 6, or of the amount of the payments to be

made by either party to the other provided for in clause 8, either party may appeal from the architect's decision in the following manner, viz.: Either party desiring to arbitrate shall serve a notice on the other party, stating his grievance and desire to arbitrate, and naming a person to act as arbitrator, and the other party shall then name an arbitrator, and these two shall select a third, and the decision of any two shall be binding and conclusive on both the parties hereto.

10. [INSURANCE.] The contractor shall at all times during the progress of the work keep the building in course of erection insured in the full value thereof from loss or damage by fire (lightning, earthquake, cyclone, or *other casualty*), and shall on request produce to the owner all policies and receipts for premiums.

11. [CONTRACTOR'S BOND.] The contractor shall furnish to the owner a good and sufficient bond, with a surety or sureties to be approved by the owner, in the sum of ——— dollars, conditioned that the contractor shall well and truly perform the agreements and terms of this contract on his part required to be performed.

In witness, *etc.*

2. Same—Where Owner Supplies Materials and no Architect is Employed

This agreement, made this ——— day of ———, between ———, hereinafter called the owner, and ———, hereinafter called the builder, witnesseth as follows:

1. [BUILDER TO ERECT BUILDING.] The builder will erect and build for the owner on the owner's land described as (*description*) a dwelling house in a good and workmanlike manner and in all respects to the satisfaction of the owner, and will supply all necessary labor and tools, but not materials, for that purpose, such house to be erected and built in all respects

in accordance with the plans and specifications hereto annexed and signed by the parties hereto.

2. [TIME OF COMPLETION.] The builder will complete the whole of the work herein provided for and remove all surplus material, plant, and rubbish off the premises not later than the ——— day of ———, unless prevented by accidents, weather, strikes, or alterations or additions ordered by the owner in writing, or other reasonable cause.

3. [OWNER TO PAY COST OF LABOR AND PERCENTAGE.] The owner will pay the builder weekly during the progress of the said work the actual cost of the labor performed in the due course thereof, and upon the completion thereof will pay the builder a sum equal to ——— per cent. of such cost, which shall constitute the builder's profit.

4. [OWNER TO PROVIDE MATERIALS, ETC.] The owner will at his own cost provide all materials essential for the said work and the erection and completion of the said house in such manner as not to delay the completion thereof, and will obtain the necessary permits and sanction from the proper authorities in respect of said work. The builder shall be responsible for all materials delivered by the owner on the premises.

5. [ALTERATIONS AND ADDITIONS.] The owner shall have the right by his written order to require any alterations and additions to the work called for by the said plans and specifications, and in such case shall at his own cost provide all materials essential thereto, and the builder shall make and execute such alterations and additions in a good and workman-like manner to the satisfaction of the owner and within such time as shall be reasonable in view of such alterations and additions. The cost of such alterations and additions shall be paid for in the manner provided by clause 3 hereof.

6. [DETERMINATION OF CONTRACT.] If the builder shall become bankrupt or make an assignment for the benefit of

creditors, or otherwise become unable to carry out the work, or if without the written consent of the owner the builder shall assign or sublet this contract, the owner may by notice in writing addressed to the builder and left at No. ———, ——— street, thereupon terminate this contract, and all claim of the builder under the same shall thereupon cease. And if the builder shall in any manner delay or neglect to finish the said house within the time hereinbefore provided, the owner may by notice given as above provided require the builder to proceed with such work, and upon his failure so to do the owner shall have the right to employ any other builder to continue and complete the said house according to the said plans and specifications, or any alterations or additions thereto as hereinbefore provided, and shall also have the right to authorize such builder to use any plant, materials, and property of the builder upon the ground, and the builder shall in such case forfeit and forego all his interest whatsoever under this contract.

7. [DISPUTES.] Any controversy or dispute arising under this contract shall be referred to ———, architect, or, him failing, to ———, architect, who shall determine the same, and whose decision or award shall be final and binding upon both the parties hereto.

In witness, *etc.*

3. For Erection of Warehouse

Agreement, made this ——— day of ——— between ———, hereinafter called the contractor of the one part, and ———, hereinafter called the owner, of the other part,

Whereby it is agreed as follows:

1. [CONTRACTOR TO ERECT BUILDING, ETC.—SPECIFICATIONS AND DRAWINGS.] The contractor, under the direction and to the satisfaction of ———, architect, hereinafter called

the architect, or his duly authorized agent, shall and will provide all the materials and perform all the work mentioned in the specifications or shown on the drawings prepared by the architect for the erection of a warehouse on (*description of premises*). Specifications and drawings for said work are hereto attached, and become a part of this contract. The contractor shall pay all charges for permits, and for opening and for use of streets.

2. [FURTHER DRAWINGS AND EXPLANATIONS.] The architect will furnish to the contractor such further drawings or explanations as may be necessary to detail and illustrate the work to be done, and the contractor shall conform to the same as part of this contract so far as they may be consistent with the drawings and specifications referred to in article I. All drawings and specifications are to remain the property of the architect.

3. [ALTERATIONS.] The owner shall have the right to make any alterations in the work under this contract, but only upon the written order of the architect, signed by the owner. The value of the work added or omitted shall be computed by the architect, and the amount so ascertained shall be added to or deducted from the contract price. Should the architect be unable to compute the value of said work in advance, the work shall proceed under the architect's order, and the architect shall compute said value as soon as practicable. In case of dissent from the architect's award, by either party hereto, the valuation of the work added or omitted shall be referred to arbitration as provided in article 9.

4. [MATERIALS AND WORK CONDEMNED.] The contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the architect or his authorized representative. He shall, within 24 hours after receiving written notice from the architect to that effect, proceed to re-

move from the grounds or building all materials condemned by him, whether worked or unworked, and to take down all portions of the work which the architect shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

5. [PROVISIONS IN CASE OF CONTRACTOR'S DEFAULT.] Should the contractor at any time refuse to or neglect to supply a sufficient amount of properly skilled workmen or materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the owner shall be at liberty, after five days' written notice to the contractor, to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the contractor under the contract; and if the architect shall certify that such refusal, neglect, or failure is sufficient ground for such action, the owner shall also be at liberty to terminate the employment of the contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work comprehended under the contract, of all materials, tools, and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the contractor, he shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the owner in finishing the work, such excess shall be paid by the owner to the contractor; but if such expense shall exceed such unpaid balance, the contractor shall pay the difference to the owner. The expense incurred by the owner as herein provided, either

for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architect, whose certificate thereof shall be conclusive upon the parties: Provided, however, if the owner or contractor shall dispute the justice of the architect's decision in the matter of said damages, then either of them may have such disputed matter referred to arbitration, under article 9 of this agreement, by serving notice of his demand therefor upon the other party within three days after receiving notice of such decision.

6. [TIME OF COMPLETION AND DAMAGES FOR DELAY.] The contractor shall complete the whole of the work embodied in this agreement not later than the —— day of —— . Time is an essential part of this agreement, and if the contractor's work is not in readiness or is not completed on or before the date mentioned in this article, or within the period of any extension of the time so fixed for the completion of said work, as provided in article 7, the contractor shall pay or cause to be paid to the owner the sum of —— dollars per day for each and every day such work is delayed or remains unfinished, as actual damages to the said owner by being deprived of possession of the premises, the said —— dollars per day being hereby mutually agreed upon by the parties hereto as actual, and not estimated, damages incurred by being deprived of possession of the premises.

7. [EXTENSION OF TIME IN CERTAIN CASES.] Should the contractor be obstructed or delayed in the prosecution or completion of his work by any act, neglect, or default of the owner, or the architect, or of any other contractor employed by the owner upon the work, or any damages which may happen by fire, lightning, earthquake, or cyclone, or by the abandonment of the work by the employés during a general strike, or by his inability after due diligence to obtain the necessary ma-

materials entering into the construction of the building, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid; but no such allowance shall be made unless a claim therefor is presented in writing to the architect within the twenty-four hours of the occurrence of such delay. The duration of such extension shall be fixed and determined by the architect.

8. [OWNER TO PROVIDE LABOR AND MATERIALS NOT INCLUDED—DELAYS IN WORK.] The owner agrees to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay the material progress of the work, and in the event of failure so to do, thereby causing loss to the contractor, agrees that he will reimburse the contractor for such loss; and the contractor agrees that, if he shall delay the material progress of the work so as to cause any loss for which the owner shall become liable, then he shall reimburse the owner for any such loss. The amount of such loss or damage to either party hereto shall in every case be fixed and determined by the architect.

9. [DISPUTES.] Any controversy or dispute arising under this contract, shall be settled by the architect, whose decision shall be final and binding upon the parties hereto, except that in the case of a dispute as to the value of extra work, or of work omitted, or of the amount of damages referred to in article 5, either party may appeal from the architect's decision to a board of arbitration, and to that end it is agreed that any such appeal shall be submitted to arbitration in the following manner, viz.: Either party desiring to arbitrate shall serve a notice on the other party, stating his grievance and desire to arbitrate, and naming in such notice some competent person to act as arbitrator; the other party to this contract shall then appoint some competent person as arbitrator; and these two

shall select a third. The decision of any two of this board shall be final and binding on both the parties hereto. Each party shall pay one-half the fees of the board of arbitration.

10. [PAYMENT AND CERTIFICATES.] The sum to be paid by the owner to the contractor for the said work and materials shall be —— dollars, subject to additions and deductions as hereinbefore provided, and such sum shall be paid by the owner to the contractor in installments upon the certificate of the architect, said certificate to represent —— per cent. of the value of labor and materials in the structure at time certificate is issued. The final certificate shall be issued within —— days after this contract is fulfilled by, and shall represent the balance due, the contractor.

11. [LIENS.] If at any time there shall be evidence of any lien or claim for which, if established, the owner of the said premises might become liable, and which is chargeable to the contractor, the owner shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify him against any such lien or claim. Should there prove to be any such claim after all payments are made, the contractor shall refund to the owner all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor's default.

12. [EVIDENCE OF PERFORMANCE.] No certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.

13. [INSURANCE.] The contractor shall, during the progress of the work, maintain full insurance on said work against loss or damage by fire, lightning, cyclone, or other casualties.

The policies shall cover all work incorporated in the building, and all materials for the same in or about the premises, and shall be made payable to the parties hereto as their interests may appear. Should the contractor refuse or neglect to insure, then the owner may do so, and charge the cost of the same to the contractor.

14. [CONTRACTOR RESPONSIBLE TO THIRD PERSONS.] The contractor shall be in the relation of an independent contractor to, and is to have entire charge, control, and supervision of, said work, and the owner shall not in any manner be answerable or accountable for any violation of city or state ordinances or laws, or for any injury, loss, or damage arising from negligence or carelessness of the contractor or of any one in his employ to any person or persons or their property; and the contractor hereby covenants and agrees to make good to the owner any loss, damage, or expense so incurred, together with reasonable attorney's fees.

15. [CONTRACTOR'S BOND.] The contractor shall furnish to the owner a good and sufficient surety bond in the sum of _____ dollars for the performance by the contractor of the terms and provisions of this agreement on the part of said contractor required to be performed, such bond to be and remain in force until _____ months after the conclusion of this contract.

In witness, *etc.*

4. For Building Stable, the Owner Paying the Actual Cost and a Commission (Short Form)

Agreement, made this _____ day of _____, between _____, of the first part, and _____, of the second part.

1. [BUILDER TO ERECT.] The party of the second part, for the consideration hereinafter mentioned, agrees to provide all the materials and perform all the work for the erection of

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a stable upon the premises belonging to the party of the first part (*description*) in accordance with the drawings and specifications hereto attached, and to build and erect the said stable in a good, substantial, and workmanlike manner, and to complete and deliver the same free from all mechanics' and other liens on or before the —— day of —— next.

2. [OWNER TO PAY ACTUAL COST AND COMMISSION.] The party of the first part, in consideration of the faithful performance by the party of the second part of his agreement aforesaid, agrees to pay to the party of the second part the actual cost of the labor and materials performed and used in the erection of the said stable, as shown by the books of the party of the second part, and in addition thereto a commission at the rate of —— per cent. on the whole cost thereof as the profit of the party of the second part.

In witness, *etc.*

5. For Alterations and Repairs, the Owner Supplying the Materials

Memorandum of agreement made this —— day of ——, between ——, of the first part, and ——, of the second part.

1. [BUILDER TO PERFORM WORK.] The party of the second part, for the consideration hereinafter mentioned, agrees to perform in a good, faithful, and workmanlike manner the following specified work, to wit: To make certain alterations and repairs in and upon the dwelling house of the party of the first part known as No. ——, —— street, in the city of ——, as shown by and in accordance with the drawings and specifications hereto attached, and to become responsible for all materials for the said work which may be delivered on the premises by the party of the first part, and to complete and

deliver the said work, free from mechanics' and other liens, on or before the —— day of ——.

2. [OWNER TO PROVIDE MATERIALS.] The party of the first part will at his own cost provide all the materials necessary for the said work, and will deliver the same on the premises in such reasonable quantities and at such reasonable times as the party of the second part shall require.

3. [REMUNERATION OF BUILDER.] The party of the first part, in consideration of the faithful performance by the party of the second part of the above specified work, agrees to pay to the party of the second part the sum of —— dollars in manner following (*state terms of payment*).

In witness, *etc.*

II

The American Institute of Architects' Forms

The forms contained in subdivision II of this chapter are printed with the permission of the American Institute of Architects and of the publisher, E. G. Soltmann.

The Uniform Contract

*Form of Contract Adopted and Recommended for General Use
by the American Institute of Architects and the
National Association of Builders*

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This agreement, made the —— day of ——, in the year one thousand nine hundred and ——, by and between ——, party of the first part (hereinafter designated the contractor—), and ——, party of the second part (hereinafter designated the owner—), witnesseth that the contractor—, in

consideration of the agreements herein made by the owner—, agree— with the said owner— as follows:

Article I. The contractor— shall and will provide all the materials and perform all the work for the ———, as shown on the drawings and described in the specifications prepared by ———, architect, which drawings and specifications are identified by the signatures of the parties hereto, and become hereby a part of this contract.

Art. II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of the said architect, and that his decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said architect, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Art. I.

It is further understood and agreed by the parties hereto that any and all drawings and specifications prepared for the purposes of this contract by the said architect are and remain his property, and that all charges for the use of the same, and for the services of said architect, are to be paid by the said owner—.

Art. III. No alterations shall be made in the work except upon written order of the architect; the amount to be paid by the owner— or allowed by the contractor— by virtue of such alterations to be stated in said order. Should the owner— and contractor— not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Art. XII of this contract.

Art. IV. The contractor— shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the architect or his authorized representatives; shall, within twenty-four hours after receiving written notice from the architect to that effect, proceed to remove from the grounds or buildings all materials condemned by him, whether worked or unworked, and to take down all portions of the work which the architect shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Art. V. Should the contractor— at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect, or failure, being certified by the architect, the owner— shall be at liberty, after three days written notice to the contractor—, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the contractor— under this contract; and if the architect shall certify that such refusal, neglect, or failure is sufficient ground for such action, the owner— shall also be at liberty to terminate the employment of the contractor— for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools, and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the contractor—, ——— shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the owner— in finish-

ing the work, such excess shall be paid by the owner— to the contractor—; but if such expense shall exceed such unpaid balance, the contractor— shall pay the difference to the owner—. The expense incurred by the owner— as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architect, whose certificate thereof shall be conclusive upon the parties.

Art. VI. The contractor— shall complete the several portions, and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit:

_____.

Art. VII. Should the contractor— be delayed in the prosecution or completion of the work by the act, neglect or default of the owner—, of the architect—, or of any other contractor— employed by the owner— upon the work, or by any damage caused by fire or other casualty for which the contractor— ——— not responsible, or by combined action of workmen in no wise caused by or resulting from default or collusion on the part of the contractor—, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the architect—; but no such allowance shall be made unless a claim therefor is presented in writing to the architect— within forty-eight hours of the occurrence of such delay.

Art. VIII. The owner— agree— to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the contractor—, agree— that ——— will reimburse the contractor— for such loss; and the contractor— agree— that if ——— shall delay the progress of the work so as to cause loss for which the owner— shall become liable, then ——— shall reim-

burse the owner— for such loss. Should the owner— and contractor— fail to agree as to the amount of loss comprehended in this article, the determination of the amount shall be referred to arbitration as provided in Art. XII of this contract.

Art. IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the owner— to the contractor— for said work and materials shall be ———, subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the owner— to the contractor—, in current funds, and only upon certificates of the architect, as follows: ———.

The final payment shall be made within ——— days after the completion of the work included in this contract, and all payments shall be due when certificates for the same are issued.

If at any time there shall be evidence of any lien or claim for which, if established, the owner— of the said premises might become liable, and which is chargeable to the contractor—, the owner— shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify ——— against such lien or claim. Should there prove to be any such claim after all payments are made, the contractor— shall refund to the owner— all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor— default.

Art. X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Art. XI. The owner— shall during the progress of the work maintain insurance on the same against loss or damage by fire, ———, the policies to cover all work incorporated in the

building, and all materials for the same in or about the premises, and to be made payable to the parties hereto, as their interest may appear.

Art. XII. In case the owner— and contractor— fail to agree in relation to matters of payment, allowance or loss referred to in Arts. III or VIII of this contract, or should either of them dissent from the decision of the architect referred to in Art. VII of this contract, which dissent shall have been filed in writing with the architect within ten days of the announcement of such decision, then the matter shall be referred to a board of arbitration to consist of one person selected by the owner—, and one person selected by the contractor—, these two to select a third. The decision of any two of this board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such reference.

The said parties for themselves, their heirs, successors, executors, administrators, and assigns, do hereby agree to the full performance of the covenants herein contained.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

In presence of

7. The Builder's Uniform Subcontract

A Form of Contract Between Builders Based upon the Requirements of the Uniform Contract Approved by the American Institute of Architects and the National Association of Builders

(Copyrighted 1906 by E. G. Soltmann, New York.)

This agreement, made the ——— day of ———, in the year one thousand nine hundred and ———, by and between ———, party of the first part (hereinafter designated the sub-

contractor—*), and ———, party of the second part herein-after designated the contractor—*), witnesseth that the subcontractor—, in consideration of the agreements herein made by the contractor—, agree— with the said contractor— as follows:

Article I. The subcontractor— shall and will provide all the materials and perform all the work for the ———, as shown on the drawings and described in the specifications prepared by architect— for said building.

Art. II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of the said architect—, and that ——— decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said architect—, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Art. I. ———.

Art. III. No alterations shall be made in the work except upon written order of the contractor—; the amount to be paid by the contractor— or allowed by the subcontractor— by virtue of such alterations to be stated in said order. Should the contractor— and subcontractor— not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Art. XII of this contract.

Art. IV. The subcontractor— shall provide sufficient, safe,

* A partnership firm, company, or corporation can avoid writing the "s" throughout the entire contract, by *not* adding it here.

and proper facilities at all times for the inspection of the work by the contractor—, the architect—, or their authorized representatives; shall, within twenty-four hours after receiving written notice from the contractor— to that effect, proceed to take down all portions of the work, and remove from the grounds or buildings all material, whether worked or unworked, which the architect— shall condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Art. V. Should the subcontractor— at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the contractor—, with the approval of the architect—, shall be at liberty, after —— days written notice to the subcontractor—, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the subcontractor— under this contract; and if such refusal, neglect, or failure is sufficient ground for such action, the contractor— shall also be at liberty to terminate the employment of the subcontractor— for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools, and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the subcontractor—, —— shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the contractor— in finishing the work, such excess shall be paid by the contractor— to the sub-

contractor—; but if such expense shall exceed such unpaid balance, the subcontractor— shall pay the difference to the contractor—. The expense incurred by the contractor— as herein provided, either for furnishing materials or finishing the work, and any damage incurred through such default, shall be chargeable to the subcontractor—.

Art. VI. The subcontractor— shall complete the several portions and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit: ———.

Art. VII. Should the subcontractor— be delayed in the prosecution or completion of the work by the act, neglect, or default of the owner—, of the architect—, of the contractor—, or of any person employed by the contractor— upon the work, or by any damage caused by fire or other casualty for which the subcontractor— ——— not responsible, or by combined action of the workmen, in no wise caused by or resulting from default or collusion on the part of the subcontractor—, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all causes aforesaid; but no such allowance shall be made unless a claim therefor is presented in writing to the contractor— within forty-eight hours of the occurrence of such delay.

Art. VIII. The contractor— agree— to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the subcontractor—, agree— that ——— will reimburse the subcontractor— for such loss; and the subcontractor—, agree— that, if ——— shall delay the progress of the work so as to cause loss for which the contractor— shall become liable, then ——— shall reimburse the contractor— for

such loss. Should the contractor— and subcontractor— fail to agree as to amount of loss comprehended in this article, the determination of the amount shall be referred to arbitration as provided in Art. XII of this contract.

Art. IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the contractor— to the subcontractor— for said work and materials shall be ———, subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the contractor— to the subcontractor— in current funds, as follows: ———.

The final payment shall be made within ——— days after the completion of the work included in this contract.

Art. X. It is further mutually agreed between the parties hereto that no payment made under this contract, except the final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Art. XI. The contractor— shall during the progress of the work maintain insurance on the same against loss or damage by fire, ———, the policies to cover all work incorporated in the building, and all materials for the same in or about the premises, and to be made payable to the parties hereto, as their interest may appear.

The subcontractor— agree— to indemnify the contractor— against all claims or demands for damage arising from accidents to persons or property occasioned by the said subcontractor— or ——— employés, and the contractor— agree— to indemnify the subcontractor— against all claims or demands for damage arising from accidents to persons or property occasioned by the said contractor— or ——— employés, during the performance of this contract.

Art. XII. In case the contractor— and subcontractor—

fail to agree in relation to matters of payment, allowance, or loss referred to in Arts. III or VIII of this of this contract, or fail to agree under the stipulations in Art. VII of this contract, then the matter shall be referred to a board of arbitration to consist of one person selected by the contractor—, and one person selected by the subcontractor—, these two to select a third. The decision of any two of this board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such reference. ———.

The said parties for themselves, their heirs, successors, executors, administrators, and assigns, do hereby agree to the full performance of the covenants herein contained.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

In presence of

8. Standard Forms of Contract Documents

These related forms consist of: (a) Invitation to Bid; (b) Instructions to Bidders; (c) Form of Proposal; (d) Form of Agreement; (e) Form of Bond; (f) General Conditions of the Contract. It is pointed out in the explanatory note, post, p. 295, that, "as in almost all cases drawings, specifications, general conditions and agreement are necessary for the complete expression of the obligations of owner and contractor, they are, in fact, as set forth in article I of the general conditions, 'The Documents Forming the Contract.'"

(a) Invitation to Submit a Proposal

Office of ———, Architect.

Dear Sir: You are invited to submit a proposal for ———.

Drawings, specifications, and other information may be procured from this office on and after ———.

All documents must be returned to this office ———.

To be entitled to consideration the proposal must be made upon the form provided, which must be fully completed in accordance with the accompanying instructions to bidders and must be delivered to this office not later than ———.

Very truly yours,

—————, Architect.

—————, 19——.

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(b) Instructions to Bidders

Standard Form of the American Institute of Architects

Proposals, to be entitled to consideration, must be made in accordance with the following instructions:

a. Proposals shall be made upon the form accompanying these instructions, and all blank spaces in the form shall be fully filled; numbers shall be stated both in writing and in figures; the signature shall be in longhand; and the completed form shall be without interlineation, alteration, or erasure.

b. Proposals shall not contain any recapitulation of the work to be done.

c. Proposals shall be delivered to the architect inclosed in an opaque, sealed envelope addressed to him, marked "Proposal," and bearing the title of the work and the name of the bidder.

d. No oral, telegraphic, or telephonic proposals or modifications will be considered.

Should a bidder find discrepancies in or omissions from the drawings or documents, or should he be in doubt as to their meaning, he should at once notify the architect, who will send a written instruction to all bidders. Neither owner nor architect will be responsible for any oral instructions.

Before submitting a proposal, bidders should carefully examine the drawings and specifications, visit the site or work, fully inform themselves as to all existing conditions and limitations, and shall include in the proposal a sum to cover the cost of all items contemplated by the contract.

The competency and responsibility of bidders and of their proposed subcontractors will be considered in making the award. The owner does not obligate himself to accept the lowest or any other bid.

The standard form of agreement of the American Institute of Architects will be used as follows:

This agreement made the —— day of ——, in the year nineteen hundred and ——, by and between ——, hereinafter called the contractor, and ——, hereinafter called the owner, witnesseth, that the contractor and the owner for the considerations hereinafter named agree as follows:

Article 1. The contractor agrees to provide all the materials and to perform all the work shown on the drawings and described in the specifications entitled ——, prepared by ——, acting as, and in these contract documents entitled, the architect, and to do to the satisfaction of the architect everything required by the drawings, specifications, and general conditions.

Art. 2. The contractor agrees to complete the work by and at the following time or times, to wit ——, and to pay or allow the owner as liquidated damages, the sum of —— (\$——) for each day thereafter, Sundays and legal holidays not included, that the work remains uncompleted.

Art. 3. The owner agrees to pay the contractor in current funds for the performance of the contract —— (\$——), subject to additions and deductions as provided in the general conditions of the contract.

Art. 4. The owner agrees to make payments on account of this contract on the certificate of the architect, as follows: —— . In no case, however, shall the contractor be entitled to a payment which, in the judgment of the architect, will leave the balance withheld insufficient to complete the work.

Art. 5. The contractor and the owner agree that the drawings with all notes now thereon, the specifications, and the general conditions of the contract are, together with this agreement, the documents forming the contract, and that the said drawings, specifications, and general conditions are as fully a part of the contract as if hereto attached or herein repeated, and that, should the con-

tractor and the owner fail to sign them, the identification of them by the architect shall be binding on both parties.

_____, the contractor and the owner for themselves, their successors, executors, administrators, and assigns, hereby agree that they will in all ways be bound by the documents forming the contract, and that they will abide by and will promptly and fully carry out all decisions given thereunder, and that they will fully perform all of the covenants and agreements therein contained, in witness whereof they have hereunto set their hands and seals, the day and year first above written.

In presence of:

_____ (Seal.)

_____ (Seal.)

Should a bond be required, the standard form of bond of the American Institute of Architects will be used as follows:

Know all men by these presents that we (*here insert the name and address of the contractor*) _____, hereinafter called the principal, and _____ and _____ and _____, hereinafter called the surety or sureties, are held and firmly bound unto _____, hereinafter called the owner, in the sum of _____ (\$_____), for the payment whereof the principal and the surety or sureties bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly, by these presents.

Whereas, the principal has, by means of a written agreement, dated _____, entered into a contract with the owner for _____, a copy of which agreement is hereto annexed.

Now, therefore, the condition of this obligation is such that, if the principal shall faithfully perform the contract on his part, and satisfy all claims and demands incurred for the same, and fully indemnify and save harmless the owner from all cost and damage which he may suffer by reason of failure so to do, and shall fully reimburse and repay the owner all outlay and expense which the owner may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect:

Provided, however, that no suit, action or proceeding by reason of any default shall be brought on this bond after _____ months from the day on which the final payment under the contract is made, and that service of writ or process commencing any such suit, action, or proceeding shall not be made after such date:

And provided, that any alterations which may be made in the terms of the contract, or in the work to be done under it, or the giving by the owner of any extension of time for the performance of the contract, or any other forbearance on the part of either the owner or the principal to the other shall not in any way release the

principal and the surety or sureties, or either or any of them, their heirs, executors, administrators, successors, or assigns, from their liability hereunder, notice to the surety or sureties of any such alteration, extension or forbearance being hereby waived.

Signed and sealed this _____ day of _____ 19—.

In presence of:

_____.	_____.	(Seal.)
_____.	_____.	(Seal.)
_____.	_____.	(Seal.)
_____.	_____.	(Seal.)

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(c) The Standard Form of Proposal of the American Institute of Architects ¹

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_____, 19—.

_____, Architect.

Dear Sir: Having carefully examined the instructions to bidders, the general conditions of the contract, and the spec-

¹ Instructions to Architects Using the Standard Form of Proposal of the American Institute of Architects

The form, as printed, includes only such statements as will probably be required in any proposal. Additions will usually have to be made to it. Suggestions suited to certain conditions are offered in the following notes:

If the bidder is to name the time required for completing the work, insert such a clause as the following:

The undersigned agrees, if awarded the contract, to begin the work within _____ days, and to complete it within _____, after the signing of the contract documents.

If liquidated damages are to be required, insert the following:

And further agrees that, from the compensation otherwise to be paid, the owner may retain as and for liquidated damages the sum of _____ dollars (\$_____) for each day thereafter, Sundays and holidays not included, that the work remains uncompleted.

If a bond is required, insert the following:

The undersigned agrees, if awarded the contract, to execute and deliver to the architect within _____ days after the signing of the

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ifications entitled (*here insert the caption descriptive of the work as used therein*), and the drawings, similarly entitled, numbered ———, as well as the premises and the conditions affecting the work, the undersigned proposes to furnish all materials and labor called for by them for (*here insert in case all the work therein described is to be covered by one contract,*

contract, a satisfactory bond in the sum of ———, extending from the time of signature ——— months beyond the day on which the final certificate is issued, the bond to be made in accordance with the form given in instructions to bidders.

And further agrees that if such bond be not required he will deduct from the proposal price the sum of ——— dollars (\$——).

If a certified check be required, the following clause should be inserted:

The undersigned further agrees that the certified check payable to ———, owner, accompanying this proposal, is left in escrow with you as architect, that its amount is the measure of liquidated damages which the owner will sustain by the failure of the undersigned to execute and deliver the above-named agreement, and that, if the undersigned defaults in executing that agreement within ——— days of written notification of the award of the contract to him, then the check shall become the property of the owner, but, if this proposal is not accepted within ——— days of the time set for the submission of bids, or if the undersigned executes and delivers said contract, the check shall be returned to him on receipt therefor.

If alternative proposals should be required, they should be set forth, as, for example:

Should ——— be substituted for ———, the undersigned agrees to deduct (*or, will require the addition of*) ——— dollars (\$——) from } the proposed sum.
to }

If unit prices are required as a part of the proposal, they should be set forth, as, for example:

The undersigned agrees that work added shall be computed at the following prices, and that work omitted shall be computed at ——— per cent. less than these prices:

Concrete foundations per cubic yard.
Rough brickwork per thousand.
Plastering (3 coats) per yard.

If the names of subcontractors whom the contractor proposes to employ are required as a part of the proposal, this requirement should be set forth, as, for example:

In case of obtaining the award the undersigned will employ, subject to the architect's approval, subcontractors in each of the sever-

"the entire work"; *in case of a partial contract insert name of the trade or trades to be covered and the numbers of the pages of the specifications on which the work is described*), in accordance with the said documents, for the sum of ——— dollars (\$———), and to execute a contract for the above work, for the above stated compensation in the form of the agreement, shown in instructions to bidders, provided that he be notified of the acceptance of this proposal within ——— days of the time set for the submission of bids.

(d) The Standard Form of Agreement of the American Institute of Architects

(This form is to be used only with the standard general conditions of the contract. In it owner, contractor, and architect are treated as of the singular number and masculine gender.)

This agreement made the ——— day of ———, in the year nineteen hundred and ———, by and between ———, hereinafter called the contractor, and ———, hereinafter called the owner, witnesseth that the contractor and the owner, for the considerations hereinafter named, agree as follows:

Article 1. The contractor agrees to provide all the materials and to perform all the work shown on the drawings and described in the specifications entitled *(here insert the caption descriptive of the work as used in the proposal, specifications,*

all trades selected from the following list (one or more names must be inserted for each trade):

Excavation
 Stone masonry
 Brickwork
 Etc., etc.

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general conditions, and upon the drawings), prepared by ———, acting as, and in these contract documents entitled, the architect, and to do to the satisfaction of the architect everything required by the drawings, specifications, and general conditions.

Art. 2. The contractor agrees to complete the work by and at the following time or times, to wit, ———, and to pay or allow the owner as liquidated damages the sum of ——— (\$——) for each day thereafter, Sundays and legal holidays not included, that the work remains uncompleted.

Art. 3. The owner agrees to pay the contractor in current funds for the performance of the contract ——— (\$——), subject to additions and deductions as provided in the general conditions of the contract.

Art. 4. The owner agrees to make payments on account of this contract on the certificate of the architect, as follows: ———. In no case, however, shall the contractor be entitled to a payment which, in the judgment of the architect, will leave the balance withheld insufficient to complete the work.

Art. 5. The contractor and the owner agree that the drawings, with all notes now thereon, the specifications and the general conditions of the contract, are, together with this agreement, the documents forming the contract, and that the said drawings, specifications, and general conditions are as fully a part of the contract as if hereto attached or herein repeated, and that should the contractor and the owner fail to sign them the identification of them by the architect shall be binding on both parties.

The contractor and the owner for themselves, their successors, executors, administrators, and assigns, hereby agree that they will in all ways be bound by the documents forming the contract, and that they will abide by and will promptly and fully carry out all decisions given thereunder, and that they will

fully perform all of the covenants and agreements therein contained, in witness whereof they have hereunto set their hands and seals, the day and year first above written.

In presence of:

_____	_____ (Seal.)

_____	_____ (Seal.)

(This agreement is not intended to diminish the use of the uniform contract, the publication of which is continued by the American Institute of Architects and the National Association of Builders. This form copyrighted 1911 by the American Institute of Architects, The Octagon, Washington, D. C. Sole Licensee for Publication, E. G. Soltmann, Drawing Materials, 134-140 W. 29th St., New York.)

**(e) The Standard Form of Bond of the American Institute
of Architects**

Know all men by these presents: That we (*here insert the name and address of the contractor*), hereinafter called the principal, and _____ and _____ and _____, hereinafter called the surety or sureties, are held and firmly bound unto _____, hereinafter called the owner, in the sum of _____ (\$_____), for the payment whereof the principal and the surety or sureties bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly, by these presents.

Whereas, the principal has, by means of a written agreement, dated _____, entered into a contract with the owner for _____, a copy of which agreement is hereto annexed.

Now, therefore, the condition of this obligation is such that, if the principal shall faithfully perform the contract on his part, and satisfy all claims and demands incurred for the same, and fully indemnify and save harmless the owner from all cost

and damage which he may suffer by reason of failure so to do, and shall fully reimburse and repay the owner all outlay and expense which the owner may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect:

Provided, however, that no suit, action, or proceeding by reason of any default shall be brought on this bond after _____ months from the day on which the final payment under the contract is made, and that service of writ or process commencing any such suit, action, or proceeding shall not be made after such date:

And provided, that any alterations which may be made in the terms of the contract, or in the work to be done under it, or the giving by the owner of any extension of time for the performance of the contract, or any other forbearance on the part of either the owner or the principal to the other shall not in any way release the principal and the surety or sureties, or either or any of them, their heirs, executors, administrators, successors, or assigns, from their liability hereunder, notice to the surety or sureties of any such alteration, extension, or forbearance being hereby waived.

Signed and sealed this _____ day of _____, 19—

In presence of:

_____	_____ (Seal.)
_____	_____ (Seal.)
_____	_____ (Seal.)
_____	_____ (Seal.)

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(f) The General Conditions of the Contract*Standard Form of the American Institute of Architects*

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Architects using the standard general conditions of the contract are requested to read the note explanatory of the documents,² and especially the appendix to the general condi-

² A Note Explanatory of the Standard Documents

The American Institute of Architects has been engaged for more than four years in an effort to improve the form of certain documents currently used by architects, with a view to making these documents clear in thought and statement, equitable as between owner and contractor, applicable to work of almost all classes, binding in law and a standard of good practice.

The related standard forms now approved by the Institute are: (a) Invitation to Bid; (b) Instructions to Bidders; (c) Form of Proposal; (d) Form of Agreement; (e) Form of Bond; (f) General Conditions of the Contract.

These forms are not put forth to diminish the use of the "Uniform Contract," the publication of which will be continued under the joint auspices of the American Institute of Architects and the National Association of Builders.

As in almost all cases, drawings, specifications, general conditions, and agreement are necessary for the complete expression of the obligations of owner and contractor, they are in fact, as set forth in article 1 of the general conditions, "The Documents Forming the Contract." It is therefore inadvisable to speak of a certain one of them as "The Contract," but, as there is one of them in which the owner and contractor formally acknowledge their agreement, that document is distinguished as "The Agreement."

The general conditions contain so much relative not merely to the specifications, but to the drawings and the agreement, that it appears illogical to call them, as customary heretofore, "The General Conditions of the Specifications." It has therefore been deemed wise to call them "The General Conditions of the Contract," and it is interesting to note that such is the designation assigned to them by the Royal Institute of British Architects.

As statements placed in any one of the documents are just as binding as if placed in any other, the agreement has been reserved for matters that are essentially private as between owner and contractor, e. g., contract price, terms of payment, date of completion, penalty, etc. All other general clauses governing the relations of owner and contractor and the execution of the work have been placed in the general conditions of the contract.

In view of the expense of corporate surety and of the difficulty of

tions.* As these conditions and the standard form of agreement have been drafted for conjoint use, neither should be used without the other.

recovery therefrom, the bonds of individuals are now frequently preferred. A simple form of bond suited for either has therefore been prepared.

The forms, though intended for use in actual practice, should also be regarded as a code of reference representing the judgment of the Institute as to what constitutes the best practice of the profession. Though intended primarily for use in connection with a single or general contract, nothing contained in them prevents their use for operations under separate contracts without a general contractor.

The work of preparing the documents was intrusted to the Standing Committee on Contracts and Specifications who, on undertaking it, studied with great care the uniform contract and forms in use by some thirty well-known architects. After much deliberation, tentative forms were embodied in a first and second edition, which latter was submitted to all the chapters of the Institute. As a result of the criticisms thus obtained, careful revisions were made and the result embodied in a third edition. This in turn was submitted for criticism to engineers, contractors, and architects throughout the country. The results of their suggestions and of further study and deliberation by the committee were embodied in three subsequent editions.

The committee has from time to time had the advice of Francis Fisher Kane, Esq., counsel for the Institute; Ernest Eidlitz, Esq., and in the fifth edition of its work, the able and careful criticism of Prof. Samuel Williston of the Harvard Law School and the assistance of James W. Pryor, Esq., in its editing.

At its Forty-First annual convention held in Chicago in 1907, the Institute authorized its board of directors to sanction the publication of the standard forms as having the approval of the Institute, which sanction was given by the board, acting through its executive committee, April 12, 1911.

The Standing Committee on Contracts and Specifications has during the preparation of the standard forms consisted of the following members of the Institute:

ALLEN B. POND, Secretary
GROSVENOR ATTERBURY, Chairman
FRANK MILES DAY
WILLIAM A. BORING
FRANK C. BALDWIN
FRANK W. FERGUSON
ALFRED STONE, Deceased
G. L. HEINS, Deceased

* See note 3 on following page.

**Title Page of the General Conditions of the Contract and
of the Specifications**

Brief Description of the Work

The work consists of that called for by the drawings and specifications entitled (*here insert the caption descriptive of the*

*** Appendix to the General Conditions of the Contract**

In many cases the sixty-three articles printed will not include all necessary general conditions of the contract. The architect will then add to them such others as he deems wise.

Many architects include in their general conditions one or more of the subjects named below. It would seem that many of these should appear in the specifications for the various trades, and that others, though suited for inclusion in the general conditions, are not invariably needed. These subjects are:

Watchmen, Heating during Construction, Protection and Care of Trees and Shrubs, Protective Coverings in General, Vault Permit, Sidewalks, Fences, Ladders, Temporary Stairways, Scaffolding, Sheds, Sanitary Conveniences, Offices and their Furniture, Telephone, Temporary Wiring and Electric Lights, Lanterns, Temporary Inclosure from Weather, Keeping Building and Cellar Free from Water, Chases, Photographs, Checking by Surveyor and his Certificate, Contractor to Work Overtime if Required, Time of Completion of the Essence of the Contract, Earthquake Insurance, Owner to Furnish Survey, Contractors to Lay out the Work, Giving Lines and Levels, Owner's Contingent Policy of Accident Insurance, Bracing Building During Construction, Damage to Adjoining Property by Movement or Settlement, Stoppage of Work in Freezing Weather, etc.

LIENS

Owing to the diversity of the lien laws in the several states, it is impracticable to draft an article suited for use in all, but it is thought that article 24 is of very general applicability. In certain states it is necessary as a bar to liens, that the agreement, or at least the lien clauses of the contract, be publicly filed or recorded.

FIRE INSURANCE

The scheme for effecting and settling insurance, described in the following paragraph, has had much consideration. As it has not been tried in practice, it is though wiser to include in the body of the general conditions the shorter form, but the following is pre-

work as used in the form of proposal, in the specifications, and upon the drawings), hereinafter called the owner, and is to be executed to the satisfaction of, under the supervision of, and

sented for the consideration of members, as possibly preferable under certain conditions, and as having the approval of the representatives of the National Board of Fire Underwriters. The "trustee" hereinafter mentioned may, of course, be agreed upon at the time of the signing of the contract, or subsequently named by the architect.

The owner shall maintain fire insurance upon the building in all stages of construction, and upon all materials in or about the premises, not including contractor's tools and appliances, to the full amount of the architect's estimate of the value of the building, so far as completed, and of such materials. The policies shall be taken out in the name of the owner "for account of whom it may concern, upon their joint and several interests in" the building and materials described. The loss, if any, shall be made adjustable with the owner, and payable to a trustee to be named by the architect. Within ten days after the occurrence of any loss covered by the policies, the contractor shall deliver to the owner a complete schedule of: (1) Labor and materials necessary for rebuilding, restoring, and replacing the work or the materials destroyed or damaged, and (2) their true value, together with a sworn statement that such schedule and valuation are full and correct. All moneys paid for losses under the policies shall be held by the trustee aforesaid for distribution to the owner, the contractor, and all other persons having insurable interests in building or in materials upon the premises, as their interests may be determined. The trustee shall disburse the insurance moneys in accordance with the agreement reached by the owner, the contractor, and other persons having insurable interests under this policy, or as determined by arbitration; but he shall make payments to contractors only upon the architect's certificates of reinstallation of the work. If the owner, the contractor, and the other persons interested in the insurance should fail to agree upon a distribution, the matter shall be referred to arbitration, as provided in article 38 of the general conditions, the owner appointing one arbitrator, the contractor, and the other persons having insurable interests appointing a second arbitrator, and these two appointing a third. The contractor agrees that, if the owner maintains insurance as above provided, he will not make upon the owner any claim for loss through fire beyond the contractor's interest under the policies of insurance maintained by the owner under this article. In case of fire the contractor shall not be released or relieved in any way from the obligation to complete the work under contract, notwithstanding the cost of so doing may exceed the contract price, or the amount

in accordance with the drawings and specifications prepared by ———, acting as, and in these contract documents called, the architect.

recovered as his share of the insurance; and the contractor shall proceed with the work forthwith, and without awaiting a decision as to the distribution of insurance money, and shall make good all his work or materials destroyed or damaged. All fire insurance policies upon the building or upon materials upon the premises shall be kept in the custody of the architect, and shall be open to inspection by the owner, the contractor and others having insurable interests. Upon the request of any person having an insurable interest under such policies, the architect shall deliver to such person a certificate setting forth briefly the terms and the amounts of the policies, and the facts so far as they are within the personal knowledge of the architect, upon which such person claims an insurable interest.

If the owner fails to maintain insurance as provided in this article, the contractor may terminate the contract; but the contractor may terminate the contract, under this provision, only at a time when building and materials are not insured as provided in this article. If the contractor or any subcontractor takes out fire insurance upon his interest in the building or in materials upon the premises, he shall not have, while such insurance is in force, any right to participate under any policy taken out by the owner.

A SUGGESTED CLAUSE RELATIVE TO PAYMENTS

When the system of monthly payments is adopted, the following form may be used in filling the blank in article 4 of the agreement: "On or about the ——— day of each month, ——— per cent. of the value, proportionate to the amount of the contract, of labor and materials wrought into the building up to the first day of that month, as estimated by the architect, less the aggregate of previous payments. On the satisfactory completion of the entire work, a sum sufficient to increase the total payments to ——— per cent. of the value of the work, and ——— days thereafter the balance due under the contract."

Identification of Documents

The drawings and specifications forming a part of these contract documents are the following:

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The General Conditions of the Contract

Standard Form of the American Institute of Architects

(This form copyrighted 1911 by the American Institute of Architects.
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134-140 W. 29th St., New York.)

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In these general conditions the owner, the contractor and the architect are treated as if each were of the singular number and masculine gender. Where the words "written notice" or "notice in writing" are used, such notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or, if delivered at the last address of the said individual, firm, or corporation known to him who gives the notice.

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Drawings and Specifications

Article 1. The agreement, the general conditions of the contract, the specifications, and the drawings, with all notes made thereon before the signing of the agreement, are the documents forming the contract. Copies of all these documents signed by the parties, or identified by the architect, as provided in the articles of agreement, shall remain in the custody of the architect, and shall be produced by him at his office on demand of either party.

Art. 2. The documents forming the contract are complementary, and what is called for by any one shall be as binding as if called for by all. They are intended to include all detail of labor and material reasonably necessary for the proper execution of the work. Should they disagree, the architect shall determine which quantity or quality of the work is to be furnished. Where reference is made to approval of work, material, fixtures, etc., such approval, unless otherwise distinctly stated, is to be understood as that of the architect.

Art. 3. The contractor, if required, shall prepare, in consultation with the architect, a schedule fixing the latest dates

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at which the various detail drawings and decisions will be required for the proper conduct of the work, and the architect will from time to time, as necessary, furnish such detail and working drawings, which shall be true developments of the scale drawings. The work shall be executed in conformity therewith, and with such instructions, directions, and explanations, not inconsistent therewith, as may from time to time be given by the architect.

Art. 4. The architect will furnish to the contractor, free of cost to him, one copy of each full size detail drawing, and two copies of all other drawings and of the specifications. If additional copies are desired, they may be obtained at the cost of reproduction. The contractor shall keep in good order upon the work one copy of the specifications and one of each drawing, and the architect and his representatives shall have free access to such copies.

Art. 5. Figured dimensions shall be followed in preference to measurements by scale; and larger scale drawings shall take precedence over those at smaller scale.

Art. 6. The drawings and specifications furnished by the architect shall be used for this work only. As instruments of service they are the property of the architect, and shall be returned to him. Any models furnished under this contract, or by the owner, are the property of the owner, and shall be disposed of as directed by him.

Art. 7. The contractor shall furnish to the architect at proper times all shop and setting drawings or diagrams which the architect may deem necessary in order to make clear the work intended or to show its relation to adjacent work of other trades. The contractor shall make any changes in such drawings or diagrams which the architect may require, and shall submit two copies of the revised prints to the architect for his

[Page 3]—Continued

identification, one copy to be returned to the contractor, the other to be filed by the architect. In submitting such shop and setting drawings the contractor shall in writing specifically call the attention of the architect to every change from the architect's drawings or specifications. The architect's identification on the revised prints shall not relieve the contractor of entire responsibility for his own errors and for changes not so pointed out in writing. Any models or templates submitted shall be changed as required until satisfactory to the architect.

Materials and Workmanship, and their Inspection

Art. 8. No one unskilled in the work which he is given to do shall be employed, and all work shall be executed in a skillful and workmanlike manner. Should the architect deem any one employed on the work incompetent or unfit for his duties, and so certify, the contractor shall dismiss him, and he shall not again, without the architect's permission, be employed on the work.

Art. 9. All materials, unless otherwise specified, shall be new and of the best quality of their respective kinds.

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Art. 10. The contractor shall at all times maintain proper facilities and provide safe access for inspection to all parts of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved it shall not be tested or covered up without timely notice to the architect of its readiness for inspection and without his approval thereof or consent thereto. Should any such work be covered up without such notice, approval, or consent, it must, if required by the architect, be uncovered for examination at the contractor's expense.

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Art. 11. When required, the contractor shall provide all facilities and labor necessary for a complete re-examination of work under suspicion, and if the architect decides that the work is defective, the contractor shall bear the expense of re-examination and replacement. If not found defective, such expense shall be credited to the contractor as extra work.

Art. 12. The contractor, upon receiving from the architect written notice and within such reasonable time as may be named therein, shall remove from the premises all materials, whether worked or unworked, and take down and remove all portions of the work, condemned by the architect as unsound or improper or as in any way failing to conform to the contract; and the contractor shall promptly replace and re-execute his own work in accordance with the contract and without expense to the owner, and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal, or replacement.

If the contractor does not remove such condemned or rejected work and materials within the time limited by the notice, the owner may remove them and may store the material at the expense of the contractor. If the contractor does not pay within ten days after such removal by the owner the expense of such removal, the owner may at any time thereafter upon ten days' written notice sell such materials at auction or at private sale. The owner shall account to the contractor for the proceeds of such sale, after deducting all expense of removal and storage.

Art. 13. Except when authorized in writing by the owner through the architect, neither the clerk of the works nor a superintendent, even though employed by the owner, has authority to add to or deduct from the work called for under the contract, or to make any changes therein.

[Page 4]—Continued**Financial Relations**

Art. 14. The contractor, when required, shall furnish to the architect, upon a blank form provided or approved by him, a correct statement, showing the estimated cost of each part of the work as subdivided in the specifications, the total equaling the contract price. This statement shall be for the use of the architect at his discretion, in preparing estimates for payments on account.

Art. 15. At least one week before each payment falls due the contractor shall submit to the architect a requisition therefor, and shall, if required, submit therewith an itemized statement of the quantities and cost and proportionate share of profit of work performed to the termination of the period to be covered by the payment. Such statement shall be made in form provided or approved by the architect, but it shall not be binding as against his judgment.

Art. 16. The acceptance by the contractor of the payment of the final certificate shall constitute a waiver of all claims against the owner under or arising out of this contract.

Art. 17. The contractor shall make good, without cost to the owner, any omissions from his work or negligence in connection therewith or any improper materials or defective workmanship or consequences thereof of which he may in writing be notified within one year of the date of the final certificate, but this general guaranty shall not act as a waiver of any specific guaranty for another length of time set elsewhere in the contract documents.

Within the period of general or special guaranty, no certificate given, nor payment made under the contract, nor partial nor entire occupancy of the premises by the owner, shall be con-

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strued as an acceptance of defective work or of improper material or as condoning any negligence or omission.

Art. 18. The architect may withhold or nullify any certificate or reduce the amount thereof, if, in his opinion, violation of the contract exists after the contractor has been duly notified to correct the same, or if he have knowledge of lien against the premises under this contract, and such certificates may be withheld until such violation is corrected to the satisfaction of the architect, or such lien is discharged or satisfactorily bonded.

Art. 19. If, in the opinion of the architect, it is not expedient to correct injured work, or work not done in accordance with the contract, the owner may deduct the difference in value between the work involved and that called for by the contract, together with a fair allowance for damage, the amount of which shall be determined by the architect, subject to arbitration.

Art. 20. The owner may, without invalidating the contract, make changes by altering, adding to, or deducting from the work in the manner hereinafter provided. No claim for an extra charge for such changes shall be valid unless such work is done in pursuance of a formal written order therefor from the owner or from the architect acting under the authorization of the owner, and no bill for extra work of any kind will be audited by the architect or paid by the owner unless it be rendered in accordance with the terms of such formal written order. Unless otherwise expressly agreed all such work shall be executed under the conditions of the original contract.

Art. 21. Should the contractor deem any work which he is called upon to perform, whether by instructions, by detail drawings, or otherwise, to be extra to the contract, he shall give the architect written notice thereof before proceeding to

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execute it, and in any case within two weeks of receiving such instructions or drawings or otherwise being called upon to perform such work, and failure so to do shall constitute a waiver of all claim for extra payment on account of it. Should the architect decide that no extra work is involved, the contractor may appeal to arbitration before commencing the work, but in any case he shall proceed with it if so ordered.

Art. 22. Should the architect determine that any alterations in, addition to or deductions from, the work covered by the contract affect the contract price, then their value shall be determined in one or more of the following ways, as may be selected by the owner:

A. By unit prices named in the contract or subsequently agreed upon, in which case the architect shall make the award, subject to arbitration.

B. By cost and percentage or cost and a fixed fee, under special order in writing, in which case the contractor shall keep a true and correct account of the net cost of labor and materials, rendering to the architect, at required intervals, detailed statements and vouchers, and the architect shall award an amount as cost and profit, subject to arbitration.

C. By estimate and acceptance in a lump sum.

D. In case an agreement as to price cannot be reached or in case the owner should refuse to employ any of the above methods, the architect may, with the authority of the owner, by a special order in writing, direct the work to proceed, and the contractor shall forthwith proceed and leave the price to be settled by arbitration.

Art. 23. Where the contractor is thus specially ordered in writing by the owner or architect to do additional work not covered by unit prices, or by estimate and acceptance in a lump sum, the contractor or his duly authorized agent shall, unless

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directed to the contrary by the architect, prior to doing such work, notify the superintendent, or, in his absence, the architect, stating his intention to enter upon such work, and not later than the next day thereafter he shall deliver to the superintendent or architect as directed a written memorandum, in duplicate, giving in detail the amount of materials and labor incorporated in the claim for the day, together with his proper compensation therefor. Failure on the part of the contractor so to notify the superintendent or architect or to deliver the memorandum relative to the day's work shall be construed as a waiver of any and all claims therefor. The duplicate copy of the above-mentioned memorandum will be returned to the contractor as soon thereafter as possible, with a duly certified

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approval, disapproval, or correction, and all bills for extra work shall be rendered on the basis of these approved daily memoranda.

Art. 24. Neither the contractor nor any subcontractor, materialman, nor any other person shall file or maintain a lien, commonly called a mechanic's lien, for materials delivered for use in, or work done in, the performance of this contract, and the right to maintain such lien by any or all of the above-named parties is hereby expressly waived, except in the event of the failure or refusal of the owner to pay the amount called for by any certificate of the architect, within ten days of the date of its tender to the owner for payment. Then, and in such case only, shall any of the above-named parties have the right to file and maintain a mechanic's lien.

Payments shall not become due unless at the time of each payment the contractor, if so required, and in any event at the time of final payment, shall deliver to the owner a satisfactory

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release of all liens against the premises on the part of all persons who have delivered materials for use in, or work done in, the performance of this contract in respect of all such work or material covered by the payment in question. At the last payment such releases shall include that of the contractor himself. If at any time there shall be evidence of any lien or claim for which, if established, the owner of the premises might be made liable, and which would be chargeable to the contractor, the owner shall have the right to retain out of any payment then due, or thereafter becoming due, an amount sufficient to indemnify himself for such lien or claim until the same shall have been effectually discharged or bonded. If, because of the contractor's negligence or default, any such lien or claim shall remain unsatisfied after all payments are made, the contractor shall refund to the owner all moneys that the latter may be compelled to pay in discharging such lien or claim.

Art. 25. The contractor shall set aside to be expended as the architect shall direct the amount of each cash allowance required by the contract. The contractor shall expend and pay such allowance at such times and in such amounts and to and in favor of such persons and upon such work as the architect may in writing direct, and the contractor shall make subcontracts with such parties for furnishing such materials and labor, and he shall assume the same responsibility for their work as for other portions of his work. But no such subcontractor shall be employed upon the work against whom the contractor shall make objection which the architect considers reasonable, or who will not enter into an agreement with the contractor upon conditions consistent with those of this contract.

Except where specifically provided to the contrary, all cash allowances shall be for the actual net cost to the contractor of labor and material only, exclusive of office or other expenses

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or profit; i. e., the contractor in making up his bid shall add such sum for expenses and profit on account of cash allowances as he deems proper, and no demand for expenses or profit other than those included in the contract sum shall be allowed by the architect. Cash allowances shall be payable by the contractor without discount or deduction or by the owner directly, if he so elect. All bills for labor and materials under such allowances shall be submitted to the architect for his approval. Proper credit or debit shall be made in the contract price, according to the difference between the total cost of such material and labor and the total of cash allowances named in the agreement or specification, and any credit balance may be deducted from the contract price or applied by written order of the architect in payment for additional work done by the contractor on formal written order.

Art. 26. Unless specifically provided otherwise in the agreement, the owner and the contractor shall each protect his own interest against loss or damage by fire, pending full performance by the contractor of the work hereunder and full payment therefor by the owner. For the purpose of maintaining fire insurance as far as concerns this contract the owner's interest at any time shall be held to amount to the sum of all payments which he shall have made to the contractor on account of this contract. For the same purpose, the contractor's interest shall be held to consist of any and all insurable value under and pertaining to this contract not above defined as "owner's interest." Loss or damage by fire shall not affect the rights and obligations of either party under this contract, except that in such event the contractor shall be entitled to reasonable extension of time for the performance of this con-

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tract, as provided under article 28, "Contractor's Claim for Extension of Time." The contractor shall upon written notice from the owner immediately proceed with the reinstallation of work damaged or destroyed, and the owner shall make payments to the contractor on account of reinstallation upon certificates of the architect issued on the same principles as govern payments during its original construction as provided in the agreement. Should the owner and the contractor fail to agree on the total amount thus to be paid, such amount shall be subject to arbitration.

Art. 27. Should the owner claim damages for delay in the completion of the work, the architect, if, in his opinion, any damages be payable, shall make an award, and shall write the amount thereof across the face of the final certificate as "amount to be deducted from the face hereof for delay in completion of the work," but such amount shall be subject to arbitration. Thereupon the architect's services in this matter shall terminate, except as provided under article 38.

Art. 28. Should the contractor be delayed in the prosecution or completion of the work by the act, neglect, or default of the owner, or of any one employed by the owner, or by fire, or by general strikes, or for any other reason deemed sufficient by the architect, then the time fixed in the agreement for the completion of the work shall be extended for a period equivalent to the time lost by reason of any and all the causes aforesaid. Such extension of time shall be determined and fixed by the architect (subject to arbitration). But no such allowance shall be made unless a claim therefor is presented in writing to the architect within forty-eight hours of the occurrence of such delay.

Art. 29. Should the owner fail to provide all labor and materials, not included in this contract, but essential to the con-

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duct of this work, in such manner as not to delay its reasonable progress, or should the contractor be damaged by any act or omission of the owner, the right of the contractor to compensation for the damage suffered, whether in the form of unusual or protracted services or otherwise, and the amount of such compensation shall be determined and awarded by the architect (subject to arbitration); but no such allowance shall be made unless a claim therefor is made in writing or by telegraph to the architect within forty-eight hours of the occurrence of such damage.

Art. 30. Should the contractor or any person directly or indirectly employed by him cause damage to the material, apparatus, or executed work of any other contractor employed by the owner on the work, or cause damage by way of delay or otherwise to such other contractor, such other contractor shall in writing notify the owner, through the architect, of the fact within forty-eight hours of the occurrence of such damage, and should the two contractors be unable to reach a settlement within ten days thereafter, the owner shall debit the contractor in the amount that the architect shall decide to be just, and shall credit that amount to the other contractor (subject to arbitration). Should the contractor sustain damage to his apparatus or materials or executed work by reason of delay or otherwise at the hands of some other contractor, he shall in similar manner notify the owner, and should the two contractors be unable to reach a settlement within ten days thereafter, the owner shall credit the contractor in the amount that the architect shall decide to be just, and shall debit that amount to the other contractor (subject to arbitration). The contractor shall in final settlement accept, or permit the deduction of, the amount determined by the architect or by arbitration. The terms of article 38, entitled "Arbitration," shall in all ways

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control any arbitration held under this paragraph, save that each contractor shall name an arbitrator or that they may agree on a single arbitrator, the owner in either case naming none.

Art. 31. The contractor shall save harmless and indemnify the owner from every claim or demand which may be made by reason of:

1. Any injury to person or property sustained by the contractor or by any person, firm, or corporation employed directly or indirectly by him upon or in connection with his work, however caused, except as provided by article 29.

2. Any injury to person or property sustained by any person, firm, or corporation, caused by any act, neglect, default,

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or omission of the contractor or of any person, firm, or corporation directly or indirectly employed by him upon or in connection with his work, whether the said injury or damage occur upon or adjacent to the work.

And the contractor at his own cost, expense, and risk shall defend any and all actions, suits, or other legal proceeding that may be brought or instituted against the owner on any such claim or demand, and pay or satisfy any judgment that may be rendered against the owner in any such action, suit, or legal proceeding or result thereof.

Art. 32. Should the contractor by his own fault or negligence delay the completion of the work, thereby necessitating unusual or protracted services or expenses on the part of the architect or the clerk of the works, the owner shall be entitled to retain from the amount otherwise to become due to the contractor, an amount sufficient to reimburse them for such protracted or unusual services or expenses (subject to arbitration).

[Page 8]—Continued

Art. 33. Should the contractor become insolvent, or at any time, except in case of a general strike, refuse or fail to supply a sufficiency of properly skilled workmen or of materials of the proper quality, or fail in the performance of any of his obligations under the contract, such refusal or failure being certified by the architect to both owner and contractor as sufficient ground for such action, the owner shall be at liberty, without prejudice to any other right or remedy he may have, to provide, after giving the contractor three days' written notice, any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the contractor under the contract.

Art. 34. If the architect shall certify to both owner and contractor that such refusal or failure is sufficient ground for such action, the owner shall also be at liberty, without prejudice to any other right or remedy he may have, after giving the contractor three days' notice, to terminate the employment of the contractor for said work, and for the purpose of completing the work, to enter upon the premises and take possession thereof, and of all materials, tools, and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor. In case of such discontinuance of the employment of the contractor, he shall not be entitled to receive any further payment until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid shall exceed the expenses incurred by the owner in finishing the work, including proper compensation to the architect for his additional services in connection therewith, such excess shall be paid by the owner to the contractor. But if such expense shall exceed such unpaid balance, the contractor shall pay the difference to the owner. The expense in-

[Page 8]—Continued

curred by the owner as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architect.

Art. 35. Should the owner fail to pay to the contractor any sum named in a certificate of the architect as due from the owner to the contractor within ten days of its presentation to the owner in person or at his last known address, the contractor may give him written notice of such failure, and should he within a further period of five days fail to pay the said sum, or if the work should be stopped under an order of any court of law for a period of three months through no action or fault of the contractor or of any one directly or indirectly employed or instigated by him, then the contractor shall be at liberty to terminate this contract by notice in writing given to the owner and the architect and to recover from the owner payment for all work executed, and for any loss he may have sustained upon any plant or material supplied or purchased for the purpose of this contract and for reasonable profit and damages.

Should the owner fail to pay the sum named in any certificate of the architect within ten days of its presentation to him or at his last known address, the contractor shall receive, in addition to the sum named in the certificate, interest thereon at the rate of five per cent. per annum until the date of payment of such certificate.

Art. 36. The contractor shall under no circumstances assign this contract without the written permission of the owner.

Art. 37. The owner reserves the right to let contracts other than this one in connection with this work.

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Art. 38. In any case in which an appeal to arbitration is permitted under this contract, the owner or contractor may demand arbitration by filing with the architect, within ten days of the receipt of the decision from which he appeals, a written notice of such demand, sending at the same time a copy thereof to the other party to the contract. In case no such notice be filed within ten days, both parties shall loose the right of appeal, and the decision of the architect shall stand as final. In case such notice be filed three disinterested arbitrators shall be chosen, one by the owner, one by the contractor, and the third by these two arbitrators, and the difference or dispute shall be submitted to them for arbitration. Should the party filing notice fail to choose an arbitrator within ten days of filing such notice, his right to arbitration shall lapse, and the decision of the architect shall stand as final. Should the other party fail to choose an arbitrator within ten days of the filing of the notice, then the architect shall appoint an arbitrator who, with the other arbitrator, shall choose a third. Should either party refuse or neglect to supply the arbitrators with any papers or information considered necessary by them and demanded in writing, the arbitrators are empowered by both parties to take ex parte proceedings.

The arbitrators shall act with promptness. The decision of any two of them shall be binding on both parties hereto. The decision of the arbitrators upon any question subject to arbitration under the terms of this contract shall be a condition precedent to any right of legal action by either owner or contractor.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense, and trouble incident to the appeal, and this sum may be named in

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cases where the claim is set aside in whole, or as an addition to or deduction from the amount of the principal award. The arbitrators shall assess the costs and charges of the arbitration upon either or both parties, in such proportion as the arbitrators shall deem just.

In lieu of the three arbitrators hereinbefore provided for, the parties may by mutual agreement name a single arbitrator, and in such case the provisions of this article shall otherwise apply.

The Architect

Art. 39. Save only in cases in which an appeal to arbitration is permitted by these general conditions, the final decision of all questions arising under this contract shall be made and given by the architect, and both the owner and the contractor shall be bound thereby, and such decision shall be a condition precedent to any right of legal action by either owner or contractor.

Art. 40. The parties to the contract recognize the architect as the interpreter of the contract documents, and in that capacity he is to define their true intent and meaning. He is not the agent of the owner, except in structural emergencies (article 41), and except when in special instances he is authorized by the owner so to act.

Art. 41. The architect has authority to stop the progress of the work whenever, in his opinion, such stoppage may be necessary to insure the proper execution of the contract. In an emergency affecting the safety of life or of the structure or of adjoining property, he is hereby empowered to act as the owner's agent, and, if he so elect, to make such changes or to order such work, extra to the contract or otherwise, as may in his opinion be advisable.

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Art. 42. In case of the termination of the employment of the architect or his successors, the owner shall appoint a capable and reputable architect, whose duties and authority under the contract shall be those of the former architect.

The Contractor

Art. 43. The contractor, if required, shall prepare, in consultation with the architect, a schedule fixing dates for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

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Art. 44. The contractor, unless otherwise expressly provided, shall furnish and install all material and shall furnish all labor, water, apparatus, light, and power necessary for the complete, prompt, and satisfactory execution of the work, and for properly connecting and co-ordinating his work with that of other contractors.

Art. 45. The contractor shall confine the storage of materials and operations of his workmen to the limits indicated by law, ordinances, permits, or by the architect, and shall not unnecessarily encumber the premises with his materials.

Art. 46. The contractor shall submit in writing the names and references of all proposed subcontractors to the architect, who shall have the right to reject such as he deems unsatisfactory, and the contractor shall not sublet any portion of the work without the written permission of the architect. Such permission shall not, however, relieve the contractor from responsibility for the conduct and work of his subcontractors.

Art. 47. The contractor in subletting any part of the work shall make contracts by which his subcontractors shall be

[Page 10]—Continued

bound by the terms of these contract documents as far as applicable to the work sublet. He shall properly direct and control his subcontractors, being responsible for the correlation of his own work and that of his subcontractors. Should the contract documents assign certain responsibilities to subcontractors the contractor is not thereby relieved of such or of any responsibilities for the entire work or any part thereof. The contractor shall promptly transmit to his subcontractors all drawings and specifications bearing on their work.

Art. 48. The contractor shall afford other contractors employed by the owner every reasonable facility for the storage and introduction of their materials and for erection of their work.

Art. 49. The contractor shall keep a competent general foreman and any necessary assistants, satisfactory to the architect, in charge during the progress of the work. The general foreman shall not be changed except with the consent or at the instance of the architect. The foreman shall represent the contractor in his absence, and all directions as to the conduct of the work given to him shall be as binding as if given to the contractor, provided that on request such directions be given in writing.

Art. 50. The contractor shall not do any work without proper drawings or instructions, and shall, at his own expense, replace any work wrongly executed, whether from lack of such drawings or instructions or otherwise.

Art. 51. The contractor, as a part of his services, shall give personal supervision to the work, and he shall carefully study and compare all drawings, specifications, and other information given to him by the architect, as to figures, materials, and methods of construction, using therein the skill and experience for which he receives compensation under this contract, and

[Page 10]—Continued

shall immediately report to the architect for rectification any error, inconsistency, or omission therein which he shall discover.

Art. 52. The contractor shall measure work already in place, to insure the proper execution of his subsequent work, or for the information of the architect; and, should any discrepancy between the executed work and the drawings be discovered, he shall report it at once to the architect.

Art. 53. The contractor shall, at his own expense, obtain for the owner all necessary permits and licenses, except permanent easements, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules, and regulations relating to the work, and to the preservation of the public health and safety. If the drawings and specifications are at variance therewith, he shall so notify the architect in writing, stating the effect of such compliance upon the contract price.

Art. 54. The contractor shall furnish, within a reasonable time, whenever required, and in the manner directed, reports showing the progress and status of the work at the building and in the shops.

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Art. 55. The contractor shall, when required, produce satisfactory evidence to show the kind and quality of materials used, and furnish duplicate labeled samples of materials and workmanship, with sufficient information, for the architect's approval, and the materials furnished shall have the same character, finish, color, and texture as the approved samples, and the workmanship shall be equal to that of the samples.

Art. 56. The contractor shall pay all royalties and license fees, and shall save the owner harmless from loss or annoy-

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ance on account of suits or claims of any kind for violation or infringement of any letters patent or patent rights by the contractor or any one directly or indirectly employed by him or by reason of the use by him or them of any art, machine, manufacture, or composition of matter on the works in violation or infringement of such letters or rights.

Art. 57. The contractor shall not allow waste material or rubbish caused by his employés to accumulate in or about the premises, but shall promptly remove the same and at the completion of the work he shall thoroughly remove all his rubbish from and about the building, and all tools, scaffolding, and surplus materials, and shall leave his work thoroughly cleaned and ready for use. In case of dispute the owner will remove the rubbish and charge the cost of work to the contractors pro rata.

Art. 58. The contractor shall promulgate and enforce rules to prevent, and it shall be his duty to prevent:

1. The lighting of open fires upon the premises, in or dangerously near the building.
2. Smoking within the building after the roof is on.
3. The erection on or about the premises of any sign, billboard, or other advertisement by the contractor or his subcontractors, except by written permission of the architect.
4. The loading of any part of the structure with a weight greater than it is calculated to bear.

Art. 59. The contractor shall cover and protect his materials and work from damage by the elements, or from any other cause, in a manner satisfactory to the architect, and shall efficiently maintain such covering and protection.

Art. 60. The contractor shall, at his own expense, make good, to the architect's satisfaction, any damage to his work

[Page 11]—Continued

from the action of the elements, or any other cause, except such damages as are contemplated in article 19.

Art. 61. The contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors, shown upon, or reasonably implied by, the drawings and specifications for the completed structure, and he shall make good after them, as the architect may direct. But the contractor shall not endanger the stability of the structure or any part thereof by cutting or digging or otherwise, and shall not in any way cut or alter the work of any other contractor, save with the consent and under the direction of the architect.

Art. 62. The contractor shall maintain such insurance as will adequately protect him and the owner from claims for damages for personal injuries arising directly or indirectly from operations under this contract, and he shall be liable to the owner for failure to maintain such insurance, and shall, if required by the owner, submit the policies to him for approval.

Art. 63. If any part of the contractor's work is dependent for its proper execution or for its subsequent efficacy or appearance on the character or condition of associated or contiguous work not executed by him, the contractor shall examine such associated or contiguous work and shall report to the architect in writing any imperfection therein or any conditions that render it unsuitable for the reception of his work. In case the contractor proceeds without making such written report, he shall be held to have accepted such other work and the existing conditions, and shall be responsible for any defects in his own work consequent thereof, and shall not be relieved of the obligation of any guaranty because of any such imperfection or condition.

CHAPTER XII

CHATTEL MORTGAGES

In General

A mortgage of personal chattels, or chattel mortgage, unless otherwise provided by statute, transfers the general property in the chattels mortgaged to the mortgagee. A chattel mortgage differs from a pledge in that under a pledge the general property remains in the pledgor. Post, p. 1118. It differs from a sale (post, p. 1191) in that the transfer is defeasible upon performance by the mortgagor of the conditions of the mortgage, usually the payment of money at a time fixed. A chattel mortgage is usually accompanied by retention of possession of the chattels by the mortgagor. At law, irrespective of statute, unless the mortgage provide otherwise, there is no right of redemption after default has been made in the performance of the conditions, although it may be otherwise in equity; and upon breach the mortgagee may take possession and deal with the goods as his own. Chattel mortgages are, however, generally governed by the provisions of statutes.

Recording Acts

Retention of possession by the mortgagor, at common law, gives rise to a presumption of fraud, in many states a conclusive presumption, thereby subjecting the transfer to the risk of avoidance by the mortgagor's creditors. For this reason the various states have enacted recording acts. These acts usually provide that chattel mortgages are void as against creditors of the mortgagor and subsequent purchasers in good faith unless possession be delivered to the mortgagee or the mortgage be recorded. Generally, to entitle a mortgage to record, it must be executed and acknowledged with the formalities of a deed of conveyance of land; and the mortgage may be assigned and satisfied by instruments similarly executed and acknowledged or by a prescribed form of entry on the margin of the record. The statutes differ, many of them prescribing the rights of the parties and the remedies of the mortgagee by sale and foreclosure in great detail.

Description of Property

To be valid against third persons, the mortgage should so describe the property as to enable them upon reasonable inquiry to indemnify it. And the better rule is that a mortgage of a certain number of chattels out of a larger number does not satisfy this requirement.

After-Acquired Property

In equity a mortgage which covers property afterwards to be acquired, if the property is sufficiently described to be identified, gives the mortgagee a lien upon the property as against the mortgagor as soon as it is acquired; but under the recording acts generally the mortgage will not prevail against the mortgagor's creditors and purchasers in good faith, and as to them it is valid only if the mortgagee takes possession before their rights accrue. Where after-acquired property is to be included, it is often best to provide for a confirmatory mortgage, to be executed and recorded when the property comes into the mortgagor's possession. Mortgages of property having a potential existence, as a crop to be grown on specified land, or the future offspring of designated animals, are sustained in some jurisdictions; and some statutes make special provision for crop mortgages.

Retention of Right to Sell

A mortgage giving the mortgagor a power of sale for his own benefit, or coupled with an agreement that he may retain possession and sell the property without applying the proceeds to the debt, is generally held to be fraudulent and void as to creditors and subsequent purchasers, although in some jurisdictions this is only evidence of fraud.

Scope of Chapter

The statutory provisions of the different states, so far as they relate to the validity of chattel mortgages, and to the formalities of record and renewal, as well as the formalities of execution and acknowledgment when they differ from those prescribed for deeds of land, and also provisions for the record of conditional sales (post, p. 1191), are here briefly set forth, followed by the statutory forms of chattel mortgages, where any are provided, and by forms of chattel mortgages in com-

mon use. These forms will usually serve as precedents elsewhere, but their provisions should be carefully examined in order that they may conform with the requirements of the governing statute.

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Chattel Mortgage—General Form

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, sell, and transfer unto the said ——— all and singular the goods and chattels mentioned in the schedule hereto annexed and now being in my possession on the premises known as ———.

To have and to hold all and singular the said goods and chattels to the said ———, his executors, administrators, and assigns forever.

[WARRANTY OF TITLE.] And I hereby covenant with the said ——— that I am the lawful owner of the said goods and chattels; that they are free from all incumbrances; that I have good right to sell the same as aforesaid; and that I will warrant and defend the same against the lawful claims of all persons:

[DEFEASANCE.] Provided nevertheless that if I, or my executors, administrators, or assigns, shall pay unto the said ———, or his executors, administrators, or assigns, the sum of ——— dollars, according to the terms of a certain promissory note made by me to the order of the said ——— for the sum of ——— dollars, payable ——— years after date, with interest thereon at the rate of ——— per cent. per annum payable semiannually on the ——— day of ——— and ——— in each year, and shall also keep and perform all and singular the covenants and agreements on his part hereinafter contained, then this deed shall be void.

[COVENANTS OF MORTGAGOR.] And I hereby covenant, for myself, my heirs, executors, administrators, and assigns, with the said ———, his executors, administrators, and assigns, as follows:

(1) [TO PAY DEBT.] To pay the said sum of money and interest at the times and in the manner above described.

(2) [TO INSURE.] Until such payment shall be made, to keep the said goods and chattels insured against loss and damage by fire in at least the sum of ——— dollars for the benefit of the said ———, his executors, administrators, and assigns, in such form and in such insurance companies as he or they shall approve, and that in default thereof he or they may effect such insurance and the sums so paid for that purpose with interest thereon at the rate of ——— per cent. per annum shall be immediately payable by me, and shall be deemed part of the debt hereby secured.

(3) [NOT TO WASTE, ETC.] Not to waste or destroy the said goods and chattels, or to suffer them or any part thereof to be attached or taken on execution or other process;

(4) [NOT TO SELL OR REMOVE.] Not to sell thereof or remove the same from the said premises where the same now are, without the consent in writing of the said ———, his executors, administrators, or assigns.

[AFTER-ACQUIRED PROPERTY INCLUDED.]¹ It is further agreed by the parties hereto that all other goods and chattels of a like kind with those hereinbefore described, and all additions to the said stock of goods which shall be brought by me upon the said premises, shall be subject to this mortgage; and I hereby covenant and agree, upon request of the said ———, to execute and cause to be duly recorded a further and confirmatory mortgage of any such property hereafter to be acquired by me during the continuance of this mortgage.

[MORTGAGOR TO RETAIN POSSESSION.] And it is agreed that until default shall be made in the payment of the said sum of money and interest as aforesaid, or in the observance or performance of any of the other covenants on my part herein contained, I, or my executors, administrators, and assigns, may retain possession of the said goods and chattels, and may use and enjoy the same.

¹ A provision like the following authorizing the mortgagor to sell on condition that with the proceeds he replace the goods sold with others of a like kind, which are to be subject to the mortgage, is held in some jurisdictions to pass to the mortgagee the legal title to the later goods when brought upon the premises (see preliminary note, ante, p. 325): "It is further agreed that I may from time to time, in the usual course of trade, sell any or all of the said stock of goods and any other goods which shall replace those sold, provided that with the proceeds of such sales I shall purchase other goods of a like kind and place the same upon the said premises, all of which goods, together with all additions to the said stock, shall be subject to this mortgage. And I covenant and agree at all times during the continuance of this mortgage to keep the said stock of goods up to the full value of ——— dollars."

[MORTGAGEE TO TAKE POSSESSION ON DEFAULT, ETC.]² But if default shall be made in the payment of the said sum of money and interest or any part thereof, or in the observance and performance of any of the other said covenants on my part herein contained, or if the said ———, or his executors, administrators, and assigns, shall at any time deem the security afforded by this mortgage unsafe or at any risk, then it shall be lawful for him or them, and I do hereby authorize and empower him or them accordingly, to take immediate possession of the said goods and chattels, and for that purpose to enter upon any premises where the same or any part thereof may be and to remove the same therefrom.

[POWER OF SALE.]³ And it is agreed that upon any such default as aforesaid, it shall be lawful for the said ———, his executors, administrators, or assigns, to sell the said goods and chattels at public (*or* private) sale, for the best price they can obtain, and that he or they may purchase at any such sale, and out of the moneys arising therefrom to retain all sums secured by this mortgage, whether then or thereafter payable, including all costs, charges, and expenses incurred by him or them in effecting such sale or otherwise in relation to the said property, rendering the surplus, if any, to me, or my executors, administrators, and assigns.

In witness whereof, *etc.*

ALABAMA

Mortgages of personal property not in writing and subscribed by the mortgagor are invalid. Civ. Code 1907, § 4288. Conveyances of personal property to secure debts or to provide indemnity must be recorded in the county in which the grantor resides, and also in the county where the property

² The provisions should conform to the requirements of any statute in that behalf.

³ See preceding note.

is at the date of the conveyance, unless the property is immediately removed to the county of the grantor's residence, and if before the lien is satisfied the property is removed to another county, the conveyance must be again recorded within three months from such removal in the county to which it is removed. Ibid. § 3376. Whenever personal property is subject to lien, incumbrance, mortgage, or trust for the security of debts, at the time of its removal to this state, the writing evidencing the same must be recorded in the county into which it is brought and remains within three months after the arrival of such property. Ibid. § 3377. Whenever any person, having an estate for life or years in personal property, removes to this state with such property, the conveyance creating such estate must be recorded in the county to which it was brought, within twelve months thereafter; and if such property is removed to another county, then in such county within four months after its removal thereto; or such property must be taken to vest absolutely in such person, as to purchasers and creditors without notice. Ibid. § 3378. Conveyances of personal property to secure debts or to provide indemnity are inoperative against creditors and purchasers without notice until recorded, unless the property is brought into this state subject to such incumbrances, in which case three months are allowed for registration of the conveyance; and if such property is removed to a different county from that in which the grantor resides, the conveyance must be recorded in such county within three months from the removal, or it ceases to have effect after such three months against creditors or purchasers of the grantor without notice. Ibid. § 3386.

All contracts for the conditional sale of personal property, except railroad equipment or rolling stock, by which the vendor retains the title until payment of the purchase money and the purchaser obtains possession, and all contracts for the lease, rent, or hire of personal property, by which the property is delivered to another on condition that it shall belong to him whenever the amount paid shall be a certain sum, or the value of the property, the title to remain in the other party until such sum or value has been paid, are, as to such condition, void against purchasers for a valuable consideration, mortgagees, and judgment creditors without notice, unless such contracts are in writing and recorded in the office of the judge of probate of the county in which the party so obtaining possession of the property resides, and also in the county in which such property is delivered and remains; and if, before such

payment, the property is removed to another county, the contract must be again recorded, within three months from the time of such removal, in the county to which it is removed; and if any such property is brought into this state while subject to such condition, the contract must within three months thereafter be recorded in the county into which the property is brought and remains. Ibid. § 3394.

Chattel Mortgage

THE STATE OF ALABAMA, }
——— County. }

Know all men by these presents that I, ———, of ———, county of ———, and state of Alabama, for and in consideration of ——— dollars, to me in hand paid by ———, of ———, do sell and convey unto the said ——— the following goods and chattels, to wit (*description*), warranted free of incumbrance, and against any adverse claims: Upon condition that, if the said ——— pay to the said ——— ——— dollars, and interest, on or before the ——— day of ———, 19—, agreeably to a promissory note of this date for that sum, payable to the said ——— or order, or demand, with interest, this deed shall be void; otherwise in full force and effect.

The aforesaid parties agree that, until the condition of this instrument is broken, the said property may remain in the possession of ———; but after this condition is broken the said ——— may, at his pleasure, take and remove the same, and may enter into any building of the said ——— for that purpose, and, after taking possession of said goods and chattels, may sell and dispose of the same at public or private sale, and after satisfying the amount due, and all expenses, the surplus, if any remain, shall be paid to said ———, or his assigns.

The exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgage is duly made, constituted, and appointed agent and attorney to do whatsoever is

above authorized. And ——— agree to waive all ——— right of exemption under the laws of the state of Alabama, or of the United States.

Witness ——— hand— and seal— this ——— day of ———, 19—.

ALASKA

A mortgage of personal property is void as against creditors and subsequent purchasers and incumbrancers in good faith for value, unless: (1) Possession of such property be delivered to and retained by the mortgagee; or (2) the mortgage provide that the property may remain in possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent from the precinct where such mortgage is executed, an affidavit of those present, and of the agent or attorney in fact of such absent party, that the same is made in good faith, to secure the amount named therein, and without design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided. Civ. Code 1900, § 311. One member of a firm of general partners may execute a mortgage and make the affidavit on behalf of the firm. The president, secretary, or managing agent of a corporation may make the affidavit on its behalf. Ibid. § 312. The mortgage must be acknowledged by the mortgagor or person executing the same, in the manner of a conveyance of real property. Ibid. § 313. The mortgage, together with the affidavits or a copy thereof, certified to be correct by the person before whom the acknowledgment was made, must be filed in the office of the recorder of the precinct where the mortgagor resides and of the precinct where the property is at the time of execution, or, if he is not a resident of the district, then of the precinct where the property is at the time of the execution. Ibid. § 314. In order to renew the mortgage, within 30 days next preceding the expiration of one year from the filing, a true copy of the mortgage, with a verified statement exhibiting the interest of the mortgagee in the property at the time the same is renewed, must be filed in the office where the original was filed; and such renewal extends the lien of the mortgage for another year. Ibid. § 315. Upon payment or discharge, an acknowledgment of satisfaction signed by the mortgagee, his legal representative or assigns, must be indorsed on the mortgage or copy thereof, filed as aforesaid. Ibid. § 321.

ARIZONA

No chattel mortgage has legal force or effect except between the parties, unless the residence of the mortgagor and mortgagee, the sum to be secured, the rate of interest to be paid, when and where payable, are set out in the mortgage; and the mortgagor and mortgagee must make affidavit that the mortgage is bona fide and made without any design to defraud or delay creditors, and the affidavit must be attached to such mortgage. Rev. St. 1913, par. 4124.

Every mortgage, deed of trust, or other form of lien attempted to be given by the owner of any stock of goods, wares, or merchandise daily exposed to sale, in parcels, in the regular course of the business of such merchandise, and contemplating a continuance of possession of the goods and control of the business, by sale of the goods by the owner, is fraudulent and void. Ibid. par. 4125.

Every chattel mortgage, deed of trust, or other instrument of writing intended to operate as a mortgage of, or lien upon, personal property, not accompanied by immediate delivery and followed by actual and continued change of possession of the property, is void as against creditors of the mortgagor, and as against subsequent purchasers and mortgagees or lienholders in good faith, unless such instrument or a true copy thereof be forthwith deposited with and filed in the office of the county recorder of the county where the property is then situated, and, if the mortgagor be a resident of this state, then it must also be recorded in the county of which he is at the time a resident. Ibid. par. 4126. If the property is removed out of the county where the mortgage is recorded, the mortgagee has one month within which to cause it to be recorded in the county to which the property is removed. Ibid. par. 4133.

If the person making such instrument removes the property from the county, or otherwise sells or disposes of the same, without the consent of the mortgagee, the mortgagee is entitled to possession of the property, and to have it then sold for the payment of his debt, whether due or not. Ibid. par. 4131.

A mortgage, where the time of payment is fixed, may be foreclosed by notice and sale, unless a stipulation, in writing to the contrary, has been agreed upon by the parties, or by action in the proper court. Ibid. par. 4134.

Chattel Mortgage

Know all men by these presents that ———, residing in ———, county of ———, state of Arizona, part— of the first part, being justly indebted to ———, residing in ———, part— of the second part, in the sum of ——— dollars, which is hereby confessed and acknowledged, for the purpose of securing the payment of said debt, do— hereby grant, bargain, sell, and mortgage unto the said part— of the second part all that certain personal property described as follows, to wit (*description*).

To have and to hold, all and singular, the personal property aforesaid, forever; Provided, always, and these presents are upon this express condition that, if the said part— of the first part shall pay or cause to be paid unto the said part— of the second part, the sum of ——— dollars, according to the conditions of ——— certain promissory note—, executed by ———, payable to the order of ———, at ——— viz., ———; dated, ———, due ———, with interest at ——— per cent. per annum, until paid, then these presents to be void and of no effect. But if default shall be made in the payment of said sum of money, or interest thereon, at the time said note shall become due, or if any attempt shall be made to remove, dispose of, or injure said property or any part thereof by said part— of the first part, or any other person, or if said part— of the first part does not take proper care of said property, or if said part— of the second part shall at any time deem ——— insecure, then, thereupon and thereafter, it shall be lawful, and the said first part— hereby authorize— the said party of the second part, or ——— authorized agent, to take said property wherever the same may be found, and hold or sell and dispose of the same and all equity of redemption, at public auction or private sale, with or without notice, and on such terms as the said part— of

the second part or ——— agent may see fit, retaining such amount as shall pay the aforesaid note— and interest thereon, and an attorney's fee of \$—— and such other expenses as may have been incurred, returning the surplus money, if any there be, to the said part— of the first part, ——— personal representatives or assigns. And as long as the conditions of this mortgage are fulfilled, the said part— of the first part is to remain in peaceful possession of said property, and in consideration thereof agrees to keep said property in as good condition as it now is, at the cost and expense of said first part—.

In witness whereof the said part— of the first part ——— hereunto set ——— hand— this ——— day of ———, A. D. 19—.

Affidavit

STATE OF ARIZONA, }
County of ———. } ss.

———, the mortgagor ——— within named, and ———, the mortgagee ——— within named, being first duly sworn, each for himself, and not for the other, doth depose and say that the foregoing mortgage is bona fide and made without design to defraud or delay creditors. _____.

Subscribed and sworn to before me this ——— day of ———, 19—.

Notary Public.

My commission expires ———.

ARKANSAS

Mortgages must be proved and acknowledged in the same manner as deeds for the conveyance of real estate; shall be recorded in the county in which the mortgagor resides, or, if he is a nonresident, in the county in which the property is where the mortgage is executed. Kirby's Dig. 1904, § 5395. They may be filed without recording, if they bear an indorse-

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ment, "This instrument is to be filed, but not recorded," signed by the mortgagee, and become liens from the time of filing. Ibid. § 5407. All trust deeds or mortgages of personal property filed with such indorsement may be withdrawn by the mortgagee if such mortgage be canceled or satisfied. Ibid. § 5413.

In the absence of stipulations to the contrary, the mortgagee has the legal title and right of possession. Ibid. § 5410.

Chattel Mortgage

This indenture, made this —— day of ——, 19—, between ——, part— of the first part, and ——, part— of the second part:

Witnesseth that for and in consideration of the sum of —— dollars, the receipt whereof is hereby acknowledged, the part— of the first part do— hereby bargain, sell, and convey to the part— of the second part the following described property, to wit (*description*). To have and to hold the same unto the part— of the second part, —— executors, administrators, and assigns, forever; conditioned, however, as follows:

Whereas, the said part— of the first part is indebted to the part— of the second part in the sum of —— dollars, payable as follows, to wit (*state terms*).

Now, if the part— of the first part shall well and truly pay to the part— of the second part the sum— hereinbefore mentioned, together with the cost of this trust, on or before the maturity hereof as above set out, then this conveyance shall be void; otherwise to remain in full force and effect. And in case any default shall be made in the payment of said indebtedness, as herein set forth, or should the part— of the first part, prior to the said maturity hereof, sell or attempt to sell, remove, or otherwise dispose of the property hereby conveyed, or any part thereof, without the consent of the part— of the second part, then, in either event, the part— of the second part, —— agent or attorney, is hereby authorized and empowered to take

possession of said property on demand, without process of law, and to sell and dispose of the same, or so much as shall be necessary, at public sale, at ———, for cash, upon two weeks' notice in some newspaper published in the county, or by written notices posted in five conspicuous places near the property, at which sale any of the parties hereto may purchase as other parties, and out of the proceeds of such sale the part— of the second part to retain the sum due ——— as herein set forth, and the cost of this trust and of sale, rendering the overplus, if any, to the part— of the first part, ——— executors, administrators, or assigns.

Given under ——— hand this ——— day of ———, A. D. 19—.

CALIFORNIA

Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following: (1) Personal property not capable of manual delivery; (2) articles of wearing apparel and personal adornment; (3) the stock in trade of a merchant. Civ. Code 1909, § 2955.

Except as otherwise provided, mortgages of personal property may be acknowledged, or proved and certified, recorded in like manner and with like effect as grants of real property. Ibid. § 2963.

A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless: (1) It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors; and (2) it is acknowledged or proved, certified, and recorded as a grant of real property. Ibid. § 2957.

Such mortgage must be recorded in the office of the county recorder of the county in which the mortgagor resides, if a resident of this state, and also in the county in which the property is situated, or to which it may be removed. Ibid. § 2959. Property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to

a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. Ibid. § 2960. Property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located. Ibid. § 2961. A single mortgage embracing several things or so situated that separate mortgages on them would be required to be recorded in different places is only valid in respect to the things as to which it is duly recorded. Ibid. § 2962. A certified copy of a mortgage once recorded may be recorded in any other county, with the same force and effect as though it was the original. Ibid. § 2964.

When the property is thereafter removed from the county in which it is situated, the lien of the mortgage is not affected for 30 days; but thereafter the property is exempted from the operation of the mortgage, except as between the parties, until either: (1) The mortgagee causes the mortgage to be recorded in the county to which the property has been removed; or (2) the mortgagee takes possession as prescribed in the next section. Ibid. § 2965. If the mortgagor voluntarily removes or permits the removal of the property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of it as a pledge for the payment of the debt, though the debt is not due. Ibid. § 2966.

The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor. Ibid. § 2972.

A mortgage of a vessel or part of a vessel under the flag of the United States is recorded in the office of the collector of customs where such vessel is registered or enrolled. Ibid. § 2958.

A mortgage of personal property may be made in substantially the following form:

Mortgage of Personal Property (Statutory)

This mortgage, made the _____ day of _____, in the year _____, by A. B., of _____, by occupation a _____, mortgagor, to C. D., of _____, by occupation a _____, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (*here describe the property*), as security for the payment to him of ——— dollars, on (*or, before*) the ——— day of ———, in the year ———, with interest thereon (*or, as security for the payment of a note or obligation, describing it, etc.*).

Ibid. § 2956.

Affidavit

STATE OF ———, }
County of ———. } ss.

———, the mortgagor— in the foregoing mortgage named, and ———, the mortgagee— in said mortgage named, being duly sworn, each for —self, deposes and says that the aforesaid mortgage is made in good faith and without any design to hinder, delay, or defraud creditors.

Subscribed and sworn to this ——— day of ———, 19—, at the county of ———.

Mortgage of Crop

(*Parties as in preceding form*) witnesseth that said mortgagor— mortgage— to the mortgagee— the following described growing crop (*describe the crop*), now growing upon that land in the county of ———, state of ———, and particularly described as follows, to wit (*describe the land*).

As security for the payment to the mortgagee— of the sum of ——— dollars, evidenced by ——— promissory note— in the words and figures following, to wit (*etc.*), and also to secure such other moneys as may be hereafter loaned or to secure payment for ——— or for account of the mortgagor— by the mortgagee—, during the continuance of this mortgage, not to exceed in all the sum of ——— dollars, exclusive of the sum mentioned in said promissory note—. And the mortgagor— hereby agree— that —he— will carefully care for and protect the said crop until fit for harvest, and then without delay

harvest ———, and deliver the same immediately into the possession of the mortgagee—, to be by ——— disposed of for the payment of the moneys hereby secured; that, in default of any of the above acts to be done by the mortgagor— the mortgagee— may at any time enter upon the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, harvest ———; and that all expenses so incurred, and that may become necessary in the keeping and care of said crop, as well as the hauling, storing, and delivery thereof, shall be secured by this mortgage, and shall be first payable in United States gold coin out of the money realized from the sale of said crop; that said mortgagee—, or ——— assigns, may at any time enter upon the premises to view them, or to take any measures —he— may deem necessary for the protection of said crop or ——— interests therein; and that upon the harvesting thereof ——— shall be entitled to its immediate possession, and may haul and store it at the expense of said mortgagor—. And said mortgagor— do— for the purposes aforesaid hereby make and appoint said mortgagee—, and ——— assigns ——— attorney in fact irrevocable, with power to enter upon said premises and take possession of said crop, and take care of, protect it, ——— in case of any default on the part of the mortgagor— in the performance of the covenants herein contained. And ——— do— further authorize said mortgagee—, or ——— assigns, to take possession of said crop, when harvested, to haul and store it, to sell and dispose of it, or any part thereof, at such time and times and for such sum or sums of money as ——— may deem proper and for the best advantage of all concerned; and out of the proceeds of such sale: First, to retain the costs and charges thereof, and any and all expenses by the said mortgagee— incurred in the care and protection, harvesting, hauling, or storing it, and commission for selling it; second, to apply the residue to the payment of said promis-

sory note— and such other moneys as may have been paid, loaned, or advanced as aforesaid, rendering the overplus, if any there be, to said mortgagor—.

In witness thereof the part— of the first part ha— hereunto set ——— hand— the day and year first above written.

COLORADO

No mortgage on personal property is valid as against third persons, unless possession of the property be delivered to and remain with the mortgagee, or the mortgage be acknowledged and recorded. 1 Rev. St. 1908, § 512.

The mortgagor must acknowledge the mortgage before some officer authorized to take the acknowledgment of deeds to real estate in this state, who shall certify: "This mortgage was acknowledged before me by A. B. (*here insert the name of the mortgagor*) this ——— day of ———, A. D. 19—." Ibid. § 513.

A mortgage of the household goods, used by the family, by husband or wife residing with the other must be by both jointly. Ibid. § 514.

Mortgages certified and admitted to record by the recorder of the county wherein the property, or the greater part thereof, is situated, if bona fide, are good and valid from the time of record until the maturity of the last installment of the mortgage indebtedness, but not exceeding two years if the principal of the indebtedness does not exceed \$2,500, and not exceeding five years if the principal be more than \$2,500 and not more than \$20,000, and not exceeding ten years if the principal exceeds \$20,000, notwithstanding that the property be left in the possession of the mortgagor, provided that the mortgage so provides. If the mortgage be given to secure more than \$2,500, there shall be recorded annually on the records of the county wherein the mortgage is recorded a sworn statement of the mortgagee, or one of them, showing: (1) That the mortgage was given in good faith to secure the payment of the sum of money mentioned therein; (2) and that said sum of money is still unpaid, or, if a portion has been paid, how much remains unpaid. Ibid. § 515.

A mortgage of live stock may cover the increase, or any part thereof, as may be provided therein. Ibid. § 515.

The lien of a mortgage recorded or filed and securing an in-

debtedness not exceeding \$300 payable in one installment, and due not more than 18 months after the execution of the mortgage, may be extended for not more than 6 months beyond the maturity of the indebtedness, by a sworn statement filed by the mortgagee, or his assignee, with the county clerk of the county wherein the mortgage is recorded or filed, showing: (1) The amount of the debt which remains unpaid; and (2) that it is still due the mortgagee or his assignee, and that the mortgagee or his assignee consents to extend the mortgage for a period not exceeding 6 months. Ibid. § 515.

Where the indebtedness does not exceed \$300, and the time of maturity does not exceed 6 months, a mortgage need not be recorded, but may be filed with the county clerk and recorder, shall then be held to be of record. And when released or discharged, the same shall be made to appear on the margin of the instrument so filed. Ibid. § 516.

The mortgagee is allowed 30 days after the maturity of the debt in which to take possession. Ibid. § 518.

The lien of a mortgage which has been admitted to record may, at any time within 30 days after maturity of the last installment of the indebtedness secured thereby, be extended for the unpaid portion of such indebtedness, by the mortgagee or his assignee filing with the county clerk of the county wherein the mortgage is recorded or filed a sworn statement showing: (1) The total payments that have been made on the debt, and the amount which remains unpaid; and (2) that it is still due the mortgagee or his assignee, and that he consents to extend the mortgage for not exceeding 2 years. Such extensions may be had, from time to time, until the indebtedness is paid or barred by limitation. Ibid. § 520.

Entry of satisfaction or a receipt for payment on the mortgage or on the record thereof operates as a release of the mortgage. Ibid. § 6888.

Chattel Mortgage

Know all men by these presents that ———, of the county of ———, in the state of Colorado, part— of the first part, for and in consideration of the sum of ——— dollars, to ——— in hand paid by ———, of the county of ———, and state aforesaid, part— of the second part, the receipt of which is hereby acknowledged, do— hereby grant, bargain, and sell unto the

said part— of the second part, the following goods and chattels (*description*).

To have and to hold, all and singular, the said goods and chattels unto the said part— of the second part, ——— personal representatives and assigns forever. And the said part— of the first part for —sel— and ——— heirs, executors, and administrators, do— hereby covenant with the said part— of the second part, ——— personal representatives and assigns, that ——— lawfully possessed (at this time) of the same goods and chattels as of ——— own property; that the same are free from all incumbrances; and that ——— will warrant and defend the same to the said part— of the second part, and ——— personal representatives and assigns, against the lawful claims and demands of all persons:

Provided, nevertheless, that if the said part— of the first part, ——— heirs, executors, and administrators, shall well and truly pay to the part— of the second part, ——— personal representatives and assigns, for the redemption of the above-bargained goods and chattels, the sum or sums hereinafter mentioned, with interest, according to the tenor and effect of ——— certain promissory note— of even date herewith given by said part— of the first part to the said part— of the second part, payable as follows (*state terms*) and shall also well and truly keep and perform each and every one of the covenants and agreements as herein contained, then these presents shall be null and void; otherwise to remain in full force and effect:

And provided, further, that until default be made by the said part— of the first part in the performance of the conditions aforesaid, it shall and may be lawful for ——— to retain the possession of the said goods and chattels, and to use and enjoy the same; but in case default should be made in the payment of said note— or either of them, or the interest therein mentioned, according to ——— tenor and effect, or if the said goods and chattels, or any part thereof, shall be attached or

claimed by any other person at any time before payment, or if the said part— of the first part shall attempt to sell or remove the same without the authority or permission of the said part— of the second part in writing expressed, from No. — street, in the city of —, in said county, or if the said part— of the second part, or — personal representatives or assigns, shall at any time feel unsafe or insecure in the aforesaid security, then the said part— of the second part, — legal representatives or assigns or the agents of — or either of them, may take immediate and full possession of the aforesaid property, goods, or chattels, wherever the same may be found, and for that purpose may enter upon or into any premises, buildings, or inclosures, by and with such force and help as may be deemed necessary therefor, and in so doing shall not be liable to any action therefor; and thereafter said part— of the second part, — personal representatives or assigns, may sell the said property, goods, and chattels, at the place where the same are found, at the option of the said second part—, for the best price that can be obtained therefor, at public or private sale, with or without notice, and out of the money arising therefrom may pay said note— and all charges touching the same, and all expenses incurred in obtaining possession thereof, together with all reasonable costs, commissions, and, in addition thereto, attorney's fees of \$— shall be allowed, the holder rendering and paying the surplus, if any, to the said part— of the first part.

And it is further agreed that, if said property, goods, or chattels, or any portion thereof, shall be sold hereunder at public or private sale, then the part— of the second part, — legal representatives, or assigns, may become the purchaser or purchasers thereof.

In witness whereof the said part— of the first part ha— hereunto set — hand this — day of —, A. D. 19—.

CONNECTICUT

When any manufacturing or mechanical establishment, together with the machinery, engines, or implements situated and used therein, or any printing, publishing, or engraving establishment, together with the machinery, engines, implements, cases, types, cuts or plates situated and used therein, or any dwelling house, together with the household furniture belonging to its owner, and used therein by him in house-keeping, or any building containing hay or tobacco in the leaf, together with such hay or tobacco, or any of the personal property above mentioned, without the real estate in which the same is situated or used, or any piano, organ, or melodeon, or any musical instrument used by an orchestra or band, or any brick burned or unburned and being in any kiln or brickyard, or any furniture, fixtures, or other personal chattels owned by hotel keepers, contained and used in the hotel occupied by such hotel keeper or employed in connection therewith, shall be mortgaged by a deed containing a condition of defeasance, and a particular description of such personal property, executed, acknowledged, and recorded as mortgages of lands, the retention by the mortgagor of the possession of such personal property shall not impair the title of the mortgagee. Gen. St. 1902, § 4132.

Every person who shall loan money upon a note secured by mortgage upon personal property, in which the sum loaned is stated to be greater than the amount actually loaned, or in which the rate of interest to be charged is greater than the rate allowed by law to be charged by pawnbrokers, shall be fined, etc.; and the mortgage and note secured thereby shall be void. Ibid. § 4134.

Mortgage of Personal Property

To all people to whom these presents shall come, greeting:

Know ye that ———, of ———, in the county of ———, and state of Connecticut, for the consideration of ——— dollars, received to ——— full satisfaction of ———, do hereby bargain, sell, transfer, and convey unto the said ——— the following articles of personal property (*description*).

To have and to hold the same to ———, the said ———, ——— executors, administrators, and assigns, forever, to ——— and their own proper use and behoof.

And ———, the said ———, for —sel— heirs, executors, and administrators, covenant and agree with the said ——— to warrant and defend the said goods to ———, the said ———, against all persons whatever.

The condition of this deed is such that whereas, the said grantor ——— justly indebted to the said grantee— in the sum of ——— dollars, as evidenced by ——— promissory note for ——— dollars, of even date herewith, payable to said grantee— or order (*state terms*).

Now, therefore, if said note shall be well and truly paid according to its tenor, then this deed shall be void; otherwise to be and remain in full force and effect.

In witness whereof ——— have hereunto set ——— hand— and seal— this ——— day of ———.

DELAWARE

A *bona fide* mortgage of personal property, if duly signed, sealed, and delivered, and acknowledged like a mortgage of real property is, is a valid lien for three years, though, possession remain in the mortgagor, if it be lodged for record in the recorder's office of each county where any of the mortgaged property is held, within ten days from the time of the acknowledgment. Rev. Code 1852, amend. to 1893, p. 633, § 1.

No mortgage is valid unless there be indorsed upon or annexed to it, to be recorded with it, an affidavit that the said mortgage was made for the bona fide purpose of securing such a debt or making indemnity, as the case may be, and was not made to cover the property of the mortgagor, to protect it from his creditors, or to hinder or delay them in the collection of their debts. Ibid. § 4.

DISTRICT OF COLUMBIA

No bill of sale, mortgage, or deed of trust to secure a debt of personal chattels whereof the vendor, mortgagor, or donor shall remain in possession is valid, except as between the parties and as to other persons having actual notice, unless executed, acknowledged, and within ten days of such acknowledgment recorded in the same manner as deeds of real estate. As to third persons not having notice, such instrument is operative only from the time within such ten days when it is delivered to the recorder. Code of Laws 1901, as amend. to 1911, § 546.

No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price is fully paid, *where the price exceeds \$100*, is valid as against third persons acquiring title to the property from the purchaser without notice, unless the terms of sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and recorded in the same manner as a chattel mortgage. Code of Laws 1901, as amend. to 1911, § 547.

Deed of Trust

This indenture, made this _____ day of _____, A. D. _____, by and between _____, of _____, District of Columbia, part— of the first part, and _____ and _____, trustees, of _____, District of Columbia, parties of the second part:

Whereas, the part— of the first part is justly indebted unto _____ in the full sum of _____ dollars, as evidenced by _____ promissory note— (*state terms*);

And whereas, said part— of the first part desire— to secure the full and punctual payment of the said note— with interest.

Now, therefore, this indenture witnesseth that said part— of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to _____ in hand paid by said parties of the second part, the receipt of which is hereby acknowledged, do— hereby grant,

sell, and deliver, unto the said parties of the second part, or the survivor of them, all and singular the goods and chattels and personal property named, mentioned, and described in Schedule "B," hereto annexed and made part of this deed, the same being now in and upon the premises known as No. ———, in ———, District of Columbia.

To have and to hold the said goods and chattels and personal property unto and to the use of the said parties of the second part, or the survivor of them, ——— executors, administrators, and assigns, in and upon the trust and for the uses following:

In trust, to suffer and permit the said part— of the first part to retain possession of and use the said goods and chattels and personal property until the same shall and may be required as hereinafter provided.

And upon this further trust upon default being made in the payment of said note—, or either of them, or of any interest thereon, when due, or any proper cost, charge, or expense in and about the same, then, and at any time thereafter, to take immediate possession of said goods and chattels and personal property, wheresoever the same may be found, and to sell the same at public auction, upon such terms and after such public notice as the said parties of the second part, or the survivor of them, ——— in the execution of this trust, shall deem advantageous and proper, and of the proceeds of sale or sales: First, to pay all proper costs, charges, and expenses, including a commission of ——— per cent. on the amount of said sale to said trustees for services; second, to pay whatever may then remain unpaid of said note—, whether the same be due or not; and, last, to pay the surplus, if any, to whomsoever shall be lawfully entitled to the same.

And upon this further trust, at any time hereafter, whether said note— shall be due or not, upon the security hereby given

being in any wise endangered in the opinion of said parties of the second part, or the survivor of them, by the removal of said goods and chattels and personal property, or any of them, without the written consent of the said parties of the second part, or the survivor of them, or by the nonpayment of the rent of the premises where said goods and chattels may be placed, stored, or deposited, or by the rendering of a judgment or decree for the payment of money against said part— of the first part, or if said part— of the first part shall not keep the same insured in some good and reliable company against loss by fire to the extent of ——— dollars, and assign the same to the use of said parties of the second part, or the survivor of them, for the more effectual securing of the payment of said indebtedness, or if the same shall become endangered in any other manner, in the opinion of the said parties of the second part, or the survivor of them, then and thereafter, upon the written order of the holder or holders of said note— or of either of them, to take possession of said goods and chattels and personal property and sell the same, and dispose of the proceeds thereof in the manner hereinbefore provided, as though default had been made in the payment of said note—.

In witness whereof said part— of the first part ha— hereunto set ——— hand— and affixed ——— seal— on the day first hereinbefore written.

SCHEDULE "B "

(Referred to in the Foregoing Deed of Trust and Made a Part of the Same)

All goods, chattels, implements, and other personal property of every description now contained in the premises No. ———, in the ———, District of Columbia, including (*description*).

Signed, sealed, and delivered in the presence of the under-

signed as witnesses ———, being delivered in the name of all said goods and chattels and personal property ———.

(Signature of witnesses.) *(Signatures and seals.)*

Received the goods and chattels mentioned in the foregoing deed of trust subject to all its provisions. *(Signatures.)*

FLORIDA

No chattel mortgage is valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless recorded, or unless the property be delivered to the mortgagee and continue to remain truly and bona fide in his possession. Gen. St. 1906, § 2496. To entitle such mortgage to record, its execution must be acknowledged or proved in the manner provided for mortgages of real property. Ibid. § 2497.

All deeds of conveyance, obligations conditioned or defeasible, bills of sale, or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, are deemed mortgages. Ibid. § 2494.

Chattel Mortgage

Know all men by these presents that ———, of the ——— of ———, in the county of ———, and state of ———, hereinafter called mortgagor—, for securing the payment of the money hereinafter mentioned, and in consideration of the sum of ——— dollars, duly paid by ———, of the ——— of ———, county of ———, and state of ———, hereinafter called mortgagee—, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha— granted, bargained, and sold, and by these presents do— grant, bargain, sell, and convey unto the said mortgagee—, ——— executors, administrators, and assigns, all the goods,

chattels, and personal property now in ——— and particularly described as follows (*description*).

To have and to hold all and singular the said goods, chattels, and personal property above bargained and sold, or intended so to be, unto the said mortgagee—, ——— executors, administrators, and assigns forever.

And the said mortgagor—, for ——— heirs, executors, and administrators, covenant— with the said mortgagee—, ——— executors, administrators, and assigns, that ——— the lawful owner—, of all and singular the goods, chattels, and personal property above bargained and sold; that said property is free from all incumbrances; that ——— good right to sell the same as aforesaid; and that ——— shall and will warrant and defend the same unto the said mortgagee—, ——— executors, administrators, and assigns, against the lawful claims of all and every person or persons whomsoever:

Provided always, and these presents are upon the express condition, that if ———, the said mortgagor—, shall well and truly pay unto the said mortgagee—, ——— executors, administrators, and assigns, the aggregate sum of ——— dollars, secured by — certain promissory note— of which the following, in words and figures, is a true and correct copy (*etc.*), and also all expenses that may or shall accrue in the event of the foreclosure of this mortgage, reasonable attorney's fees, and costs of court included, then these presents shall be void; otherwise to remain in full force and virtue.

And ———, the said mortgagor—, for ——— and ——— heirs, executors, and administrators, do— covenant and agree to and with the said mortgagee—, ——— executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, or any installment thereof, or in the payment of the whole or any part of the interest thereon at the times and in the manner provided in said promissory note—, or in case the said party of the first part

shall remove the said goods, chattels, and personal property or any of them without written permission of said mortgagee—, or permit or suffer any attachment or other process to be levied upon said property or any part thereof, or permit or suffer any judgment to be entered up against ———, then the said aggregate sum of money herein mentioned shall become instantly due and payable, at the option of the said mortgagee—, and then it shall and may be lawful for this mortgage to be immediately foreclosed for the whole of said money, interest, costs, fees, charges, and expenses as aforesaid.

In witness whereof the said mortgagor— ha— hereunto set
——— hand— and seal— the ——— day of ———.

GEORGIA

A mortgage is only security for a debt, and passes no title. It may embrace all property in possession, or to which the mortgagor has the right of possession at the time, or may cover a stock of goods, or other things in bulk, but changing in specifics, in which case the lien is lost on all articles disposed of by the mortgagor up to the time of foreclosure, and attaches to the purchases made to supply their place. A mortgage given by a person or a corporation to a trustee or trustees, to secure an issue of bonds, shall, when it is expressly so stipulated therein, embrace and cover after-acquired property of such person or corporation. Civ. Code 1910, § 3256.

No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property upon which it is to take effect. It must be executed in the presence of, and attested by, or proved before, a notary public or justice of any court in this state, or a clerk of the superior court and recorded. Ibid. § 3257.

Mortgages must be recorded in the county where the mortgagor resided at the time of its execution, if a resident of this state; if a nonresident, then in the county where the property is. If a mortgage be executed on personalty not within this state, and such property is afterwards brought within the state, the mortgage must be recorded according to the above rules within six months after the property is so brought in.

Mortgages of stocks of goods, wares, and merchandise, or other personal property, must be recorded, if upon property located in some other county than that of the mortgagor's residence, in the county where the property is located at the time of the execution of the mortgage, in addition to the record in the county of the mortgagor's residence. Ibid. § 3259.

A mortgagor who has paid off his mortgage may present the same, with the order of the mortgagee or transferee directing that it be canceled, to the clerk of the superior court of the county or counties in which the same is recorded, and such clerk shall write across the face of such record the word "satisfied," and the date of such entry, and sign his name thereto officially. Ibid. § 3270.

Chattel Mortgage

STATE OF GEORGIA, }
——— County. }

Know all men by these presents that whereas, ——— justly indebted to ———, of ———, in the sum of ——— dollars, with interest from ——— at the rate of ——— per cent. per annum until paid, which is evidenced by ——— promissory note—, payable as follows (*state terms*).

Now, therefore, for the purpose of securing the payment of said sum or sums, as it or they may fall due, ——— hereby mortgage and create a mortgage lien upon, to and for the benefit to ——— heirs and assigns, the following described property, to wit (*description*), together with all the accretions, replenishments, additions, and all other property that shall appertain to said property aforementioned. And ——— do declare that all of said property is ——— and is free from any lien or incumbrance whatever.

And it is further agreed and understood that this mortgage shall stand good for and include all future advances of money and indebtedness of any kind to date of foreclosure or settlement owing by ——— to the said ———. And it is further agreed and understood that, in default of payment of said sum

or any sum covered hereby at maturity, then the whole indebtedness shall become immediately due, and this mortgage shall be foreclosed for the whole amount of indebtedness; but, if all sums are promptly paid at maturity, then this mortgage to be null and void.

And it is further agreed that the whole debt shall become due and payable, and the mortgage may be foreclosed for the whole amount, cost, and expenses, if any sale is made of this property or any interest herein, without consent of the mortgagees, except in due course of trade, if stock of goods, or if there be any change of firm.

Witness _____ hand— and seal— this _____ day of _____.

IDAHO

A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless: It is accompanied by the affidavit of the mortgagor that it is made in good faith and without any design to hinder, delay, or defraud creditors; and is acknowledged or proven, as grants of real estate, and the mortgage, or a true copy thereof, is filed for record with the county recorder of the county where such property is located and kept. Rev. Codes 1908, § 3408.

Where mortgaged property is thereafter removed from the county wherein it was situated at the time of the execution of the mortgage by the written consent of the mortgagee, it is, except as between the parties to the mortgage, exempt from the operations thereof, unless either: (1) The mortgagee, within ten days after such removal, cause the mortgage to be recorded in the county to which the property has been removed; or (2) the mortgagee, within ten days after such removal, take possession of the property. Ibid. § 3410.

Chattel Mortgage

This mortgage, made this _____ day of _____, by _____, of _____, county of _____, state of Idaho, the mortgagor—, to _____, of _____, county of _____, state of Idaho, the mortgagee—:

Witnesseth that the said mortgagor— hereby mortgages to the said mortgagee— all of those certain goods and chattels now being in _____, state of Idaho, and described as follows (*description*), to secure the payment of _____ dollars, according to the terms and conditions of _____ certain promissory note— in words and figures as follows, to wit (*etc.*).

But if the said mortgagor— shall fail to make any payment as in said promissory note— provided, then at the option of the said mortgagee—, _____ executors, administrators, or assigns, the said note— shall immediately become due and payable, and the said mortgagee— may take possession of the said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds to pay the whole amount in the said note— specified and all costs of any action or sale, including _____ dollars as counsel fees, paying the surplus to the said mortgagor—.

(*Signature.*)

Affidavit

STATE OF IDAHO, }
County of _____. } ss.

_____, the mortgagor— in the foregoing mortgage named, depose— and say— that the foregoing mortgage is made in good faith and without any design to hinder, delay, or defraud creditor or creditors. _____.

Subscribed and sworn to before me this _____ day of _____.

ILLINOIS

No mortgage, trust deed, or other conveyance of personal property having the effect of a mortgage or lien is valid against third persons, unless possession is delivered to and remain with the grantee, or the instrument provides for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded; and every such instrument is, for the purposes of this act, deemed a chattel mortgage. Hurd's Rev. St. 1913, c. 95, § 1.

Such instruments must be acknowledged, in counties having a population of less than 200,000, before a justice of the peace or the county judge of the county where the mortgagor resides, or before the clerk or deputy clerk of any municipal court in such county, or, if the mortgagor is not a resident of the state at the time of acknowledgment, before any officer authorized by law to take acknowledgment of deeds, and in counties having a population of more than 200,000 if the mortgagor is a resident of the state at the time of acknowledgment, before a justice of the peace of the town or precinct where the mortgagor resides, or, if there be no justice of the peace therein, before the clerk or a deputy clerk of the municipal court in the district in which the mortgagor resides or, if there be no such clerk or deputy clerk, before the county judge of the county in which the mortgagor resides. The certificate of acknowledgment may be in the following form: This (*name of instrument*) was acknowledged before me by (*name of grantor*) (*when the acknowledgment is made of a resident insert the words, "and entered by me"*) this _____ day of _____, 19—. Witness my hand and seal. (*Name of officer.*) (*Seal.*) Ibid. § 2.

Such instrument, so acknowledged, shall be admitted to record by the recorder of the county in which the mortgagor resides at the time when the instrument is executed and recorded, or, in case the mortgagor is not a resident of this state, then in the county where the property is situated and kept. It is then, if *bona fide*, a valid lien from the time it is filed for record until the maturity of the entire debt or obligation, or extension thereof. *Provided*, such time shall not exceed 3 years from the filing of the mortgage, unless within 30 days next preceding the expiration of such 3 years, or, if the debt or obligation matures within such 3 years, then within 30 days next preceding the maturity of said debt or

obligation, the mortgagor and mortgagee, his or their agent or attorney, files for record in the office of the recorder of deeds of the county where the original mortgage is recorded, also with the justice of the peace, or his successor, upon whose docket the same was entered, an affidavit setting forth particularly the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, and, if such mortgage is for the payment of money, the amount remaining unpaid thereon, and the time when the same will become due, by extension or otherwise, which affidavit shall be recorded by such recorder and be entered upon the docket of said justice of the peace, and thereupon the lien originally acquired is continued and extended for one year from the filing of such affidavit, or until the maturity of the indebtedness, or extension thereof, provided such time shall not exceed one year from the date of filing such affidavit. Ibid. § 4.

No mortgage executed by a married man or married woman on household goods is valid unless joined in by the husband or wife, as the case may be. Ibid. § 24.

All notes secured by chattel mortgages must state upon their face that they are so secured, and when assigned by the payee are subject to all defenses existing between the payee and the payor. A chattel mortgage securing notes which do not state upon their face the fact of such security is absolutely void. Ibid. § 25.

Chattel Mortgage

Know all men by these presents that ———, of ———, in the county of ———, and state of ———, in consideration of the sum of ——— dollars, to ——— paid by ———, of the county of ———, and state of ———, the receipt whereof it hereby acknowledged, do— hereby grant, sell, convey, and confirm unto the said ———, and to ——— heirs and assigns, the following goods and chattels, to wit (*description*).

To have and to hold all and singular the said goods and chattels unto the said mortgagee— herein, and ——— heirs, executors, administrators, and assigns, to ——— and their sole use, forever. And the mortgagor— herein, for ———, and for ——— heirs, executors, and administrators, do— hereby cov-

enant to and with the said mortgagee—, ——— heirs, executors, administrators and assigns, that said mortgagor— ——— lawfully possessed of the said goods and chattels, as of ——— own property; that the same are free from all incumbrances; and that ——— will, and ——— executors and administrators shall, warrant and defend the same to ———, the said mortgagee—, ——— heirs, executors, administrators, and assigns, against the lawful claims and demands of all persons:

Provided, nevertheless, that if the said mortgagor—, ——— executors or administrators, shall well and truly pay unto said mortgagee—, ——— executors, administrators, or assigns, the sum of ——— dollars, with interest according to the terms of a certain promissory note (*state terms*), then this mortgage is to be void; otherwise to remain in full force and effect:

And provided, also, that it shall be lawful for the said mortgagor—, ——— executors, administrators, and assigns, to retain possession of the said goods and chattels, and at ——— own expense to keep and use the same until ———, or ——— executors, administrators, or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times and in the manner hereinbefore stated. And the said mortgagor— hereby covenant— and agree— that in case default shall be made in the payment of the note— aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable, or if the mortgagee—, ——— executors, administrators, or assigns, shall feel ——— insecure or unsafe, or shall fear diminution, removal, or waste of said property, or if the mortgagor— shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein, or if any writ or any distress warrant shall be levied on said goods and chattels, or any part thereof, then and in any or either of the aforesaid cases all of said note— and sum of money, both principal and interest, shall, at the

option of the said mortgagee—, ——— executors, administrators, or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee—, ——— executors, administrators, or assigns, or any of them, shall thereupon have the right to take immediate possession of said property, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor—, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and, if found, to take possession of, and remove and sell, and dispose of the said property, or any part thereof, at public auction, to the highest bidder, after giving ——— days' notice of the time, place, and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee—, ——— heirs, executors, administrators, or assigns, agents or attorneys, or any of them, may elect, and out of the money arising from such sale to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note—, rendering the surplus, if any remain, unto said mortgagor—, or ——— legal representatives.

Witness the hand— and seal— of the said mortgagor— this ——— day of ———.

Acknowledgment

STATE OF ———, }
County of ———. } ss.

I, ———, a justice of the peace in the town of ———, in and for said county, do hereby certify that this mortgage was duly acknowledged before me by the above-named ———, the

mortgagor— herein named [and entered by me]⁴ this ——— day of ———, A. D. 19—.

Witness my hand and seal.

—————, (*Seal.*)

Justice of the Peace.

INDIANA

No assignment of goods by way of mortgage is valid against any other person than the parties thereto, where such goods are not delivered to the mortgagee or assignee and retained by him, unless such assignment or mortgage is acknowledged as in case of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor resides, if he resides in this state, and, if not a resident of the state, then in the county where the property is situated, within ten days after the execution thereof. Burns' Ann. St. 1914, § 7472.

The mortgage may be released on the margin of the record or by certificate of satisfaction acknowledged like a deed of conveyance. Ibid. §§ 1138, 1140. It may be assigned by assignment entered in the margin or by separate assignment. Ibid. § 1145.

Chattel Mortgage

Know all men by these presents that ———, of ——— county, in the state of ———, mortgage— to ———, of ——— county, in the state of ———, the following described personal property, to wit (*description*), to secure the payment of ——— promissory note—, dated ———, 19—, given by ——— to ———, payable (*state terms*), all without relief from valuation or appraisal laws.

Now, if the said ——— shall well and truly pay said note— at maturity, with all interest due thereon, then this instrument shall be void; otherwise to remain in force.

⁴ If the mortgagor be not a resident of the state, the acknowledgment may be before any officer authorized by law to take acknowledgments of deeds, in which case the words in brackets are omitted.

It is agreed and understood by the parties hereto that said ——— shall retain possession of and have the use of said property until said note— hereby secured become— due, and, if said note— ——— not paid promptly at maturity, said ——— shall then have the right to take and keep possession of said property, wherever it may be found, without any process of law, and the same shall become the absolute property of the said ———. And the said ——— hereby expressly agree— not to remove the said property from the place where it now is without the consent of said ———, nor to sell, assign, or lease the same without such consent, to use such property well, keep the same insured in some reliable company, and in good repair. And in case of default being made in any one of these conditions, or if the property shall be levied on by execution from any court, or shall come into the hands of any administrator, guardian, executor, assignee, trustee, or commissioner, to be sold, then and in either of such cases the mortgagee or his attorney or agent, or his heirs, executors, administrators, or assigns, shall have the right to take immediate and unconditional possession of the same wherever the same can be found, and sell the same at public or private sale, without any proceedings or decree of foreclosure first had and obtained, to the highest bidder, for cash in hand or on reasonable credit, as ——— may deem best, after giving ——— days' notice of the time, place, and terms of sale, with a description of the property to be sold, by at least ——— advertisements, in print or writing, posted in public places in the vicinity where the sale is to take place.

Witness ——— hand— and seal— this ——— day of ———, 19—.

IOWA

No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession, is valid against existing creditors or subsequent purchasers, without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and filed for record with the recorder of the county where the holder of the property resides. No incumbrance of personal property exempt from execution by the head of a family, if a resident of this state, is valid, except for the purchase price, unless it be by written instrument, and the husband and wife concur in and sign the same joint instrument. Code 1897, § 2906. In the absence of stipulations in the mortgage, the mortgagee is entitled to possession, but the title remains in the mortgagor until divested by sale. Ibid. § 2911. Deeds of trust may be executed as securities for the performance of contracts, and are considered as, and foreclosed like, mortgages. Ibid. § 4284.

No sale, contract, or lease wherein the transfer of title or ownership of personal property is made to depend upon any condition is valid against creditors or purchasers of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless in writing, executed by the vendor or lessor, acknowledged and recorded in the same manner as chattel mortgages. Ibid. § 2905.

Chattel Mortgage

In consideration of _____ dollars, in hand paid by _____, of _____, mortgagee, I, _____ of _____, mortgagor, hereby sell and transfer to the said mortgagee the following described personal property, to wit (*description*).

It being my intention to mortgage all property of the respective kinds above described that I now own, the same being free from incumbrance and in my possession at _____, _____ county, Iowa, with all increase or additions thereto, until the consideration herein named is fully paid, according to the terms of a certain promissory note made by me, bearing even date herewith (*state terms*).

Should the mortgagee at any time deem himself unsafe, it shall be lawful for his representative to take said property and sell the same at public or private sale, with or without notice, whether the debt secured hereby is due or not due, in such manner and at such place as he may designate, and apply the proceeds of such sale to the payment of the expenses of taking, keeping and selling said property, and the payment of said note according to its terms.

Signed and delivered this _____ day of _____.

KANSAS

Every mortgage or conveyance intended to operate as a mortgage of personal property, not accompanied by immediate delivery and followed by actual and continued change of possession, is void as against creditors of the mortgagor, and subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy is forthwith deposited in the office of the register of deeds in the county where the property is then situated, or, if the mortgagor be a resident of this state, then in the county of which he is at the time a resident. Gen. St. 1909, § 5224. Every mortgage so filed is void as against such persons after the expiration of two years after filing, unless, within thirty days next preceding the expiration of such two years, and each two years thereafter, the mortgagee, his agent or attorney makes an affidavit exhibiting the interest of the mortgagee in the property at that time, and, if the mortgage is to secure the payment of money, the amount yet due and unpaid. Such affidavit must be attached to and filed with the instrument or copy on file to which it relates. Ibid. § 5226. If such affidavit be made and filed before any purchase of the mortgaged property is made, or other mortgage deposited, or lien obtained thereon in good faith, it is as valid to continue in effect such mortgage as if made and filed within the period provided. Ibid. § 5227. In the absence of stipulations to the contrary, the mortgagee has the legal title and right of possession. Ibid. § 5230.

All instruments in writing or promissory notes evidencing the conditional sale of personal property, which retain the title in the vendor until the purchase price is paid in full, are void as against innocent purchasers or creditors of the vendee, unless

the instrument or a copy of it be deposited in the office of the register of deeds of the county where the property is kept, and when so deposited is subject to the law applicable to the filing of chattel mortgages. A conditional verbal sale reserving to the vendor the title is void as against creditors and innocent purchasers for value. Ibid. § 5237.

Chattel Mortgage .

Know all men by these presents that ———, of ———, of the first part, is indebted to ———, of ———, of the second part, in the sum of ——— dollars, to be paid as follows (*state terms*).

Now, therefore, in consideration of such indebtedness, and to secure the payment of the same, as aforesaid, the said part— of the first part do— hereby sell, assign, transfer, and set over, to the said part— of the second part, the property owned entirely by the said part— of the first part without any incumbrance, and described in the following schedule, viz. (*description*):

Provided, however, that if said debt and interest be paid, as above specified, this sale and transfer shall be void.

The property sold is to remain in possession of the said part— of the first part until default be made in the payment of the debt and interest aforesaid, or some part thereof; but in case of a sale, or a disposal, or an attempt to sell or dispose of the same, or a removal of or an attempt to remove the same from ———, or an unreasonable depreciation in the value, or if from any other cause the security shall become inadequate, or if at any time the said part— of the second part shall deem ——— insecure, the said part— of the second part may take such property, or any part thereof, into ——— own possession. And upon taking the said property into ——— possession, either in case of default or as above provided, said part— of the second part shall sell the same at public or private sale,

with or without notice; and after satisfying the aforesaid debt, and interest thereon, and all necessary and reasonable costs, charges, and expenses incurred, out of the proceeds of sale, —he— shall return the surplus to the said part— of the first part or — legal representatives. And if from any cause the said property shall fail to satisfy the said debt and interest aforesaid, the said part— of the first part hereby agree— to pay the deficiency.

In witness whereof the said part— of the first part ha— hereunto set — hand—, this — day of —.

Affidavit on Renewal

STATE OF KANSAS, }
— County. } ss.

I do solemnly swear that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the — day of —, 19—, conveyed to — to secure the payment of — dollars, of which sum there is yet due and unpaid the sum of — dollars. So help me God.

Subscribed and sworn to before me this — day of —, 19—.

KENTUCKY

Chattel mortgages are not valid against purchasers for a valuable consideration without notice to creditors, until acknowledged or proved and lodged for record in the office of the clerk of the county court of the county of the owner's residence. St. 1909, §§ 2061, 2062; *Coppage v. Johnson*, 107 Ky. 620, 55 S. W. 424. As a condition of record the mortgage should state the residence and post office address of the mortgagee. Acts 1906, c. 22, art. 2, § 10.

MAINE

No mortgage of personal property is valid against any other person than the parties, unless possession of the property is delivered to and retained by the mortgagee, or the mortgage is recorded by the clerk of the city, town, or plantation organized for any purpose in which the mortgagor resides when the mortgage is given. When all the mortgagors reside without the state, the mortgage must be recorded in the city, town, or plantation where the property is when the mortgage is made; but, if a part of them reside in the state, then in the cities, towns, or plantations in which such mortgagors reside when the mortgage is given. A mortgage by a corporation must be recorded in the town where it has its established place of business. If a mortgagor resides in an unorganized place, the mortgage must be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county. Rev. St. 1903, c. 93, § 1. The mortgage is considered as recorded when received. No consent given by the mortgagee to the mortgagor for the sale or exchange of the property is valid unless in writing and signed by the mortgagee or his assigns. Ibid. c. 93, § 2.

Loans for less than \$200 secured by mortgage or pledge of personal property, are dischargeable by the debtor on payment or tender of the sum borrowed and interest at the rate specified, not to exceed 3 per cent. a month for not exceeding three months, and thereafter the rate of 15 per cent. a year, no renewal to bear a greater rate than 15 per cent. a year. Not exceeding \$3 for the actual expenses of making and securing the loan may be charged. All loans made in violation hereof bear interest at the legal rate only. Ibid. c. 46, § 2. No mortgage of household furniture made to secure such a loan is valid unless it states with substantial accuracy the amount of the loan, the time for which it is made, the rate of interest, and the actual expense of making and securing it. Ibid. c. 46, § 4.

No agreement that personal property bargained and delivered to another shall remain the property of the seller till paid for is valid unless in writing and signed by the person to be bound. When so made and signed, whether such agreement is or is called a note, lease, conditional sale, purchase on installments, or by any other name, and in whatever form it may be, it is not valid, except as between the original parties, unless

recorded in the office of the clerk of the town in which the purchaser resides at the time of the purchase. The property, whether the agreements are recorded or not, is subject to redemption and to trustee process, but the title may be foreclosed in the manner provided for mortgages of personal property. Ibid. c. 113, § 5.

Mortgage of Personal Property

Know all men by these presents that ———, of ———, in consideration of ——— dollars paid by ———, of ———, the receipt whereof the said ——— do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said ———, the following goods and chattels, viz. (*description*).

To have and to hold the said goods and chattels unto the said ———, heirs, executors, administrators, and assigns to ——— only proper use, benefit, and behoof forever. And ———, the said ———, do avouch ——— to be the true and lawful owner of the said goods and chattels, and have in ——— full power, good right, and lawful authority to dispose of the same in manner aforesaid; and ——— do for ———, heirs, executors, and administrators, hereby covenant and agree to warrant and defend the said goods and chattels against the lawful claims and demands of all persons whomsoever, unto ———, the said ——— heirs, executors, administrators, and assigns:

Provided, nevertheless, that if the said ———, executors, administrators, or assigns, shall pay unto the said ———, executors, administrators, or assigns, the sum of ——— dollars in ——— from this date, with interest at ——— per cent. per annum, payable ——— annually, then this bill of sale, as also ——— certain promissory note bearing even date with these presents, given by the said ——— to the said ——— to pay the sum and interest at the time aforesaid, shall be void; otherwise shall remain in full force:

Provided, also, that it shall and may be lawful for said _____ to continue in possession of said goods and chattels until _____.

In witness whereof _____, the said _____, have hereunto set _____ hand— and seal— this _____ day of _____.

MARYLAND

No personal property whereof the vendor, mortgagor, or donor shall remain in possession shall pass, alter, or change, or any property therein be transferred to any purchaser, mortgagee, or donee, unless by bill of sale or mortgage acknowledged and recorded as herein provided; but this shall extend to any sale or gift accompanied by delivery, nor invalidate such transfer as between the parties. Md. Ann. Civ. Code 1910, art. 21, § 43. A bill of sale is sufficient in form if it contain the names of the parties, the consideration, a description of the property, and be signed and sealed by the vendor, and dated. Ibid. § 44. A bill of sale or chattel mortgage, if acknowledged within this state, may be acknowledged before any officer authorized to take acknowledgments of deeds within this state in the same manner as deeds are acknowledged, or acknowledged as certified; if acknowledged out of the state, before any officer authorized to take acknowledgment of deeds. Ibid. §§ 45, 46.

A bill of sale must be recorded within 20 days from its date, in the county or city where the vendor or donor resides; if he resides out of the state, in the county where the property is located, or in Baltimore city, if it be located in that city. Ibid. § 47.

A mortgage of personal property must be executed, acknowledged, and recorded as bills of sale. Ibid. § 48. It shall be deemed to contain an implied covenant (unless the contrary is therein expressed) by the mortgagor to pay the debt and interest specified in said mortgage. Ibid. § 49. Such mortgages are valid and take effect, except as between parties, only from the time of recording; and, if more than one, the one first recorded has preference. Ibid. § 50.

Mortgages of personal property may be assigned and released in the same manner as mortgages of real property.⁵ Ibid. § 51.

⁵ Post, p. 910.

No bill of sale or mortgage of personal property is valid, except as between the parties, unless the bargainee or vendee or mortgagee, or some one of them, or the agent of some one of them, make affidavit that the consideration in said bill of sale or mortgage is true and bona fide as therein set forth, and in the case of a mortgage, unless in addition to the above affidavit, the mortgagee, or some one of them, or the agent of some one of them, make the further oath or affirmation prescribed by section 32,⁶ and such affidavit may be made at any time before recording, and before any person authorized to take the acknowledgment of such bill of sale or mortgage. Ibid. § 52.

Mortgage of Personal Property (Statutory)

I, ———, of ——— county, Maryland, being now indebted to ———, of ——— county, in the sum of ——— dollars, with interest from ———, in consideration thereof do hereby bargain and sell to the said ———, the following property (*here describe property*): Provided, that if I, the said ———, shall pay to the said ——— the said sum of ——— dollars, with the interest thereon, on or before the ——— day of ———, then these presents shall be void.

Witness my hand and seal this ——— day of ———.

(Seal.)

Ibid. § 64.

Acknowledgment and Affidavit

STATE OF MARYLAND, }
—————, } to wit:

I hereby certify that on this ——— day of ———, in the year ———, before me, the subscriber, a ——— of the state of Maryland, in and for the ——— aforesaid, personally appeared ———, the mortgagor named in the foregoing mortgage, and acknowledged the foregoing mortgage to be his act.

⁶ Post, p. 905.

And at the same time, before me also personally appeared ———, the within-named mortgagee, and made oath in due form of law that the consideration set forth in the above mortgage is true and bona fide, as therein set forth, and did also make oath in due form of law (*or*, did solemnly and truly declare and affirm) that the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage.

MASSACHUSETTS

Mortgages of personal property must, within 15 days from the date written in the mortgage, be recorded in the city or town in which the mortgagor resides when the mortgage is made, and in the city or town in which he then principally transacts his business or follows his trade or calling; if he resides out of the commonwealth, and the property is within the commonwealth when the mortgage is made, in the city or town in which the property then is. If a record in two places is required, and the mortgage is recorded in one within 15 days, it may be recorded in the other within 10 days after the date of the first record. Unless the property is delivered to and retained by the mortgagee, the mortgage is not valid, except between the parties, until it is so recorded. Rev. Laws 1902, c. 198, § 1. The foregoing provisions do not apply to a mortgage of a ship or vessel of the United States, or to goods at sea or abroad, if the mortgagee takes possession of such goods as soon as may be after their arrival in this commonwealth. Ibid. § 2.

Loans of less than \$1,000 must be discharged on payment or tender of principal and interest at 18 per cent. per annum, and not exceeding \$5 for the expense of making and securing the loan; but the lender is entitled to 6 months' interest if the debt be paid within that time. Ibid. c. 102, § 51.

A mortgage of household furniture to secure a loan of less than \$1,000, with interest at or over 18 per cent. per annum,

is not valid unless it states with substantial accuracy the amount of the loan, the time, rate of interest, actual expense of making and securing, and contain a provision that the debtor shall be notified, as provided in chapter 198, § 5, of the time and place of any sale to be made on foreclosure at least 7 days before such sale. Ibid. c. 102, § 53.

A vendee under a sale made on condition that title shall not pass until payment of the price within 15 days after the vendor takes possession for default may redeem by paying the unpaid balance, with interest, charges, and expenses. Ibid. c. 198, § 11. Certain formalities are prescribed for conditional sales of furniture and household effects. Ibid. c. 198, §§ 12, 13.

Mortgage of Personal Property

Know all men by these presents that ———, of ———, in consideration of ——— dollars paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said ——— the following goods and chattels, namely (*description*).

To have and to hold all and singular the said goods and chattels to the said ———, and ——— executors, administrators, and assigns, to their own use and behoof forever.

And ——— hereby covenant with the vendee that ——— the lawful owner of the said goods and chattels; that they are free from all incumbrances; that ——— have good right to sell the same as aforesaid; and that ——— will warrant and defend the same against the lawful claims and demands of all persons:

Provided, nevertheless, that if ———, or ——— executors, administrators, or assigns, shall pay unto the vendee, or ——— executors, administrators, or assigns, the sum of ——— dollars in ——— from this date, with interest as stated in ——— note of even date signed by ———, and until such payment shall keep the said goods and chattels insured against fire in a sum not less than ——— dollars for the benefit of the vendee,

and ——— executors, administrators, and assigns, in such form and in such insurance companies as they shall approve, shall not waste or destroy the said goods and chattels, nor suffer them or any part thereof to be attached on mesne process, and shall not, except with the consent in writing of the vendee or ——— representatives, attempt to sell or to remove from ——— the same or any part thereof, then this deed, as also the aforesaid note shall be void.

But upon any default in the performance or observance of the foregoing condition, the vendee, or ——— executors, administrators, or assigns, may sell the said goods and chattels at public auction, first giving ——— days' notice in writing of the time and place of sale to ——— or ——— representatives, or publishing such notice once a week for three successive weeks in some one newspaper published in said ———. And out of the money arising from such sale the vendee, or ——— representatives, shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by ——— or them in relation to the said property, or to discharge any claims or liens of third persons affecting the same, rendering the surplus, if any, to ———, or ——— executors, administrators, or assigns.

And it is agreed that the vendee, or ——— executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid, and that until default in the performance or observance of the condition of this deed ———, and ——— executors, administrators, and assigns, may retain possession of the above-mortgaged property, and may use and enjoy the same, but after such default the vendee or those claiming under ——— may take immediate possession of said property, and for that purpose may, so far as ——— can give authority therefor, enter

upon any premises on which said property or any part thereof may be situated, and remove the same therefrom.

In witness whereof ———, the said ———, hereunto set
——— hand— and seal— this ——— day of ———.

Assignment of Mortgage

Know all men by these presents that I, ———, of ———, the mortgagee named in a certain mortgage of personal property given by ———, of ———, to me, dated (*etc.*), and recorded on the records of the ——— of ——— with the records of mortgages of personal property, book ———, page ———, in consideration of ——— dollars, paid by ———, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said ——— the said mortgage deed, the note and claim thereby secured, and all ——— right, title, and interest in the personal property thereby conveyed.

In witness, *etc.*

Discharge of Mortgage

Know all men by these presents that I, ——— of ———, the mortgagee named in a certain mortgage of personal property given by ———, of ———, to me, dated (*etc.*), and recorded in records of mortgages of personal property in the clerk's office of the ——— of ———, book ———, page ———, do hereby acknowledge that ——— have received from ———, the mortgagor named in said mortgage, full payment and satisfaction of the same; and in consideration thereof ——— do hereby cancel and discharge said mortgage, and release unto the said ——— the personal property thereby sold and transferred.

In witness, *etc.*

MICHIGAN

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, not accompanied by immediate delivery and followed by actual and continued change of possession, is absolutely void as against creditors of the mortgagor and subsequent purchasers and mortgagees in good faith, unless the mortgage or a copy be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the goods or chattels are located, and also where he resides, or, if the mortgagor is a nonresident of the state, where the property is: Provided, that in the case of corporations engaged in transporting passengers or freight or conveying electricity, gas, or telephonic or telegraphic communications it is sufficient to file a copy of the mortgage with the register of deeds of each county through which lines or property thereof passes, and such mortgage requires no affidavit of renewal; and unless the mortgagor named in the mortgage or conveyance, or some person for him having knowledge of the facts, before filing the same, make and annex thereto an affidavit setting forth that the consideration of said instrument was actual and adequate, and that the same was given in good faith for the purposes in such instrument set forth, no officer shall receive or file the instrument until such affidavit is made and annexed. Comp. Laws 1897, § 9523, as amend. 1905, Act 258, 1907, Act 332.

Every such mortgage ceases to be valid, as against the creditors of the person making it, or subsequent purchasers and mortgagees in good faith, after one year from such filing, unless within 30 days next preceding the expiration of the year the mortgagee, his agent or attorney, make and annex to the instrument or copy on file, an affidavit setting forth the interest which the mortgagee has, by virtue of said mortgage, in the property therein mentioned; upon which affidavit the township or city clerk shall indorse the time when the same was filed: Provided, that such affidavit being made and filed before any purchase of such property, or other mortgage received or lien obtained thereon in good faith, is as valid to continue in effect such mortgage made and filed within the period above provided. Comp. Laws 1897, § 9526. The effect of such affidavit does not continue beyond one year from the time when the mortgage would otherwise cease to be valid,

as against subsequent purchasers or mortgagees in good faith; but within 30 days next preceding the time when the mortgage would otherwise cease to be valid a similar affidavit may be filed and annexed, with the like effect. Ibid. § 9527.

The mortgage may be discharged by entry on the book in the filing office or by instrument of release duly acknowledged and filed. Ibid. § 9531.

The wife must join in a mortgage of exempt property, subject to certain exceptions. Ibid. § 10322.

Chattel Mortgage

Know all men by these presents that ———, of the first part, being justly indebted unto ———, of the second part, in the sum of ——— dollars, ha— for the purpose of securing payment of said debt, and the interest thereon, granted, bargained, sold, and mortgaged, and by these presents do— grant, bargain, sell, and mortgage, unto the said ———, the following goods, chattels, and personal property, to wit (*description*), which said above-described goods, chattels, and property, at the date thereof, are situated at ———, in the ——— of ———, ——— county, Michigan, and are free and clear from all liens, conveyances, incumbrances, and levies, and for a valuable consideration the said part— of the first part hereby warrant— the above representations to be true.

To have and to hold the same forever: Provided, always, and the conditions of these presents is such, that if the said ——— shall pay or cause to be paid to the said part— of the second part the said sum of ——— dollars, being the debt aforesaid, with interest at the rate of ——— per cent. per annum, as follows (*etc.*), according to the terms of ——— promissory note—, bearing even date herewith, executed by said ——— to said part— of the second part, and to which this mortgage is collateral security, then this mortgage and said notes shall be void and of no effect. And ———, the said ———, agree— to pay the same accordingly.

But if default be made in such payment, the said ——— hereby authorized to, and shall sell at public auction, after the like notice as is required by law for constables' sales, the goods, chattels, and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest and reasonable expenses, and to retain the same out of the proceeds of such sale, the overplus or residue, if any, to belong and to be returned to ———.

And the said ——— hereby authorized at any time when ——— shall deem ——— insecure, or if the said part— of the first part shall sell, assign, or dispose of, or attempt to sell, assign, or dispose of, the whole or any part of the said goods and chattels, or remove or attempt to remove the whole or any part thereof from the said ——— without the written assent of the part— of the second part, then and from thenceforth it shall and may be lawful for the said part— of the second part, ——— executors, administrators, or assigns, or his, her, or their authorized agent, to enter upon the premises of the said part— of the first part, or any place or places where the said goods and chattels, or any part thereof, may be, and take possession thereof, and the same retain in some convenient place, at the risk and expense of ———, until the said sum of money shall become due, as aforesaid, and then to dispose of the same in the manner above specified.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— and seal— the ——— day of ———, in the year ———.

Signed, sealed, and delivered in presence of ———.

(Signatures and seals.)

Affidavit

STATE OF MICHIGAN, }
County of _____. } ss.

_____, of _____, being duly sworn, deposes and says that —he is (*or*, one of; *or*, the attorney of) the mortgagor—named in the within and foregoing chattel mortgage, that the consideration of said chattel mortgage was actual and adequate, and that said chattel mortgage was given in good faith for the purpose therein set forth, and that this deponent has knowledge of these facts, and makes this affidavit for and on behalf of himself (*or*, said mortgagor).

Subscribed and sworn to, *etc.*

(*Signature.*)

Renewal Affidavit

STATE OF MICHIGAN, }
County of _____. } ss.

_____, of _____, being duly sworn, deposes and says that he is the owner of a certain chattel mortgage to which (*or*, to a true copy of which) this affidavit is annexed, given by _____ to _____, dated the _____ day of _____, A. D. 19—, and filed in the office of the city (*or*, township) clerk of the _____ of _____, in said county, on the _____ day of _____, A. D. 19—, at _____ o'clock — m., that there is now due and remaining unpaid on said chattel mortgage the sum of _____ dollars, and interest from _____, A. D. 19—, at the rate of _____ per cent. per annum, that the interest of this deponent in the chattels described in said chattel mortgage remains unchanged, and is hereby renewed for the amount above written, and further this deponent says not.

Subscribed and sworn to, *etc.*

(*Signature.*)

MINNESOTA

A mortgage of personal property is void as against creditors of the mortgagor and purchasers and incumbrancers in good faith, unless executed in good faith and accompanied by immediate delivery, and followed by actual and continued changes of possession; or, in lieu thereof, unless the mortgage be attested by two witnesses and duly acknowledged, and be filed, except in cities of more than 50,000 inhabitants, with the register of deeds of the county in which the mortgagor, if a resident of the state, resides, or, if he be a nonresident, in the county in which the property is then situate, or in such cities, be filed with the clerk or recorder of the municipality in which the mortgagor, if a resident of the state, resides, or if he be a nonresident, in which the property is then situate. Duplicates of the mortgage or copies certified by the officer with whom the original is filed may be filed in any other place where part of the property was situated when the mortgage was made. Gen. St. 1913, §§ 6966, 6967, 6985, 6986, 6993.

The mortgage, when filed, is notice to all persons. Its lien continues until the debt secured is paid or barred, but as against creditors and purchasers ceases six years after filing, unless the debt is not then due by its terms, in which case it continues two years after maturity. Ibid. § 6969.

On performance of the conditions the mortgagee must file satisfaction, which need not be witnessed or acknowledged, and give a duplicate to the owner of the property. Ibid. § 6971.

In mortgages of household furniture not exceeding \$500 and certain other exempt property husband and wife should join. Ibid. § 6970.

A provision in a mortgage on crops mortgaging or conveying any crop to be grown later than during the season beginning May 1st after date of the mortgage is void, unless given to secure purchase price or rent of the land on which the crop is to be grown. Ibid. § 6980.

Promissory notes and contracts of sale conditioned that the title to the property for which they are given shall remain in the vendor are void as to creditors of the vendee and subsequent purchasers and mortgagees in good faith, unless the note or contract or a copy, or, if the contract be oral, a memorandum signed by the purchaser and expressing its terms and conditions, be filed as in the case of a chattel mortgage. The

instrument is then notice to all persons interested, but ceases to be such as against such creditors, purchasers, and mortgagees after six years from the date of maturity of debt. Ibid. §§ 6981-6983.

Chattel Mortgage

Know all men by these presents that I, ———, of the ——— of ———, county of ———, and state of ———, being justly indebted to ———, of ———, in the sum of ——— dollars, which is hereby confessed and acknowledged, for the purpose of securing the payment of said debt, do hereby grant, bargain, sell, and mortgage unto the said ——— all that certain personal property described as follows, to wit (*description*), all of said property being now in my possession in the ——— of ———, county of ———, and state aforesaid, and free from all incumbrance.

To have and to hold the same to the said ———, and ——— executors, administrators, and assigns, forever: Provided, always, and these presents are upon this express condition, that if I shall pay or cause to be paid unto the said ———, ——— executors, administrators, or assigns, the sum of ——— dollars in ——— from the date hereof, with interest at the rate of ——— per cent. per annum, according to the terms of a certain promissory note of even date herewith, made by me and payable to the order of the said ———, then these presents shall be void and of no effect. But if default shall be made in the payment of said sum of money or the interest thereon, or any part thereof, when the same shall become due, or if any attempt shall be made to remove, dispose of, or injure said property or any part thereof, by me or any other person, or if I do not take proper care of said property, or if said ——— shall at any time deem himself insecure, then, thereupon and thereafter it shall be lawful, and I hereby authorize said ———, ——— executors, administrators, or assigns, or ——— authorized agent, to take said property, wherever the same may be found,

and to hold or to sell the same at public sale pursuant to the statute in such case made and provided, and said ——— may become the purchaser of said property at such sale, retaining such amount as shall pay the aforesaid note and interest thereon, and an attorney's fee of ——— dollars, and such other expenses as may have been incurred, returning the surplus money, if any there may be, to me, my executors, administrators, or assigns. And so long as the conditions of this mortgage are fulfilled I am to remain in peaceful possession of said property, and in consideration thereof I agree to keep said property in as good condition as it now is, at my cost and expense.

In witness whereof I have hereunto set my hand this ——— day of ———.

MISSISSIPPI

Every writing respecting the title to personal property which by law ought to be recorded shall be recorded in the office of the clerk of the chancery court of the county in which such property may remain; and if afterwards the person claiming title under such writing permits any other person in whose possession the property may be to remove the same or any part thereof out of the county in which the writing is recorded, and does not, within 12 months after removal, cause the writing to be duly certified to the county into which the property may be removed and to be delivered to the clerk of the chancery court to be recorded, the writing, for so long as it remains without being recorded or delivered for record in the last-mentioned county, and for so much of the property as may have been removed, is void as to all purchasers for a valuable consideration without notice, and as to all creditors. Code 1906, § 2785.

All deeds of trust and mortgages whatsoever shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded; but the same as between the parties and their heirs,

and as to all subsequent purchasers with notice or without valuable consideration, shall nevertheless be valid and binding. Ibid. § 2787.

Every conveyance, covenant, agreement, bond, mortgage, and deed of trust shall take effect, as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors, only from the time when delivered to the clerk to be recorded. Ibid. § 2788.

Mortgages, deeds of trust, and other liens on personal property executed out of this state shall only be binding on such property in or when removed into this state, as against creditors and bona fide purchasers without notice, from the time such mortgage, deed of trust, or other instrument, duly acknowledged or proved, or a duly certified copy of the record thereof, shall be delivered to the proper clerk in this state for record. Ibid. § 2797.

Chattel Mortgage

In consideration of ——— dollars, I, of ———, grant, bargain, sell, convey, and warrant to ———, of ———, the following described property in the ——— of ——— (*describing location*), in the county of ———, Mississippi, to wit (*description*), in trust to secure the payment of ——— dollars, evidenced by my promissory note (*state terms*).

Now, if the said note shall be paid and satisfied according to its tenor, this deed is to be void; otherwise it is to remain in full force and effect. But in case of any default in said payment, the said ———, his legal representatives or assigns, are hereby empowered to sell said property, or so much thereof as shall be necessary to pay the amount then due, with all costs, to the best bidder for cash, at public outcry at ———, after advertising said sale for ten days by posting notices thereof in three public places in said county; any balance remaining to be paid me.

Witness my signature this ——— day of ———.

MISSOURI

No mortgage or deed of trust of personal property is valid against any other person than the parties, unless possession of the property be delivered to and retained by the mortgagee or trustee or cestui que trust, or unless such instrument be acknowledged or proved and recorded in the county in which the mortgagor or grantor resides, in the same manner as conveyances of land, or unless such instrument, or a true copy, be filed in the office of the recorder of deeds of the county where the mortgagor or grantor resides, and, in the case of the city of St. Louis, with the recorder of deeds for said city, or, where the grantor is a nonresident of the state, then in the office of the recorder of deeds of the county or city where the property was situated at the time of executing such instrument. Such mortgage or deed of trust, or copy, may be so filed, although not acknowledged. Such instrument, when acknowledged and recorded, or when the same, or a copy thereof, is filed, is notice of the contents thereof to all the world. Rev. St. 1909, § 2861. The preceding section shall avoid or defeat a contract of bottomry, respondentia, nor any transfer or assignment or hypothecation of any boat, vessel, ship, or goods, at sea or abroad, if the mortgagee, trustee, or cestui que trust take possession as soon as may be after the arrival thereof within the state. Ibid. § 2862.

If the mortgage or deed of trust, or copy, be merely filed, it ceases to be valid after five years. Ibid. § 2864.

The mortgage or deed of trust may be discharged by the mortgagee or cestui, his agent or assigns, on the margin of the index, or on presentation by the mortgagor or grantor of the original instrument and his affidavit before the recorder that it is the original of the copy on file, and that it has been fully paid and satisfied, or upon presentation or receipt of an order in writing signed by the mortgagee or cestui, attested by a justice of the peace or notary public, that it is paid and satisfied. Ibid. § 2863.

Conditional sales are void against subsequent purchasers in good faith and creditors, unless the condition be evidenced by writing executed, acknowledged, and recorded as provided for mortgages of personal property. Certain contracts of sale of railroad or street railway equipment or rolling stock are recorded in the office of the secretary of state.

Chattel Mortgage

Know all men by these presents that the undersigned ———, of ———, in consideration of the sum of ——— dollars, to ——— paid by ———, of ———, do— sell, assign, transfer, and set over unto the said ———, ——— executors, administrators, and assigns, the following described personal property, to wit (*description*), upon condition that, if ——— pay to the said ———, ——— executors, administrators, and assigns, the sum of (*state terms*), then this conveyance shall be void; otherwise to remain in full force and effect. And in case default be made in the payment of the debt above mentioned, or any part thereof, or of the interest due thereon, on any day when the same ought to be paid, then the whole sum shall, at the election of the said ———, become immediately due and payable.

The property hereby sold and conveyed to remain in ——— possession until default be made in the payment of the said debt and interest, or some part thereof; but in case of a sale or disposal or attempt to sell or dispose of said property, or a removal of or attempt to remove the same from ———, or an unreasonable depreciation in value thereof, the said ———, or ——— legal representatives, may take the said property, or any part thereof, into ——— possession.

Upon taking possession of said property, or any part thereof, either in case of default or as above provided, the said ———, or ——— legal representatives, may proceed to sell the same, or any part thereof, at public auction, to the highest bidder for cash, at ———, in the ——— of ———, county of ———, and state of Missouri, first having given ——— days' public notice of the time, terms, and place of sale, and property to be sold, by publication thereof in some newspaper of general circulation printed and published at said ———, and after satisfying the necessary costs, charges, and expenses in-

curred by ———, and paying said debt and interest out of the proceeds of such sale, ——— shall pay over the surplus, if any, to ———, or ——— legal representatives.

In witness whereof ——— have hereunto set ——— hand—
this ——— day of ———.

MONTANA

Any interest in personal property which is capable of being transferred may be mortgaged. Laws 1913, c. 86, § 1. A mortgage of personal property must be signed and acknowledged by the mortgagor, and have attached thereto the affidavit of the mortgagee, his agent, attorney, or other representative, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors. One of two or more mortgagees, copartners or otherwise, may make such affidavit on behalf of all. Ibid. § 2. One member of a firm of general partners may execute a mortgage on behalf of the firm, to secure all its existing indebtedness. In case of a mortgagee corporation, the president, vice president, secretary, assistant secretary, cashier, or general manager may execute the mortgage or make the affidavit. Ibid. § 3. The mortgage, with the affidavit, or a copy thereof certified to be correct by the officer before whom the same was acknowledged or verified, or by the county clerk and recorder with whom it is filed, must be filed in the office of the county clerk and recorder of the county where the property was situated at the time of the execution of the mortgage. Ibid. § 4. The mortgage ceases to be valid as against creditors of the mortgagor and subsequent purchasers or incumbrancers in good faith after the expiration of two years and sixty days from the filing thereof, unless renewed. Ibid. § 5. A mortgage may be renewed at any time within sixty days after the expiration of two years from the date of filing the same in case the debt or obligation or any part thereof be unpaid or unfulfilled, by filing an affidavit of the mortgagee or his assignee showing the date of such mortgage, the names of the mortgagor and mortgagee, the date of filing the same, and the amount of the debt justly owing at the date of the making of such affidavit or the condition of the obligation then unfulfilled, and that such mortgage was neither made nor renewed to hinder, delay, or defraud creditors or subsequent mort-

gagees of the mortgagor and mortgagee. Such affidavit may be made by one mortgagee or assignee on behalf of all. In case of absence of the mortgagee or his assignee from the county where the mortgage is filed, the affidavit may be made by his agent or attorney or other representative. It may be made in behalf of a corporation by one of the officers above mentioned, and, if no such officer is within such county, by the agent, attorney or other representative of such corporation. The renewal continues in force for three years from the date of filing the affidavit. Ibid. § 6. The filing of the renewal affidavit does not extend the time of the maturity of the debt or the execution of an obligation secured. Ibid. § 7. A subsequent mortgagee may pay the prior mortgage and be subrogated to the rights of the prior mortgagee. Ibid. § 8. The foregoing provisions extend to all such bills of sale, deeds of trust, and other conveyances of personal property as have the effect of a mortgage or lien thereon. Ibid. § 11. The mortgage may be foreclosed like one of real property, but it is lawful to insert a clause authorizing the sheriff of the county in which said property or any part thereof may be to execute the power of sale therein granted. Ibid. § 12. The mortgage may be satisfied by an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, indorsed on the mortgage or copy filed. Ibid. § 15. A mortgage may be given upon a growing crop, or a crop to be grown, and the lien thereon continues after severance, whether remaining in its original state or threshed or otherwise prepared for market; but the lien attaches only to crops next maturing after the execution of such mortgage, except in case of mortgages to secure the purchase price of rental of the land. Ibid. § 16.

Chattel Mortgage

This mortgage, made the _____ day of _____, A. D. _____, by _____, of _____, in the county of _____, in the state of Montana, mortgagor—, to _____, of _____, in the county of _____, in the state aforesaid, mortgagee—:

Witnesseth that the mortgagor— mortgage— to the mortgagee— the following described personal property, to wit (*description*), which said property is now in the _____, in the county _____, and state aforesaid, as security for the pay-

ment to the said mortgagee— of the sum of ——— dollars, on the ———, day of ———, according to the terms of a certain promissory note, which is in words and figures following, to wit (*set out copy*).

And this mortgage shall be void if such payment is made in accordance with the terms of said promissory note.

But in case default is made in the payment of the principal or interest as provided in said promissory note, the mortgagee—, ——— legal representatives and assigns, are, or the sheriff of any county in which the above-described property or any part thereof may be, is hereby empowered and authorized to sell the said property or any part thereof, in the manner prescribed by law, and out of the money arising from such sale to retain the said principal and interest, together with the cost and charges of making such sale, and the overplus, if any, shall be paid by the party making such sale on demand to the mortgagor—, ——— legal representatives or assigns. In case the said power of sale shall be executed by a sheriff, as above authorized, then such sale shall be advertised by such sheriff by posting notices in five public places in said county, at least ——— days prior to such sale, pursuant to the statute in such case provided.

It is further provided that the mortgagor—, ——— legal representatives or assigns, shall have the right to remain in possession of and carefully use all of the above-described property until default be made herein by the mortgagor—: Provided, however, that if default be made in the payment of the principal or interest as provided in said promissory note, or if prior to the maturity of said indebtedness the said property or any part thereof shall be attached, seized, or levied upon or at the instance of any creditor of the mortgagor—, or claimed by any other person, or if any person shall remove or attempt to remove the said property or any part thereof from the said county of ———, or shall conceal, make away with, sell, or

in any manner dispose of the said property or any part thereof, or shall attempt so to do, or if the mortgagee— shall at any time consider the possession of the said property or any part thereof essential to the security of the payment of said promissory note, then and in any such event the mortgagee—, ——— legal representatives or assigns, or his or their agent or attorney, or such sheriff, shall have the right to the immediate possession of the said property and the whole or any part thereof, and to take and recover such possession from any person or persons having or claiming the same with or without suit or process, and for that purpose may enter upon any premises where the said property or any part thereof may be found, and may at his or their option regard the debt secured by this mortgage due, and may thereon proceed and sell such property as above provided, and apply the proceeds of sale to the satisfaction of said debt as above provided. The exhibition of this mortgage or a copy thereof shall be sufficient proof that any person claiming to act for the mortgagee— is duly constituted agent or attorney to do whatsoever is herein authorized to be done by or on behalf of the mortgagee—, ——— legal representatives or assigns.

In witness, *etc.*

Affidavit

STATE OF MONTANA, }
County of ———. } ss.

———, the mortgagee named in the foregoing mortgage of personal property, being duly sworn, says: That the said mortgage is made in good faith, to secure the amount named therein, and without any design to hinder, delay, or defraud creditors.

Subscribed and sworn to before me this ——— day of ———.

Notary Public for the State of Montana, residing at ———.

My commission expires ———.

NEBRASKA

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, not accompanied by immediate delivery and followed by actual and continued change of possession is absolutely void as against the creditor of the mortgagor, and as against subsequent purchasers and mortgagees, in good faith, unless the mortgage, or a true copy thereof, be filed in the office of the county clerk of the county where the mortgagor resides, or, in case he is a nonresident of the state, of the county where the property is at the time of executing the mortgage. Such instrument may be so filed, although not acknowledged, unless upon household goods, in which case it must be executed and acknowledged by both husband and wife, in the same manner as a conveyance of real estate. Comp. St. 1911, § 3647.

The mortgage ceases to be valid against such creditors, purchasers, and mortgagees after five years from the filing thereof. Ibid. § 3649.

Satisfaction may be by entry by the mortgagee, agent, or assignee on the margin of the index, or by the county clerk on presentation of a receipt or order, signed by the mortgagee and attested by a justice of the peace or some officer having a seal. Ibid. § 3648.

No sale, contract, or lease wherein the transfer of title or ownership of personal property is made to depend upon any condition is valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease without notice, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county within which such vendee or lessee resides. Such copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor and lessee, or description of the property transferred, and the full and true interest of the vendor or lessor therein. All such sales and transfers cease to be valid against purchasers on good faith or judgment or attaching creditors without notice at the expiration of five years, unless such vendor or lessor shall, within thirty days prior to the expiration of five years from the date thereof, file a copy thereof, verified as aforesaid, in the office of said clerk, and the

vendor or lessor may preserve the validity of the sale or transfer by an annual refiling in the manner as aforesaid of such copy. Ibid. § 3659.

Chattel Mortgage

Know all men by these presents that I, ———, of the county of ———, and state of ———, in consideration of the sum of ——— dollars, to me in hand paid by ———, of ———, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators, and assigns, the following goods, chattels, and property, to wit (*description*), which chattels are now in my possession, are owned by me, and free from incumbrance in all respects; to have and to hold the same forever. And I will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if I shall pay to the said party of the second part, his representatives or assigns, promissory notes dated ———, and described as follows, to wit (*describe notes*), according to the tenor thereof, then these presents to be void; otherwise in full force.

And I, the said ———, do hereby covenant and agree to and with the said party of the second part that in case of default made in the payment of the above-mentioned promissory notes, or in case of my attempting to dispose of or remove from said county of ——— the aforesaid goods and chattels, or any part thereof, or if at any time the said mortgagee, or his assigns, should feel unsafe or insecure, then and in that case it shall be lawful for the said mortgagee, or his assigns, by himself or agent, to take immediate possession of said goods and chattels, wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with

all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

Said sale to take place at ———, in the county of ———, and state of Nebraska, after giving at least twenty days' notice of such sale, by advertisement published in some newspaper printed in the county in which such sale is to take place, or, in case no newspapers are printed therein, by posting up notices in at least five public places in said county, two of which shall be in the precinct where the mortgaged property is to be offered for sale.

Witness my hand this ——— day of ———, ———.

NEVADA

No mortgage of personal property is valid for any purpose against any other person than the parties, unless possession be delivered to and retained by the mortgagee, or unless the mortgage be recorded in the office of the county recorder of the county where the property is situated, and also in the county where the mortgagor resides. A mortgage upon personal property, including growing crops, executed, acknowledged, and recorded, is valid against all third parties without such delivery of possession: Provided, that no such mortgage is valid for any purpose as against other than the parties thereto unless there be appended or annexed thereto the affidavits of the mortgagor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith, and given for a debt actually owing from the mortgagor, stating the amount and character of such debt, and that the same is not made to hinder, delay, or defraud any creditor of the mortgagor. The lien of a mortgagee on a growing crop continues until after the crop is harvested and threshed or baled, or otherwise prepared for market, and delivered to the mortgagee or his order: Provided, that a chattel mortgage on a growing crop may be executed as well before as after the crop is planted, and, when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of

the parties that the same shall take effect upon the crops when planted. All chattel mortgages shall be canceled and discharged in the same manner as mortgages on real property are canceled and discharged. No chattel mortgage shall be given or be valid for a less sum than \$100. Rev. Laws 1912, § 1080.

Chattel Mortgage

This mortgage, made the _____ day of _____, by _____, of _____, mortgagor, to _____, of _____, mortgagee, witnesseth that the said mortgagor mortgages to the said mortgagee all that certain personal property situated and described as follows, to wit (*description*), as security for the payment to the said mortgagee of _____ dollars, on the _____ day of _____, with interest thereon at the rate of _____ per cent. per annum, according to the terms and conditions of a certain promissory note dated _____, and in the words and figures following, to wit (*set out copy*).

It is also agreed that, if the mortgagor shall fail to make any payment as in the said promissory note provided, then the mortgagee may take possession of the said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount in said note specified, and all costs of sale, including counsel fees not exceeding _____ per cent. upon the amount due, paying the surplus to the said mortgagor.

In witness whereof the said party of the first part has hereunto set his hand the day and year first above written.

Affidavit

STATE OF NEVADA, }
County of ———. } ss.

———, mortgagor— in the foregoing mortgage named, and
———, the mortgagee— in said mortgage named, being duly
sworn, each for ———self, deposes and says that the afore-
said mortgage is made in good faith and given for a debt ac-
tually owing from the mortgagor—, and the amount of such
debt is \$———, and the character of said debt is ———, and
the same is not made to hinder, delay, or defraud any cred-
itor— of the mortgagor—. Subscribed and sworn to this
——— day of ———, 19—, at the county of———.

NEW HAMPSHIRE

Personal property and crops of every description, whether
the same have or have not come to maturity, are subject to
mortgage agreeably to the provisions of this chapter. Pub.
St. 1901, c. 140, § 1.

Possession of the property must be delivered to and be re-
tained by the mortgagee, or the mortgage must be recorded in
the office of the clerk of the town in which the mortgagor re-
sides at the time of making the same. Ibid. § 2.

Mortgages may be recorded in unincorporated places which
may be required to pay a public tax; and the clerks thereof
are required to record the same. Ibid. § 3. If there is no such
clerk, the mortgage may be recorded by the clerk of the town
or place adjoining the unincorporated place paying the great-
est proportion of the state tax. Ibid. § 4. When the mort-
gagor resides out of the state at the time of making the mort-
gage, it shall be recorded in the town in which the property is
situate. Ibid. § 5.

Each mortgagor and mortgagee shall make and subscribe
an affidavit in substance as follows:

We severally swear that the foregoing mortgage is made for
the purpose of securing the debt specified in the condition
thereof, and for no other purpose whatever, and that said debt

was not created for the purpose of enabling the mortgagor to execute said mortgage, but is a just debt, honestly due and owing from the mortgagor to the mortgagee.

Ibid. § 6.

Where copartners are parties, the affidavit may be made and subscribed by either in behalf of the firm. Ibid. § 7. Where a corporation is a party, the affidavit may be made and subscribed by any director, or by any person authorized by the corporation to make or to receive the mortgage. Ibid. § 8. If the mortgage is given to indemnify the mortgagee against any liability assumed, or to secure the fulfillment of any agreement other than for the payment of a debt due from the mortgagor to the mortgagee, such liability or agreement must be stated truly and specifically in the condition of the mortgage, and the affidavits so far varied as to verify the validity, truth, and justice of such liability or agreement. Ibid. § 9. Every such affidavit, with the certificate of the justice who administered the oath, must be made upon or appended to the mortgage, and be recorded therewith. Ibid. § 10.

No such mortgage shall be valid against any person except the mortgagor, his executors and administrators, unless possession is delivered or the mortgage is sworn to and recorded. Ibid. § 12.

No mortgagor shall sell or pledge any of the mortgaged property without the consent of the mortgagee, in writing, indorsed on the mortgage and upon the margin of the record. Ibid. § 13. No mortgagor shall execute a subsequent mortgage while the property is subject to a previous mortgage given by him, unless the fact of its existence is set forth in the subsequent mortgage. Ibid. § 14.

Nothing in this chapter shall effect any transfer of property under bottomry or respondentia bonds, or of any ships or goods at sea, or abroad, if the mortgagee shall take possession thereof as soon as may be after their arrival in this state. Ibid. § 17.

No lien reserved on personal property sold conditionally and passing into the hands of the conditional purchaser, except a lien upon household goods created by a lease thereof, containing an option in favor of the lessee to purchase the same at a time specified, is valid against attaching creditors or subsequent purchasers without notice, unless the vendor takes a written memorandum, signed by the purchaser, witnessing the

lien, the sum due thereon, and containing an affidavit as provided in the following section, and causes such memorandum to be recorded in the town clerk's office of the town: (1) Where the purchaser resides, if within this state; or (2) where the vendor resides, if within this state, and the purchaser does not reside in the state; or (3) where the property is situated, if neither purchaser nor vendor resides in the state. Ibid. § 23. Each vendor and purchaser shall make and subscribe an affidavit in substance as follows:

We severally swear that the foregoing memorandum is made for the purpose of witnessing the lien and the sum due thereon as specified in said memorandum, and for no other purpose whatever, and that said lien and the sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum stated to be due thereon is honestly due thereon and owing from the purchaser to the vendor.

Ibid. § 24.

When copartners or corporations are parties to such a memorandum, the affidavit may be made and subscribed as in case of mortgages of personal property. Ibid. § 25.

If the record required by section 23 is made within 20 days after the property is delivered, the lien reserved is valid against all attaching creditors and purchasers; but if it is not made until after the expiration of 20 days, it is valid against those attaching creditors and purchasers only who become such after the record. Ibid. § 26.

Mortgage of Personal Property

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars, to me paid by ———, of ———, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and do by these presents grant, bargain, and sell, unto the said ———, all the goods, chattels, wares, effects, and merchandise described as follows (*description*).

To have and to hold the same unto the said grantee, his executors, administrators, and assigns, forever: Provided, nevertheless, that if I, or my executors, administrators, or assigns, shall pay or cause to be paid unto the said ———, or his executors, or administrators, the sum of ——— dollars in ——— from the date hereof, with interest at the rate of ——— per cent. per annum, then these presents shall be void. And I have put the said grantee in full possession of said property, by delivering to him this deed in the name of the whole.

And it is agreed by the parties that, until default of performance of said condition, it shall be lawful for said property to remain in possession of said grantor, liable, however, to be taken and removed by said grantee, as well before as after said default; and for that purpose said grantee, his executors, administrators, or assigns, may forcibly, and without judgment of law, enter into the dwelling house of the said grantor, or wherever said property may be situated, and remove the same at pleasure.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

Signed, sealed and delivered in presence of us.

NEW JERSEY

Every chattel mortgage vests in the mortgagee or owner thereof the right to the possession of the chattels described, so far as necessary for the purpose of preventing their removal out of the county wherein they were at the time of execution or delivery of the mortgage, and of recovering such chattels in case of such removal. Comp. St. 1910, p. 463, § 1. When such chattels are so removed by any party and recovered by such mortgagee or owner by legal proceedings, or when such removal is prevented by like proceedings, the court may regulate the disposition of such chattels and prescribe such terms for their possession by any person interested as will protect the rights of such mortgagee or owner. Ibid. p. 463, § 2. The above provisions do not apply to any vessel, rolling stock

of railroads, or to any chattels which, in the ordinary use thereof at the time of the execution of the mortgage, are taken from time to time out of the county wherein they were when so mortgaged. Ibid. p. 463, § 3.

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, not accompanied by immediate delivery and followed by actual and continued change of possession, is absolutely void as against the creditors of the mortgagor and subsequent purchasers and mortgagees in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by the holder of the mortgage, his agent or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, be recorded as directed in the succeeding section. But nothing in this act applies to any mortgage of personal property included in a mortgage of franchise and real estate made by a railroad company, and recorded or registered as a mortgage of real estate in every county in which such railroad or any part of it is located, and it shall not be necessary to record as a chattel mortgage any such mortgage. Ibid. p. 463, § 4. A chattel mortgage shall be recorded in the clerk's office of the county where the property so mortgaged shall be at the time of the execution thereof, or, in any county where the office of the register of deeds and mortgages exists, in the office of such register. Ibid. p. 468, § 5. No such mortgage shall be recorded unless its execution be first acknowledged or proved, and such acknowledgment or proof certified thereon in the manner prescribed. Ibid. p. 468, § 6.

A chattel mortgage may, upon application to the judge of the circuit court or of the court of common pleas of the county wherein the mortgage is recorded, be canceled of record by the order of the judge in the same manner as a mortgage upon real estate by order of a judge of the said courts. Ibid. p. 470, § 11.

A chattel mortgage, bill of conditional sale, conveyance, or other instrument of the nature of a chattel mortgage made upon or for household goods and furniture in the use and possession of any family, not given to secure the purchase money, must be signed, sealed, executed, and acknowledged by the husband and wife of the family, and recorded in the county where such household goods and furniture are at the time of the execution. Ibid. p. 469, § 10.

In every contract for the conditional sale of goods and chattels, accompanied by actual delivery and followed by actual and continued change of possession of the things contracted

to be sold, all conditions and reservations providing that the ownership thereof is to remain in the vendor, or any person other than the one contracting to buy, until the same are paid for, or until the occurring of any future event or contingency, is absolutely void as against the judgment creditors of the persons so contracting to buy the same and subsequent purchasers and mortgagees thereof in good faith, unless the contract, with the conditions and reservations, be recorded in the clerk's office of the county wherein the person contracting to buy, if a resident of the state, shall reside at the time of the execution thereof, and, if not a resident, then in the clerk's office of the county where the property conditionally bought is at the time of the execution of such instrument: Provided that in counties where the office of register of deeds exists the contract should be recorded there. To entitle them to record, the contracts must be acknowledged or proved, and when recorded they are valid as against such creditors, purchasers, and mortgagees from the time of recording until the record be canceled, as in the case of real estate mortgages. P. L. 1889, p. 421, as amend. P. L. 1895, p. 302.

Chattel Mortgage

Know all men by these presents, that I, ———, of the ——— of ———, in the county of ———, and state of ———, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of one dollar, to me duly paid by ———, of the ——— of ———, county of ———, and state of ———, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part, his executors, administrators, and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in ———.

To have and to hold all and singular the said goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, forever. And I, the said party of the first part,

for myself, my heirs, executors, administrators, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, his executors, administrators, and assigns, against me the said party of the first part, and against all and every person and persons whomsoever, shall and will warrant and forever defend.

Upon condition that, if I, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, and assigns, the sum of ——— dollars (*state terms*), then these presents shall be void, and I, the said party of the first part, for myself, my heirs, executors, administrators, and assigns, do covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the first part shall at any time before the day of payment herein provided for remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against me, or permit or suffer any judgment to be entered up against me, then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower the said party of the second part, his executors, administrators and assigns, with the aid and assistance of any person or persons, to enter my dwelling house, store, and other premises, and such other place or places whatsoever in which the said goods and chattels or any of them are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain, and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same,

rendering the overplus (if any) unto me, the said party of the first part, my heirs, executors, administrators, or assigns.

In witness whereof I, the said party of the first part, have hereunto set my hand and seal the —— day of ——.

Signed, sealed, and delivered in the presence of.

(Signature and seal.)

STATE OF ——, }
County of ——, } ss.

——, the mortgagee in the foregoing mortgage named, being duly sworn on his oath, says that the true consideration of the said mortgage is as follows, viz. *(state consideration)*. The deponent further says that there is due on said mortgage the sum of —— dollars, besides lawful interest thereon from the —— day of ——.

(Signature of mortgagee.)

Sworn and subscribed this —— day of ——, A. D., 19—, before me.

(Signature and title of officer.)

SCHEDULE

The following is the schedule referred to in the foregoing mortgage *(description)*.

NEW MEXICO

Personal property of every description, except growing crops, until the same are matured and gathered, is subject to mortgage. A mortgage on such growing crops is void. Comp. Laws 1897, § 2360.

Chattel mortgages, or other instruments having the effect of a mortgage or lien upon personal property, must be acknowledged and recorded in the same manner as conveyances affecting real estate. Ibid. § 2361.

Every mortgage so filed is void as against the creditors of the person making the same, or against subsequent purchasers,

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or mortgagees in good faith, after the expiration of one year after the filing thereof, unless within 30 days next preceding the expiration of one year from such filing, and each year thereafter, the mortgagee, his agent or attorney, make an affidavit exhibiting the interest of the mortgagee in the property at the time last aforesaid, claimed by virtue of such mortgage, and, if said mortgage is to secure the payment of money, the amount yet due and unpaid. Such affidavit shall be attached to and filed with the instrument or copy on file to which it relates. Ibid. § 2362. If such affidavit be made and filed before any purchase of such mortgaged property be made, or other mortgage deposited, or lien obtained thereon in good faith, it is as valid to continue in effect such mortgage as if made and filed within the period above provided. Ibid. § 2363.

In the absence of stipulation to the contrary, the mortgagor has the right of possession of the property. Ibid. § 2365.

Chattel Mortgage

Know all men by these presents that I, ———, of ——— of ———, in the county of ———, and state of New Mexico, party of the first part, for and in consideration of the sum of ——— dollars to me in hand paid by ———, of ———, party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell unto the said party of the second part the following goods and chattels, viz. (*description*).

To have and to hold, all and singular, the said goods and chattels unto the said party of the second part, his executors, administrators, and assigns forever. And the said party of the first part, for his heirs, executors, and administrators, doth hereby covenant to and with the said party of the second part, and his executors, administrators, and assigns, that he is lawfully possessed of the same goods and chattels as of his own property; that the same are free from all incumbrances; and that he will warrant and defend the same to the said party of the second part, and his executors, administrators, and assigns against the lawful claims and demands of all persons:

Provided, nevertheless, that if the said party of the first part, his heirs, executors, and administrators, shall well and truly pay to the party of the second part, his executors, administrators, and assigns, for the redemption of the above-bargained goods and chattels the just and full sum of ——— dollars (*state terms*), then these presents shall be void; otherwise to remain in full force and virtue:

And provided, further, that until default be made by the said party of the first part in the performance of the condition. aforesaid, it shall and may be lawful for him to retain possession of the said goods and chattels, and to use and enjoy the same; but in case default should be made in the payment of the said ——— or the interest therein mentioned according to ——— tenor, or if said goods and chattels, or any part thereof, shall be attached or claimed, by any other person or persons at any time before payment, or if said party of the first part shall attempt to sell or remove the same without the authority or permission of the said party of the second part, in writing expressed, then it shall and may be lawful for the said party of the second part, his executors, administrators, or assigns, to take immediate and full possession of the whole of said goods and chattels to his own use, and sell the same in manner and form as now prescribed by law, and out of the money arising from such sale to pay said principal sum, and interest, and all charges touching the same, rendering and paying the surplus, if any, in accordance with the form of the statute in such case made and provided.

In witness whereof the said party of the first part has hereunto set his hand this ——— day of ———, 19—.

NEW YORK

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, not accompanied by an immediate delivery, and followed by an actual and continued change of possession, is absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, is filed as directed in this article. Consol. Laws, c. 33, § 230. Every chattel mortgage, or an instrument intended to operate as such, or a true copy thereof, except craft navigating the canals, must be filed in the town or city where the mortgagor, if a resident of the state, resides at the time of the execution thereof, and, if not a resident, in the city or town where the property mortgaged is at the time of the execution of the mortgage. If there is more than one mortgagor, the mortgage, or a certified copy thereof, must be filed in each city or town within the state where each mortgagor resides at the time of the execution thereof. In the city of New York such instrument must be filed as follows: In the borough of Brooklyn, in the office of the register of the county of Kings; in the borough of Queens, in the office of the clerk of Queens county; in the borough of Richmond, in the office of the clerk of the county of Richmond; and in the borough of Manhattan and the borough of the Bronx, in the office of the register of the city and county of New York. In every other city or town, such instrument must be filed in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it must be filed therein. If the chattels mortgaged are in the city of New York at the time of the execution of the mortgage, the mortgage or a true copy thereof must be filed in the county where the mortgagor alleges to reside at the time of the execution of the mortgage, and in the county where the property is situated. Ibid. c. 33, § 232. Mortgages of canal boats, steam tugs, scows, or other craft, or their appurtenances, navigating the canals of the state, are filed in the office of the comptroller, and are then valid as against such creditors, purchasers, and mortgagees as long as the debt secured is enforceable. Ibid. c. 33, §§ 232, 236. Mortgages creating a lien on real and personal property, executed by a corporation as security for the payment of bonds, or by a telegraph, telephone, or electric light corporation, and

recorded as a mortgage of real property in each county where such property is located or through which the line of such telegraph, telephone, or electric light corporation runs, need not be filed or refiled as chattel mortgages. Ibid. c. 33, § 231.

A chattel mortgage, except as otherwise provided, in this article, is invalid as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless: (1) Within 30 days next preceding the expiration of each such term a statement containing a description of such mortgage, the names of the parties, the time when and place where filed, the interest of the mortgagee or any person who has succeeded to his interest in the property claimed by virtue thereof, or (2) a copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, is filed in the proper office in the city or town where the mortgagor then resided, if he is then a resident of the town or city where a mortgage or a copy thereof or such statement was last filed; if not such resident, but a resident of the state, a true copy of such mortgage, together with such statement, shall be filed in the proper office of the town or city where he then resides; and if not a resident of the state, then in the proper office of the city or town where the property so mortgaged was at the time of the execution of the mortgage. Where the chattels mortgaged were located in the city of New York at the time of the execution of the mortgage, a copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, must be filed in the same office where the original mortgage or a copy thereof was filed at the time of the execution of the same. Except in the city of New York, the officer with whom such renewal statement or copy of a mortgage is filed must on request issue to the person filing the same a receipt, in writing, which shall contain the names of the parties to the instrument filed, its date, amount, and the date and time of filing thereof. Ibid. c. 33, § 235.

Chattel mortgages are discharged by certificate signed and acknowledged by the mortgagee, his assignee or legal representatives, and filed in the proper office. Ibid. c. 33, § 238.

In contracts for the conditional sale of chattels, accompanied

by immediate delivery and followed by actual and continued change of possession, all conditions and reservations providing that ownership is to remain in the vendor or other person than the vendee until the chattels are paid for, or until the occurrence of a future event or contingency, are void as against subsequent purchasers, pledgees, or mortgagees in good faith, and as to them the sale is to be deemed absolute, unless the contract of sale, containing the conditions and reservations or a copy be filed in the town or city where the vendee resides at the time of execution of the contract, or, if he be not a resident of the state, in the town or city where the property is at such time. The instrument is filed in the several cities and towns in the respective offices above mentioned for chattel mortgages. The above provisions as to the filing and discharge of chattel mortgages apply. Every contract for the sale of chattels attached or to be attached to a building is void against subsequent purchasers or incumbrancers of the premises, unless at or before the date of delivery at such building such contract containing a description of the premises is filed with the register of the city or county, or with the county clerk (where there is no register) of the county, in which the premises are situated. Ibid. c. 41, §§ 62-64.

Chattel Mortgage

Know all men by these presents that I, ———, of ———, of the first part, for securing the payment of the indebtedness hereinafter mentioned, and in consideration of the sum of one dollar to me duly paid by ———, of ———, of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged,* have bargained and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, all the ——— and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the (store of the said party of the first part, at number ———, ——— street, in the city of ———).

To have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and

assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said party of the second part to warrant and defend all and singular of the said goods and chattels above bargained and sold unto the said party of the second part, his executors, administrators, and assigns, against him, the said party of the first part, and against all and every person or persons whomsoever. Upon condition that, if the said party of the first part shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the sum of ——— dollars and interest thereon (*state terms*), then these presents shall be void.

And the said party of the first part, for himself, his executors, administrators, and assigns, doth covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, or any part thereof, or should the said party of the second part at any time deem the security afforded by this mortgage unsafe or at any risk, then it shall and may be lawful for, and the said party of the first part, doth hereby authorize and empower, the said party of the second part, his executors, administrators, or assigns, with the aid and assistance of any person or persons, to enter upon the dwelling house, store, and other premises of the said party of the first part, and such other place or places as the said goods or chattels are or may be placed in, and take and carry away the said goods or chattels, and to sell and dispose of the same at public or private sale for the best price they can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto the said party of the first part, or his executors, administrators, or assigns.

And until default be made in the payment of the said sum of money the said party of the first part is to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same. If from any cause said property shall fail to satisfy said debt, interest, costs, and charges, the said party of the first part hereby covenants and agrees to pay the deficiency.

And it is expressly agreed by and between the parties to these presents that the said party of the first part shall and will keep the goods and chattels in this mortgage and in the annexed and subjoined schedule set forth insured against loss and damage by fire, by insurers, and in an amount approved by the said party of the second part, and assign the policy and certificates thereof to the said party of the second part and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged goods and chattels, added to the amount of the said mortgage or obligation, and secured by these presents, and payable on demand with interest at the rate ——— per cent. per annum.

In witness whereof I, the said party of the first part, have hereunto set my hand the ——— day of ———.

In the presence of

(Signature.)

SCHEDULE

Referred to in the foregoing mortgage (*describe goods and chattels*).

Assignment of Chattel Mortgage

(*Follow preceding form to the **) have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said part— of the second part, a certain chattel mortgage, bear-

ing date the —— day of ——, in the year ——, made by —— to ——, and filed in the office of the ——, county of —— on the —— day of ——, in the year ——, at —— o'clock in the ——, and the money due and to grow due thereon with the interest. To have and to hold the same unto the said part— of the second part, —— executors, administrators, and assigns, for ——, subject only to the proviso in the said chattel mortgage mentioned.

And —— do hereby make, constitute, and appoint the said part— of the second part —— true and lawful attorney, irrevocable, in —— name or otherwise, but at —— proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as —— might or could do if these presents were not made.

In witness, *etc.*

Satisfaction of Chattel Mortgage

STATE OF NEW YORK, }
County of ——, } ss.

——, of ——, doth hereby certify that a certain chattel mortgage, bearing date the —— day of ——, in the year ——, made and executed by —— to ——, and filed in the office of the ——, county of ——, on the —— day of ——, in the year ——, at —— o'clock in the ——, is paid, and I do hereby consent that the same be discharged of record.

Dated the —— day of ——, 19—.

NORTH CAROLINA

No deed of trust or mortgage for personal estate is valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor but from the registration of such instrument in the county where the donor, bargainor or mortgagor resides, or, if he reside out of the state, in the county where the personal estate, or some part of the same, is situated, or, in case of choses in action, where the donee, bargainee, or mortgagee resides. Rev. 1908, § 982.

Any person indebted to another in a sum to be secured, not exceeding at the time of executing the instrument \$300, may execute a chattel mortgage in form substantially that which follows:

Chattel Mortgage (Statutory)

I, ———, of the county of ———, in the state of North Carolina, am indebted to ———, of ——— county, in said state, in the sum of ——— dollars, for which he holds my note to be due the ——— of ———, A. D. 19—, and to secure the payment of the same I do hereby convey to him these articles of personal property, to wit, ———, but on this special trust that, if I fail to pay said debt and interest on or before the ——— day of ———, A. D. 19—, then he may sell said property, or so much thereof as may be necessary, by public auction for cash, first giving twenty days' notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me. Given under my hand and seal, this ——— day of ———, A. D. 19—. ———. (Seal.)

Ibid. § 1039.

Such mortgage is good to all intents and purposes when duly registered, but no sale thereunder shall be made without giving at least 20 days' public notice of the time and place of such sale. Ibid. § 1040.

All conveyances of household and kitchen furniture by a married man, made to secure the payment of money or other

thing of value, are void, unless the wife join and her privy examination be taken in the manner prescribed in conveyances of real estate. *Ibid.* § 1041.

All conditional sales of personal property in which the title is retained by the bargainor shall be reduced to writing and registered in the same manner and with the same legal effect as chattel mortgages, in the county where the purchaser resides, or, if he resides out of the state, in the county where the property or some part thereof is situated, or, in case of choses in action, where the donee, bargainee, or mortgagee resides. *Ibid.* § 983.

NORTH DAKOTA

A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value unless the original or an authenticated copy is filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated. *Comp. Laws 1913, § 6758.* Such filing operates as notice to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section situated in the county or counties wherein such mortgage or an authenticated copy thereof is filed. *Ibid.* § 6759. Property in transit from the possession of the mortgagee to the county of the residence of the mortgagor or to a location for use is during a reasonable time for transportation to be taken as situated in the county in which the mortgagor resides or where it is intended to be used. Property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located. *Ibid.* § 6760. A single mortgage embracing several things such or so situated that separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original authenticated by the register of deeds in whose office it is filed may be filed in any other county with the same effect as to the property therein as the original. *Ibid.* § 6761.

A mortgage of personal property ceases to be valid as against creditors of the mortgagor and subsequent purchasers or incumbrancers in good faith after the expiration of three

years from filing, except as hereinafter provided, unless within ninety days next preceding the expiration of such term a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien sworn to and subscribed by him, his agent or attorney, are filed anew in the office in which the mortgage was originally filed; and in like manner the mortgage and statement must be again filed every three years: Provided, that mortgages of the personal property belonging to street car companies, telephone companies, and telegraph companies, and trust deeds or other trust conveyances or instruments executed to secure bonds of corporations, need not be renewed. Ibid. § 6762.

A mortgage of personal property must be signed by the mortgagor in the presence of two witnesses who must sign the same as witnesses thereto, or acknowledge the execution before some official qualified to take acknowledgments. The mortgagee must surrender to the mortgagor at the time of the execution a correct copy of the original mortgage so signed, with witnesses or acknowledgment shown thereon. The mortgagor must surrender to the mortgagee a receipt which shall be attached to the original mortgage showing that the mortgagee has surrendered to him a copy of such mortgage, and said receipt must accompany the mortgage when presented to the register and filed therewith; otherwise the mortgage shall not be filed. Ibid. § 6763.

A mortgage may be canceled by the register on presentation of a receipt for the sum, money, or property secured, or an acknowledgment of satisfaction signed by the mortgagee. Ibid. § 6764. Any mortgage may be paid or satisfied before the date of maturity, providing that the full amount be tendered or delivered. Ibid. § 6769.

Mortgages containing a power of sale upon default may be foreclosed by public sale on giving the prescribed notice or by action. A mortgage on crops may be foreclosed by sale if a stipulation to that effect be in the mortgage. Stipulations waiving the statutory provisions are void. Ibid. §§ 8123-8132.

Mortgage of Personal Property (Statutory)

This mortgage made the —— day of ——, in the year ——, by A. B., of ——, by occupation ——, mortgagor, to C. D., ——, of ——, by occupation a ——, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (*here describe the property*) as security for the payment to him of ——— dollars, on (*or, before*) the ——— day of ———, in the year ———, with interest thereon (*or, security for the payment of a note or obligation, describing it, etc.*) A. B.

Ibid. § 6756.

Same—Another Form

(*Begin as in statutory form.*)

And the mortgagor hereby expressly represents and covenants that he is the sole, absolute, and exclusive owner of said property and every part thereof; that he has good right and lawful authority to mortgage the same in manner aforesaid; and that the same is free and clear of all incumbrances whatsoever.

And the mortgagor doth hereby further covenant and agree to and with the mortgagee that in case of default made in the payment of the above-mentioned sums of money or any part thereof, or in case of any attempt to dispose of or remove from the said county of ——— the aforesaid goods and chattels or any part thereof, or if the mortgagee shall at any time deem himself insecure, then and in either or any of the above cases it shall be lawful for the mortgagee, or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents, or a duly certified copy thereof, being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising and selling of said property, together with the statutory attorney's fee, the money remaining after paying said sum, if any, to be paid on demand to the mortgagor. Said sale to take place at ———, in the county of ———, and state of North Dakota, after giving the public notice pursuant to the statute in that case provided.

And the mortgagor hereby further authorizes the person conducting the sale to adjourn the same if deemed in his opinion necessary from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected therewith, and to convey absolutely all my right and title therein. If from any cause said property shall fail to satisfy said debt, interest, and charges, the mortgagor covenants and agrees to pay the deficiency. *(Signature.)*

• All reservations of the title to personal property as security for the purchase money thereof shall, when the possession of such property is delivered to the vendee, be void as to subsequent creditors without notice and purchasers and incumbrancers in good faith and for value, unless such reservation is in writing and filed and indexed as a mortgage of personal property. Ibid. § 6757.

OHIO

A mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, is absolutely void as against the creditors of the mortgagor, subsequent purchasers, and mortgagees in good faith, unless the mortgage, or a true copy thereof, be forthwith deposited as directed. Gen. Code 1910, § 8560. Such instruments must be deposited with the county recorder of the county where the mortgagor resides at the time of the execution thereof, or, if not a resident of the state, of the county in which the property is situated at the time of execution of the instrument. Ibid. § 8561.

Before the instrument is filed the mortgagee, his agent or attorney, must state thereon, under oath, the amount of the claim, and that it is just and unpaid, if given to secure payment of a sum of money only; if given to indemnify the mortgagee against a liability as surety for the mortgagor, such sworn statement shall set forth the liability and that the instrument was taken in good faith to indemnify against loss that may result therefrom. Ibid. § 8564.

Every mortgage so filed is void, as against the creditors of the person making it, or against subsequent purchasers or mort-

gagees in good faith, after the expiration of three years from the filing thereof, unless within thirty days next preceding the expiration of such three years a true copy of such mortgage, together with a statement, verified as above provided, exhibiting the interest of the mortgagee in the property at the time last aforesaid, claimed by virtue of such mortgage, is again filed in the office where the original was filed. Ibid. § 8565.

When personal property is sold to a person to be paid for in whole or part in installments, or is leased, rented, hired, or delivered to another on condition that it will belong to the person purchasing, leasing, renting, hiring, or receiving it, when the amount paid is a certain sum, or the value of the property, the title to it to remain in the vendor, lessor, renter, hirer, or deliverer thereof until such sum or the value of the property or any part thereof has been paid, such condition in regard to the title so remaining until payment shall be void as to all subsequent purchasers and mortgagees in good faith and creditors unless the conditions are evidenced by writing, signed by the purchaser, lessee, renter, hirer, or receiver thereof, and also a statement thereon, under oath, made by the person so selling, leasing, or delivering the property, his agent or attorney, of the amount of the claim, or a true copy thereof, with an affidavit that it is a copy, be deposited with the county recorder of the county where the person signing the instrument resides at the time of its execution, if a resident of the state, and, if not such resident, then with the county recorder of the county in which the property is situated at the time of the execution of the instrument. Ibid. § 8568.

Chattel Mortgage

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt of which is hereby acknowledged, do hereby bargain, sell, and convey to the said ———, his executors, administrators, and assigns, the following described goods and chattels, to wit (*description*).

The condition of this conveyance is such that, if I shall pay, or cause to be paid, to the said ———, the sum of ——— dollars (*state terms*), then this conveyance shall be void; otherwise it shall be in full force.

It is further agreed that, if default be made in the above conditions or any part thereof, or if any secreting or removal from their location, any abuse or misuse, any sale, any seizure whatever by any process of law of said goods or chattels, or of any part of them, be either made or attempted by said mortgagor, or by any person or persons claiming under him, or in behalf of either, or by or in behalf of any creditor or creditors of said mortgagor, or if from any other cause the security shall become inadequate, then said mortgagee, or successors, may take immediate possession of said property, or of any part thereof, wherever found, and sell same at public or private sale, for the highest price he or they can obtain, and pay indebtedness and expenses. And it is further agreed that said mortgagee, or successors, may insure said property for his or their benefit during the continuance of this mortgage and at the expense of the said mortgagor, the cost of said insurance to be secured by this mortgage; and, further, that in default of payment of said money, or any part thereof, then said mortgagee or successors may sell said property at public or private sale, for the highest price he or they can obtain, and shall apply the proceeds of said sale to the payment of said indebtedness and interest thereon, and of all reasonable and necessary costs, including the cost of filing, recording, and refiling this mortgage and said costs of insurance, and shall pay the residue, if any, to said mortgagor, or successors; otherwise said property is to be and remain in the peaceable possession of said mortgagor, or legal representatives.

In witness whereof I, the said ———, have hereunto set my hand this ——— day of ———.

Statement of Claim

(When Mortgage is given to Secure Money only.)

THE STATE OF _____, }
County of _____. } ss.

The undersigned makes solemn oath and says, that he is the (agent or attorney of the) within-named mortgagee; that the said mortgagee has a valid claim against the within-named mortgagor, _____, amounting to _____ dollars and _____ cents; that said claim is just and unpaid; and that the foregoing mortgage is given to secure the same.

(Deponent's signature.) _____.

Sworn to and subscribed before me, a _____ in and for said county, this _____ day of _____.

(Officer's signature.) _____.

Same

(When Mortgage is given to Indemnify Mortgagee as Surety.)

THE STATE OF _____, }
County of _____. } ss.

The undersigned makes solemn oath and says, that he is the (agent or attorney of the) within-named mortgagee; that on the _____ day of _____, A. D. 19—, the said mortgagee became surety for the within-named mortgagor, _____, on a certain _____ executed by _____ as principal and said mortgagee as security, dated (*describe the note or other instrument*); that he verily believes said claim is just and unpaid; and that the foregoing mortgage is taken in good faith to indemnify said mortgagee against any loss that may result to him from said suretyship.

(Deponent's signature.) _____.

Sworn to and subscribed, etc.

Same*(On Refiling Mortgage.)***INDORSEMENT ON REFILED MORTGAGE**

THE STATE OF ———, }
 County of ———. } ss.

————, being sworn, says that he is (one of) the within-named mortgagees (*or*, the agent *or* attorney of the within-named mortgagee; *or*, one of the firm of ———, who are the within-named mortgagees); that by virtue of the within mortgage he has a just and lawful interest as mortgagee in the property described in said mortgage (because of his liability as surety, as set forth in said mortgage), which now amounts (principal and interest) to ——— dollars; that he verily believes said amount is just and unpaid, and that said interest in said property remains unimpaired to secure said sum, with the interest and costs that may accrue, according to the terms mentioned in said mortgage.

(Deponent's signature.) ———.

Sworn to and subscribed, *etc.*

OKLAHOMA

A mortgage of personal property is void as against creditors of the mortgagor, subsequent purchasers, and incumbrancers of the property for value, unless the original or an authenticated copy be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged or any part thereof is at such time situated; or, if situated in territory attached to an organized county for judicial purposes, in the office of the register of deeds of such county. Rev. Laws 1910, § 4031. Such filing operates as notice of the mortgage to all subsequent purchasers and incumbrancers of so much of the property as is at the time mentioned located in the county or counties wherein such mortgage or copy is filed: Provided, that when a mortgaged chattel is moved into this

state, or from one county to another, any previous filing of the mortgage shall not operate as notice as against subsequent creditors, purchasers, mortgagees, or incumbrancers for longer than 120 days after such removal, but such mortgage must be refiled in the county to which the chattel is removed and in which it is permanently located. Ibid. § 4032. Property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. Property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located. Ibid. § 4033. A single mortgage embracing several things such or so situated that separate mortgages upon them would be required to be filed in different counties is only valid in respect to the things as to which it is duly filed; but a copy of the original authenticated by the register of deeds in whose office it is filed may be filed in any other county with the same effect as to the property therein as the original. Ibid. § 4034.

A mortgage ceases to be valid as against creditors of the mortgagor and subsequent purchasers or incumbrancers in good faith after the expiration of three years from filing, unless within thirty days next preceding the expiration of such term a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides, and in like manner the mortgage and statement of debt must be again filed every three years, or it ceases to be so valid. Ibid. § 4035.

The mortgage must be signed by the mortgagor. Such signature may either be attested by acknowledgment before any person authorized to take acknowledgments of deeds, or it may be signed and validated by the signature of two persons not interested therein. Ibid. § 4036.

The mortgage may contain a power of sale and stipulation for attorneys' fees.

A mortgage of personal property may be in substantially the following form:

Chattel Mortgage (Statutory)

This mortgage, made the — day of —, in the year —, by A. B., of —, by occupation a —, mortgagor, to C. D., of —, by occupation a —, mortgagee, witnesseseth:

That the mortgagor mortgages to the mortgagee (*here describe the property*), as security for the payment to him of — dollars, on (*or, before*) the — day of —, in year —, with interest thereon (*or, security for the payment of a note or obligation, describing it, etc.*). A. B.

Ibid. § 4025.

All instruments, including promissory notes, evidencing the conditional sale of personal property and retaining title in the vendor until payment of the purchase price, are void as against innocent purchasers or creditors of the vendor, unless the instrument or a copy be deposited in the office of the register of deeds of the county where the property is kept; and, when so deposited, are subject to the laws applicable to the filing of chattel mortgages. Any conditional verbal sale is void as to creditors and innocent purchasers for value.

OREGON

A mortgage or other instrument intended to operate as a mortgage of personal property alone, or with real property, shall be executed, witnessed, and acknowledged, or certified or proved, in the same manner as a conveyance of real property. Lord's Ore. Laws 1910, § 7404. Such instrument may be recorded in the office of the recorder of conveyances in counties in which such office is or may be established by law, and in other counties in the office of the county clerk, of the county where the property is situated, and of such other counties as the mortgagee may elect. If the instrument includes real property, it may be recorded in the records of mortgages of real property, and need not be recorded in the records of mortgages of personal property. Ibid. § 7405.

When mortgaged personal property is removed from the county or counties in which the mortgage is recorded, the lien

of the mortgage is suspended as to subsequent purchasers and mortgagees in good faith and for a valuable consideration from and after 30 days from the time of such removal, unless within such 30 days the mortgage be recorded in the county to which the property is removed, or the mortgagee has taken possession. Such lien remains suspended until the mortgage is recorded in the county to which the property is removed, or the property is returned to a county in which the mortgage is recorded, or the mortgagee takes possession: Provided, that a mortgagee may have his mortgage recorded in one or more counties, as he may elect, and the mortgage shall be a lien upon the property while it is in any county in which the same is recorded: And provided, further, that a mortgage on a vessel or boat of over 20 tons burden shall be recorded in the office of the collector of customs where registered, enrolled, or licensed, and need not be recorded elsewhere. Ibid. § 7406.

Every mortgage or instrument intended to operate as a mortgage of personal property, either alone or with real property, not accompanied with immediate delivery and followed by actual and continual change of possession, or not recorded, is void as against subsequent purchasers and mortgagees in good faith and for a valuable consideration. Ibid. § 7407.

The mortgage may provide the manner of foreclosure. Otherwise, on breach of condition, if the consideration does not exceed \$500, the mortgage may be foreclosed, and the property sold after the manner of an execution sale; and, if the consideration exceed \$500, the foreclosure is by action.

Chattel Mortgage

In consideration of _____ dollars to me paid by _____, of _____, I, _____, of _____, hereby bargain, sell, and convey unto said _____ the following personal property (*description*), now being in _____, county of _____, state of Oregon: Provided, nevertheless, that the payment of a certain promissory note, of which the following is substantially a copy (*insert copy*), shall render void this conveyance. But in case default shall be made in the payment of said promissory note, or any part thereof, or if said property is attempted to be removed from said _____, or be seized or attached, or levied upon, or

sold or assigned, or attempted to be sold or assigned, then said promissory note shall at once become due and payable, and this mortgage may be foreclosed in the manner provided by law for the foreclosure of such chattel mortgages as do not provide within themselves the manner in which they are to be foreclosed, and the consideration of which does not exceed the sum of five hundred dollars. But until such default I am to retain and remain in possession of said mortgaged property.

Witness my hand and seal this ——— day of ———.

All conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is thereafter so attached to any real estate as to become a fixture, are void as to any purchaser or mortgagee of such real property unless within 10 days after such personal property is placed in and becomes attached to such real property a memorandum of such sale, stating its terms and conditions, together with a brief description of such personal property so as to identify it, and signed by the vendor and vendee, with a notice indorsed thereon or attached thereto, signed by the vendor or his agent, describing such real property, be filed in the county clerk's or county recorder's office of the county wherein such property and real estate is situated. Ibid. § 7414.

PENNSYLVANIA

All iron ore mined and prepared for use, pig iron, blooms, and rolled or hammered iron in sheets, bars, or plates, iron and steel nails, steel ingots and billets, rolled or hammered steel in sheets, bars, or plates, and all boilers, engines, oil, gas, and artesian well supplies, and all steel or iron castings of every description not in place, all petroleum or coal oil, crude or refined, in tanks, barrels, reservoirs, or other receptacle in bulk, all roofing and manufactured slate, as well as all slate quarried to be used for roofing or manufactured for other uses, asphaltum blocks, including all materials used in the manufacture thereof, all manufactured cement in barrels, bags, or bins, including all materials on hand used in the manufacture thereof, may be mortgaged for any sum not less than \$100 by an instrument in writing, signed by the owner thereof, or by

his agent, and duly acknowledged before some person authorized to take acknowledgments of deeds. 1891, May 20, P. L. 102, § 1; Pepper & Lewis' Dig. p. 2835, par. 217.

Chattel Mortgage (Statutory)

To all to whom these presents shall come, greeting: Know ye that ———, indebted unto ——— in the sum of ——— dollars and ——— cents, being for ———, now, for securing the payment of the said debt and the interest from the date hereof to the said ———, do hereby sell, assign, and transfer to the said ——— all the goods, chattels, and property described in the following schedule, namely, said property now being and remaining in the possession of ———: Provided, always, and this mortgage is on the express condition, that if the said ——— shall pay to the said ——— the sum of ——— with interest, as follows, namely, ———, which said sum and interest the said ——— hereby covenant to pay, then this transfer to be void and of no effect, but in case of nonpayment of the said sum, at the time or times above mentioned, together with interest ———, then the said ——— may give to the said ———, or to the person in possession of the property claiming the same, written notice as required by law ——— intention to foreclose this mortgage for breach of the condition thereof, and, if the said sum is not then paid, the said ——— shall have full power and authority to enter upon the premises of the said party of the first part, or any other place or places where the goods and chattels aforesaid may be, to take possession of said property to sell the same according to law, and the avails, after deducting all expenses of the sale and keeping of the said property, to apply in payment of the above debt. If from any cause said property shall fail to satisfy said debt, interest, costs, and charges, the said ——— covenant and agree to pay the deficiency ———. In witness whereof ———

has hereunto set ——— hand and seal the ——— day of ———, in the year of our Lord one thousand nine hundred and ———. (Seal.)

Sealed and delivered in the presence of :
—————.

But the parties may include in the mortgage any covenant not inconsistent with the provisions of this act. 1887, April 28, P. L. 73, § 1; Pepper & Lewis' Pa. Dig. p. 2836, par. 218.

Such mortgage shall, except between the parties thereto, take effect and be valid only from the time of recording the same in the office of the recorder of deeds of the proper county, and in case of more than one mortgage the first recorded shall have preference, and be first paid out of the proceeds of the sale of the property mortgaged. 1887, April 28, P. L. 73, § 2; Pepper & Lewis' Pa. Dig. p. 2837, par. 219.

Such mortgages shall be recorded in the county wherein the chattels actually are at the time of the execution of such mortgages. 1887, April 28, P. L. 73, § 3; Pepper & Lewis' Pa. Dig. p. 2837, par. 220.

Such mortgages may be assigned or released by an instrument in writing, signed by the mortgagee, or his agent, duly constituted, and recorded in the same office as the original mortgage, and such assignment or release shall, except as between the parties thereto, take effect and be valid only from the time of recording the same. 1887, April 28, P. L. 73, § 4; Pepper & Lewis' Pa. Dig. p. 2837, par. 221.

No such mortgage shall be valid for longer than three months after maturity, unless a statement in writing signed by the mortgagee, or his agent duly constituted, and acknowledged, and specifying the amount due upon said mortgage, be recorded in the office of the recorder of deeds in the county wherein such mortgage is recorded within the said three months, and, in case such statement be filed, the said mortgages shall continue valid for the amount due for a further period of one year from maturity. 1887, April 28, P. L. 73, § 5; Pepper & Lewis' Pa. Dig. p. 2837, par. 222.

RHODE ISLAND

No mortgage of personal property is valid as to the assignee in insolvency of the mortgagor, or any other person except the parties and their executors and administrators, until possession be delivered to and retained by the mortgagee, or the mortgage be recorded in the records of mortgages of personal property in the town or city where the mortgagor resides, or, if not in this state, in the town where the property is at the time of making the mortgage, which recording or taking and retention of possession shall be made or taken within five days from the date of the signing thereof: *Provided*, that nothing herein affects any transfer of property under bottomry or respondentia bonds, or of any ship or goods at sea or abroad, if the mortgagee take possession as soon as may be after the arrival of the same in this state. Gen. Laws 1909, c. 258, § 10.

Mortgage of Personal Property

Know all men by these presents that I, ———, of ———, in consideration of the sum of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said ——— the following articles of personal property now in my possession in ——— (*description*).

To have and to hold, all and singular the said articles unto the said ———, his executors, administrators, and assigns forever. And I, the said ———, do avouch myself to be the sole, true, and lawful owner of said goods and chattels, and have in me good right, full power, and lawful authority to sell and dispose of the same in manner aforesaid, and that the same are free and clear from any and all incumbrances whatever: *Provided*, nevertheless, that if the said ———, his executors and administrators, shall well and truly pay to the said ———, his executors, administrators, or assigns, a certain promissory note of even date with these presents, for the sum of ———

dollars, signed by me, payable to the order of the said ———, ——— from the date thereof, with interest at the rate of ——— per cent. per annum, then this deed to be void; otherwise to be and remain in full force:

Provided, however, and it is expressly understood and agreed between the said mortgagor and mortgagee, that the mortgagor shall and may retain and keep possession of said granted property until after default be made in the performance of the above conditions; but if the same or any part thereof shall be attached by any creditor of the said mortgagor, or if the said mortgagor shall sell or attempt to sell the same, or any part thereof, except in ordinary course of trade, without the written assent of the said mortgagee, his legal representatives or assigns, to do so, or if the said mortgagor shall remove, or suffer to be removed, said property or any part thereof, except in ordinary course of trade from and out of said ——— without such previous written assent of said mortgagee, his legal representatives or assigns, or if at any time the said mortgagee, his legal representatives or assigns, shall deem said property or his interest or security therein endangered or imperiled, then the said mortgagee, his legal representatives or assigns, may enter upon the premises and take immediate possession of the whole of said granted property, wherever the same may be.

And I do hereby constitute the said ———, his executors, administrators, and assigns, my attorneys irrevocable for me and in my name or in their names at any time after default in the payment of said note, or of the interest thereon, or breach of the foregoing conditions, or any one of them, or possession taken as aforesaid, to sell said granted property at public auction at ———, first giving ——— days' notice of such sale, by advertisement in some newspaper printed in said ———, and after payment of the expenses incident thereto and the amount

due on said note, accounting to the said ———, or his legal representatives, for all sums over and above the amount thereof, hereby ratifying, approving, and confirming such sale or sales as may be made by virtue hereof.

Furthermore, I, the said mortgagor, for myself, and for my heirs, executors, administrators, and assigns, do hereby covenant with the said mortgagee, his executors, administrators, or assigns, that insurance against loss by fire shall be kept and maintained upon the property aforesaid in a sum not less than ——— dollars, and that the policy or policies of such insurance shall be assigned and transferred to the said mortgagee, or assigns as collateral security hereto, and in default thereof do hereby agree that the said mortgagee, his heirs, executors, administrators, or assigns, may effect such insurance; and the premium or premiums paid thereon shall be a further lien upon said property, added to the amount of said note and secured by these presents.

In testimony whereof I have hereunto set my hand this ——— day of ———.

SOUTH CAROLINA

No chattel mortgage, except mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company or manufacturing company, is valid or good to convey any interest or right to the mortgagee unless the property mortgaged be described in writing or type-writing, but not printing, on the face of the mortgage, nor shall any prosecution lie for selling any property under the lien of such mortgage, unless the property mortgaged be so described. 1 Code of Laws 1912, § 4103.

All deeds of trust or instruments conveying personal estate and creating a trust in regard thereto, or charging or incumbering the same, and all mortgages or instruments in the nature of a mortgage of any such property, are valid, so as to affect from the time of delivery or execution the rights of subsequent creditors (whether lien creditors or simply contract cred-

itors) or purchasers for valuable consideration without notice, only when recorded within 10 days from such time in the office of the register of mesne conveyances or clerk of court of the county where the owner of the property resides, or, if he resides without the state, of the county where the property is situated at time of the delivery or execution: Provided, that recording and record of such instruments subsequent to the expiration of said 10 days shall from date of such record have the same effect as to creditors and purchasers without notice as if such instruments had been executed and delivered on the date of the record thereof. Ibid. § 3542; 1914, 482.

A crop mortgage conveys an interest only in the crops to be raised during the year in which it is given, and the land must be described. Ibid. § 4106.

The mortgagor of a chattel has the right to redeem at any time before sale by the mortgagee by paying the mortgage debt and costs incurred in attempting to enforce its payment, and a tender of a sufficient amount, if not accepted, renders the mortgage null and void. Ibid. § 4107.

Mortgage of Personal Property

(Set out copy of note.)

THE STATE OF SOUTH CAROLINA, }
County of ———. }

Whereas, I am indebted to ——— in the sum of ——— dollars, and have given my note therefor, of even date with these presents (a copy of which is hereto annexed), payable on the ——— day of ———.

Now, in order to secure the payment of said note, and in consideration of the sum of five dollars to me in hand paid, I do hereby grant and sell unto the said ——— the following goods and chattels, to wit (*description*).

To have and to hold, all and singular, the said goods and chattels unto the said ———, his executors, administrators, and assigns forever:

Provided, nevertheless, that if the said mortgageor shall pay to the mortgagee the sum hereinabove mentioned when due,

then this mortgage to be void; otherwise to remain in full force and effect.

And provided, further, that said mortgagor may retain possession of said goods and chattels until default be made in payment of the said note; but if the same is not paid when due, or if, before the said note is due, the said mortgagor shall attempt to make way with or remove said goods and chattels, or any part thereof, from the place where they now are, then and in either event the said mortgagee, or his agent, shall have the right, without suit or process, to take possession of the said goods and chattels, wherever they may be found, and may sell the same, or so much as may be necessary, at public auction for cash, after giving notice by advertisement ——— days, and shall apply the proceeds of said sale to the discharge of the said debt, interest, and expenses, and pay any surplus to the said mortgagor and his assigns.

In witness whereof I, the said mortgagor, do hereunto set my hand and seal this ——— day of ———.

SOUTH DAKOTA

A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers in good faith for value unless the original or an authenticated copy be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged or any part thereof is at such time situated. Comp. Laws 1913 (Civil Code) § 2085. A single mortgage, embracing several things such or so situated that separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original, authenticated by the register of deeds in whose office it is filed, may be filed in any other county with the same effect as to the property therein that the original could have been. Ibid. § 2088.

A mortgage of personal property ceases to be valid as against such creditors, purchasers, or incumbrancers after the expira-

tion of three years from filing, unless within thirty days next preceding the expiration of such term a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds in the county in which the mortgagor then resides, and in like manner the mortgage and statement of debt must be again filed every three years, or it ceases to be valid as against creditors of the mortgagor and subsequent purchasers or incumbrancers. Ibid. § 2089.

A mortgage of personal property must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed. Ibid. § 2090.

The mortgagee shall at the time of its delivery make and deliver to the mortgagor a full, true, and complete copy of the mortgage. Ibid. § 2091.

No register of deeds shall receive or file any chattel mortgage which does not contain a receipt over the signature of the mortgagor to the effect that a copy of such mortgage has been received by him; and every chattel mortgage not containing such receipt shall be null and void. Ibid. § 2092.

Any provision in any chattel mortgage by which a lien is sought to be created on any crops not in actual existence, at the time of giving such mortgage, except crops growing or to be grown within one year thereafter, and any provision in any chattel mortgage, earnings contract, conditional sale, or lien, made or taken upon property in this state, by which a lien is sought to be created upon the earnings of any threshing machine, or upon the earnings of any team or labor used in connection with the operation thereof, are void. Ibid. § 2102.

On satisfaction, the mortgagee or assignee must within 30 days file in the office of the register of deeds a release and satisfaction in full, which must bear the names of two witnesses. Failure so to do is a misdemeanor. Ibid. § 2094.

Chattel mortgages are foreclosed by public sale, on 6 days' notice, by publication in newspaper nearest the place of sale or by auction. See Ibid. §§ 2073-2075. Any stipulation or agreement in any chattel mortgage by which any provisions of this act are waived in form are inoperative and void. Ibid. § 2082.

As to mortgages of ships and vessels of the United States, Ibid. § 2101.

A mortgage of personal property may be made in substantially the following form:

Mortgage of Personal Property (Statutory)

This mortgage, made the _____ day of _____, in the year _____, by A. B., of _____, by occupation a _____, mortgagor, to C. D., of _____, by occupation a _____, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (*here describe the property*), as security for the payment to him of _____ dollars, on (*or, before*) the _____ day of _____, in the _____, with interest thereon (*or, security for the payment of a note or obligation, describing it, etc.*). A. B.

Ibid. § 2072.

Acknowledgment of Receipt of Copy

_____ certify that a full, true, perfect, and complete copy of this chattel mortgage has been delivered to and received by _____ at the time of the execution of this mortgage as provided by law. _____.

TENNESSEE

All mortgages and trusts of personalty shall be in writing, and proved and registered, to be valid against the creditors of the bargainor, or purchasers under him for value and without notice. Code 1896, § 3664. The foregoing does not apply to choses in action. Ibid. § 3665. All deeds, bills of sale, agreements, and other instruments for the conveyance or mortgage of personal property shall be registered in the county where the vendor or person executing the same resides, and, in case of his nonresidence, where the property is. Ibid. § 3706.

Chattel Mortgage

This instrument witnesseth: That for and in consideration of ——— dollars to me paid by ———, of ———, I, ———, of ———, have this day bargained, sold, and conveyed to the said ——— the following described personal property, to wit (*description*).

To have and to hold the same for the following uses, purposes, and trusts, and none other, that is to say: That whereas, I am indebted to the said ——— in the sum of ——— dollars, as evidenced by a certain promissory note (*state terms*).

Now, if I shall pay said note, with interest, at maturity, then this sale and conveyance shall be void; but, if I shall fail to pay said note, with interest, at maturity, then the same shall immediately become due, and the said ——— is authorized and empowered, after giving thirty days' notice of the time and place of such sale, to sell said property, or so much thereof as may be necessary to pay said indebtedness, or so much as remain unpaid. The proceeds of the sale of said property will be applied by said ———: First, to the payment of the expenses incident to this sale; second, to the payment of said indebtedness, or so much as remains unpaid; third, the remainder, if any, to be paid over to me, or my executors, administrators, or assigns.

If any sale of said property, or any part thereof, is made under this mortgage, it shall be for cash.

Said property is now in possession of ———, and it is agreed by the maker of this mortgage and the beneficiaries under it that the possession of said property shall continue where it now is until such time as a sale under this mortgage becomes necessary to be made, and the said ——— agrees to surrender the possession of said property whenever a sale be-

comes necessary by the terms of this mortgage, without delay or any hindrance whatever, and without process of law.

This _____ day of _____, 19—.

Witness:

_____.

TEXAS

Every chattel mortgage, deed of trust, or other instrument intended to operate as a mortgage of or lien upon personal property, not accompanied by immediate delivery and followed by actual and continued change of possession, is absolutely void as against the creditors of the mortgagor or person making same, and as against subsequent purchasers and mortgagees or lienholders in good faith, unless such instrument or a true copy be forthwith deposited with and filed in the office of the county clerk of the county where the property is situated, or, if the mortgagor or person making the same be a resident of this state, of the county of which he is a resident. Rev. St. 1911, art. 5655. The clerk shall indorse on the instrument the day and hour when it was deposited, and keep it on file until satisfaction be entered. If a copy, the clerk shall compare it with the original and it shall not be filed unless it is a true copy. A copy can be filed only when the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for record. Ibid. art. 5656.

All chattel mortgages so filed are prima facie presumed to have been paid after six years from the date of the maturity of the debts they were intended to secure, unless the owner or holder, his agent or attorney, within three months next before the expiration of said time, file an affidavit with clerk stating that such debt has not been paid and the amount still due thereon. Ibid. art. 5662.

If the mortgagor remove the property from the county, or sell or dispose of it, without consent of the mortgagee, he is entitled to possession and sale for payment of the debt, whether due or not. Ibid. art. 5660.

Any mortgage or other form of lien attempted to be given by the owner of a stock of goods daily exposed to sale, in the regular course of business of such merchandise, and contemplating a continuance of possession of such goods and con-

trol of such business by sale of such goods by such owner, is void.

All reservation of the title to or property in chattels as security for the purchase money thereof are held to be chattel mortgages, and when possession is delivered to the vendee, are void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages: Provided, that nothing in this law shall be construed to contravene the landlord and tenant act. Rev. St. 1911, art. 5654.

Contracts for the conditional sale, lease, or hire of railroad equipment and rolling stock are recorded in the office of the secretary of state. Ibid. art. 5655.

Chattel Mortgage

THE STATE OF TEXAS, }
County of ———. }

Know all men by these presents:

That I, ———, of ———, for and in consideration of the sum of ——— dollars to me in hand paid by ———, of ———, the receipt of which is hereby acknowledged, do by these presents bargain, sell and convey unto the said ——— the following described property, to wit (*description*).

I hereby warrant that said property is owned by me in good faith, under perfect title, free of all liens and incumbrances whatsoever, and I agree to hold the same where it is now located, free of all liens, other than the one hereby granted, until the indebtedness hereinafter mentioned is paid in full. This conveyance, however, is intended as a mortgage, I being indebted to the said ——— in the sum of ——— dollars, as evidenced by my certain promissory note dated ——— day of ———, and due ——— day of ———, bearing interest at the rate of ——— per cent. per annum from ——— until paid, and payable to the order of ———. Now, if I pay or cause to be paid said indebtedness at its maturity, then this obligation is to be null and void; but in case said note is not paid at ma-

turity, or in case all or part of said property is moved from where it is now located, or when it is legally seized, then, or at any time thereafter, the holder thereof is hereby fully authorized to seize and to take into his possession all of said above described property, or any part thereof, wherever the same may be found (hereby binding myself to surrender up the same), and to sell, convey, and deliver the said property, or cause the same to be done, at either public or private sale, with or without notice, at such place and on such terms as he may deem best, and the proceeds of such sale shall be applied, after deducting all costs, expenses, and attorney's fees to the payment of said note. The surplus, if any, shall be paid to me, my executors, administrators, or assigns; and, if the proceeds of said sale shall not be sufficient to pay said note, I agree to be and remain liable for any deficiency. The holder of said note hereby secured may become the purchaser of all or any part of said property at such sale, being the highest bidder. In case the holder of said note shall elect to sell said property at public sale, with notice, then such notice of the time, place, and terms of such sale shall be given in the same manner as is required by law in the sale of personal property under execution.

Witness my hand this ——— day of ———.

UTAH

Unless the possession of personal property be delivered to and retained by the mortgagee, no mortgage thereof is valid as against any person other than the parties, unless: (1) The mortgage, duly witnessed by at least one person, provide that the property may remain in the possession of the mortgagor; (2) the mortgage be accompanied by the affidavit of the parties, or, if any party is absent, by the affidavit of the parties present and that of the agent or attorney of such absent party, that the same is made in good faith to secure the amount named therein and without any design to hinder or delay the

creditors of the mortgagor; and (3) the mortgage or a copy be filed in the office of the recorder of the county where the mortgagor resides, or, if he is a nonresident of this state, of the recorder of the county or counties where the property may be at the time of execution of the mortgage. Comp. Laws 1907, § 150. Such mortgage need not be acknowledged. Ibid. § 151.

Every mortgage so filed is void against the creditors of the person making it or against subsequent purchasers or mortgagees in good faith, after the expiration of one year after filing, unless within 30 days after the expiration of such year, and within 30 days after the expiration of each year thereafter, the mortgagee, his agent or attorney, make an affidavit exhibiting the interest of the mortgagee in the property at the time last aforesaid, claimed by virtue of such mortgage, and, if the mortgage is to secure the payment of money, the amount yet due and unpaid, and file the same with the county recorder, to be attached to the instrument or copy on file: Provided, that no mortgage is valid against creditors of the mortgagor or subsequent purchasers or mortgagees in good faith after 5 years from the date of the original filing. Ibid. § 155. If such affidavit be made and filed before any purchase of the mortgaged property be made, or other mortgage deposited, or lien obtained thereon, in good faith, it is as valid to continue in effect the mortgage as if made and filed within the period above provided. Ibid. § 156.

The provisions of the foregoing sections extend to all such bills of sale, deeds of trust, and other conveyances of personal property as have the effect of a mortgage or lien thereon. Ibid. § 159.

The mortgage may be discharged by entry on the margin of the index by the mortgagee, his agent, assignee, or legal representatives, or by the recorder on presentation of an order duly signed and acknowledged. Ibid. § 154.

The husband may not without the consent of the wife create a lien by mortgage or otherwise on property exempt to heads of families. Such mortgage must be executed by both. Ibid. § 167.

If the mortgage contains a power of sale, it may be foreclosed by advertisement in the manner prescribed. If the mortgage does not contain a power of sale, it is foreclosed like a mortgage on real estate without redemption. Ibid. §§ 152, 153, 160-165.

Chattel Mortgage

_____, of _____, mortgagor—, in consideration of _____ dollars, to _____ paid by _____, of _____, mortgagee, do— hereby sell and mortgage unto said mortgagee all that certain personal property situated _____, in said _____, and described as follows, to wit (*description*).

This is a chattel mortgage to secure the payment of a promissory note of even date herewith, for _____ dollars, signed by the mortgagor— and payable to the order of the mortgagee _____ after date, at _____, in said _____, with interest at the rate of _____ per cent. per annum, and _____ dollars attorney's fee for collection.

Said property may remain in the possession of the mortgagor— subject to the conditions herein mentioned; but the mortgagor— agree— that _____ will not remove the same from the place where it now is.

If default be made in the payment of said note, or if sale or removal of said property be made or attempted, the mortgagee may take possession of said property wherever found, using all necessary force for that purpose, and may proceed to foreclose. And is hereby fully authorized and empowered to sell and dispose of the same at public auction, by advertisement, according to the act in such case made and provided.

Should the proceeds from such sale fail to satisfy this mortgage, costs, and expenses, then the mortgagor— agree— to pay the deficiency.

Witness the hand— of the mortgagor— this _____ day of _____, 19—.

(*Signature.*)

Witness:

_____.

Affidavit

STATE OF UTAH, }
County of ———. } ss.

———, the mortgagor—, and ——— (*attorney for*) the mortgagee named in the foregoing mortgage, being severally duly sworn, each for himself, says that the said mortgage is made in good faith to secure the amount named therein, and without any design to hinder or delay to the creditors of the said mortgagor—.

(*Signatures.*)

Subscribed and sworn to, *etc.*

VERMONT

All personal property shall be subject to mortgage agreeably to the provisions of this chapter. Pub. St. 1906, § 2620.

A mortgage of personal property is not valid either between the parties or otherwise unless in writing and recorded within 30 days from its execution in the office of the town clerk of the town in which the mortgagor resides, or if he resides out of the state, in the town in which the property is situated. Ibid. § 2621.

A mortgagor and mortgagee, or, in the absence of the mortgagee, his agent or attorney, shall make and subscribe an affidavit in substance as follows: "We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due and owing from the mortgagor to the mortgagee." Such affidavit, with the certificate of the oath signed by the authority administering the same, shall be appended to such mortgage and recorded therewith. Ibid. § 2622. When a corporation is a party to such mortgage, the affidavit may be made and subscribed by a director, trustee, cashier, or treasurer thereof, or by a person authorized on the part of such corporation to make or receive such mortgage. When a partnership is a party, the affidavit may be made and subscribed by one member. Ibid. § 2623. If such mortgage is given to indemnify the mortgagee against liability assumed, or to secure the fulfillment of an agreement other than the payment of a debt due from the mortgagor to

the mortgagee, or given to a trustee to secure bonds issued or to be issued thereunder, such liability, agreement, or obligation shall be stated specifically in the condition of the mortgage; and the affidavit shall be so varied as to verify the validity and justice of such liability, agreement, or obligation. Ibid. § 2624.

Such mortgages may be discharged as mortgages of real estate. Ibid. § 2626.

The property must not be removed from the state without consent of the mortgagor, mortgagee, or assigns. Ibid. § 2630. The mortgagor must not sell or pledge the property without consent of the mortgagee in writing on the back of the mortgage and on the margin of the record. Ibid. § 2631. A mortgagor shall not execute a second or subsequent mortgage of property subject to a previous mortgage given by him, unless its existence is set forth in the subsequent mortgage. Ibid. § 2632.

After condition broken, the mortgagor or any person holding under him, or holding a subsequent mortgage, may redeem by paying or tendering to the mortgagee the amount due, with reasonable costs and expenses incurred thereby before sale. Ibid. § 2635. After 30 days from the time of condition broken the mortgagee may cause the property or any part to be sold at public auction by some public officer in the manner prescribed. Ibid. §§ 2635-2639.

No lien reserved on personal property sold conditionally and passing into the hands of the purchaser is valid against bona fide purchasers and attaching creditors, unless a memorandum, signed by the purchaser, witnessing the lien and the sum due thereon, is recorded within 30 days after the property is delivered, in the office of the clerk of the town where the purchaser resides, or, if he resides out of the state, of the town where the vendor resides. Ibid. § 2663. The lien may be enforced by public sale in the manner of a chattel mortgage. Ibid. § 2666. It may be discharged by a release signed by the vendor, his legal representative, attorney or assignee, and recorded in the clerk's office, or by entry in the margin of the record or on the instrument creating the lien similarly signed. Ibid. § 2664. As to conditional sales of railroad or street railway equipment or rolling stock, etc., Ibid. §§ 4389, 4390.

Mortgage of Personal Property

Know all men by these presents that I, ———, of ———, in the county of ———, as security for the sum of ——— dollars, as hereinafter set forth, do hereby sell, assign, and transfer to ———, of ———, in the county of ———, the following described personal property, to wit (*description*):

Provided, however, that it is a condition of the foregoing sale, assignment, and transfer that, if the said ———, his heirs, administrators, and assigns, shall well and truly pay or cause to be paid to the said ———, his heirs and assigns, the sum of ——— dollars, justly due and owing from the said ——— to the said ———, as follows (*state terms*), then this instrument to be wholly null and void; otherwise to be and remain in full force and virtue.

And it is hereby agreed that the property hereinbefore described is free and clear of all liens, mortgages, and incumbrances, and that I am the sole owner thereof, and have good right to sell the same as above written, and I agree that until the full payment of the debt named in the foregoing condition the said personal property shall not be removed from the state of Vermont, except by consent of the party holding this mortgage hereon indorsed, and that I will not pledge, sell, or mortgage the same to any other party without such written consent indorsed hereon. It is also further agreed that at any time after thirty days after the debt specified in the condition above written shall become due and payable and shall not be paid as aforesaid that the said ———, his heirs or assigns, may cause any or all said property to be sold at public auction by some public officer, at any public place in town where the mortgagor resides, or where said property is situated, by posting notices of said sale in two or more public places in said town at least ten days previous thereto, and by giving the

mortgagor and all other persons interested in said sale notice thereof as required by law.

In witness whereof I have hereunto set my hand and seal this _____ day of _____.

Signed, sealed and delivered in the presence of:

_____.

Affidavit of Mortgagor and Mortgagee

We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose whatever, and that the same is a just debt, honestly due and owing from the mortgagor to the mortgagee.

(Signatures.)

STATE OF VERMONT, }
_____ County. } ss.

I hereby certify that the foregoing affidavit was subscribed and sworn to by _____ this _____ day of _____, A. D. 19—.

Before me, _____ (Signature and title.)

Assignment

Know all men by these presents that I, _____, of _____, in the county of _____, and state of _____, in consideration of _____ dollars paid to me in full satisfaction by _____, of _____, in the county of _____, and state of _____, do hereby assign, transfer, and convey unto the said _____, his executors, administrators, and assigns, forever, all my right, title, interest, and estate in and unto the property conveyed by the within mortgage and all my rights and privileges under said mortgage.

In witness whereof I hereunto set my hand and seal this _____ day of _____.

In the presence of:

_____.

Discharge

I hereby acknowledge satisfaction of the mortgage deed within, and the same is discharged at ——— this ——— day of ———, A. D. 19—. *(Signature and seal.)*

In presence of:

VIRGINIA

Every deed of trust or mortgage conveying goods and chattels and every bill of sale or contract for the sale of goods and chattels, when the possession is allowed to remain with the grantor (and any such bill of sale or contract shall be in writing and signed by the vendor), shall be void as to subsequent purchasers for valuable consideration without notice and creditors until and except from the time that it is duly admitted to record in the county or corporation wherein the property may be. Code 1904, § 2465.

Although recorded in one county or corporation, it is not valid as to property embraced in it and being in another. Ibid. § 2466. If any such goods or chattels be removed from a county or corporation where admitted to record, the writing shall, within one year after such removal, be admitted to record in the county or corporation to which the property is so removed; otherwise, so long as it is not there admitted to record, as to the property so removed the writing is void as to such creditors or purchasers, except in respect to the interest of any married woman (such interest not being her separate estate), infant, or insane person, if before the end of one year after the disability shall cease, the writing be recorded in the county or corporation to which the property is removed. Ibid. § 2468. No mortgage, deed of trust, or other incumbrance on personal property in another state is a valid incumbrance thereon after it is removed into this state, as to purchasers and creditors, unless recorded in the county or corporation in which the property is located in this state. Ibid. § 2468a.

Every sale or contract for the sale of goods and chattels wherein the title or a lien is reserved until the same be paid for in whole or in part, or the transfer is made to depend on a condition, and possession is delivered to the vendee, in respect to such reservation and condition is void as to purchasers

for value without notice from such vendee until such sale or contract, signed by both vendor and vendee, in which such reservation or condition is expressed, and until and except from the time that a memorandum of such writing, setting forth the date thereof, the amount due thereon, when and how payable, and a brief description of such goods or chattels, be docketed in the clerk's office of the circuit or corporation court of the county or corporation in which said goods or chattels may be. Special provisions apply to rolling stock, etc., of railroad companies. Ibid. § 2462.

WASHINGTON

Mortgages may be made on all kinds of personal property, the rolling stock of a railroad company, all kinds of machinery, boats and vessels, portable mills and such like property, growing crops and crops before the seed thereof shall have been sown or planted, except that the mortgaging of crops before the seed thereof shall have been sown or planted for more than one year in advance is forbidden, and all securities or mortgages on such unsown or unplanted crops are void and of no effect, unless such crops are to be sown or planted within one year from the time of the execution of the mortgage. Rem. & Bal. Code, § 3659.

A mortgage of personal property is void as against creditors of the mortgagor or subsequent purchasers and incumbrancers for value and in good faith, unless accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless acknowledged and recorded in the manner required in conveyance of real property. Ibid. § 3660. It must be filed within ten days from the time of its execution in the office of the county auditor of the county in which the property is situated. Ibid. § 3661.

Every mortgage filed and indexed is notice to all the world, but ceases to be notice, as against creditors of the mortgagors and subsequent purchasers and mortgagees in good faith after the expiration of the time such mortgage becomes due, unless before the expiration of two years after the time it becomes due the mortgagee, his agent or attorney, make and file as aforesaid an affidavit setting forth the amount due upon the mortgage, which affidavit must be annexed to the instrument to which it relates, and the auditor shall indorse on said affi-

davit the time it was filed. Ibid. § 3662. The effect of such affidavit shall not continue beyond one year from the time the mortgage would otherwise cease to be valid, as against such creditors and subsequent purchasers and mortgagees in good faith, unless before the time when the mortgage would otherwise cease to be valid as aforesaid a similar affidavit be filed and annexed as above provided and with like effect. Ibid. § 3663.

A mortgage given to secure \$100 or less, exclusive of interest and costs of foreclosure, may be made in substantially the following form:

Chattel Mortgage for \$100 or Less (Statutory)

This mortgage, made this —— day of ——, in the year ——, by A. B., of ——, mortgagor, to C. D., of ——, mortgagee:

Witnesseth that the mortgagor mortgages to the mortgagee (*here describe the property*), as security for the payment to him of —— dollars, on (*or, before*) the —— day of ——, in the year ——, with interest thereon (*or, security for the payment of a note or obligation, describing it, etc.*).

A. B.

Signed and delivered in the presence of:

E. F.

G. H.

Ibid. § 3664.

A mortgage given to secure \$300 or more, exclusive of interest, costs, and attorney's or counsel fees, may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this act. Ibid. § 3665.

If the property is in two or more counties, a copy of such mortgage may be filed in each county, with like force and effect as the original mortgage. Ibid. § 3666.

A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property is situated. When the property is thereafter removed from the county in which it is situated, it is, except

as between the parties to the mortgage, exempted from the operation thereof, unless either:

(1) The mortgagee within 30 days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or (2) the mortgage be recorded in the customhouse; or (3) the mortgagee within 30 days after such removal takes possession of the property. A mortgage on a vessel or boat, or part of a vessel or boat, over 20 tons burden, shall be recorded in the office of the collector of customs where such vessel is registered, enrolled, or licensed, and need not be recorded elsewhere. Ibid. § 3668.

A mortgage may be satisfied by acknowledgment on the margin of the record, or by filing an instrument signed and acknowledged by the mortgagee, referring to the mortgage by volume and page of record, and acknowledging satisfaction thereof. Ibid. § 8798.

When the debt is due, the mortgage may be foreclosed by notice and sale or by action. Ibid. §§ 1104-1110. Where the debt has become due, or is not yet due, and the mortgagee has reasonable ground to believe that his debt is insecure, and that by allowing the property longer to remain in the hands of the mortgagor he would be in danger of losing his debt or security, he may have the property taken from the possession of the mortgagor and sold. Where the debt is not due, and the mortgagee has reasonable cause to believe that the property will be destroyed, lost, or removed, he has a right of action for the recovery of the debt; and the court may make an order to secure the property, so as to make it available for satisfaction of the debt. Ibid. §§ 1111, 1112.

All conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, are absolute as to the purchasers, incumbrancers, and subsequent creditors in good faith, unless within 10 days after taking possession by the vendee a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, be filed in the auditor's office of the county wherein at the date of the vendee's taking possession he resides. Ibid. § 3670.

Affidavit of Mortgagor

STATE OF WASHINGTON, }
County of ———. } ss.

———, the mortgagor— in the foregoing mortgage named, being first duly sworn, on oath deposes and says that the aforesaid mortgage is made in good faith, and without any design to hinder, delay, or defraud creditors. (Signature.)

Subscribed and sworn to before me, this ——— day of ———, A. D. 19—. (Signature.)

Notary public in and for the state of Washington, residing at ———.

WEST VIRGINIA

Every contract or deed of trust of mortgage conveying goods and chattels is void as to creditors and subsequent purchasers for valuable consideration without notice, until and except from the time that it is admitted to record in the county wherein the property embraced in such contract or deed may be. Ibid. § 3103.

Notwithstanding such writing be admitted to record in one county wherein there are goods or chattels, it is void as to such creditors and purchasers in respect to other goods or chattels without the same until admitted to record in the county wherein such other goods or chattels may be. Ibid. § 3104.

If any goods or chattels mentioned in such writing be removed from a county in which it is admitted to record, the writing shall, within three months after such removal, be admitted to record in the county to which the property is so removed; otherwise the same, for so long as it is not admitted to record in such last-mentioned county, shall, as to the property so removed, be void as to such creditors or purchasers. But such writing shall not be so void in respect to the interests of any married woman, infant, or insane person if, before the end of three months after the disability shall cease, the writing be recorded in the county to which the property is removed. Ibid. § 3105.

If any sale be made of goods and chattels, reserving the title until the same is paid for, or otherwise, and possession be de-

livered to the buyer, such reservation is void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is, or, if the goods and chattels consist of engines, cars, or other rolling stock or equipment to be used in or about the operation of any railroad, unless such notice be recorded in the office of the secretary of state. Code 1906, § 3101.

WISCONSIN

No mortgage of personal property is valid against any other person than the parties, unless possession be delivered to and retained by the mortgagee, or unless the mortgage or a copy be filed. Nor is a chattel mortgage of exempt property valid unless signed by the wife of the mortgagor, if he be a married man and she a member of his family, and her signature be witnessed by two witnesses. St. 1911, § 2313.

A mortgage of personal property or a copy may be filed in the office of the clerk of the town, city, or village where the mortgagor resides, or, if he is a nonresident of the state, where the property may be at the time of execution of the mortgage: Provided, that when the mortgage is of a stock of goods, wares, and merchandise, or of the fixtures pertaining to the same, the mortgage or a copy shall in addition be filed in the office of the register of deeds of the county in which may be situated the town, city, or village in the office of the clerk of which the mortgage or copy may be filed. Mortgages so filed are valid and binding upon all persons as if the property had been immediately delivered to and its possession retained by the mortgagee. Ibid. § 2314; Laws 1913, c. 575.

Such mortgage ceases to be valid as against the creditors of the person making the same or subsequent purchasers or mortgagees in good faith after the expiration of 2 years from such filing, unless within 30 days next preceding the expiration of the 2 years the mortgagee, his agent or attorney, make and annex to the instrument or copy on file, and in a proper case to the copy on file in the office of the register of deeds, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned. St. 1911, § 2315. The effect of such affidavit does not continue beyond 2 years from the time when the mortgage would otherwise cease to be valid as against subsequent purchasers

or mortgagees in good faith; but within 30 days next preceding that time a similar affidavit may be filed and annexed as above provided and with like effect. Ibid. § 2316.

The mortgagor of any stock of goods or stock in trade of which he is in possession and from which he is permitted to make sales and apply the proceeds upon the indebtedness shall file a statement in writing of the aggregate amount of the sales made therefrom, the amount applied on the mortgage debt, and the total valuation of the stock added, every 60 days from the date of such mortgage, with the town, city, or village clerk in whose office the mortgage is filed, and shall file a copy in the office of the register of deeds. Such mortgage shall cover and be a valid lien on the property added to such stock after its execution for the amount of the indebtedness remaining unpaid thereon. Such statement shall be verified by the mortgagor, his agent or attorney, as being a true and correct statement of all sales made from the stock of mortgaged goods, the value of the additions made to the original stock since the date of the mortgage or the date of the last verified statement so filed and the amount paid on the mortgage debt since the execution of the mortgage or the filing of such statement. If any mortgagor fail to file such statement within the time prescribed, the mortgage, as between the parties, shall be immediately due and payable, and at the expiration of 15 days from the time fixed for the filing of such statement shall cease to be a lien on such stock of goods or stock in trade, except as between the mortgagor and mortgagee. Ibid. § 2316b.

On payment and performance of conditions, the mortgagee shall give a certificate to that effect, and, if the mortgage or copy was filed in the office of the register of deeds, two certificates, which may be filed by the mortgagor, who may then remove the mortgage. Ibid. § 2317a.

Provisions for sale and redemption, Ibid. §§ 2316a, 2316c, 2316m.

As to mortgage of logs, Ibid. § 1739.

No contract for the sale of personal property by the terms of which the title is to remain in the vendor and the possession in the vendee until the purchase price is paid or other conditions of sale are complied with, is valid as against any other person than the parties and those having notice unless the contract be in writing, subscribed by the parties, and the same or a copy be filed in the office of the clerk of the town,

city, or village where the vendee resides, or if he be not a resident of the state, in the office of the clerk of the town, city, or village where the property may be at the time of making the contract; but the effect of such filing does not extend for more than one year after the time fixed for payment of the contract price or for the performance of the other conditions of such sale. Ibid. § 2317. Contracts for the sale of furniture or other household effects made on condition that the title should not pass until the price is paid in full, whether such contract be in the form of a lease or otherwise, must be in writing and filed as above specified, and a copy thereof furnished the vendee by the vendor at the time of sale. All payments made by or on behalf of the vendee, and all charges, in the nature of interest or otherwise, as they accrue, must be indorsed by the vendor or his agents upon such copy, if the vendee so request. If the vendor fails to comply with any of these provisions through negligence, his rights under such contract are suspended while the default continues, and if he refuse or willfully or fraudulently fails to comply with these provisions he waives the conditions of the sale. The vendor, upon taking possession for noncompliance with the terms of the contract, must furnish the vendee or other person in charge of such property an itemized statement of account, showing the amount due, and the vendee may at any time within 15 days after such taking redeem the property, by paying the full amount of the price then unpaid, with interest and lawful charges and expenses. Ibid. § 2319b. As to conditional sales of railroad equipment and rolling stock, Ibid. § 1839a.

Chattel Mortgage

Know all men by these presents that I, ———, residing in ———, county of ———, state of Wisconsin, for the purpose of securing the payment of the sum hereinafter mentioned, and in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, do by these presents bargain, sell, assign, and set over unto ———, of ———, county of ———, state of ———, all the following described goods, chattels, and personal property, to wit (*description*), said property situated and being now at ———, in the ——— of ———,

TIFF FORMS—29

county of ———, and state of Wisconsin, and now free and clear from any prior lien or incumbrance, and being in possession of said mortgagor and to remain in his possession until the same shall be taken possession of by said mortgagee as hereinafter provided.

To have and to hold the same forever, upon condition that, if said mortgagor shall pay to said mortgagee the sum of ——— dollars (*state terms*), then these presents shall cease and be void. But in case of any default in making such payment, or any part thereof, at the time above agreed on, or in performing any conditions hereof, the said mortgagee is hereby authorized and empowered, with the aid and assistance of any person or persons, to enter into or upon any place where said mortgaged property may be, and take possession of said mortgaged property and convey it away and to sell and dispose of same at private sale without notice or at public sale after giving ——— days' notice of time and place of such sale, in his discretion, or so much thereof as may be necessary to satisfy the said debt and interest, and all costs and expenses in taking, keeping, and disposing of said property, together with ——— dollars for attorney's fees, and to retain the same out of the proceeds of said sale, rendering the surplus, if any, to said mortgagor. And in case the said mortgagee shall at any time deem the said property or the said debt insecure, he is hereby authorized and empowered to take immediate possession of said mortgaged property, or any part thereof, and to sell and apply the proceeds as above provided.

The provisions of this instrument shall extend and apply to the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

WYOMING

A mortgage of personal property shall be executed in one or the other of the following methods: (1) It may be executed and acknowledged in the manner of conveyances of real estate; (2) it may be signed in duplicate by the mortgagor with two witnesses, in which case one duplicate shall be retained by the mortgagor, and the other, in which shall be contained or to which shall be annexed a statement over the signature of the mortgagor acknowledging receipt of a duplicate copy thereof, shall be filed as a chattel mortgage, in the manner provided in this chapter: Provided, that no instrument shall operate as a chattel mortgage unless it state distinctly upon its face that it is intended for security, and the amount for which it is security. Comp. St. 1910, § 3723. Such mortgage, or an assignment or release thereof, by a partnership, must be executed and acknowledged by each member; but a mortgage may run to a partnership without enumerating its members. Ibid. §§ 3724, 3726.

A mortgage may include property of like kind and character as that therein described thereafter to be acquired. Ibid. § 3721. In a mortgage of live stock it is a sufficient description to set forth all such brands and marks of the same as will enable the mortgagee to identify, prove, and recover any or all of such stock as was possessed by the mortgagor at the time of making the mortgage, together with the ranches or range upon which such stock shall be running or ranging. Such mortgage conveys and covers all the cattle, horses, mules, sheep, or other live stock then marked or branded with such mark and brand belonging to the mortgagor and which thereafter may be acquired by him and be marked and branded with such mark and brand, and also such mark or brand, and all increase of such live stock. Ibid. § 3722.

Every mortgage of personal property not accompanied by immediate delivery and followed by actual and continued change of possession is absolutely void as against the creditors of the mortgagor and subsequent mortgagees or purchasers in good faith, unless filed. Ibid. § 3727. It must be filed in the office of the county clerk where the property is situated. Ibid. § 3728. It is sufficient if a mortgage of live stock is filed in the county where the range upon which the live stock are or shall be principally running or ranging is located, the location of which range shall be described with reasonable certainty.

Ibid. § 3730. In case of the removal of the property to some other county by consent of the mortgagee, the mortgage or a copy shall be certified by the clerk of the county where said instrument is filed, and immediately filed in the county to which the property is removed; but this does not apply to live stock temporarily used, driven, or grazed in a county other than that in which the herd may belong or be permanently located. Ibid. § 3731.

The mortgage, when filed, remains in force against third persons for its term and six months thereafter. If before expiration of such six months the mortgagee files or causes to be filed an affidavit setting forth his interest and the amount due and unpaid, the mortgage continues in force for one year, and it may be continued from time to time by like affidavits. Ibid. § 3733; Laws 1911, c. 82.

A mortgage may give the mortgagor permission to use, handle, operate, herd, manage, and control the property, and to market, sell, and dispose of such portions as may be necessary in the course of business, or to preserve and care for it, and to replace the property sold with other property of like kind and character, either with the proceeds of property sold or otherwise, all of which shall be subject to the mortgage; but, unless otherwise stipulated, the mortgagor must pay to the mortgagee all such proceeds of sale. Comp. St. 1910, § 3774.

An assignment or release may be by indorsement on the mortgage on file, or by separate instrument executed and acknowledged like a chattel mortgage. Ibid. § 3728.

Mortgages with power of sale are foreclosed by public auction. Ibid. § 3735 et seq.

No sale, contract, or lease wherein the transfer or title of ownership of personal property is made to depend upon any condition is valid against any purchaser or judgment creditor of the vendee or lessee in possession without notice, unless it be in writing, signed by the vendee or lessee, and the original or a copy be filed in the office of the county clerk of the county wherein the property is. The instrument so filed shall have attached an affidavit of the vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee, or lessor and lessee, with a description of the property and the full and true interest of the vendor or lessor therein. Such sales or transfers shall cease to be valid against purchasers in good faith or judgment or attaching creditors without notice at the expiration of one year from the date of such

sale, unless the vendor or lessor within 30 days prior to that time file a similar affidavit in the office of such clerk. The vendor or lessor may preserve the validity of such sale or transfer by an annual refile in the same manner as aforesaid of such copy. Ibid. § 3745. See, also, Ibid. § 3747 et seq.

Chattel Mortgage

Know all men by these presents that ———, of the county of ———, and state of ———, part— of the first part, for and in consideration of the sum of ——— dollars to ——— in hand paid by ———, of the county of ———, and state of ———, part— of the second part, the receipt of which is hereby acknowledged, do— grant, bargain, and sell unto the said part— of the second part, ———, the following goods and chattels, viz. (*description*), all in the county of ———, and state of Wyoming.

To have and to hold, all and singular, the said goods and chattels unto the said part— of the second part, ——— executors, administrators, and assigns, forever. And the said part— of the first part, for ——— heirs, executors, and administrators, do— hereby covenant to and with the said part— of the second part, ——— executors, administrators, and assigns, that ——— the lawful owner— of said goods and chattels; that the same are free from all incumbrances; and that ——— will warrant and defend the same to the said part— of the second part, and ——— executors, administrators, and assigns, against the lawful claims and demands of all persons whomsoever:

Provided, nevertheless, that if the said part— of the first part, ——— heirs, executors, and administrators, shall well and truly pay to the part— of the second part, ——— executors, administrators, or assigns, for the redemption of the above-bargained goods and chattels, the just and full sum of ——— dollars on or before the ——— day of ———, A. D.

19—, with interest on the same according to the tenor and effect of ——— certain promissory note— bearing even date herewith, given by the said part— of the first part to the said part— of the second part (*state terms*), then these presents to be void; otherwise to remain in full force and virtue:

And provided, further, that until default is made by the said part— of the first part in the performance of the conditions aforesaid it shall and may be lawful for ——— to retain the possession of said goods and chattels, and to use and enjoy the same; but in case default should be made in the payment of said note—, or the interest thereon, or any installment of principal or interest according to the tenor and effect of said note— or if the goods and chattels, or any part thereof, shall be attached or claimed by any other person or persons at any time before payment, or if the said part— of the first part shall attempt to sell or remove the same beyond the limits of said county without the written consent of the said part— of the second part, or be negligent in the care of the same, or whenever the said part— of the second part shall deem ——— unsafe, then it shall and may be lawful for the said part— of the second part, or ——— assigns, to take immediate and full possession of the whole or any part of said goods and chattels to ——— own use, and sell the same according to law, or so much as may be necessary to pay said note—, together with the interest thereon and all costs, attorney's fees, and other expenses touching the same, and out of the money arising therefrom to pay said note—, interest, costs, attorney's fees, and other expenses as aforesaid, rendering and paying the surplus, if any, to the said part— of the first part: And provided, also, that the heirs, executors, administrators, and assigns of either or both parties to this chattel mortgage shall have the same rights and privileges as the parties themselves would have, and shall be bound by all the terms, conditions, and provisions herein contained.

This chattel mortgage is intended for security, and the amount for which this instrument is intended as security as aforesaid is the sum of ——— dollars, with such interest as may accrue thereon, according to the tenor and effect of the promissory note— above described.

In witness whereof the said part— of the first part ha— hereunto set ——— hand this ——— day of ———, A. D. 19—.

Signed and delivered in presence of (*Two witnesses*).

CHAPTER XIII

COPYRIGHT

The forms here given include only assignments of copyright and publishing agreements, which necessarily deal with the ownership of the copyright.

A copyright may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright. An assignment executed in a foreign country must be acknowledged before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. Every assignment must be recorded in the copyright office within three months after its execution in the United States, or within six months of its execution without the United States, in order to protect the assignee against subsequent purchasers and mortgages. Act March 9, 1909, c. 320, §§ 43-45, 35 Stat. 1084 (U. S. Comp. St. 1913, §§ 9564-9566). An assignment may be of the whole right or of a specified interest therein, as an assignment for less than the full term of the copyright, or of the exclusive right to sell the copyrighted work or to represent a drama in a limited territory, or an assignment with a reservation of the right to translate or to dramatize and to exercise the dramatic performing rights.

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1. Assignment of Literary Copyright

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby sell, assign, and transfer unto the said ———, his execu-

tors, administrators, and assigns,* the copyright heretofore secured by me for a certain book entitled ———, of which I am the (author and) proprietor, the certificate of the registration whereof is hereto annexed, with all my rights in and to and in respect of the said copyrighted work, to hold and enjoy the same for the full unexpired term of the said copyright.

In witness, *etc.*

2. Same—Another Form

This indenture, made the ——— day of ———, between ———, of ———, of the one part, and ———, of ———, of the other part:

[RECITAL OF COPYRIGHT.] Whereas, the said ——— is the (author of and) proprietor of the copyright in a book (*or*, literary work) entitled ———.

[ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the sum of \$—— paid by ——— to the said ———, the receipt whereof is hereby acknowledged, the said ——— hereby assigns unto the said ——— all the copyright and other rights in the said book which is or are subsisting for the residue of the term thereof (excepting, however, and reserving hereby unto the said ——— the right to dramatize the said book and to exercise or assign the performing rights therein).

In witness, *etc.*

3. Assignment of Performing Rights in a Play

Indenture made the ——— day of ——— between ———, of ———, of the one part, and ———, of ———, of the other part:

[RECITAL OF COPYRIGHT.] Whereas, the said ——— is the (author of and) proprietor of the copyright in a certain dramatic work or drama entitled ———.

[ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the sum of \$—— paid by the said —— to the said ——, the receipt whereof is hereby acknowledged, the said —— hereby assigns unto the said —— the exclusive right to perform or represent the said drama publicly in this country or elsewhere for the term of the said copyright.

[WARRANTIES.] And the said —— hereby warrants that the said drama (is his original work and) was performed first within the United States on the —— day of ——, and was not performed or issued in book form or made public either in this country or elsewhere before that date.

In witness, *etc.*

4. Sale of a Manuscript with the Right to Copyright

(*Begin as in Form No. 1, p. 456, to **), the manuscript of a certain unpublished book of which I am the (author and) proprietor, entitled ——, with all my literary and other property, right, title, and interest therein, and all the profit, benefit, and advantage which may arise from printing, publishing, and vending the same, and the right to procure and have copyright of the said book in accordance with any statute in such case provided.

In witness, *etc.*

5. Same—With Agreement for Publication

Indenture made the —— day of —— between ——, hereinafter called the author, of the one part, and ——, hereinafter called the publisher, of the other part:

[RECITAL OF AUTHORSHIP AND OWNERSHIP.] Whereas, the author has written a book entitled ——, which book has never been published, and the author is the sole owner of the manuscript thereof and of all right, title, and interest therein.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] The author hereby assigns to the publisher the exclusive right of publishing the said book, and the publisher shall be the sole owner of the copyright therein on publication.

2. [CERTAIN RIGHTS RESERVED TO AUTHOR.] The author reserves to himself the sole right of translating, abridging, or dramatizing the book, but he shall not without the publisher's consent publish any translation, abridgment, or dramatized version as a book. The author shall have full liberty to authorize the performance of any dramatized version of the book, and shall be the proprietor of the performing rights therein.

3. [STYLE AND FORM OF PUBLICATION.] The publisher shall at his own expense and risk publish said book in such style as he shall see fit. The author's name shall be conspicuously printed as author on the title page of every copy of the book sold or published; and the publisher shall not publish the book under any other title than ———, nor shall he in any way alter the literary matter contained in the book.

4. [AUTHOR TO REVISE PROOFS.] The publisher shall submit to the author for revision the proofs of the first edition of the book, and the author shall carefully and with reasonable dispatch revise and correct the same, and see it through the press.

5. [TERMS OF PAYMENT.] In consideration of the premises the publisher shall pay to the author the sum of \$——, which shall be payable as follows: \$—— on delivery of the manuscript; and \$—— on publication.

In witness, *etc.*

6. Agreement for Publication of Book, Author Reserving Copyright and Receiving Royalties

Agreement made this —— day of —— between ——, hereinafter called the author, of the first part, and ——, hereinafter called the publisher, of the second part:

[RECITAL OF DELIVERY OF MANUSCRIPT.] Whereas, the author has written a work (*or*, a novel) entitled ——, and has delivered the manuscript thereof to the publisher.

It is hereby agreed as follows:

1. [AUTHOR TO CORRECT PROOF SHEETS.] The author shall promptly revise and correct all proof sheets submitted to him by the publisher.

2. [PUBLISHER TO PRINT, PUBLISH AND ADVERTISE.] The publisher shall as soon as practicable at his own expense proceed to print and publish the said book, in one or more volumes, and in such style, as to paper, type, binding, and embellishments, and at such price, as in his judgment may be advisable, and shall advertise and push the sale of the said book to the best of his ability, and shall at all times keep the market fully supplied therewith.

3. [ROYALTIES.] The publisher shall pay to the author a royalty of —— per cent. of the retail price at which the said book shall be sold on each and every copy sold, excluding copies for review or supplied to the author, who shall receive —— copies gratis.

4. [ACCOUNTS.] The publisher shall render to the author a statement of the number of copies printed, and as often as every six months shall render a statement of the number sold and at the same time pay the said royalties for the same, such accounting to be for the six months ending on the first days of —— and —— in each year.

5. [EXCLUSIVE RIGHT OF PUBLICATION.] During the continuance of this agreement the author shall not publish or authorize to be published any copy or abridgment of the said work (but the author shall be at liberty to dramatize the same and exercise or assign the performing rights therein).

6. [COPYRIGHT AND LICENSE.] The publisher shall cause the said book to be duly copyrighted in the name of the author, in whom the copyright shall remain vested. The author hereby grants to the publisher the exclusive license to print, publish, and sell copies of the said work during the continuance of such copyright or any renewals thereof, subject to the terms of this agreement.

7. [AUTHOR TO DEFEND COPYRIGHT AND INDEMNIFY AGAINST LIBEL.] The author shall defend the said copyright against all adverse claims, and indemnify the publisher against all claims for libel.

8. [PUBLISHER NOT TO ASSIGN.] This agreement and the said license shall not be assignable by the publisher by any assignment either voluntary or involuntary (except in the event of a change in the constitution of his firm to the partners of the new firm).

9. [RIGHT OF AUTHOR TO TERMINATE AGREEMENT.] The author may determine this agreement and the said license if the publisher shall be adjudicated bankrupt (*or*, shall become insolvent), *or* shall make default in the payment of royalties for ——— months after the respective dates hereby appointed for the payment of the same, *or* shall otherwise fail to perform substantially the agreements on his part. Upon any such determination of this agreement all copies of the said book in stock (and the plates of the same) shall at the author's option be taken over by him at a fair valuation; and, if he shall fail to exercise such option within one month after notice re-

quiring him to do so, the said copies may be sold by the publisher, provided that the author shall receive his royalties upon all copies so sold.

In witness, *etc.*

7. Same—Another Form

This agreement made this _____ day of _____ between _____, hereinafter called the author, of the one part, and _____, hereinafter called the publisher, of the other part, witnesseth that it is hereby agreed as follows:

1. [AUTHOR TO DELIVER MANUSCRIPT.] The author shall write or complete the writing of a book of not less than _____ words, being a (*description of work*), to be entitled _____, and shall deliver the completed manuscript thereof to the publisher on or before the _____ day of _____.

2. [EXCLUSIVE RIGHT OF PUBLICATION—DRAMATIC RIGHTS RESERVED.] During the subsistence of this agreement the publisher shall have the sole right of publishing the book throughout the United States. The author shall not during such period publish or cause to be published in any part of the United States any copy, abridgment (*or*, dramatized version) of the work without the consent in writing of the publisher (but the author shall be at liberty to dramatize the work and exercise or assign the dramatic performing rights therein).

3. [NEITHER PARTY TO PRODUCE RIVAL WORKS.] During the existence of this agreement neither the publisher nor the author shall publish or cause to be published or edit, or assist in editing or contribute matter to, any work or treatise on the subject of _____.

4. [PUBLISHER TO PRINT AND PUBLISH—FIRST AND SUBSEQUENT EDITIONS AND PRICE.] The publisher shall print and publish the book at his own expense and risk. He shall publish a first edition of not less than _____ copies nor more

than ——— copies on or before the ——— day of ———, printed on good paper and substantially bound. The book shall be sold at the price of ———. Second or subsequent editions are to be a matter of agreement with the author or his assigns and the publisher, and the publisher shall have no right nor be under any obligation to publish any such subsequent edition except by mutual agreement (*or, in place of the last sentence: "The publisher may in his discretion publish second and subsequent editions in the same form and at the same price or in such form and at such price as may be mutually agreed."* *In the case of works requiring periodical revision the following may be added: "In the event of any second or subsequent edition being required, the publisher shall before publishing such edition make a written request to the author, his executors, administrators, or assigns, requiring him or them to bring the book up to date, and thereupon he or they shall without undue delay make or cause to be made by some competent person all necessary and proper additions and alterations; and, in the event of his or their failure so to do, the publisher may employ some competent person to do the said work, the cost of which shall be deducted from the author's credit for royalties on the ensuing accounts."*)

5. [AUTHOR'S CORRECTIONS.] The publisher shall submit the proof sheets of the first and all subsequent editions to the author, who shall revise and correct the same. If the author's alterations and corrections by reason of departures made by him therein from the original manuscript shall exceed ——— per cent. of the cost of composition, the amount of such excess shall be deducted from his credit for royalties on the next ensuing account.

6. [ROYALTIES.] The publisher shall pay to the author the following royalty on the sale of copies, viz.: A royalty of ——— per cent. of the said price at which the book shall be

sold on each and every of the first 1,000 copies sold, and a royalty of ——— per cent. of the said price on each and every copy sold thereafter.

7. [ACCOUNTS.] The publisher shall render to the author an account of sales every six months, commencing six months after the date of the first publication. The balance due to the author shall be payable three months after the half-yearly account is rendered.

8. [INSPECTION OF PUBLISHER'S BOOKS.] The author may require an inspection of the publisher's books every six months after the account of sales has been rendered, and also at the termination of this agreement. On the author demanding in writing an inspection, the publisher shall forthwith permit any accountant nominated by the author to examine all books and documents relating to the publication and sale of the book.

9. [INDEMNIFICATION OF PUBLISHER.] The author shall indemnify the publisher against all damage in consequence of the book (which is believed by both parties hereto to be innocent) being libelous or containing any infringement of copyright.

10. [PUBLISHER TO PROCURE COPYRIGHT, WHICH SHALL REMAIN IN AUTHOR, WHO MAY ASSIGN.] The publisher shall cause the book to be copyrighted in the name of the author. Subject to the provisions of this agreement, the whole right, title, and interest in the manuscript and the copyright in the book when published shall remain in the author, who shall be entitled to assign the same, together with his rights and obligations under this agreement.

11. [PUBLISHER MAY NOT ASSIGN.] The publisher shall not assign the benefit of or delegate his obligations as a publisher under this agreement, except that the whole agreement may be assigned to such person or persons as may succeed him in his business as publisher.

12. [RESCISSION IF PUBLISHER REFUSES TO PUBLISH NEW EDITION.] If at any time the copies of the book in stock are reduced to ——— copies or less, the author may propose in writing to the publisher that a new edition shall be published, and if the publisher does not publish a new edition within ——— months of such proposal, the author may by notice in writing terminate this agreement.

13. [RESCISSION BY EITHER PARTY IF SALES DO NOT REACH CERTAIN AMOUNT.] If in any six months after the first six months from the date of publication the sale of the book does not exceed ——— copies, either the publisher or the author may by notice in writing terminate this agreement.

14. [RESCISSION ON PUBLISHER'S BANKRUPTCY.] If the publisher shall at any time commit an act of bankruptcy, the author may by notice in writing terminate this agreement.

15. [RIGHTS OF PARTIES UPON RESCISSION.] In the event of this agreement being terminated, the copies of the book remaining in stock, and any plates, engravings, or other plant specially prepared for the production of the book shall at the option of the author be taken over by him at a fair valuation, or, if he fails to exercise such option within ——— days after such termination, shall be sold by auction or otherwise, as the publisher shall see fit. On such sale or valuation the author shall be entitled to be credited with the royalties hereinbefore provided for according to the number of the copies which shall have been sold during the existence of this agreement.

In witness, *etc.*

TIFF.FORMS—30

CHAPTER XIV

DEEDS

In General

By the statute of frauds, which has been enacted with some variations in the several states, an instrument in writing is requisite for the conveyance of lands or any interest therein except tenancies for a short term. The instrument of conveyance is termed a deed even in states where the use of seals has been abolished. The formalities of execution are generally prescribed by statutes, which differ in respect to the requirements for witnessing, sealing and acknowledgment, while many states require particular formalities in the case of married women. Short forms of deeds also are frequently prescribed, or rather authorized, for their use is not required. And generally any instrument, executed with the prescribed formalities, is sufficient, if it expresses an intent to convey the land described. For example, Kent declared the following to be sufficient anywhere in the United States: "I, A. B., in consideration of one dollar to me paid by C. D., do bargain and sell to C. D. and his heirs the lot of land (*describe it*). Witness my hand and seal."

The requirements of the several states in respect to the execution of conveyances, as well as some other statutory provisions relating to their form and effect, are given on pages 514-643).

Parts of Deeds

Deeds which follow the older and longer forms consist of the premises, that is, the parties, the recitals, if any, the consideration, the operative words of grant or conveyance, and the description of the land, with the exceptions, if any; the habendum; the reservations, if any; the covenants, if any; and the testimonium.

The operative words of conveyance generally used are "grant, bargain, sell and convey"; although other words are often added, as "give, remise, release, alien, enfeoff and confirm." Any words in a deed which clearly show an intent to grant the maker's interest or estate in the premises, as "grant" or "convey," are sufficient. In a "quitclaim" deed the usual

words are "remise, release and forever quitclaim"; the word "grant" being often avoided for the reason that it is sometimes held to imply a covenant of general warranty. A quitclaim deed is by some statutes declared to be sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale. But a quitclaim deed does not extend to after-acquired title, and in some states such a deed does not give the grantee the rights of a bona fide purchaser within the recording acts.

It is usual by the granting words to define the estate intended to be created by adding, after the name of the grantee, if a fee simple is intended, "and his heirs and assigns"; the common-law rule being that words of grant to a man without words of limitation or inheritance are understood to create in him only a life estate, and the word "heirs" being necessary to create an estate of inheritance, although this has been changed in most states by statute. Strictly the definition of the estate intended to be created is covered by the habendum, viz., "to have and to hold" to the grantee, "his heirs and assigns," and in that case the addition of "heirs and assigns" in the granting part is superfluous; but if the granting part contains proper words of limitation, as it usually does, the habendum may be, although in practice it seldom is, dispensed with.

If the grantor wishes to except anything out of what in general terms he purports to grant, as a part of the land or an existing easement, the exception should follow the description of the thing granted, and the exception should be described with great particularity. An exception is to be distinguished from a reservation, which is always of some new right not in esse, a right newly created out of the land granted, as a right to cut timber or to extract minerals, or a right of way reserved in favor of the grantor. The reservation must be in favor of the grantor, and if he intends to secure it beyond his life there should be words of limitation and inheritance. A reservation is usually made by the reddendum, which follows the habendum, but sometimes follows immediately after the description.

It is usual after the description of the lands, or more commonly in the habendum, to add the words "with the appurtenances" or other general words applicable to easements or servitudes used and enjoyed with the land. Ordinarily these words add nothing, for whatever is included under them will pass without them by the conveyance. Where, however, the thing granted is loosely described, as by such words as "dwelling house" or "mill," the word "appurtenance" includes, not

only the soil actually covered by the building, but so much other land as is habitually occupied therewith and without which it cannot be enjoyed. Post, p. 644.

Deeds other than those of mere quitclaim usually contain covenants in respect to the title of the granted premises. These so-called "warranty deeds" differ somewhat in different states, but usually include covenants of seisin and right to convey, against incumbrances, and of warranty, and sometimes covenants of quiet enjoyment and for further assurance. A covenant is sometimes implied at common law from the words "give" and "grant," and in some states certain covenants arise from the use of particular operative words or from statutory forms of deeds, although no covenants be expressed. A covenant of warranty is usually general, that is, against the lawful claims of all persons; but the covenant may be limited to the claims of particular persons, deeds containing only such limited covenants being known as "special warranty" deeds. Covenants of special warranty are often inserted in quitclaim deeds, the grantor warranting only against persons claiming by, through or under him.

Restrictions and Conditions

Restrictions concerning the use of the land are usually made by means of a covenant as to such use on the part of the grantee, but they may also be made by a proviso to that effect, or by a reservation, or even by a condition. Restrictions ordinarily run with the land, and are enforceable in equity by the owners of other land, either the grantor, or other persons for whose benefit the restriction is intended to operate. Such third persons are usually subsequent grantees of other land of the grantor; but a restriction may operate in favor of prior grantees, if it is manifest that there was an agreement with them on the part of the common grantor that restrictions to be subsequently imposed should operate for their benefit—as where land has been subdivided into lots pursuant to a general plan which contemplates restrictions as to the use to which the lots may be put, to be secured by covenants or other provisions to be inserted in the deeds to the several purchasers, with the intent that the restrictions shall bind and inure for the benefit of each purchaser.

A restriction is to be distinguished from a condition, which is a right of reverter upon condition broken in favor of the grantor and his heirs, and is not assignable, although the fact that a remedy by way of forfeiture of the estate is attached

does not necessarily exclude an implied promise not to do the act forbidden which may be enforced as a restriction.

Deed Poll and Indenture

In some states the common form of deed is by deed poll, commencing, "Know all men by these presents that I," etc., or occasionally, "To all to whom these presents may come, greeting: Know ye that I," etc. In other states the common form is by so-called indenture, the grantor and the grantee being designated respectively as the party of the first part and the party of the second part, although like a deed poll the indenture is signed only by the grantor. Probably there is no state where the use of either form would be questioned.

Acknowledgment

As a rule the acknowledgment of a conveyance is not essential to its validity as between the parties; but to entitle it to record, and thereby to protect the rights of the grantee and those claiming under him, its execution must be acknowledged or proved by the parties executing it as required by the particular statute. Ante, p. 1.)

Recording

The statutes generally provide that conveyances and other instruments relating to land may be recorded, usually with the register of deeds of the county in which the land is, and that, if not so recorded, they are void as against subsequent purchasers and mortgagees in good faith for valuable consideration whose deeds or mortgages are first recorded, and in some states as against attaching and judgment creditors without notice. The recording acts differ mainly as to the place of record and the persons protected.

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I

Forms Generally Applicable¹

1. Warranty Deed (Indenture)

This indenture, made this ——— day of ———, between ———, of ———, party of the first part, and ———, of ———, party of the second part,

Witnesseth, that the said party of the first part, in consideration of the sum of ——— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey unto the said party of the second part (*his heirs and assigns, forever*) all that tract or parcel of land lying and being in the ——— and described as follows, to wit: (*Description.*)

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns, forever.

And the said party of the first part, for himself, his heirs, executors and administrators, doth covenant with the said party of the second part, his heirs and assigns, that he, the said party of the first part, is well seised in fee of the lands and premises aforesaid; that he has good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances; and that he will, and his heirs, executors and administrators shall, warrant and defend the same to the said party of the second part, his heirs and assigns, against the lawful claims and demands of all persons.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

¹ The statutes should always be consulted. The statutory provisions and many forms in common use in the different states follow (pp. 514-643).

2. Special Warranty Deed (Indenture)

This indenture (*as in preceding form down to and including habendum*).

And the said party of the first part, for himself and his heirs, executors and administrators, doth covenant with the said party of the second part, his heirs and assigns, that he, the said party of the first part, has not made, done, executed or suffered any act or thing whereby the above described premises or any part thereof now are or at any time hereafter shall or may be imperiled, charged or incumbered in any manner whatsoever; and the title to the above granted premises against all persons lawfully claiming the same from, through or under him the said party of the first part will forever warrant and defend.

In witness, *etc.*

3. Quitclaim Deed (Indenture)

This indenture (*as in Form No. 1, p. 475*) doth by these presents remise, release and quitclaim unto the said party of the second part (*his heirs and assigns, forever*) all that (*description*).

To have and to hold the above quitclaimed premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said party of the second part, his heirs and assigns, forever.

In witness, *etc.*

4. Warranty Deed (Deed Poll)

Know all men by these presents that I, ———, of ———, in consideration of \$——— to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby give,

grant, bargain and sell unto the said —— all that parcel of land situate in —— and described as follows: (*Description.*)

To have and to hold the granted premises, with all the rights, easements and appurtenances thereto belonging, to the said ——, his heirs and assigns, to his and their own use and behoof forever.

And I do, for myself and my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seised in fee of the granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said ——, hereunto set my hand and seal this —— day of ——.

5. Quitclaim Deed (Deed Poll)

Know all men (*as in preceding form*) do hereby remise, release, and forever quitclaim unto the said —— all that (*description and habendum as in preceding form*).

In witness, *etc.*

6. Same—With Covenant of Special Warranty

Know all men (*as in preceding form, adding as follows:*)

And I do hereby, for myself and my heirs, executors and administrators, covenant with the said grantee and his heirs and assigns, that the granted premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns for-

ever against the lawful claims and demands of all persons claiming by, through or under me.

In witness, *etc.*

7. Deed by a Corporation to a Corporation (Indenture)

This indenture, made this _____ day of _____, by the _____ Company, a corporation organized and existing under the laws of the state of _____, party of the first part, and the _____ Company, a corporation organized and existing under the laws of the state of _____, party of the second part,

Witnesseth that the said party of the first part (*as in Form No. 1, p. 475*). To have and hold the same (*etc.*) unto the said party of the second part, its successors and assigns, forever.

And the said party of the first part, for itself and its successors, doth covenant with the said party of the second part, its successors and assigns (*etc.*).

In witness whereof, the said party of the first part has caused its corporated name to be hereunto subscribed by its president and its duly attested corporate seal to be hereunto affixed by its secretary, all in the city of _____, the day and year first above written.

The _____ Company,
(Corporate Seal.) By _____, President.

Attest:

_____, Secretary.

8. Warranty Deed Subject to Mortgage which Grantee Assumes

This indenture (*as in Form No. 1, p. 475*) down to and including description).

The said premises hereby conveyed are subject to a mortgage thereof made by ——— to ———, dated (*etc.*) and recorded (*etc.*), and securing the payment of the sum of \$——, which sum with interest thereon at the rate of ——— per cent. per annum from the ——— day of ———, remains unpaid [and the said party of the second part hereby assumes and agrees to pay the same as part of the above mentioned consideration].²

To have and to hold (*continuing as in Form No. 1, p. 475*) inserting after the covenant against incumbrances "except the aforesaid mortgage").

9. Conveyance Subject to a Lease

This indenture made this ——— day of ——— between (*parties as in Form No. 1, p. 475*).

Witnesseth that in consideration (*as in appropriate form down to and including the description*).

To have and to hold the same unto the said party of the second part, his heirs and assigns, subject to a lease thereof, dated (*etc.*) and recorded (*etc.*) and made between (*parties*), and the term of (*twenty-one*) years thereby created, but with the full right to and benefit of the rent thereby reserved and of the lessee's covenants and agreements therein contained.

In witness, *etc.*

² If the grantee does not assume the mortgage, the words in brackets should be omitted.

10. Conveyance in Fee, a Lessee Joining to Merge his Lease

This indenture, made the _____ day of _____, between _____, of _____, hereinafter called the vendor, of the first part, and _____, of _____, hereinafter called the lessee, of the second part, and _____, of _____, hereinafter called the purchaser, of the third part.

[RECITAL OF LEASE.] Whereas, the vendor is the owner in fee simple of the land and premises hereinafter described, subject only to an indenture of lease thereof, dated (*etc.*) and recorded (*etc.*) and made between (*parties*), whereby the said land and premises were demised to the lessee for a term of _____ years from the _____ day of _____ at the yearly rent of \$_____.

[CONVEYANCE.] Now this indenture witnesseth that in consideration of \$_____ paid by the purchaser, as to \$_____, part thereof, to the vendor, and as to \$_____, the balance thereof, to the lessee by the direction of the vendor, the receipt whereof the vendor and the lessee respectively acknowledge, the vendor, as owner of the reversion expectant on the term created by the said indenture of lease, doth hereby grant, bargain, sell and convey, and the lessee, as owner of and to the intent that the said term shall be merged and extinguished in the fee simple reversion, hereby surrenders and conveys unto the purchaser all (*description*). To have and to hold (*etc.*). In witness, *etc.*

(*Signatures and seals of parties of first and second part.*)

11. Conveyance of Life Estate

This indenture (*as in Form No. 1, p. 475*).

[RECITAL OF VENDOR'S TITLE.] Whereas, ———, deceased, by his will, dated (*etc.*) and duly proved and allowed in and by the Probate Court of (*etc.*) on the ——— day of ———, devised the lands and hereditaments hereinafter described unto the said party of the first part during his life and from and after his death unto ——— his heirs and assigns.

[CONVEYANCE.] Now this indenture witnesseth that in consideration (*etc.*) the said party of the first part doth hereby grant, bargain, sell and convey unto the said party of the second part all that (*description*).

[HABENDUM.] To have and to hold the same unto the said party of the second part, his heirs and assigns during the remainder of the life of the said party of the first part.

In witness, *etc.*

12. Conveyance Subject to a Life Estate

This indenture, made this ——— day of ———, between (*parties as in Form No. 1, p. 475*).

[RECITAL OF VENDOR'S TITLE IN REMAINDER.] Whereas, under and by virtue of the will of ———, dated (*etc.*) and duly proved and allowed in and by the Probate Court of (*etc.*) on the ——— day of ———, the said party of the first part is entitled to the land and hereditaments hereby conveyed in fee simple in remainder expectant on the death of ———.

[CONVEYANCE.] Now this indenture witnesseth that in consideration (*etc.*) the said party of the first part hereby grants, bargains, sells and conveys unto the said party of the second part all that (*description*).

[HABENDUM.] To have and to hold the same unto the said party of the second part, his heirs and assigns forever, subject to the estate for life of the said —— therein.

In witness, *etc.*

13. Conveyance to Subpurchaser by Vendor under Contract of Sale, the Original Purchaser Joining

This indenture made this —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part, and ——, of ——, party of the third part.

[RECITAL OF CONTRACT OF SALE AND REQUEST.] Whereas, by a certain contract in writing dated (*etc.*) and recorded (*etc.*) the said party of the first part agreed to sell the premises hereinafter described to the said party of the second part, who has requested the said party of the first part in discharge of the said contract to join in these presents.

[CONVEYANCE.] Now this indenture witnesseth, that, in consideration of the sum of \$——, paid by the said party of the third part to the said party of the first part by the direction of the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth hereby grant, bargain, sell and convey and the said party of the second part doth hereby remise, release and forever quitclaim, unto the said party of the third part all that (*description*). To have and to hold the same (*etc.*).

(*Covenants of vendor as to title, as agreed.*)

In witness, *etc.*

(*Signatures and seals of parties of first and second part.*)

14. Conveyance by Tenants in Common or Joint Tenants

This indenture, made the —— day of ——, between ——, ——, and ——, of ——, parties of the first part, and ——, of ——, party of the second part.

[RECITAL OF TENANCY IN COMMON OR JOINT TENANCY.]

Whereas, the said parties of the first part are seised of the premises hereinafter described in fee simple as tenants in common in equal shares (*or, as joint tenants*).

[CONVEYANCE.] Now this indenture witnesseth that in consideration of \$—— paid by the said party of the second part, the receipt whereof is hereby acknowledged, each of the said parties of the first part so far as relates to his own share, estate or interest in the premises hereby conveyed doth hereby grant, bargain, sell and convey unto the said party of the second part all (*description*). To have and to hold, *etc.*

[VENDOR'S COVENANTS.] And each of the said parties of the first part, for himself and his heirs, executors and administrators, doth covenant with the said party of the second part, but so as to make each of them liable in damages in respect of any breach of any of the covenants herein contained to the extent of one-third only of such damages, that (*covenants as agreed*).

In witness, *etc.*

15. Conveyance to Joint Tenants

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and ——, ——, and ——, of ——, parties of the second part.

Witnesseth that (*conveyance to the said parties of the second part as in appropriate form*).

To have and to hold the same unto the said parties of the second part and their respective heirs and assigns forever as joint tenants.

In witness, *etc.*

16. Conveyance to Partnership

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and —— and ——, both of ——, manufacturers carrying on business at —— under the style or firm name of —— & Co., parties of the second part.

Witnesseth that (*conveyance to the said parties of the second part as in appropriate form*).

To have and to hold the same unto said parties of the second part in fee simple as joint tenants, in trust nevertheless for the said parties of the second part, their executors, administrators and assigns, as part of the property of the said firm of —— & Co. (*but so that after the death of either of the said parties of the second part the survivor of them or the executors or administrators of such survivor shall have power without the concurrence of the executors, administrators or assigns of the one of them first dying to lease, sell, mortgage or otherwise dispose of the premises hereby conveyed or any part thereof and to receive and give effectual discharges for any moneys arising from any such disposition, and that every such disposition shall be absolutely binding upon all persons having or claiming any interest in the partnership estate*).

In witness, etc.

17. Conveyance to Tenants in Common

This indenture (*parties as in Form No. 15, supra*).

Witnesseth that, in consideration of \$—— paid to the said party of the first part by the said parties of the second part in equal shares (*or, in the proportions hereinafter mentioned*) the said party of the first part (*conveyance to the said parties of the second part as in appropriate form*).

To have and to hold the same unto the said parties of the second part and their respective heirs and assigns forever as tenants in common in equal shares (*or, if in unequal shares, in the shares following, viz., as to three equal undivided sixth parts thereof to the said ———, and as to two other equal undivided sixth parts thereof to the said ———, and as to the remaining one equal one-sixth part thereof to the said ———*).

In witness, *etc.*

18. Conveyance by Indenture by Trustees under Deed of Trust with Special Warranty

This indenture, made the ——— day of ———, between ——— and ———, of ———, trustees, parties of the first part, and ———, of ———, party of the second part.

[RECITAL OF DEED CREATING TRUST.] Whereas, by an indenture dated (*etc.*) and recorded (*etc.*) on the ——— day of ———, and made between ———, of ———, and the said parties of the first part, the land hereby conveyed was conveyed to the said parties of the first part in trust for the uses and purposes in the said indenture declared and with power of sale as therein set forth.

[CONVEYANCE.] Now this indenture witnesseth that the said parties of the first part under and acting by virtue and in pursuance of the powers in them vested by the said indenture, in consideration of the sum of \$—— to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, all the piece or parcel of land situate in ——— and described as (*description*).

To have and to hold the above described premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever.

[COVENANT OF SPECIAL WARRANTY.] And the said parties of the first part, for themselves and their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns, that they have not made, done, executed or suffered any act or thing whatsoever, whereby the above described premises or any part thereof now or at any time hereafter shall be imperiled, charged or incumbered in any manner whatsoever; and the title to the above granted premises against all persons lawfully claiming the same from, through or under them the said parties of the first part will forever warrant and defend.

In witness whereof, the said parties of the first part, trustees as aforesaid, have hereunto set their hands and seals the day and year first above written.

19. Conveyance by Deed Poll by Trustees under Deed of Trust

Know all men by these presents that we, —— and ——, of ——, trustees, in the exercise of the power in this behalf conferred upon us by a conveyance to us in trust from ——, of ——, dated (*etc.*) and recorded (*etc.*), and of every other power us hereunto enabling, and in consideration of the sum of \$—— to us paid by ——, of ——, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said —— all that parcel of land (*description*).

To have and to hold the granted premises, with the privileges and appurtenances thereto belonging, to the said —— and his heirs and assigns to their own use and behoof forever.

In witness whereof, we, the said —— and ——, trustees as aforesaid, have hereunto set our hands and seals this —— day of ——.

20. Conveyance by Trustee in Bankruptcy

This indenture, made this _____ day of _____, between _____, as the duly appointed trustee of the estate of _____, bankrupt, party of the first part, and _____, of _____, party of the second part, witnesseth that:

[RECITAL OF ADJUDICATION IN BANKRUPTCY.] Whereas, the said _____ was duly adjudged bankrupt by the District Court of the United States for the district of _____ upon a petition filed in said court on the _____ day of _____;

[RECITAL OF SALE AND APPROVAL.] And whereas, the said party of the first part, trustee as aforesaid, by virtue of the power to him granted by said court on the _____ day of _____, has sold the right, title and interest of the said bankrupt in the premises hereinafter described at public auction (*or*, private sale) to the said party of the second part for the sum of \$_____, and said sale has been duly approved by said court,

[CONVEYANCE.] Now, therefore, by virtue and in execution of the power to him granted by said court and of every other power and authority him hereto enabling, and in consideration of the said sum of \$_____ to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part as such trustee doth hereby grant, bargain, sell and convey unto the said party of the second part all the right, title and interest which the said bankrupt had on the said date of the commencement of proceedings in the said bankruptcy in and to that parcel of land (*description*).

To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to the said party of the second part and his heirs and assigns forever.

In witness whereof, the said party of the first part, trustee as aforesaid, *etc.*

21. Conveyance by Executor under Power of Sale in Will (Indenture)

This indenture, made the _____ day of _____, between _____, of _____, executor of the last will of _____, late of _____, deceased, party of the first part, and _____, of _____, party of the second part.

[RECITALS OF WILL AND PROBATE, ETC.] Whereas, by his last will, dated the _____ day of _____, the said _____ appointed the said party of the first part as executor thereof; and whereas, the said testator died on the _____ day of _____, and his said will was on the _____ day of _____ duly proved and allowed by the probate court of the said county of _____,

[CONVEYANCE.] Now this indenture witnesseth, that in the exercise of the powers to him given by the said will and every other power him hereunto enabling, and in consideration of the sum of \$_____ to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part, executor as aforesaid, doth hereby grant, bargain, sell and convey unto the said _____ all that (*description*).

To have and to hold, *etc.*

In witness whereof, the said party of the first part, executor as aforesaid, *etc.*

22. Same—By Deed Poll

Know all men by these presents that I, _____, of _____, executor of the last will of _____, late of _____, in the county of _____ and state of _____, deceased, which will was duly proved and allowed by the probate court for said county on the _____ day of _____, do by virtue and in execution of the power to me given in and by said will, and of every oth-

er power and authority me hereunto enabling, and in consideration of the sum of \$—— to me paid by ——, of ——, the receipt whereof is hereby acknowledged, hereby grant, bargain, sell, and convey unto the said —— all that (*description*).

To have and to hold the above granted premises, with all the privileges and appurtenances thereto belonging, to the said ——, and his heirs and assigns, to their own use and behoof forever.

In witness, *etc.*

23. Deed of Executor, Administrator or Guardian Selling at Public or Private Sale Pursuant to License

To all to whom these presents shall come, I, ——, of ——, executor of the last will (*or*, as administrator of the estate of ——, late of ——, deceased; *or*, guardian of ——, a minor) send greeting:

[RECITAL OF LICENSE.] Whereas, by an order of license made by the probate court of —— on the —— day of ——, I, the said ——, in my capacity of executor (*or*, administrator; *or*, guardian) aforesaid, was authorized and empowered to sell at public (*or*, private) sale the real estate of the said —— hereinafter described;

[RECITALS OF COMPLIANCE WITH LICENSE AND SALE.] And whereas, I, the said ——, having given the required bond (*recite the compliance with whatever other formalities may be required by the statute, as the oath, the appraisal, the notice of sale, etc.*), and having in all things fully complied with the said order and with the requirements of the statute in such case made and provided, did on the —— day of ——, at ——, pursuant to the said order (*and notice*) sell by public vendue (*or*, by private sale) the real estate hereinafter described to —— of —— for the sum of —— (*if at pub-*

lic sale, add: he being the highest bidder therefor); and whereas (add recital of report of sale and order of conformance if required by statute):

[CONVEYANCE.] Now, therefore, know ye that I, the said ———, as executor (*or, administrator; or, guardian*) aforesaid, by virtue of the power and authority in me vested as aforesaid and in consideration of the sum of \$——— to me in hand paid by the said ———, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said ——— all that (*description*). To have and to hold, *etc.*

In witness, *etc.*

24. Deed of Sheriff or Referee upon Judicial Sale Pursuant to Judgment ³

This indenture, made the ——— day of ———, between ———, as sheriff of the county of ——— in the state of ——— (*or, referee in the action hereinafter mentioned*), party of the first part, and ———, of ———, party of the second part.

[RECITAL OF JUDGMENT.] Whereas, at a ——— term of the ——— court (*describing it*) held at ——— on the ——— day of ———, it was among other things ordered, adjudged and decreed by the said court, in a certain action then pending therein between (*parties plaintiff and defendant*) that all and singular the (*mortgaged*) premises mentioned in the complaint in the said action and in the said judgment and hereinafter described (*or so much thereof as might be sufficient to satisfy the said judgment and which might be sold separately without material injury to the parties interested*) be sold at public

³ The practice and the forms of deed upon such sales differ in the different states. The form given indicates in a general way the usual form of such a deed. The practice and forms of deeds upon sheriff's sales under execution are so divergent that no form is given.

auction according to the course and practice of the said court (*or, according to the statute in such case made and provided*) by or under the direction of the sheriff of the said county of ——— (*or, by and under the direction of the said party of the first part as referee thereby duly appointed for that purpose*); that the said sale be made in the county where the premises (*or the greater part thereof*) are situated; that the said sheriff (*or referee*) give public notice of the time of such sale according to the course and practice of the said court (*or, according to course and practice provided by statute in the case of the sale of real estate upon execution*), and that any of the parties in the said action might become a purchaser or purchasers on such sale; that the said sheriff (*or, referee after such sale make report thereof to the said court and after such report shall have been duly confirmed then that he*) execute to the purchaser or purchasers of the said (*mortgaged*) premises or such part or parts thereof as should be sold a good and sufficient deed or deeds of conveyance for the same.

[RECITAL OF SALE.] And whereas, the said sheriff (*or, referee*) in pursuance of the said judgment did on the ——— day of ——— sell at public auction at ——— the premises in the said judgment mentioned, due notice of the time and place of such sale being first given agreeably to the said judgment, at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of \$——, that being the highest sum bidden for the same (*and the said referee's report of the said sale having been duly confirmed*).

[CONVEYANCE.] Now this indenture witnesseth that the said party of the first part, sheriff (*or, referee*) as aforesaid, in order to carry into effect the said sale so made by him as aforesaid, in pursuance of the order and judgment of the said court (*and in conformity with the statute in such case made and provided*) and also in consideration of the premises and of the said sum of money so bidden as aforesaid being first

duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold and by these presents doth grant and convey unto the said party of the second part all that (*description*).

To have and to hold the same unto the said party of the second part his heirs and assigns forever (*subject, however, to be redeemed agreeably to the law in such case made and provided*).

In witness whereof, the said party of the first part, sheriff (*or, referee*) as aforesaid, has, *etc.*

25. Conveyance to Trustees under a Will

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and —— and ——, of ——, parties of the second part.

[RECITAL OF WILL CREATING TRUST AND AUTHORIZING PURCHASE.] Whereas, ——, late of ——, deceased, by his last will dated (*etc.*) and duly proved and allowed by the probate court of (*etc.*) on the —— day of ——, devised and bequeathed all the residue of his estate to the said parties of the second part upon certain trusts therein declared, and thereby empowered the said parties of the second part as such trustees to invest the whole or any part of the moneys at any time subject to the said trusts in the purchase of real estate to be held subject to the said trusts.

[CONVEYANCE.] Now this indenture witnesseth that, in consideration of the sum of \$—— to him paid by the said parties of the second part, trustees as aforesaid, the said party of the first part doth hereby grant, bargain, sell and convey unto the said parties of the second part, trustees as aforesaid, all that (*description*).

[HABENDUM.] To have and to hold the same unto the said parties of the second part, trustees aforesaid, their heirs and

assigns and successors in the said trust, upon the trusts and subject to the powers, provisions and declarations by and in the said will declared and contained of and concerning real estate purchased under the power in that behalf in the said will contained.

In witness, *etc.*

26. Deed of Partition Between Three Co-owners

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and ——, of ——, party of the second part, and ——, of ——, party of the third part.

[RECITALS OF OWNERSHIP AND AGREEMENT.] Whereas, the parties hereto are now seised of all the lands hereinafter described in fee simple as tenants in common in equal shares (*or, as joint tenants*) and have agreed to make a partition and division of the said lands in manner hereinafter appearing.

Now this indenture witnesseth as follows:

1. [QUITCLAIM TO PARTY OF FIRST PART BY OTHER PARTIES.] In consideration of the premises (*and of the sum of \$—— paid by the said party of the first part to the said party of the second part for equality of partition, the receipt whereof is hereby acknowledged*) the said parties of the second and third parts do hereby remise, release and forever quitclaim unto the said party of the first part all those parcels (*description*). To have and to hold the same, with all the privileges and appurtenances thereunto belonging, unto the said party of the first part, his heirs and assigns forever in severalty.

2. [QUITCLAIM TO PARTY OF THE SECOND PART BY OTHER PARTIES.] In consideration of the premises the said parties of the first and third parts do hereby remise, release and for-

ever quitclaim unto the said party of the second part all those parcels (*description*).

To have and to hold, *etc.*

3. [QUITCLAIM TO PARTY OF THE THIRD PART BY OTHER PARTIES.] (*As in preceding clause.*)

4. [MUTUAL COVENANTS AS TO TITLE.] And each of the parties hereto, for himself and his heirs, executors and administrators, covenants with each of the other of them and his heirs and assigns that the premises by him granted are free from all incumbrances made or suffered by him, and that he will and his heirs, executors and administrators shall warrant and defend the same to the respective grantees thereof and their heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under him.

In witness whereof the said parties hereto, *etc.*

27. Deed Executed under Power of Attorney ⁴

This indenture, made this ——— day of ——— (*parties as in form No. 1, p. 475*).

Witnesseth that the said party of the first part (*following the usual form*).

In witness whereof, the said party of the first part has hereunto, by ———, his attorney (*in fact*), set his hand and seal (*or, ———, by virtue of a letter of attorney, under the hand and seal of the said party of the first part, dated, etc., and recorded, etc. [or, to be recorded herewith]*), hath hereunto set the hand and seal of the said party of the first part the day and year first above written.

(*Signature of principal*) (*Seal*)

By ———, His Attorney (*in Fact*).

⁴ It is more usual to follow the ordinary form of testimonium as in other cases, the fact of execution by the attorney appearing only by the signature. The certificate of acknowledgment should, of course, follow in appropriate form where the execution is by attorney.

28. Assignment of Dower

This indenture made the ——— day of ———, between ——— and ———, of ———, parties of the first part, and ———, of ———, widow of ———, late of ———, deceased, party of the second part.

[RECITAL OF SEISIN OF INTESTATE AND DESCENT.] Whereas, the said ——— was in his lifetime and at the time of his decease seised in fee simple of certain lands and tenements situate in ———, which upon his decease descended unto the said parties of the first part, his heirs at law him surviving, subject to the dower of the said party of the second part.

[ASSIGNMENT.] Now this indenture witnesseth that the said parties of the first part hereby endow and assign unto the said party of the second part the one-third of all the said lands and tenements which are described as follows: (*Description.*)

To have and to hold the same unto the said party of the second part for and during her natural life in severalty as, for and in the name of dower and in satisfaction of all claim which the said party of the second part has or ought to have in the said lands and tenements which belonged to the said ———.

[ACCEPTANCE BY WIDOW.] And the said party of the second part hereby accepts the said lands and tenements so assigned as and for her dower and in full satisfaction of the same.

In witness, *etc.*

(Signatures and seals of all parties.)

29. Release of Dower

Know all men by these presents that I, ———, of ———, wife of ———, of ——— (or, widow of ———, late of ———, deceased), in consideration of the sum of \$——— to me paid by ———, of ———, sole heir of the said ———, do hereby grant, remise, release and forever quitclaim unto the said ———, and his heirs and assigns forever, all the right and title of and to dower which I have or may have in that parcel of land (*description*) (or, in all and singular the lands, tenements and real estate whereof the said ——— was seised or possessed), so that neither I, my heirs, executors, administrators or assigns, nor any other person or persons for me, shall have any claim, demand or right in the same or any part thereof, but thereof and therefrom shall be utterly barred and excluded forever.

In witness, *etc.*

30. Same—Another Form

This indenture made the ——— day of ———, between ———, of ———, party of the first part, and ——— and ———, of ———, parties of the second part.

[RECITAL OF DECEASE AND SEISIN OF INTESTATE.] Whereas, ———, late of ———, deceased, died on the ——— day of ———, intestate, leaving the said party of the first part, his wife, and the said parties of the second part, his heirs at law him surviving; and whereas, the said ——— was in his lifetime seised in fee simple of certain lands and tenements in respect whereof the said party of the first part is entitled to dower.

[RELEASE.] Now this indenture witnesseth that, in consideration of the sum of \$——— paid by the said parties of the second part to the said party of the first part, the receipt

whereof is hereby acknowledged, the said party of the first part doth hereby release unto the said parties of the second part, their heirs and assigns, forever, all the dower and all right, title, claim or demand of or to dower which the said party of the first part has or if these presents had not been executed could claim of, in or to the whole or any part or parts of the said lands and tenements of which the said ——— was in his lifetime seised as aforesaid, and all actions or suits of or concerning the same.

[COVENANT NOT TO SUE.] And the said party of the first part hereby covenants with the said parties of the second part and their respective heirs and assigns that neither the said party of the first part nor any person or persons whatsoever for her or in her name shall at any time hereafter bring or prosecute any action or claim or demand or any right or title against the said parties of the second part, their heirs or assigns, or their lands or tenements, for or by reason of any dower due to her the said party of the first part, but that she and they and every of them shall be excluded and barred of and from all actions, claims and demands of dower in and to the same.

In witness, *etc.*

(Signatures and seals of all parties.)

31. Release by Tenant of the Curtesy

This indenture, made this ——— day of ———, between ———, of ———, party of the first part, and ———, of ———, party of the second part.

Whereas, ——— died on the ——— day of ———, intestate, leaving the said party of the first part, her husband, and the said party of the second part, the only child of their marriage; and whereas, the said party of the first part thereupon became and now is seised of or entitled to the lands and

hereditaments hereinafter described for an estate for his life as tenant by the curtesy.

Now this indenture witnesseth that in consideration of the sum of (*etc.*) the said party of the first part hereby releases and quitclaims unto the said party of the second part, his heirs and assigns, all the estate for life or tenancy by the curtesy which the said party of the first part has or if these presents had not been executed could claim of, to or in all that (*description*) of and all other the freehold hereditaments to which the said ——— was entitled at her decease and in which the said party of the first part could claim an estate by the curtesy.

In witness, *etc.*

32. Conveyance of Land with Easements of Right of Way and Sewer; Reservation of Right of Way; and Restrictive Covenant against Building

This indenture, made this ——— day of ——— (*parties as in Form No. 1, p. 475*).

1. [CONVEYANCE OF LAND.] Witnesseth that the said party of the first part, in consideration of the sum of \$—— to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said party of the second part all that parcel of land (*description*), the said parcel of land hereby conveyed being shown on the plan annexed hereto and thereon colored red.

2. [EASEMENTS OF RIGHT OF WAY AND DRAINS.] Together with the following rights and easements, namely:

(1) [RIGHT OF WAY.] A right of way in common with the said party of the first part, his heirs and assigns, owners for the time being of all or any part of the land of the said party of the first part next northerly and adjoining the said

parcel hereby conveyed and shown on the said plan and thereon colored blue, at all times and for all purposes with or without vehicles and animals to and from the said parcel hereby conveyed or any part thereof over and along a strip of land (*eight*) feet wide on the last mentioned land of the said party of the first part, the boundaries of the said strip being on the said plan shown by dotted lines between the points marked A, B, C and D (*subject to a fair proportion of the expense of maintaining the said way in repair*).

(2) [SEWER.] The right to use for the passage of sewage water and soil from the said parcel hereby conveyed a certain sewer or drain in and under the land of the said party of the first part next westerly and adjoining the said parcel hereby conveyed, by which the drainage of the said parcel hereby conveyed is now carried into the main sewer in ——— street, the last mentioned land being shown on the said plan and thereon colored green and the course of the said sewer or drain being shown by dotted lines between the points marked E and F thereon, and for that purpose to make and forever to repair and maintain all such connections with the said sewer or drain at the said point marked E as may be reasonable and proper, making good nevertheless at his own expense all damage which may be caused thereby to the last mentioned land.

3. [RESERVATION OF RIGHT OF WAY.] Reserving nevertheless unto the said party of the first part, his heirs and assigns, owners for the time being of all or any part of the said parcel of land colored blue on the said plan, and all persons going to or from any part of the same, a perpetual right of way in common with the said party of the second part, his heirs and assigns, at all times and for all purposes, with or without vehicles and animals over and along a strip of land (*eight*) feet wide on the said parcel hereby conveyed, next northerly and adjoining the said parcel on the said plan colored blue

(*subject to a fair proportion of the expense of maintaining the said way in repair*), the said strip of land (*eight*) feet wide making in connection with the first mentioned strip (*eight*) feet wide an alley or passageway (*sixteen*) feet wide to be used in common as hereinbefore provided.

4. [HABENDUM.] To have and to hold the granted premises, with all rights and appurtenances thereto belonging, to the said party of the second part, his heirs and assigns forever.

5. [RESTRICTIVE COVENANT BY GRANTEE AGAINST BUILDING.] And the said party of the second part for himself, his heirs, executors, administrators and assigns, hereby covenants with the said party of the first part, his heirs and assigns as follows:

(1) [NOT TO BUILD BEYOND CERTAIN LINE.] That neither the said party of the second part nor his heirs or assigns will ever erect any building upon the land hereby conveyed within ——— feet from the land of the said party of the first part which is shown on the said plan and thereon colored green.

(2) [NOT TO BUILD ABOVE CERTAIN HEIGHT.] That the said party of the second part, his heirs or assigns, will not ever raise any part of the buildings now standing upon the land hereby conveyed to any greater height than the present elevation thereof or erect on the said land any building being in any part of greater height than the existing buildings now are.

6. (*Covenants of grantor, as may be agreed.*)

In witness, etc.

33. Conveyance of One Lot with Restrictions for the Benefit of All Lots Embraced in a General Plan

This indenture, made this _____ day of _____, between the _____ Land Company, a corporation organized and existing under the laws of the state of _____, hereinafter called the company, of the one part, and _____, of _____, hereinafter called the purchaser, of the other part.

[RECITALS OF PLAN AND PURPOSE OF RESTRICTIONS.]
Whereas, the company has heretofore caused a plan of certain lands, including the land hereby conveyed, to be made, dividing the same into lots and streets, which plan was on the _____ day of _____ duly filed and recorded in the registry deeds for the county of _____ in said state in book _____ of _____, at page _____; and whereas, the company has conveyed certain of the said lots, and intends to convey the remainder of the same, by deeds containing restrictive covenants on the part of the purchasers therein similar to those hereinafter contained, to the end that the restrictions therein imposed shall inure to the benefit of each and all of the purchasers of such lots whether they shall have become such before or after the date hereof, and their respective heirs and assigns.

1. [CONVEYANCE OF LAND WITH BENEFIT OF RESTRICTIVE COVENANTS IN OTHER DEEDS.] Now this indenture witnesseth that, in consideration of the sum of \$_____ paid to the company by the purchaser, the receipt whereof is hereby acknowledged, the company doth hereby grant, bargain, sell and convey unto the purchaser, his heirs and assigns, all that parcel of land (*description*) the same being shown and designated as lot number _____ in the above recited plan; together with the benefits of the covenants of the respective grantees named in the several deeds, whether heretofore or hereafter

executed, of each and all of the lots shown and designated upon the said plan restrictive of the user by such grantees respectively and their respective heirs and assigns of the lots described in those deeds respectively. To have and to hold the granted premises unto the purchaser and his heirs and assigns forever.

2. [RESTRICTIVE COVENANTS OF PURCHASER.] The purchaser, as to the said lot of land hereby conveyed, and with intent to bind all persons in whom the said lot hereby conveyed shall for the time being be vested, but not so as to be personally liable under this covenant after he has parted with the said lot, for himself and his heirs and assigns hereby covenants with the company and its assigns as follows:

(1) [NOT TO BUILD BEYOND BUILDING LINE.] Not at any time hereafter to erect or make any building or obstruction, other than a boundary fence or wall, northward of the dotted line drawn on the said plan and thereon marked "building line," which line is situate at a distance of ——— feet or thereabouts inside the southern boundary of ——— street shown on the said plan.

(2) [TO BUILD DWELLING HOUSE ONLY.] Not to erect any building other than a single detached dwelling house, either with or without a stable, coach house, garage or other necessary outbuilding, upon the said lot of land hereby conveyed or any part thereof.

(3) [NOT TO ERECT HOUSE OF LESS THAN COST MENTIONED.] Not to erect or suffer to be erected upon the said lot of land hereby conveyed any dwelling house at a cost of less than \$———, such cost to be calculated upon the net cost of labor and material alone estimated at current prices.

(4) [NOT TO USE EXCEPT FOR DWELLING HOUSE.] Not to use any building to be erected upon the said lot of land hereby conveyed or any part thereof for any other purpose than that of a private dwelling house only.

(5) [NOT TO SELL INTOXICATING LIQUORS OR SUFFER NUISANCE.] Not to make, sell or keep for sale upon the said lot of land hereby conveyed or any part thereof any spirituous or intoxicating liquors, and not to do or suffer thereon anything which shall be a nuisance to the person or persons for the time being owning or occupying any of the land included in the said plan.

3. (*Vendor's covenants of title, as may be agreed.*)

In witness, etc.

34. Conveyance to Railway Company Subject to a Condition in Case the Premises are Not Used for Station

This indenture made this —— day of ——, between ——, of ——, party of the first part, and the —— Railway Company, a corporation (*etc.*), party of the second part, [CONVEYANCE.] Witnesseth that, in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part doth hereby grant, bargain, sell and convey unto the said party of the second part, all that (*description*).

To have and to hold the same, with all the rights, easements and appurtenances thereunto belonging, to the said party of the second part, its successors and assigns forever.

[CONDITION.] Provided always and this conveyance is made upon the express condition that if the said party of the second part, its successors and assigns, shall at any time fail during the period of one year to maintain thereon a railway passenger station, then the estate hereby conveyed shall revert to and revest in the said party of the first and his heirs, and it shall be lawful for him or them to re-enter upon the premises hereby conveyed.

(*Covenants of title, as may be agreed.*)

In witness, etc.

35. Conveyance to Railway Company for Right of Way with Condition in Case of Abandonment of Railroad

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and —— Railway Company, a corporation organized and existing under the laws of the state of ——, party of the second part.

[CONVEYANCE.] Witnesseth that the said party of the first part, in consideration (*etc.*) doth hereby grant, bargain, sell and convey (*or*, remise, release and quitclaim) unto the said party of the second part a strip of land —— in width, being —— feet wide on each side of the center line of the railroad right of way of the said party of the second part as the same is now surveyed and located (*or*, is now constructed) across the following lands (*description*).

To have and to hold the same, with all the rights, easements and appurtenances thereunto belonging, unto the said party of the second part, its successors and assigns forever.

[CONDITION.] Provided always and this conveyance is made upon the express condition that if the said party of the second part shall at any time abandon and cease to operate its said railroad upon the premises hereby conveyed (*or*, quitclaimed) then the estate hereby conveyed (*or*, quitclaimed) shall revert to and re-vest in the said party of the first part and his heirs, and it shall be lawful for him or them to re-enter upon the premises hereby conveyed (*or*, quitclaimed).

In witness, *etc.*

36. Deed to Correct Mistake in Prior Deed

This indenture made the —— day of ——, between (*parties as in Form No. 1, p. 475*).

[RECITAL OF PRIOR DEED.] Whereas, by a warranty deed dated (*etc.*) and recorded (*etc.*) the said party of the first part

conveyed to the said party of the second part (*or, to one —, under whom the said party of the second part claims*) certain lands therein and hereinafter described.

[RECITAL OF MISTAKE AND PURPOSE OF EXECUTION.] And whereas, in the said deed by mistake the words — were written instead of the words — (*or, the words — were omitted; or otherwise specifying the error*), and this deed is executed for the purpose of correcting the said mistake.

[CONVEYANCE.] Now this indenture witnesseth that the said party of the first part, in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said party of the second part (*concluding as in other cases*).

37. Deed of Mining Claim

This indenture, made the — day of —, between (*parties as in Form No. 1, p. 475*).

Witnesseth, that the said party of the first part, for and in consideration of the sum of \$— to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth by these presents grant, bargain, sell, remise and forever quitclaim unto the said party of the second part, his heirs and assigns, — feet undivided in that certain mining claim situate in the — mining district, in the county of — and state of —, being — feet in length and — feet in width, and known as the —.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed, and, also, all and singular, the tenements, hereditaments and appurtenances thereto belonging,

or in anywise appertaining, and the rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness, *etc.*

38. Conveyance Reserving Mines and Minerals with Liberty to Work

This indenture made this ——— day of ———, between (*parties as in Form No. 1, p. 475*).

Witnesseth as follows:

1. [CONVEYANCE.] In consideration (*follow Form No. 1, p. 475, down to and including description*), subject to the exception and reservation in favor of the said party of the first part, his heirs and assigns, hereinafter mentioned. To have and to hold (*as in ordinary form*).

2. [RESERVATIONS.] Out of the conveyance hereinafter contained there are excepted and reserved unto the said party of the first part, his heirs and assigns, all mines and minerals of whatsoever nature lying in or under the lands and hereditaments hereby conveyed, together with full liberty at all times for the said party of the first part, his heirs and assigns,⁵ his and their agents and workmen, to enter upon all or any part of

⁵ Or, as an alternative, the following, in which case clauses 3 and 4 should be omitted: "To work, get and carry away the said mines and minerals, but by underground workings only and without entering upon or in any manner affecting or exercising any rights or powers whatsoever in or over the surface of the lands and hereditaments hereby conveyed, and without any liability to pay compensation to the said party of the second part, his heirs or assigns, for any damage to the buildings on the said lands and hereditaments or for draining water from underneath the same by the working of the hereby reserved or the adjoining mines and minerals."

the said land and hereditaments and to search for, work, get and carry away the said mines and minerals, and any mines and minerals upon adjoining lands of the said party of the first part, his heirs and assigns, and to let down the surface of all or any part of the said land and hereditaments and any buildings now or hereafter to be erected thereon (*or, but not so as to injure or disturb any buildings now erected thereon*), and for the purpose of such working to sink pits and shafts, erect buildings, construct railways, tramways and roads, lay pipes, make aqueducts and watercourses, and appropriate and use the surface of the said lands and hereditaments hereby conveyed or any part thereof for refuse heaps, and to do all other things convenient or necessary for the full enjoyment of the exception and reservation herein contained.

3. [COVENANT FOR COMPENSATION FOR DAMAGE.] The said party of the first part, his heirs and assigns, shall make full compensation to the said party of the second part, his heirs and assigns, and his and their lessees and tenants, for all damage done to the surface of the lands and hereditaments hereby conveyed by the exercise of the liberty hereinbefore excepted and reserved.

4. [ARBITRATION.] The amount of such compensation as aforesaid shall be determined by (*provision for arbitration as may be agreed*).

5. (*Covenants of title, as may be agreed.*)

In witness, *etc.*

39. Conveyance Reserving Coal

This indenture, made the ——— day of ——— (*parties as in Form No. 1, p. 475*), witnesseth:

[CONVEYANCE.] That the said party of the first part for and in consideration of the sum of \$——, paid by the said party of the second part, the receipt whereof is hereby ac-

knowledge, hereby grants, bargains, sells and conveys unto the said party of the second part the surface and right of soil only of and to the following parcel of land (*description*).

[RESERVATION.] Excepting and reserving, however, unto the said party of the first part, his heirs and assigns, all the coal and other minerals in, under, and upon the said described parcel of land, and also the right and privilege of mining and removing the same by any subterranean process, and of making and driving tunnels, passages and ways under the said surface for the purpose of mining any coal now or hereafter owned or held by the said party of the first part, his heirs or assigns, on said land or any adjoining lands, as fully and entirely as if the said party of the first part, his heirs or assigns, remained the owner in fee simple of said surface or right of soil, without any liability on the part of the said party of the first part, his heirs or assigns, whatever to the said party of the second part, his heirs and assigns, for any injury that may occur to the said surface or to any buildings or improvements now or hereafter erected thereon by reason of the mining and removal of all the said coal and other minerals, or any adjoining coal or other minerals, or from any failure of vertical or lateral support, or by reason of driving said tunnels, passages, and ways, or of anything that may occur in connection with the mining of said coal or other minerals or in consequence thereof; it being expressly agreed that the exceptions and reservations aforesaid have materially reduced the amount of the consideration of this indenture, and that any damages of any nature whatsoever that may occur for any of the reasons aforesaid have, by such reduction, been fully liquidated and satisfied in full.

Together with all and singular, the buildings, improvements, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining; excepting and reserving, however, as aforesaid.

[HABENDUM.] To have and to hold the said described surface, hereditaments and premises, hereby conveyed, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; excepting and reserving, however, as aforesaid.

[COVENANT OF GRANTOR.] And the said party of the first part, for himself and his heirs, executors and administrators, covenants with the said party of the second part, his heirs and assigns that he the said party of the first part all and singular the hereditaments and premises herein above described and granted unto the said party of the second part, his heirs and assigns, against him the said party of the first part, his heirs and assigns, against all and every other person or persons, whomsoever lawfully claiming or to claim the same or any part thereof, subject to the reservations hereinbefore set forth, shall and will warrant and defend.

In witness, *etc.*

40. Deed by One of Full Age Confirming a Conveyance Made During Infancy

This indenture, made this —— day of —— (*parties as in Form No. 1, p.475*),.

[RECITAL OF FORMER DEED.] Whereas, by a deed dated (*etc.*) and recorded (*etc.*) the party of the first part did convey to the party of the second part the premises hereinafter described.

[RECITAL OF FULL AGE.] And whereas, at time of making the said deed the party of the first part was not of the age of twenty-one years and has since attained that age.

[CONFIRMATION.] Now this indenture witnesseth that the party of the first part, in consideration of the premises, doth hereby ratify and confirm the said deed and the conveyance thereby made and all the covenants therein contained to the

intent that it may take effect in the same manner in all respects as if he had been of full age at the date thereof. And by way of further assurance the party of the first part doth hereby remise, release and forever quitclaim unto the party of the second part all that parcel of land in the said deed expressed or conveyed, to wit (*description*). To have and to hold the same with all the privileges and appurtenances thereunto belonging to the party of the second part, his heirs and assigns, forever.

In witness, *etc.*

41. Deed Confirming a Conveyance under Power of Attorney

This indenture made this _____ day of _____ (*parties as in Form No. 1, p. 475*).

[RECITAL OF FORMER DEED, ETC.] Whereas, a certain deed dated (*etc.*) and recorded (*etc.*) was executed on behalf of the party of the first part by _____ as attorney for him under a power of attorney dated (*etc.*), and recorded (*etc.*), whereby the said _____ was appointed attorney for the party of the first part for the purposes therein set forth, and doubts have since arisen as to his power and authority to execute the said deed.

[CONFIRMATION.] Now this indenture witnesseth that in consideration of the premises the party of the first part doth hereby ratify and confirm the said deed and the conveyance thereby made to the intent that the said deed may take effect in the same manner as if it had been executed by the party of the first part. And by way of further assurance (*concluding as in preceding form*).

DESCRIPTIONS

42. City Lot

All that tract or parcel of land with the buildings thereon situate in the city of ——— in the county of ——— and state of ——— bounded and described as follows:

Beginning at a point on the southerly line of First street distant fifty feet westerly from the westerly line of Second street; thence westerly along the southerly line of First street thirty feet; thence at right angles southerly through a party wall parallel with Second street one hundred feet; thence at right angles easterly thirty feet; thence at right angles northerly one hundred feet to the point of beginning.

43. Same—According to Plat

All that tract or parcel of land situate in the county of ——— and state of ———, known and described as lot seven in block eight of Smith's addition to the city of ———, according to the plat thereof on file and of record in the office of the register of deeds in and for said county.

44. Land in Government Survey

All that tract or parcel of land situate in the county of ——— and state of ——— known and described as the northwest quarter (*or*, the northwest quarter of the northwest quarter; *or*, lot four) of section ten of township seven north, range twenty-one west of the fifth principal meridian according to the government survey thereof.

45. By Course and Distance

Beginning at a stone monument (*describing it*), running thence north — rods; thence north — degrees — minutes east — rods; thence south — degrees — minutes east — rods; thence south — minutes west — rods more or less to the point of beginning, containing — acres, more or less.

46. Description with Reference to Other Land

All that tract or parcel of land with the dwelling house and buildings thereon situate in the town of — in the county of — and state of —, bounded on the north by — street, on the east by — street, on the south by land now or formerly of —, and on the west by land of —, containing — acres more or less, and being the same premises conveyed to me by — by deed dated (*etc.*) and recorded (*etc.*).

47. Description with Reference to Map or Plan

All that (*description*) which premises are shown on a map or plan made by —, surveyor, dated (*etc.*), and recorded in the office of the register of deeds of — in book —, page — (*or*, and to be recorded herewith).

ATTESTATION

48. Where Delivery is in Escrow

Signed, sealed and delivered by the above named (*grantor*) as an escrow and placed in the hands of (*custodian*) to be delivered up to the within named (*grantee*) as the deed of the said (*grantor*) when the within mentioned sum of \$—

shall have been paid by the said (*grantee*) to the said (*custodian*) as the agent and on behalf of the said (*grantor*) (*or, whatever the condition may be on the fulfillment of which the operation of the deed is made dependent*) in the presence of
(*Signatures of witnesses.*)

49. Noting Alterations, Omissions or Insertions

Signed, sealed and delivered by the above named (*or, within named*) ———, the words ——— having been previously interlined between the words ——— and ——— (*or, previously written over obliterations*) in the ——— line of the ——— page and the words ——— in the ——— line of the ——— page having been previously struck out (*and the words ——— substituted therefor*) in the presence of

(*Signatures of witnesses.*)

50. Where Signature is by Mark

Signed, by making his mark, he being unable to write his name, and sealed and delivered by the above named (*grantor*) after the nature of the above written instrument had been first read over to him, in the presence of

(*Signatures of witnesses.*)

51. Where Signature is Written for Grantor

Signed in the name of the above named (*grantor*) at his request and in his presence, he being unable through illness (*or, blindness*) to write his name, by (*person writing the signature*) and sealed and delivered by the said (*grantor*) after the above written instrument had been read over to him and he appeared perfectly to understand the same, in the presence of

(*Signatures of witnesses.*)

52. Where Execution is by Attorney *

Signed, sealed and delivered by the above named (*attorney*)
as the attorney and in the name of the above named (*principal*)
in the presence of- (*Signatures of witnesses.*)

II**Statutory Provisions and Forms in Use in the
States****ALABAMA****In General**

Conveyances for the alienation of lands must be written or printed, or partly written and partly printed, on parchment or paper, and signed at their foot by the contracting party, or his agent having written authority; or, if he is not able to sign his name, it must be written for him, with the words, "his mark," written against the same, or over it. The execution must be attested by one witness, or, if the party cannot write, by two. Civ. Code 1907, § 3355.

Acknowledgment operates as a compliance with the above requisitions as to witnesses. Ibid. § 3357.

All writings which import on their face to be under seal are to be taken as sealed instruments. Ibid. § 3363.

Every estate is to be taken as a fee simple, although the words necessary to create an estate of inheritance are not used, unless it clearly appears that a less estate was intended. Ibid. § 3396.

In all conveyances of estates in fee, the words "grant," "bargain," "sell," or either of them, must be construed, unless it otherwise clearly appears therefrom, an express covenant to the grantee, his heirs and assigns, that the grantor was seised of an indefeasible estate in fee simple, free from incumbrances done or suffered by him, except the rents and services that are reserved, and also for quiet enjoyment against him, his heirs

* Usually the ordinary form of attestation is followed, the signature and the certificate of acknowledgment showing that the execution was by attorney.

and assigns, unless limited by the express words of such conveyance. Ibid. § 3421.

Husband and Wife

The wife, if of the age of 18, may relinquish dower, by joining with her husband in a conveyance, or in a power of attorney authorizing the attorney to convey the lands, or subsequently to a conveyance thereof by the husband by a separate instrument executed by her alone; and in either case her signature must be witnessed or acknowledged in the manner prescribed for other conveyances (ante, p. 9). The form of the separate and apart acknowledgment of homestead by her (ante, p. 11) is sufficient to relinquish or pass dower. Civ. Code 1907, § 3818. Dower defined. Ibid. § 3812.

Married women, residing or living beyond the limits of the state, may in like manner convey or release their right of dower to land within the state, such conveyance being acknowledged by them as other conveyances executed beyond the state. Ibid. § 3819.

As a rule, the wife cannot alienate or mortgage her lands, or any interest therein, without her husband's assent and concurrence, manifested by his joining in the alienation in the mode prescribed for the execution of conveyances of land; but if he be non compos mentis, or has abandoned her, or is a nonresident, or is imprisoned under a conviction for crime for two years, she may alienate or mortgage her lands as if she were sole. Ibid. § 4494.

No conveyance of the homestead by a married man is valid without the voluntary signature and assent of the wife, which must be shown by her examination, separate and apart from him, before an officer authorized to take acknowledgments, whose certificate must be substantially in the form prescribed. Ibid. § 4161. The form is given ante, p. 11.

Warranty Deed

THE STATE OF ALABAMA, }
——— County. }

Know all men by these presents: That I, of ———, for and in consideration of the sum of ——— dollars, to me in hand paid by ———, of ———, the receipt whereof I do

hereby acknowledge, have granted, bargained, sold and conveyed, and by these presents do hereby grant, bargain, sell and convey unto the said ———, his heirs and assigns, the following described real estate, situated in the county of ——— and state of Alabama, to wit: (*Description.*)

To have and to hold the aforegranted premises to the said ———, his heirs and assigns forever. And I do covenant with the said ———, his heirs and assigns, that I am lawfully seised in fee of the aforementioned premises; that they are free from all incumbrance; that I have a good right to sell and convey the same to the said ———, his heirs and assigns; and that I will warrant and defend the premises to the said ———, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I have hereunto set my hand and seal this the ——— day of ———, A. D. 19——.

Quitclaim Deed

THE STATE OF ALABAMA, }
——— County. }

Know all men by these presents: That for and in consideration of the sum of ——— dollars to me in hand paid by ———, the receipt whereof is hereby acknowledged, I do remise, release, quitclaim and convey to the said ——— all my right, title, interest and claim in or to the following described land situate in the county of ——— and state of Alabama, to wit: (*Description.*)

Witness my hand and seal, this the ——— day of ———.

ALASKA

In General

A conveyance of lands or of any estate or interest therein may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded. Civ. Code, § 73. Cf. Code Civ. Proc. § 1041, abolishing private seals.

As to execution of deed, ante, p. 12.

A deed of quitclaim and release passes all the real estate which the grantor could convey by deed of bargain and sale. Civ. Code, § 75.

The term "heirs" or other words of inheritance are not necessary to create or convey an estate in fee simple. Ibid. § 76.

No covenant is implied, in any conveyance. Ibid. § 78.

Husband and Wife

A husband and wife may by their joint deed convey her real estate as she might do by her separate deed if unmarried. Ibid. § 74.

A widow is entitled to dower, or the use during her life of one-third part in value of all the lands whereof her husband died seised of an estate of inheritance. Ibid. § 36.

When a man and his wife are seised in her right of any estate of inheritance, the husband on her death holds the lands for his life as tenant by the curtesy, although they may not have had issue born alive. Ibid. § 56.

ARIZONA

Every deed or conveyance must be signed by the grantor and acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. Civ. Code 1913, par. 2053. A private seal or scroll is not necessary, except as to corporations.

Every instrument affecting real property in this state executed, acknowledged and certified in any other state or territory in accordance with the laws thereof, is valid and entitled to record. Ibid. par. 2077.

Every estate granted or conveyed is deemed a fee simple, although words necessary at common law to transfer an es-

tate in fee simple be not added, if a less estate be not limited. Ibid. par. 2051.

From the use of the word "grant" or "convey" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms: (1) That previous to the time of execution the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee; (2) that such estate is at the time of execution free from incumbrances. Ibid. par. 2056.

The term "incumbrances" includes taxes, assessments and all liens upon real property. Ibid. par. 2057.

Husband and Wife

A married woman of the age of 18 or over may convey lands vested in her in her own right, without being joined by the husband. Ibid. par. 2058.

The homestead of a family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife, which must be evidenced by joining in the conveyance. Ibid. par. 2058.

Married men of 21 or over may convey lands, or any estate or interest therein, vested in them in their own right, without being joined by the wife. Ibid. par. 2059.

No conveyance, transfer, mortgage or incumbrance of real estate which is the common property of husband and wife, or any interest therein, is valid unless executed and acknowledged by both. But this does not apply to unpatented mining claims, which may be conveyed, transferred, mortgaged or incumbered by the one in whose name the title or right of possession may be, without the other joining therein. Ibid. par. 2061.

Either husband or wife may authorize the other, by power of attorney, executed and acknowledged in the manner as conveyances, execute, acknowledge and deliver any instrument affecting the separate property of the constituent or the community property. Ibid. par. 2062.

Forms

The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated:

(1) For the consideration of ——— dollars, I hereby quit-claim to A. B. all my interest in the following tract of real estate (*describing it*).

(2) For the consideration of ——— dollars, I hereby convey to A. B. the following tract of real estate (*describing it*).

(3) The same as the last preceding form, adding the words "and I warrant the title against all persons whomsoever" (*or other words of warranty, as the party may desire*).

(4) The same as deed of conveyance, adding the following: "To be void upon condition that I pay," *etc.* Ibid. par. 2065.

Warranty Deed (Common Form)

STATE OF ARIZONA, }
County of ———. } ss.

Know all men by these presents: That I, ———, of ———, for and in consideration of the sum of ——— dollars, to me in hand paid by ———, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said ——— all those certain premises described as follows, viz.: (*Description.*)

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said ———.

And I hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said ———, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Witness my hand this ——— day of ———.

Quitclaim Deed (Common Form)

This indenture, made the —— day of ——, between ——, the party of the first part, and ——, the party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released and quitclaimed, and by these presents do convey, remise, release and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described real estate and property situated in the county of —— and state of Arizona, to wit: (*Description.*)

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity, in possession or expectancy to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

ARKANSAS

In General

Deeds and instruments of conveyance must be executed in the presence of two disinterested witnesses, or, in default thereof, acknowledged by the grantor in the presence of two such witnesses, who shall then subscribe the same; and, if they do not subscribe at the time of the execution, the date of their subscribing must be stated with their signatures. Kirby's Dig. 1904, § 742.

Private seals are abolished. Const. Schedule, § 1.

"Heirs," or other words of inheritance, are not necessary to convey an estate in fee simple. Ibid. § 733.

The words "*grant, bargain, and sell*" are an express covenant to the grantee, his heirs and assigns, that the grantor is seised of an indefeasible estate in fee simple, free from incumbrance done or suffered from the grantor, except rents or services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and from the claim or demand of all other persons whatsoever, unless limited by express words in such deed. Ibid. § 731.

Husband and Wife

The husband must join in the conveyance of the wife's real estate, if acquired before October 13, 1874. In other cases she may convey her real estate by deed executed by herself as if she were a feme sole. See Ibid. § 740. She may relinquish dower by joining with her husband in a deed of conveyance, and acknowledging in the manner prescribed. Ibid. § 741; ante, p. 18. Such relinquishment shall be authenticated and the title passed by her voluntarily appearing before the proper court or officer, and, in the absence of her husband, declaring that she had of her own free will signed the relinquishment for the purposes therein contained and set forth without compulsion or undue influence of her husband. Ibid. § 751; ante, p. 18.

No conveyance of the homestead of a married man is valid unless his wife join in the execution and acknowledge the same. Ibid. § 3901.

Warranty Deed, With Relinquishment of Dower (Statutory)

Know all men by these presents:

That we, ——— and ———, his wife, for and in consideration of the sum of ——— dollars to us paid by ———, ———, do hereby grant, bargain, sell, and convey unto the said ———, and unto ——— heirs and assigns forever, the following lands lying in the county of ———, and state of Arkansas, to wit (*insert correct description*). To have and to hold the same unto

the said ———, ——— and unto ———, heirs and assigns forever, with all appurtenances thereunto belonging. And ———, hereby covenant ——— with said ——— that ——— will forever warrant and defend the title to the said lands against all claims whatever. And I, ———, wife of the said ———, for and in consideration of the said sum of money, do hereby release and relinquish unto the said ——— all my right of dower and homestead in and to the said lands.

Witness our hands and seals on this ——— day of ———,
19—. ———. (L. S.)
—————. (L. S.)

CALIFORNIA

In General

An estate in real property, other than at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. Civ. Code, § 1091. If the signature is by mark, the name must be written near it by one who writes his own name as witness, and there must be two subscribing witnesses. Distinctions between sealed and unsealed instruments are abolished. Ibid. § 1629.

A fee simple title is presumed to be intended to pass, unless it appears from the grant that a lesser estate was intended. Ibid. § 1105.

From the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance: (1) That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; (2) that such estate is at the time of such execution free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon as if expressly inserted. Ibid. § 1113.

Husband and Wife

A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. Ibid. § 1187.

The homestead cannot be conveyed or incumbered unless the instrument is executed and acknowledged by both husband and wife. Ibid. § 1242. There is no dower or courtesy. Ibid. § 173.

Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. Ibid. § 687. While the husband alone can convey the community property for value, it is advisable to have the wife join in the deed.

Statutory Form of Grant

A grant of an estate in real property may be in substance as follows:

I, A. B., grant to C. D. all that real property situated in (*insert name of county*) county, state of California, bounded (*or, described*) as follows (*here insert description, or, if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance, "the Norris Ranch"*).

Witness my hand this —— day of —— A. D. 19—.

A. B.

Ibid. § 1092.

Warranty Deed

I, A. B., of the first part, grant to C. D., of the second part, all that real property situated in ——, county of ——, state of California, bounded (*or described*) as follows (*description*).

The party of the first part covenants with the party of the second part that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on de-

mand, execute and deliver to the party of the second part, and at the expense of the latter, any further assurance of the same that may be reasonably required, and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

To have and to hold the above granted and described premises unto said ———, his heirs and assigns, forever.

Witness, *etc.*

Quitclaim Deed

This indenture, made the ——— day of ———, A. D. 19—, between ———, the party of the first part, and ———, the party of the second part, witnesseth: That the party of the first part, in consideration of the sum of ——— dollars to him in hand paid, by the party of the second part, the receipt whereof is hereby acknowledged, does hereby release and forever quitclaim, unto the party of the second part, and to his heirs and assigns, all that certain lot, piece, or parcel of land situate in the county of ———, state of California, and bounded and described as follows, to wit (*description*).

Together with all the tenements, hereditaments, and appurtenances thereunto belonging.

To have and to hold the said premises, unto the party of the second part, and to his heirs and assigns, forever.

In witness whereof, *etc.*

COLORADO

In General

A seal is unnecessary. Rev. St. 1908, § 682. Witnesses are not required, but one is desirable for the purpose of proof of execution in case of defective acknowledgment. See *Ibid.* §§ 693, 695, 696.

Every estate granted or conveyed is deemed a fee simple if a less estate be not limited. *Ibid.* § 675.

Husband and Wife

A married woman may convey her real property as if she were sole. Ibid. § 4190.

As to homestead, ante, p. 24.

Warranty Deed

This deed, made this —— day of ——, A. D. 19——, between ——, of ——, of the first part, and ——, of ——, of the second part:

Witnesseth that the said party of the first part, for and in consideration of the sum of —— dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever (*description*).

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described with the appurtenances, unto ——, the said party of the second part, his heirs and assigns forever.

And the said ——, party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seised of the premises above conveyed, as of good, sure, perfect, absolute, and inde-

feasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatever kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand (and seal) the day and year first above written, *etc.*

Quitclaim Deeds

(*Begin as in preceding*) has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right title, interest, claim, and demand which the said party of the first part has in and to the following described (*description*).

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

CONNECTICUT

In General

Conveyances must be in writing, sealed by the grantor, and subscribed with his own hand, or with his mark with his name thereto annexed, or by his attorney authorized for that purpose, by a power executed and acknowledged in the manner provided for conveyances, and attested by two witnesses with their own hands, and acknowledged by the grantor or by such attorney to be his free act and deed. Gen. St. 1902, § 4029; Pub. Acts 1905, c. 63. Conveyances executed in another state, ante, p. 26.

Husband and Wife

Conveyances of the real estate of wives married prior to April 20, 1877, executed by them jointly with their husbands, and duly acknowledged and recorded, are effectual to transfer such estate, and conveyances by the husband alone of such real estate of such a wife are ineffectual to convey her interest therein; but no joinder by the husband is required in case of a wife married on or after said date. Gen. St. 1902, § 4035. A wife need not join in a conveyance of her husband's real estate. Ibid. § 386. See Ibid. §§ 246, 247, 391.

Warranty Deed

To all people to whom these presents shall come, greeting:
Know ye that I, ———, of ———, for the consideration of ——— dollars, received to my full satisfaction of ———, of ———, do give, grant, bargain, sell, and confirm unto the said ——— (*description of premises*).

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto ———, the said grantee, his heirs and assigns forever, to his and their own proper use and behoof. And also I, the said grantor, do for myself, and my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that at and until the ensealing of these presents I am well seised of the premises,

as a good indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever.

And, furthermore, I, the said grantor, do by these presents bind myself, and my heirs forever, to warrant and defend the above granted and bargained premises to ———, the said grantee, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

Quitclaim Deed

Know all men by these presents that I, of ———, for divers good causes and considerations thereunto moving, especially for ——— received to my full satisfaction of ———, have remised, released, and forever quitclaimed, and do by these presents, for myself and heirs, justly and absolutely remise, release, and forever quitclaim unto the said ———, his heirs and assigns forever, all such right and title as I, the said ———, have or ought to have in or to (*description*).

To have and to hold the premises unto him, the said ———, and to his heirs and assigns, to the only use and behoof of the said ———, his heirs and assigns forever, so that neither I, the said ———, nor any other person or persons in my name and behalf, shall or will hereafter claim or demand any right or title to the premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness, *etc.*

DELAWARE

In General

One witness is sufficient. A scroll serves for a seal.

Where there is no express covenant in a deed, the words "grant, bargain, and sell," unless specially restrained, imply a special warranty against a grantor and his heirs, and all persons claiming under him. Rev. Code 1852, as amend. to 1893, c. 83, § 2.

Warranty Deed

This indenture, made the —— day of ——, A. D. 19—, between ——, of ——, and ——, his wife, of the one part, and ——, of ——, of the other part, witnesseth that the said parties of the first part, for and in consideration of the sum of —— dollars lawful money unto them well and truly paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said party of the second part his heirs and assigns, all that (*description*).

Together with all and singular the improvements, woods, ways, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity, or otherwise, howsoever, of, in, and to the same, and every part and parcel thereof.

To have and to hold the said property or piece of ground, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only

proper use and behoof of the said party of the second part, his heirs and assigns forever.

And the said ———, for himself, his heirs, executors, and administrators, doth by these presents, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that ———, the said party of the first part, and his heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned, or intended so to be, with the appurtenances unto the said party of the second part, his heirs and assigns, against himself the said party of the first part, and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof under him, them, or any of them, shall and will by these presents warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals. Dated the day and year first above written.

DISTRICT OF COLUMBIA

In General

No estate of inheritance, or for life, or for a longer term than one year, in real property, shall be created or take effect, except by deed signed and sealed by the grantor or lessor and acknowledged in the manner provided (ante, p. 29). Code 1901, as amend. to 1911, § 492. There is no requirement as to witnesses, but one is customary, usually the officer taking the acknowledgment. Deeds cannot be executed and acknowledged by attorney, except deeds of corporations. Ante, p. 30.

The word "grant," the phrase "bargain and sell," or any other words purporting to transfer the whole estate pass the whole estate and interest of the grantor, unless there be limitations or reservations showing a different intent. Ibid. § 503.

The word "covenant" has the same effect as if expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns. Ibid.

§ 505. A covenant by the grantor "that he will warrant generally the property hereby conveyed," or a grant in which the granting words are followed by the words "with general warranty," has the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives, will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns, against the claims and demands of all persons whomsoever. Ibid. §

506. A covenant "that he will warrant specially the property hereby conveyed," or a grant in which the granting words are followed by the words "with special warranty," has the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. § 507. A covenant "that the said grantee shall quietly enjoy said land" has the same effect as if he had covenanted that the said grantee, his heirs and assigns, shall, at any and all times hereafter, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. Ibid. § 508.

A covenant "that he has done no act to incumber said land" has the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or incumbered in title, estate, or otherwise. Ibid. § 509. A covenant "that he will execute such further assurances of said land as may be requisite" has the same effect as if he had covenanted that he, his heirs or devisees, will at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed all such further acts, deeds, and things for the better, more perfectly, and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised advised, or required. Ibid. § 510.

Husband and Wife

Dower and curtesy exist. Ibid. §§ 1158, 1159. A wife of 18 years may release her dower by joining her husband's deed or by separate deed, executed, signed, sealed, and acknowledged by her in the manner provided for others. Ibid. § 494; ante, p. 30. Married women hold all their property for their separate use, and have power to dispose of it by deed or otherwise as fully as if unmarried; but no disposition thereof is valid if made by a woman under 21 years. Ibid. § 1154.

Forms

The following forms or forms to the like effect are sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the above forms. Any other form conforming to the rules herein laid down is sufficient. Ibid. § 556.

Fee-Simple Deed

This deed, made this _____ day of _____, in the year _____, by me, _____ of _____, witnesseth that, in the consideration of (*here insert consideration*), I, the said _____, do grant unto (*here insert grantee's name*), of _____, all that (*here describe the property*).

Witness my hand and seal. _____ (Seal.)

Ibid. § 556.

Deed by Husband and Wife

This deed, made this _____ day of _____, in the year _____, by us, _____ and _____, his wife, of _____, witnesseth that, in consideration of _____, we, the said _____ and his wife, do grant unto _____, of _____ (*and so forth*).

Witness our hands and seals. _____ (Seal.)

_____ (Seal.)

Ibid. § 556.

Deed of Life Estate

This deed, made this _____ day of _____, in the year _____, by me, _____, of _____, witnesseth that, in consideration of _____, I, the said _____, do grant unto _____, of _____, all that (*and so forth*) (*here describe the property*), to hold during his life, and no longer.

Witness my hand and seal. _____ (Seal.)

Ibid. § 556.

Deed of Trust to Secure Debts, Sureties, or for Other Purposes

This deed, made this _____ day of _____, in the year _____, by me, _____, of _____, witnesseth that whereas (*here insert the consideration for the deed*), I, the said _____, do grant unto _____ (as trustee), of _____, as trustee, the following property (*here describe it*), in trust for the following purposes (*here insert the trusts and any covenant that may be agreed upon*).

Witness my hand and seal. _____ (Seal.)

Ibid. § 556.

Trustee's Deed under a Decree

This deed, made this _____ day of _____, in the year _____, by me, _____, trustee, of _____, witnesseth: Whereas, by a decree of (*here insert court*) passed on the _____ day of _____, in the cause of _____ versus _____, I, the said _____, was appointed trustee to sell the land decreed to be sold, and have sold the same to _____, and said sale has been ratified by said court, and said _____ has fully paid the purchase money due on said sale: Now, therefore, in consideration of the premises, I, the said _____, do grant unto _____,

of ———, all the right and title of all the parties to the aforesaid cause in and to all that (*here describe property*).

Witness my hand and seal. ———. (*Seal.*)

Ibid. § 556.

Executor's Deed

This deed, made this ——— day of ———, in the year ———, witnesseth that I, ———, of ———, executor of the last will of ———, late of ———, deceased, under a power in said will contained, in consideration of ———, have sold and do hereby grant to ———, of ———, all that (*and so forth*) (*here describe the property*).

Witness my hand and seal. ———. (*Seal.*)

Ibid. § 556.

FLORIDA

In General

No estate or interest of freehold, or for a term of more than two years, or any uncertain interest of, in or out of any messuages, lands, tenements, or hereditaments, shall be created, made, granted, transferred, or released in any other manner than by deed in writing, signed, sealed, and delivered in the presence of at least two subscribing witnesses by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of years, or by his agent thereunto lawfully authorized, unless by will. Gen. St. 1906, § 2448. A scrawl or scroll, printed or written, affixed as a seal, is as effectual as a seal. Ibid. §§ 2484, 2485.

To entitle any instrument concerning real property to be recorded, its execution must be acknowledged by the party executing it, or the execution be proved by a subscribing witness before some officer before whom acknowledgment or proof may be made. Ibid. § 2481; ante, p. 30.

A conveyance or grant without words of limitation passes the fee-simple or other whole estate or interest which the grantor had power to dispose of, unless a contrary intention appears therein. Ibid. § 2456.

Husband and Wife

A married woman, although a minor, may sell, convey, or mortgage real property belonging to her, provided her husband joins. Ibid. §§ 2460, 2464. She may relinquish dower, although a minor, by joining in the conveyance or mortgage, or by a separate deed executed in like manner as other conveyances. Ibid. §§ 2461, 2463, 2464. In either case she must acknowledge separately and apart. Ibid. § 2462; ante, p. 31. A deed by a husband direct to his wife is effectual. Ibid. § 2457.

Forms

A deed executed in the following form shall be held to be a warranty deed with full common-law covenants, and shall bind the grantor, and his heirs, as if said covenants were specifically set out therein. And this form of deed, when signed by a married woman, shall be held to convey whatever interest in the property conveyed she may possess. Ibid. § 2450. Such deeds shall be executed and acknowledged as is now or may hereafter be provided by the law regulating conveyances of realty by deed. Ibid. § 2451.

Warranty Deed (Statutory Form)

This indenture, made this ——— day of ———, A. D. ———, between ———, of the county of ———, in the state of ———, party of the first part, and ———, of the county of ———, in the state of ———, party of the second part. witnesseth: That the said party of the first part, for and in consideration of the sum of ——— dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit: ———. And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Ibid. § 2449.

GEORGIA

In General

A deed to lands must be in writing, signed by the maker, attested by at least two witnesses, and delivered to the purchaser or some one for him, and be made on a valuable or good consideration. The consideration may always be inquired into when the principles of justice require it. Civ. Code 1910, § 4179; ante, p. 32. Seal includes impressions on the paper itself, on wax or wafers. With the exception of official seals, a scrawl or other mark intended as a seal is sufficient. Ibid. § 5.

The word "heirs," or its equivalent, is not necessary to create an absolute estate; but every conveyance, properly executed, conveys the fee, unless a less estate is mentioned and limited in the conveyance. Ibid. § 3659.

The purchaser of lands obtains with the title, however conveyed to him at public or private sale, all the rights which any former owner under whom he claims may have had by virtue of any covenants of warranty of title, or of quiet enjoyment, or of freedom from incumbrances, contained in the conveyance from any former grantor, unless the transmission of such covenants with the land is expressly negatived in the covenant itself. Ibid. § 4192. In a sale of land there is no implied warranty of title. Ibid. § 4193. A general warranty of title against the claims of all persons includes in itself covenants of a right to sell, and of quiet enjoyment, and of freedom from incumbrances. Ibid. § 4194. A general warranty of title against the claims of all persons covers defects in the title, though known to the purchaser at the time of taking the deed. Ibid. § 4195. Patent defects are not covered by a general express warranty, unless intended to be so covered, in proof of which parol evidence is admissible. Ibid. § 4140.

Husband and Wife

Dower is the right of a wife to an estate for life for one-third of the lands of which the husband was seised or possessed at his death or to which he obtained title in her right, which he could do only under a marriage contracted before 1866. As to her acknowledgment, ante, p. 33. As to other lands she need not join in her husband's deed.

Forms

No prescribed form is essential to the validity of a deed. If sufficient in itself to make known the transaction between the parties, no want of form will invalidate it. Ibid. § 4182.

Warranty Deed

This indenture, made this —— day of ——, A. D. 19—, between ——, of ——, of the first part, and ——, of ——, of the second part:

Witnesseth that the said party of the first part, for and in consideration of the sum of —— dollars in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all that tract or parcel of land lying and being in (*description*).

To have and to hold the said premises, together with all and singular the rights, members, and appurtenances thereof to the same belonging or in any wise appertaining, to the only proper use, benefit, and behoof of ——, the said party of the second part, his heirs and assigns forever, in fee simple.

And the said party of the first part, for himself and his heirs, executors, and administrators, will warrant and forever defend the right and title to the above-described property unto the said party of the second part, his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

HAWAII

Husband and Wife

No sale or mortgage of the real estate of a married woman is valid without the written consent of her husband. Rev. Laws 1905, § 2251.

IDAHO

In General

A fee-simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. Rev. Codes, § 3112.

From the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms: (1) That previous to the time of the execution the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; (2) that such estate is at the time of the execution free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Ibid. § 3120.

Husband and Wife

All property of the wife owned by her before marriage, or acquired afterwards by gift, bequest, or descent, or that which she shall acquire with the proceeds of her separate property, is her sole and separate property. Ibid. § 2676. She has the absolute power of disposition of her separate property, and may bargain, sell, and convey her real and personal property. Ibid. § 2677.

All property owned by the husband before marriage, and that acquired by gift, bequest, devise, or descent, is his separate property. Ibid. § 2679.

All other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, is community property, unless by the instrument by which any such property is acquired by the wife it is provided that the rents and profits thereof be applied to her sole and separate use, in which case the management and disposal of such rents and profits belong to the wife,

and they are not liable for the debts of the husband. Ibid. § 2680. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate; but such power of disposition does not extend to the homestead or that part of the common property occupied or used by the husband and wife as a residence. Ibid. § 2686.

No estate is allowed the husband as tenant by curtesy on the death of his wife, nor any estate in dower to the wife on the death of her husband. Ibid. § 2687.

No estate in the homestead of a married person, or in any part of the community property occupied as a residence by a married person, can be conveyed or incumbered by act of the party, unless both husband and wife join in the execution of the instrument, and it be acknowledged by the wife in the manner prescribed (ante, p. 37). Ibid. § 3106. No estate in the real property of a married woman passes by a grant or conveyance purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed (ante, p. 37), and her husband, if a resident of the state, joins with her in the execution. Ibid. § 3107. If he has not been a bona fide resident at any time within the year next preceding her conveyance, she may convey her separate real property, or any interest therein, by an instrument in writing, subscribed and acknowledged by her in the manner prescribed (ante, p. 37). Ibid. § 3108. A power of attorney of a married woman, authorizing the transfer of an estate in her separate real property, has no validity until acknowledged by her in the manner prescribed (ante, p. 38), and her husband, if a resident of the state, join therein; but, if he has not been a bona fide resident of the state at any time within one year next preceding the execution of the power, she may execute the same alone, as provided for the execution by her of conveyances when her husband is a nonresident. Ibid. § 3109.

Forms

A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. Ibid. § 3105. An attorney in fact must subscribe the name of his principal to the instrument, and his own name as attorney in fact. Ibid. § 3110. All distinctions between sealed and unsealed instruments are abolished. Ibid. § 3319.

Warranty Deed

This indenture, made this _____ day of _____, between _____, of _____, the party of the first part, and _____, of _____, the party of the second part:

Witnesseth that the said party of the first part, for and in consideration of the sum of _____ dollars, _____ of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate, situated in _____ county, state of Idaho, to wit (*description*).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all estate, right, title, and interest in and to the said property, as well in law as in equity, of the said party of the first part.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever. And the said party of the first part, and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by by these presents forever defend.

In witness, *etc.*

ILLINOIS

In General

A deed, mortgage, or other conveyance in writing, signed and sealed by the party making the same, is sufficient to convey all the estate specified. Hurd's Rev. St. 1911, c. 30, § 1. A scrawl by way of seal is sufficient. Ibid. c. 29, § 1.

In deeds whereby any estate of inheritance in fee simple is limited to the grantee and his heirs or other legal representatives, the words "grant," "bargain," and "sell" are express covenant to the grantee, his heirs and other legal representatives, that the grantor was seised of an indefeasible estate in fee simple, free from incumbrances done or suffered from the grantor, except the rents and services that may be reserved, and for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words. Ibid. c. 30, § 8. Every estate granted or conveyed is a fee-simple estate of inheritance, if a less estate be not limited. Ibid. § 13.

Husband and Wife

The estate of curtesy is abolished. The surviving husband or wife is endowed of the third part of all the lands whereof the deceased spouse was seised of an estate of inheritance at any time during the marriage, unless relinquished in legal form. Equitable estates and real estate contracted for by the deceased spouse, the title of which may be completed, are subject to dower. Ibid. c. 41, § 1.

A married woman above the age of 18, may convey her lands by joining with her husband in the conveyance. Ibid. c. 30, § 18.

As to homestead and acknowledgment, ante, p.42.

Forms

Deeds for the conveyance of land (warranty deeds) and quitclaim deeds may be substantially in the following forms (Ibid. c. 30, §§ 9, 10):

Warranty Deed (Statutory Form)

The grantor (*here insert name or names and place of residence*), for and in consideration of (*here insert consideration*) in hand paid, conveys and warrants to (*here insert the gran-*

tee's name or names) the following described real estate (*here insert description*), situated in the county of ———, in the state of Illinois.⁷

Dated this ——— day of ———, A. D. 19—.

A. B. (L. S.)

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seised of an indefeasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all incumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed. Ibid. c. 30, § 9.

Quitclaim Deed (Statutory Form)

The grantor (*here insert grantor's name or names and place of residence*), for the consideration of (*here insert consideration*), convey and quitclaim to (*here insert grantee's name or names*) all interest in the following described real estate (*here insert description*), situated in the county of ———, in the state of Illinois.⁸

Dated this ——— day of ———, A. D. 19—.

A. B. (L. S.)

Every deed in substance in the form prescribed in this section when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release, and quitclaim to the

⁷ If the deed releases the right of homestead, add: "Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the state of Illinois." Ante, p. 42.

⁸ See note 7, supra.

grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to after-acquired title unless words are added expressing such intention. Ibid. § 10.

INDIANA

In General

Although several of the sections referred to below in terms provide that conveyances shall be sealed, a seal, except for a corporation, is not requisite. Burns' Ann. St. 1908, § 4042.

Conveyances of lands or of any interest therein shall be by deed in writing subscribed (sealed) and duly acknowledged by the grantor or by his attorney, except bona fide leases for a term not exceeding three years. Ibid. § 3947. No conveyance by attorney is good unless the attorney be empowered by instrument in writing, subscribed (sealed) and acknowledged by his principal as the conveyance is required to be. Ibid. § 3948.

A deed of release or quitclaim passes all the estate which the grantor could convey by a deed of bargain and sale. Ibid. § 3955.

It is not necessary to use the words "heirs and assigns of the grantee" to create an estate of inheritance; and, if it be the intention to convey a lesser estate, it shall be so expressed. Ibid. § 3960.

Husband and Wife

A married woman need not acknowledge in any other form than if single. Ibid. § 3971.

A married woman under 21 years whose husband is of the age of 21 may join with him in the conveyance of his real estate, under such regulations as are prescribed in such cases for married women of the age of 21. Ibid. § 3976. A married woman under the age of 21, her husband being of full age, may convey or mortgage her separate real estate with the consent of the judge of the circuit court of the judicial circuit where she and her husband reside, the husband joining therein. Ibid. 3977-3978. A married woman may join in a power of attorney with her husband for the conveyance or mortgage of lands. Ibid. § 3984.

Forms—Warranty Deed

Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—being dated and duly signed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives that he is lawfully seised of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances; and that he will warrant and defend the title to the same against all lawful claims. Ibid. § 3958.

Same—Quitclaim Deed

Any conveyance of lands worded in substance as follows: "A. B. quitclaims to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—being duly signed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. Ibid. § 3959.

IOWA

In General

Seals, other than corporate, are not required. Code 1897, § 3068. Witnesses are not required. See Ibid. § 2926.

The term "heirs" or other technical words of inheritance are not necessary to convey an estate in fee simple. Ibid. § 2913. Every conveyance passes all the interest of the grantor, unless a contrary intent can be reasonably inferred from the terms used. Ibid. § 2914.

Husband and Wife

A married woman may convey or incumber any real estate belonging to her to the same extent and in the same manner as other persons. Ibid. § 2919. Dower and curtesy are abolished; but each spouse must join in a conveyance by the other of his or her real property, or otherwise relinquish his or her statutory right therein. Every conveyance made by a husband and wife is sufficient to pass all right of either in the property

conveyed, unless the contrary appears on the face of the conveyance. Ibid. § 2920. No conveyance or incumbrance of the homestead is valid unless the husband and wife join in execution of the same joint instrument. Ibid. § 2974.

Forms

The four following forms are given by statute, and they or other equivalent forms, varied to suit the circumstances, are sufficient for the purposes therein contemplated (Ibid. § 2958):

For a Quitclaim Deed

For the consideration of —— dollars, I hereby quitclaim to A. B. all my interest in the following tract of real estate (*describing it*).

For a Deed in Fee Simple without Warranty

For the consideration of —— dollars, I hereby convey to A. B. the following tract of real estate (*describing it*).

For a Deed in Fee with Warranty

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" (or other words of warranty, as the party may desire).

For a Mortgage

The same as deed of conveyance, adding the following: "To be void upon condition that I pay," etc.

Ibid. § 2958.

TIFF.FORMS—35

Warranty Deed—Another Form

Know all men by these presents that ———, of ———, in consideration of the sum of ——— dollars in hand paid by ———, of ———, do hereby sell and convey unto the said ———, the following described premises situated in the county of ———, and state of Iowa, to wit (*description*).

And the said ——— hereby covenanted with the said ——— that ——— hold said premises by good and perfect title; that ——— ha— good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever. And ——— covenant to warrant and defend the title to the said premises against the lawful claims of all persons whomsoever.

And the said ——— hereby relinquishes all contingent rights, including all ——— right of dower, homestead, or distributive share in and to the above described premises.

Signed the ——— day of ———, A. D. 19—.

Quitclaim Deed—Another Form

Know all men by these presents that ———, of ———, in consideration of the sum of ——— dollars in hand paid by ———, of ——— do hereby release, remise, and quitclaim unto the said ——— all ——— right, title, and interest in and to the following described premises, situated in the county of ———, and state of Iowa, to wit (*description*).

And the said ——— hereby relinquishes all contingent rights, including dower, homestead, or distributive share, in and to the above-described premises.

Signed, *etc.*

KANSAS

In General

Conveyances of land or of any other estate or interest therein may be made by deed, executed by any person having authority to convey the same, or by his agent or attorney, and may be acknowledged and recorded as herein directed, without other act or ceremony. Gen. St. 1909, § 1654. All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by his lawful agent or attorney, and may be acknowledged or proved and certified in the manner herein prescribed. Ibid. § 1658. The use of private seals, except of corporations, is abolished. Ibid. § 1643. As to execution without the state in conformity with the laws of the place, ante, p. 47.

The term "heirs" or other words of inheritance are not necessary to create or convey an estate in fee simple; and every conveyance passes all the estate of the grantor, unless the intent to pass a less estate expressly appears or is necessarily implied in the grant. Ibid. § 1651.

Any corporation may convey lands by deed, sealed by the common seal of the corporation, and signed by its president, vice president, or presiding member or trustee; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the manner provided for other conveyances, may be recorded. Ibid. § 1757.

Husband and Wife

Dower and by curtesy are abolished. Ibid. § 2961. The property which a woman owns at her marriage, or which comes to her by descent or devise, or the gift of any person except her husband, remains her sole and separate property. Ibid. § 4872. She may bargain, sell, and convey her property as a married man may in relation to his property. Ibid. § 4873. A homestead shall not be alienated without the joint consent of husband and wife. Ibid. § 3646.

Forms—Warranty Deed

Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—the said conveyance being dated, duly signed, and acknowledged by

the grantor, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants from the grantor, for himself and his heirs and personal representatives, that he is lawfully seised of the premises, has good right to convey the same, and guarantees the quiet possession thereof, that the same are free from all incumbrances, and he will warrant and defend the same against all lawful claims. Ibid. § 1652.

Same—Quitclaim Deed

Any conveyance of lands worded in substance as follows: "A. B. quitclaims to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—the said conveyance being duly signed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. Ibid. § 1653.

KENTUCKY

In General

The owner may convey any interest in lands not in the adverse possession of another; but no estate of inheritance or freehold, or for a term of more than one year, shall be conveyed, unless by deed or will. St. 1909, § 490. No seal or scroll is required, except for corporations. Ibid. § 471.

Unless a different purpose appear, every estate created is deemed a fee-simple or such other estate as the grantor had power to dispose of. Ibid. § 2342.

All deeds of bargain and sale, deeds to stand seised to use, deeds of release, and deeds of trust shall vest the possession of the grantor in the grantee to the extent of the estate intended to be conveyed. Ibid. § 491. A deed of release is effectual for the purposes therein expressed without the execution of a lease. Ibid. § 492.

A covenant by a grantor in a deed "that he will warrant the property hereby conveyed," or words of like import, or the words "with warranty" or "with general warranty," have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whatever. A covenant by a grantor "that he

will warrant specially the property thereby conveyed," or words of like import, or the words "with special warranty," have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. § 493.

Husband and Wife

Dower and curtesy exist. Ibid. §§ 2132, 2138.

Married women may convey any real estate which they own, or in which they have an interest, legal or equitable, in possession, reversion, or remainder. Ibid. § 505. The conveyance may be by the joint deed of husband and wife, or by separate instrument; but in the latter case the husband must first convey, or have theretofore conveyed. Acts 1910, c. 82, § 4. A married woman may by agent convey any interest she may have in real estate which she could convey in person. Such conveyance must be made in virtue of a power of attorney executed and acknowledged or proven as deeds by married women are required to be. Ibid. § 6.

Forms

All deeds of conveyance and mortgages of any interest in real estate equal to or greater than a life estate must, as a condition to record, plainly specify and refer to the next immediate source from which the grantors derived title. If such source be a deed or other recorded writing, the deed offered for record shall refer thereto and give the date, and the office, book, and page of record. If the title be obtained by inheritance or in any other way than by recorded writing, the deed offered for record shall state clearly and accurately how and from whom the title was obtained. If the title be obtained from two or more sources, the deed shall specify each and show which part of the property or interest was obtained from each. Ibid. § 495.

Warranty Deed

This deed of conveyance, made and entered into this _____ day of _____ 19—, between _____, of _____, party of the first part, and _____, of _____, party of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of _____ dollars paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby sell and convey to the party of the second part, his heirs and assigns, the following described property, to wit (*description*), being the same property conveyed to the party of the first part by _____, by deed dated the _____ day of _____, 19—, and recorded in the office of the _____ County Court in deed book No. _____, page _____. To have and to hold the same, together with all the appurtenances thereunto belonging, unto the party of the second part, his heirs and assigns forever. And the party of the first part hereby covenants with the party of the second part that he will warrant the title to the property hereby conveyed unto the party of the second part and his heirs and assigns forever.

In testimony whereof, the party of the first part has hereunto subscribed his name the day and year first aforesaid.

LOUISIANA

In General

Instruments affecting real estate must be in writing. R. C. C. 2275. To have effect as against third persons, they must be registered in the proper public offices in the parish where the property is situated. R. C. C. 2262 and 2264.

Husband and Wife

Every contract by a married woman in Louisiana, whether the same be a contract of sale, or any other contract, must have the authorization of the husband, and this authorization is

necessary, even though the wife is separate in estate from the husband. R. C. C. 122. If the husband refuses to empower the wife, the wife may cause him to be cited before the judge of her domicile, who may authorize her to make such a contract, or refuse to empower her, after the husband has been heard. R. C. C. 125. On the other hand, the husband in no event needs the assistance of his wife in any contract involving his separate property or that of the community of acquêts and gains which exists between himself and his wife. He is considered as the head and master of the community, and is authorized to sell, mortgage, or hypothecate the real estate of the community which exists between him and his wife, at his pleasure, without the concurrence, sanction or assistance of his wife. R. C. C. 2404. The wife's intervention is necessary, however, in cases where she has recorded matrimonial, dotal or paraphernal rights against her husband. R. C. C. 129.

Forms

All sales of immovable property shall be made by authentic act or by act under private signature. R. C. C. 2440. An authentic act is one passed before a notary public, or other officer authorized to execute such functions, in the presence of two witnesses, aged at least fourteen years, or of three witnesses if the party be blind. R. C. C. 2234. The authentic act is full proof of the agreement contained in it against the contracting parties, their heirs and assigns, unless it be declared to be a forgery. R. C. C. 2236. An act under private signature does not make proof in itself until such time as the signatures thereto are proved. However, an act under private signature can be given the same effect as that of an authentic act provided it is acknowledged by the parties before a notary public (or other officer authorized to take oaths) and two witnesses. R. C. C. 2242.

The deed of sale should be signed by both vendor and purchaser. The Supreme Court of Louisiana has held, however, that where the sale is a cash sale it need not be signed by the purchaser.

If authentic deeds are passed in another state, involving real estate in Louisiana, they may be passed before a notary public or Louisiana commissioner, in the presence of two witnesses, at least 14 years of age; in a foreign country such acts may be passed before an ambassador, minister, consul, etc. (ante, p. 550), without the assistance of such witnesses. If the acts be

passed under private signature in another state or country, they should be acknowledged before such notary public or commissioner, and two witnesses, or such ambassador, minister, consul, etc., in order to give to them the same effect as authentic acts. However, such an acknowledgment is not absolutely necessary, as the act under private signature is binding upon the parties to it. The only effect of such an acknowledgment is to give to it the dignity of an authentic act and dispense with proof of the signatures thereto.

The editor is indebted to Mr. Theodore A. Schuber, of the New Orleans bar, for the following forms, as well as for the form of mortgage (post, p. 900), and for this statement of the Louisiana law.

Sale by Married Woman (Notarial Act)

UNITED STATES OF AMERICA, }
STATE OF LOUISIANA, }
Parish of Orleans. }

Be it known that on this twelfth day of the Month of July, in the year of our Lord one thousand nine hundred and fifteen, before me, Theodore A. Schuber, a notary public, duly commissioned and qualified, in and for this city of New Orleans, and the parish of Orleans, therein residing, and in the présence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Elizabeth Berley, wife of August Faber, herein duly aided, authorized, and assisted by her said husband, both of lawful age, and residents of New Orleans, parish of Orleans, La., who declare that she does by these presents grant, bargain, sell, convey, transfer, assign, set over, abandon, and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which she has or may have against all preceding owners and vendors, unto James Smith, also of lawful age, and a resident of New Orleans, La., here present, accepting, and purchasing for himself, his heirs and assigns,

and acknowledging due delivery and possession thereof, all and singular the following described property, to wit: a certain lot of ground, together with the buildings and improvements thereon, and all the appurtenances thereunto belonging, situate in the First district of this city, designated by the letter "C," in square No. 382, bounded by Erato, Clio, South Robertson, and Freret streets, on the sketch annexed to an act passed before Felix J. Dreyfeus, notary public of this city, of date March 29, 1909, made by C. Uncas Lewis, deputy city surveyor, and according to which said sketch said lot lies at a distance of sixty-six feet, eleven inches, and two lines from the corner of Erato and Freret street, and measures twenty-nine feet, eight inches front on Erato street, same width in the rear by a depth of one hundred and twenty feet, between equal and parallel lines.

Being the same property acquired by the vendor herein, by purchase from Henry James, as per act passed before the undersigned notary on June 27, 1910, registered C. O. B. 265, folio 78, and recorded in M. O. B. 948, folio 149.

To have and to hold the above-described property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of five thousand dollars (\$5,000.00) cash, which the said purchaser has well and truly paid in ready and current money to the said seller herein, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

All state and city taxes up to and including the taxes due and exigible in 1914 are paid as per city and state tax researches hereto annexed. All taxes for the year 1915 are assumed by the purchaser herein.

By reference to the certificates of the register of conveyances and recorder of mortgages in and for the parish of Or-

leans, annexed hereto, in the name of the present vendor, it does not appear that said property has been heretofore alienated by the said vendor or that it is subject to any incumbrance whatever.

According to certificates from the United States district and circuit courts hereto attached, there appears to be no unsatisfied judgments standing in those courts against the present vendor.*

The vendor herein declared on oath that she has been married but once, and at that time to her present husband, who joins her in this act.

The purchaser herein declared on oath that he has never been married.

Thus done and passed in my office at New Orleans, La., on the day, month, and year herein first above written, in the presence of Messieurs Edgar M. Cahn and Wm. F. Conkerton, competent witnesses, who hereunto sign their names with the said appearers, and me notary, after reading of the whole.

Mrs. Elizabeth Berley Faber,
August Faber, to authorize,
assist and aid my wife.
James Smith.

Witnesses:

1. Edgar M. Cahn,
2. Wm. F. Conkerton.

Theodore A. Schuber, Notary Public. (*Seal.*)

Credit Sale (Notarial Act)

(*Begin as in preceding form*) personally came and appeared August Faber, of lawful age, and a resident of New Orleans, La., who declared that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon, and deliver, with all legal warranties and with full substitution and

subrogation in and to all the rights and actions of warranty which he has or may have against all preceding owners and vendors, unto James Smith, also of lawful age, and a resident of New Orleans, La., here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging due delivery and possession thereof, all and singular the following described property, to wit (*description*).

To have and to hold the above-described property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of five thousand dollars (\$5,000.00), in part payment and deduction whereof the said purchaser has well and truly paid, in ready and current money, the sum of one thousand dollars (\$1,000.00) to the said seller herein, who hereby acknowledges the receipt thereof and grant full acquittance and discharge therefor.

And for the balance of said purchase price to wit, the sum of four thousand dollars (\$4,000.00), the said purchaser has furnished his two (2) promissory notes each for the sum of two thousand dollars (\$2,000.00), dated this day, and payable at New Orleans, La., in one and two years after date, respectively, payable to his own order and by himself indorsed, which said notes stipulate to bear interest at the rate of seven per cent. per annum from date until paid, and, after having been paraphed "Ne Varietur" by me, notary, to be herewith identified, were delivered to the said vendor, who hereby acknowledges the receipt thereof.

The purchaser hereby binds himself to keep the buildings on above-described property constantly insured against the risk of loss by fire, and to transfer such insurance to the present vendor or any other holder or holders of above-described notes up to the full amount of such notes. Said purchaser hereby authorizing said vendor, or any future holder or hold-

ers of above-described notes to cause said insurance to be effected on his default, at a premium not exceeding three per cent.

And in case it should become necessary to institute suit for the recovery of the amount of said notes or any part thereof, the said purchaser hereby binds and obligates himself to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at ten per cent. on the amount sued for.

And now, in order to secure the full and punctual payment of the said notes at maturity, together with all interest, costs, attorney's fees, and premiums of insurance, special mortgage and vendor's lien and privilege are hereby retained and granted in favor of said vendor and of all future holder or holders of said notes on the property herein conveyed, which the said purchaser binds himself not to sell, alienate, or in any wise incumber to the prejudice of this act.

And here the said purchaser declares that he does by these presents consent, agree, and stipulate that, in the event of said promissory notes and not being punctually paid at their maturity, it shall be lawful for, and he does hereby authorize, the said vendor, or any other holder or holders thereof, to cause all and singular the said hereinbefore described and herein conveyed and mortgage property to be seized and sold (after due process of law) without appraisement, to the highest bidder, payable cash. The said James Smith hereby confessing judgment in favor of said vendor, or any future holder or holders of said note.

All state and city taxes, up to and including the taxes due and exigible in 1914 (*following preceding form to the **).

The vendor herein declared on oath that he has been married but once, and at that time to Elizabeth Berley, who is still alive and living with him in this city and state.

The purchaser declared on oath that he has never been married.

Thus done and passed in my office at New Orleans, La., on the day, month, and year herein first above written, in the presence of Messieurs Edgar M. Cahn and Wm. F. Conkerton, competent witnesses, who hereunto sign their names with the said appearers, and me notary, after reading of the whole.

Witnesses:

August Faber,

1. Edgar M. Cahn,

James Smith.

2. Wm. F. Conkerton.

Theodore A. Schubert, Notary Public. (*Seal.*)

Promissory Note to Accompany Above *

\$2,000.00.

New Orleans, La. July 12th, 1915.

One year (1 yr.) after date I promise to pay to the order of myself, two thousand dollars (\$2,000.00) at New Orleans, La., with interest at the rate of seven (7%) per centum per annum, from date until paid, for value received.

(*Signed*) James Smith.

(*Endorsed*) James Smith.

If a deed is to be passed under private signature, it is necessary to omit the notarial preamble, and to change the conclusion in the foregoing acts, in conformity with the following:

Act under Private Signature

Be it known that I, ———, of lawful age, and a resident of the city of New Orleans, parish of Orleans, state of Louisiana, do hereby sell, convey, transfer, set over, abandon, and

* Across the face of the note should appear the following words and figures: "Ne varietur. To identify it with an act of sale and mortgage passed before me this day. New Orleans, July 12, 1915. (*Signed*) Theodore A. Schubert, Notary Public." The second note is similar, except that it is payable two years after date.

deliver unto —— (description, etc., following substantially the preceding or other desired forms).

Thus done and signed by the parties at the city of ——, state of ——, this —— day of ——, 19——, in the presence of the undersigned witnesses. (Signatures.)

Witnesses:

(Acknowledgment.)

Where either the vendor or the purchaser is absent, if the sale is by notarial act, the absent party may be represented by an attorney and agent under an express and special power of attorney, or the act may be passed also under private signatures, the vendor and purchaser severally signing and acknowledging with two witnesses in the respective states. If a married woman is a party to an act, and therefore needs the assistance and authorization of her husband, it seems that it is sufficient to obtain his written consent and authorization wherever he may be, which should be notarially acknowledged and annexed to the act; and the officer passing the act should refer to the authorization of the husband as being made in writing and in such and such a place, and acknowledged before the notary who attested it, and should annex it to his act.

Special Power of Attorney to Represent Absent Purchaser under Notarial Act

Know all men by these presents that I, ——, of the city of New Orleans, state of Louisiana, have constituted and appointed, and do by these presents constitute and appoint, ——, also of this city of New Orleans, state of Louisiana, to be my true and lawful attorney in fact, general and special, giving and by these presents granting unto the said attorney full power and authority for me and in my name and behalf to represent me and act for me in the purchase and acquisition for my account of a certain piece of real estate situated in the

city of New Orleans, La., and bearing the municipal No. 1626 ——— street, belonging to ———, and more particularly described as follows (*description*).

The sale of said above-described property is to be made to me on the consideration that I assume and bind and obligate myself to pay the outstanding mortgage against said property, which is for the sum of \$1,800.00, and which mortgage is in favor of ———, of New Orleans, La., and is recorded in M. O. B. ———, folio ———.

To pass, sign, and execute all acts and deeds for the purpose aforesaid, and generally to do and perform all and every other act, matter, and thing whatsoever as shall or may be requisite and necessary as fully, amply, and effectually, and to all intents and purposes with the same validity, as if all and every such act, matter, or thing were or had been herein particularly stated, expressed, and specially provided for, or as he could or might do if personally present, also with full power of substitution and revocation, hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue hereof.

And said attorney is specially authorized to bind and obligate me for the payment of the outstanding mortgage of \$1,800.00 against said property above referred to, which assumption is to constitute the consideration of the sale.

Witness my hand and seal at ——— on this ——— day of ———, 1915.

(*Signature.*)

Witnesses:

(*Acknowledgment.*)

MAINE**In General**

No estate greater than a tenancy at will can be granted, assigned, or surrendered, unless by writing signed by the grantor or maker, or his attorney. Rev. St. 1903, c. 75, § 13. A deed of release or quitclaim of the usual form conveys the estate, which the grantor has and can convey by a deed of any other form. Ibid. § 17.

Husband and Wife

A married woman relinquishes her right by descent or otherwise by joining in her husband's deed, or by separate deed. A joint deed conveys her estate in which the husband has an interest. Ibid. § 17.

Forms

A seal is necessary. One witness is usual, but none is required, except to a deed when not acknowledged. See Rev. St. 1903, c. 75, § 21.

Warranty Deed

Know all men by these presents that ———, of ———, in consideration of ——— paid by ———, the receipt whereof ——— do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said ———, ——— heirs and assigns forever, a certain lot or parcel of land (*description*).

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said ———, ——— heirs and assigns, to ——— and their use and behoof forever.

And ——— do covenant with the said grantee—, ——— heirs and assigns, that ——— lawfully seised in fee of the premises; that they are free of all incumbrances; that ——— have good right to sell and convey the same to the said grantee— to hold as aforesaid; and that ——— and ——— heirs shall and will warrant and defend the same to the said

grantee—, ——— heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof the said ——— and ———, wife of the said ———, joining in this deed as grantor—, and relinquishing and conveying ——— right by descent and all other rights in the above-described premises, have hereunto set ——— hand— and seal— this ——— day of ———, A. D. 19—.

Quitclaim Deed (With Covenant)

(*Begin as in preceding*) do hereby remise, release, bargain, sell and convey and forever quitclaim unto the said ———, ——— heirs and assigns forever, (*description*).

To have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to ———, the said ———, ——— heirs and assigns, forever.

And ——— do covenant with the said ———, heirs and assigns, that ——— will warrant and forever defend the premises to ——— the said grantee—, ——— heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under ———.

In witness whereof (*as in preceding*).

MARYLAND

In General

No estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years, shall pass or take effect unless the deed conveying the same be executed, acknowledged, and recorded as herein provided. Code Pub. Civ. Laws 1910, art. 21, § 1. As to acknowledgments, ante, p. 51. All deeds conveying real estate which contain the names of the grantor and grantee, or bargainor and bargainee, a consideration where a consideration is necessary to the validity of a deed, and a description of the real estate sufficient to identify the same with reasonable certainty, and the interest or estate intended thereby to be conveyed, are sufficient, if execut-

ed, acknowledged, and recorded as herein required. Ibid. § 9. Every deed conveying real estate shall be signed and sealed by the grantor or bargainor and attested by at least one witness. Ibid. § 10.

No words of inheritance are necessary to create an estate in fee simple, but every conveyance of real estate is construed to pass a fee-simple estate, unless a contrary intention appears. Ibid. § 11. The word "grant," the phrase "bargain and sell," in a deed, or any other words purporting to transfer the whole estate of the grantor, are construed to pass to the grantee the whole interest and estate of the grantor in the lands therein mentioned, unless there be limitations or reservations showing, by implication or otherwise, a different intent. Ibid. § 12.

Every deed shall be recorded within six months from its date, in the county or city in which the land lies. Ibid. § 13. Every deed of real property, when acknowledged and recorded, takes effect as between the parties thereto from its date. Ibid. § 14. Where there are two or more deeds conveying the same lands or chattels real, the deed or deeds first recorded shall be preferred, if made bona fide and upon good and valuable consideration. Ibid. § 16. Deeds, except mortgages, may be recorded after the time prescribed, and when so recorded have, as against the grantor, etc., purchasers with notice, and creditors who become so after the recording, the same validity as if recorded within the time. Ibid. § 19.

Husband and Wife

A married woman may relinquish her dower by the joint deed of herself and husband or by her separate deed, or she may authorize an agent or attorney to relinquish the same by a power of attorney executed jointly with her husband or by herself without the joinder of her husband. A husband may relinquish his interest in the real estate of his wife by joint or separate deed, or may authorize an agent or attorney to relinquish the same by a power of attorney executed jointly with his wife or by himself without the joinder of his wife. Ibid. art. 45, § 12.

Forms

The following forms, or forms to like effect, are sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed, or introduced. Ibid. art. 21,

§ 66. Any other forms conforming to the rules hereinbefore laid down, or to the rules of law, are sufficient. Ibid. § 67.

Deed Conveying Fee Simple (Statutory)

This deed, made this ——— day of ———, in the year ——— by me (*here insert the name of the grantor*), witnesseth that, in consideration of (*here insert consideration*), I, the said ———, do grant unto (*here insert the name of the grantee*) all that (*here describe the property*).

Witness my hand and seal.

(Seal.)

Test: .

A. B.

Ibid. art. 21, § 54.

Form where Married Woman is Party (Statutory)

This deed, made this ——— day of ———, in the year ———, by us, ——— and ———, his wife, witnesseth that, in consideration of ———, we, the said ——— and his wife, do grant unto ———.

Witness our hands and seals.

(Seal.)

Test:

A. B.

Ibid. § 55.

Form Conveying Estate for Life (Statutory)

This deed, made this ——— day of ———, in the year ———, by me, ———, witnesseth that, in consideration of ———, I, the said ———, do grant unto ———, to hold during his life and no longer.

Witness my hand and seal.

(Seal.)

Test:

A. B.

Ibid. § 56.

Trustee's Deed under a Decree (Statutory)

This deed, made this ——— day of ———, in the year ———, by me, ———, trustee, witnesseth, whereas, by a decree of (*here insert style of court*), passed on ——— (*here insert day of decree*), in the case ——— v. ———, I, the said ———, was appointed trustee to sell the land decreed to be sold, and have sold the same to ———, who has fully paid the purchase money therefor: Now, therefore, in consideration of the premises, I, the said ———, do grant unto ——— all the right and title of all the parties to the aforesaid cause, in and to ——— (*describe property*).

Witness my hand and seal.

(Seal.)

Test:

A. B.

Ibid. § 59.

Executor's Deed (Statutory)

This deed, made this ——— day of ———, in the year ———, witnesseth that I, ———, executor of the last will of ———, late of ——— county, deceased, under a power in said will contained, in consideration of the sum of ———, have bargained and sold to ——— all that parcel of land (*here describe the land as described in the report of the executor to the court*).

Witness my hand and seal.

(Seal.)

Test:

A. B.

Ibid. § 61.

When in a deed conveying real estate the words "the said ——— covenants" are used, such words shall have the same effect as if the covenant was expressed to be by the covenantor for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee in the deed, his heirs, devisees, and personal representatives and assigns. Ibid.

§ 72. A covenant by the grantor "that he will warrant generally the property hereby conveyed" has the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives, will forever warrant the said property unto the grantee, his heirs, devisees, and assigns, against the claims and demands of all persons whomsoever. Ibid. § 73. A covenant by a grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, devisees, and personal representatives and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. § 74. As to particular covenants, see Ibid. §§ 75-79.

MASSACHUSETTS

In General

A deed executed and delivered by the person or by the attorney of the person who has authority therefor, subject to the limitations of section 4, is sufficient to convey land. R. L. 1902, c. 127, § 1. A deed of quitclaim and release is sufficient to convey all the estate which could lawfully be conveyed by a deed of bargain and sale. Ibid. c. 127, § 2. A conveyance in fee simple, fee tail, or for life, or a lease for more than seven years, is not valid except as against the grantor or lessor, etc., and persons having actual notice, unless recorded. Ibid. c. 127, § 4.

Husband and Wife

A married woman may bar her right of dower in land which is conveyed by her husband or by operation of law by joining in the deed conveying the land and therein releasing her right to dower, or by releasing the land by a subsequent deed executed either separately or jointly with her husband. Ibid. c. 132, § 5. The husband should join in the wife's deed of her real property. Husband and wife may make conveyances of real estate to each other, except by way of mortgage, as if unmarried; but no such conveyance shall have any effect until the deed is duly acknowledged and recorded. Acts 1912, c. 304.

Forms

The following forms may be used and are sufficient. They may be altered as circumstances may require, and other forms may be used. Acts 1912, c. 502, § 1. A seal is necessary, and a scroll is not sufficient. A witness is unnecessary, except to prove an unacknowledged deed in certain cases. R. L. c. 127, § 15.

Statute Form, Warranty Deed

——, of ——, —— county (being unmarried), for consideration paid, grant to ——, of ——, with warranty covenants, —— the land in (*description and incumbrances, if any*).

——, wife of said grantor, release to said grantee all rights of dower and homestead and other interests therein.

Witness —— hand and seal this —— day of ——.

(*Acknowledgment.*)

(*Seal.*)

Every deed in substance in the above form, when duly executed, shall have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor for himself, his heirs, executors, administrators, and successors, with the grantee, his heirs, successors, and assigns, that at the time of the delivery of such deed: (1) He was lawfully seised in fee simple of the granted premises; (2) that the granted premises were free from all incumbrances; (3) that he had good right to sell and convey the same to the grantee and his heirs and assigns; and (4) that he will, and his heirs, executors, and administrators shall, warrant and defend the same to the grantee and his heirs and assigns against the lawful claims and demands of all persons. Acts 1912, c. 502, § 2.

Statute Form, Quitclaim Deed

——, of ——, county —— (being unmarried), for consideration paid, grant to ——, of ——, with quitclaim covenants, —— the land in —— (*description and incumbrances, if any*).

——, wife of said grantor, release to said grantee all rights of dower and homestead and other interests therein.

Witness —— hand and seal this —— day of ——.

(*Acknowledgment.*)

(*Seal.*)

Every deed in substance in the above form, when duly executed, shall have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor for himself and his heirs, executors, administrators, and successors, with the grantee and his heirs, successors, and assigns, that at the time of the delivery of such deed the premises were free from all incumbrances made by him, and that he will, and his heirs, executors, and administrators shall, warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other. Ibid. c. 502, § 3.

Statute Form, Deed of Executor, Administrator, Trustee, Guardian, or Conservator

——, executor of the will of —— (*or, administrator of the estate of ——; or, trustee under ——; or, guardian of ——; or conservator of ——*), by the power conferred by ——, and every other power, for —— dollars paid, grant to —— the land in —— (*description*).

Witness —— hand and seal this —— day of ——.

(*Acknowledgment.*)

(*Seal.*)

Ibid. c. 502, § 4.

Statute Form, Release

_____, of _____, _____ county, for consideration paid, release to _____, of _____, the land in _____ (*description*).

_____, wife of said _____, release to said _____ all _____ rights of dower and homestead and other interests therein.

Witness _____ hand and seal this _____ day of _____.

(*Acknowledgment.*)

(*Seal.*)

Ibid. c. 502, § 5.

For the purpose of avoiding the unnecessary use of words in instruments executed or delivered after this act takes effect in forms like or other than the foregoing, the following rules and definitions are made applicable to all such instruments relating to real property (Acts 1912, c. 502, § 13): The word "grant" shall be a sufficient word of conveyance without the use of the words "give, bargain, sell, and convey," and no covenant shall be implied from the use of the word "grant." Ibid. c. 502, § 14. When a conveyance or devise of real property is made to a grantee or devisee to a use intended to be executed by the statute of uses, the word "use" shall be employed in declaring the use, and provisions introduced by the words "in trust," or other expressions that might otherwise create uses, shall be deemed to create trusts, and not uses. If no use is declared in a conveyance or devise of real property, the same shall take effect as if it were expressed to be for the use of the grantee or devisee. Ibid. c. 502, § 15. In a conveyance the words "warranty covenants" shall have the full force, meaning, and effect of the following words: "The grantor, for himself and his heirs, executors, administrators, and successors, covenants with the grantee and his heirs, successors, and assigns that he is lawfully seised in fee simple of the granted premises; that they are free from all incumbrances; that he has good right to sell and convey the same; and that he will, and his heirs, executors, administrators, and successors shall, warrant and defend the same to the grantee and his heirs, successors, and assigns forever against the lawful claims and demands of all persons." Ibid. c. 502, § 16. The words "quitclaim covenants" or the words "limited covenants" shall have the full force, meaning, and

effect of the following words: "The grantor, for himself and his heirs, executors, administrators, and successors, covenants with the grantee and his heirs, successors, and assigns that the granted premises are free from all incumbrances made by the grantor, and that he will, and his heirs, executors, administrators, and successors shall, warrant and defend the same to the grantee and his heirs, successors, and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other." Ibid. c. 502, § 17. In a conveyance or reservation of real property the terms "heirs," "assigns," or other technical words of inheritance shall not be necessary to convey or reserve an estate in fee. A deed or reservation of real property shall be construed to convey or reserve an estate in fee simple, unless a different intention clearly appears in the deed. Ibid. c. 502, § 19. In a conveyance of real property all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the property conveyed and passed by the conveyance, unless the contrary shall be stated in the deed, and it shall not be necessary to enumerate or mention them either generally or specifically. Ibid. c. 502, § 21.

Forms In Common Use—Warranty Deed

Know all men by these presents that I, ———, of ———, in the state of ———, in consideration of ——— dollars (*or*, one dollar and other valuable considerations) to me paid by ——— of ———, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said ——— all that parcel of land situate in said ———, and bounded as follows, *etc.*

To have and to hold the granted premises, with all the rights, easements, and appurtenances thereto belonging, to the said ———, his heirs and assigns, to his and their own use and behoof forever.

And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seised in fee of the granted premises; that they are free from all incumbrances; that I have

good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, ———, of ———, wife of the said ———, do hereby release unto the grantee and his heirs and assigns all rights of or to both dower and homestead in the granted premises.

In witness whereof we, the said ——— and ———, hereunto set our hands and seals this ——— day of ———, 19—.

Same—Quitclaim Deed (with Covenants)

Know all men by these presents that I, ———, of ———, in the state of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said ——— all that parcel of land situate in said ———, and bounded as follows, *etc.*

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said ———, and his heirs and assigns, to their own use and behoof forever.

And I do hereby, for myself and my heirs, executors, and administrators, covenant with the said grantee and his heirs and assigns that the granted premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under me.

And for the consideration aforesaid I (*concluding as in preceding form*).

MICHIGAN

In General

Conveyances of lands or of any estate or interest therein may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded. C. L. § 8956. A scroll or device used as a seal has the effect of a seal, but this does not apply to official seals. Ibid. § 9005. Deeds executed within the state of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such. C. L. § 8962, as amend. Pub. Acts 1905, No. 103. Deeds executed in another state, territory, or district of the United States may be executed according to the laws thereof. C. L. § 8963. The officer taking an acknowledgment should certify that the deed is executed and acknowledged according to such law. Ibid. § 8964. As to acknowledgments, ante, p. 54.

A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale. Ibid. § 8957. No covenant is implied in any conveyance of real estate. Ibid. § 8959.

No deed, mortgage, or other instrument required to be acknowledged, affecting the title to lands or any interest therein, shall be recorded, unless witnessed and acknowledged or proved. Ibid. § 9013.

It is not necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance; and, if it be the intention to convey any lesser estate, it shall be so expressed. Ibid. § 9016.

Husband and Wife

A married woman residing within the state may bar her right of dower in any estate conveyed by her husband by joining in the deed of conveyance and acknowledging the same, or by joining with her husband in a subsequent deed, or by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title: Provided, the intent to bar her right of dower shall be expressed in the deed. Ibid. § 8930. When a married woman not residing in the

state joins with her husband in any conveyance of real estate situated within the state, the conveyance has the same effect as if she were sole, and the acknowledgment or proof of the execution may be the same as if she were sole. Ibid. § 8968.

Forms—Warranty Deed (Statutory)

Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—the said conveyance being dated and duly signed, sealed, and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives that he is lawfully seised of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances; and that he will warrant and defend the title to the same against all lawful claims. Ibid. § 9014.

Same—Quitclaim Deed (Statutory)

Any conveyance of lands worded in substance as follows: "A. B. quitclaims to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)"—the said conveyance being duly signed, sealed, and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. Ibid. § 9015.

MINNESOTA

In General

No estate or interest in lands, other than leases for a term not exceeding one year, shall be created, granted, assigned, or surrendered, unless by operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, etc. G. S. 1913, § 7002. All conveyances made within the state of any interest in lands therein must be executed in the presence of two subscribing witnesses. Such conveyances made out of the state may be so executed as above, or according to the laws of the place of execution. Ibid. § 6833. As to proof of such execution, ante, p. 56. To entitle any conveyance, power of attorney, or other instrument affecting real

estate to record, it must be executed and acknowledged by the parties (ante, p. 57). Ibid. § 6835.

A corporation may convey by an attorney appointed by resolution of its directors or governing board, a copy of which, certified by its clerk or secretary, may be filed for record. Ibid. § 6826. A deed of quitclaim and release is sufficient to pass all the estate which the grantor could convey by deed of bargain and sale. The word "heirs" or other words of inheritance are not necessary to create or convey an estate in fee simple. Ibid. § 6827. Except as provided in section 6828, *infra*, no covenant is implied in any conveyance or mortgage. Ibid. § 6829.

Husband and Wife

The surviving spouse has an undivided one-third of all lands of the other to the disposition of which such survivor has not consented in writing, subject to certain exceptions. Ibid. § 7238. A husband or wife by their joint deed may convey the real estate of either. Either, by separate deed, may convey any real estate owned by him or her, except the homestead, subject to the rights of the other therein; and either may by separate conveyance relinquish his or her rights in the real estate so conveyed by the other. Subject to the foregoing, either may separately appoint an attorney to sell or convey any real estate owned by him or her, or to join in any conveyance made by or for the other. The wife's minority does not invalidate a conveyance executed by her. Ibid. § 6814. A wife is bound by her covenants. Ibid. § 7144. As to acknowledgments, ante, p. 55. No alienation of the homestead is valid without the signature of both husband and wife. Ibid. § 6961.

Forms

Warranty and quitclaim deeds may be substantially in the following forms:

Warranty Deed (Statutory)

A. B., grantor of (*here insert the place of residence*), for and in consideration of (*here insert the consideration*), conveys and warrants to C. D., grantee, of (*here insert the place of resi-*

dence), the following described real estate in the county of _____, in the state of Minnesota (*here describe the premises*).

Dated this _____ day of _____, 19—. (Signature.)

Every such instrument, duly executed, is a conveyance in fee simple of the premises described to the grantee, his heirs and assigns, with covenants on the part of the grantor, his heirs and personal representatives: (1) That he is lawfully seised of the premises in fee simple, and has good right to convey the same; (2) that the premises are free from all incumbrances; (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof; (4) and that he will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as if written at length in such deed. Ibid. § 6828.

Quitclaim Deed (Statutory)

A. B., grantor, of (*here insert the place of residence*), for the consideration of (*here insert the consideration*), conveys and quitclaims to C. D., the grantee, of (*here insert the place of residence*), all interest in the following described real estate in the county of _____, in the state of Minnesota (*here describe the premises*).

Dated this _____ day of _____, 19—. (Signature.)

Every such instrument, duly executed, is a conveyance to the grantee, his heirs and assigns, of all right, title, and interest of the grantor in the premises described, but it does not extend to after-acquired title, unless words expressing such intention be added. Ibid. § 6828.

MISSISSIPPI

In General

Any interest in or claim to land may be conveyed, to vest immediately or in the future, by writing signed and delivered. Code 1906, § 2762. The use of private seals is dispensed with, except as to corporations. Ibid. § 4631.

Every estate granted or conveyed is deemed a fee simple if

a less estate be not limited. Ibid. § 2764. A conveyance of quitclaim and release is sufficient to pass all the estate or interest of the grantor and estops him and his heirs from asserting a subsequently acquired adverse title. Ibid. § 2767.

The words "grant, bargain, sell" operate as an express covenant to the grantee, his heirs and assigns, that the grantor was seised of an estate, free from incumbrance made or suffered by the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express word contained in the conveyance; and the grantee, his heirs, executors, administrators, and assigns, may, in any action, assign breaches as if the covenants above mentioned were expressly asserted. Ibid. § 2769. The word "warrant," without restrictive words, in a conveyance, has the effect of embracing all of the five covenants known as common law, to wit, seisin, power to sell, freedom from incumbrance, quiet enjoyment, and warranty of title. Ibid. § 2817. The words "warrant specially" constitute a covenant that the grantor, his heirs and personal representatives, will forever warrant and defend the title of the property unto the grantee and his heirs, representatives, and assigns, against the claims of all persons claiming by, through, or under the grantor. Ibid. § 2818. A conveyance without any warranty operates to transfer the title and possession of the grantor as a quitclaim and release. Ibid. § 2819.

Husband and Wife

Married women have the same capacity to dispose of all property as if not married. Ibid. § 2517. Dower and curtesy, except where the estate vested prior to November 1, 1880, are abolished. Ibid. § 2519. Conveyances of the homestead must be by joint deed.

Forms

A conveyance of land may be in the following form, and is as effectual to transfer all the right, title, claim, and possession of the person making it as can be done by any sort of conveyance:

Warranty Deed (Statutory)

In consideration of (*here state it*), I convey and warrant to _____ the land described as (*describe it*).

Witness my signature the _____ day of _____, A. D. _____.

If only a special warranty is intended, add the word "specially" to the word "warrant" in the conveyance. Ibid. § 2816.

Deed of Trust or Mortgage (Statutory)

A deed of trust or mortgage may be in the form of a conveyance to the words "Witness my signature" at the end, and then as follows: "In trust to secure (*here state what it is to secure and all the necessary provisions*). In witness, etc." Ibid. § 2820.

Quitclaim Deed

STATE OF MISSISSIPPI, }
_____ County. }

In consideration of _____ dollars, I hereby convey to _____ the land in said county and state described as (*description*).

Witness my signature, etc.

MISSOURI**In General**

Conveyances of lands or of any estate or interest therein may be made by deed executed by any person having authority to convey the same, or by his agent or attorney, and acknowledged and recorded. Rev. St. 1909, § 2787. A witness is not necessary. Private seals are abolished. Ibid. § 2773. All deeds or other conveyances shall be subscribed by the party granting the same, or by his lawful agent, and acknowledged or proved and certified. Ibid. § 2792; ante, p. 59.

The words "grant, bargain, and sell," in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by expressed terms, be construed to be the

following expressed covenants on the part of the grantor, for himself and his heirs to the grantee, his heirs and assigns: First, that the grantor was at the time of the execution of such conveyance seised of an indefeasible estate, in fee simple, in the real estate thereby granted; second, that such real estate was at the time of the execution of such conveyance free from incumbrances done or suffered by the grantor or any person under whom he claims; third, for further assurances of such real estate to be made by the grantor and his heirs to the grantee and his heirs and assigns—and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance. Ibid. § 2793.

Husband and Wife

A husband and wife may convey the real estate of the wife, and she may relinquish her dower in his real estate, by their joint deed acknowledged and certified as herein provided. Any covenant expressed or implied in any deed conveying property belonging to the wife shall bind the wife and her heirs. No covenant in any deed conveying property belonging to the wife shall bind the husband, nor shall any covenant in any deed conveying the property of the husband bind the wife, except so far as may be necessary to effectually convey from the husband or wife, so joining therein, and not owning the property, all the right, title, and interest expressed to be conveyed therein: Provided, however, that where the property conveyed is owned by the husband and wife as an estate by the entirety, then both shall be bound by the covenants therein expressed or implied. Ibid. § 2788. The husband is debarred from selling, mortgaging, or alienating the homestead. The husband and wife may jointly convey, mortgage, alienate, or in any other manner dispose of the homestead. Ibid. § 6704.

Warranty Deed

This indenture, made on the ——— day of ———, A. D. 19—, by and between ———, of ———, part— of the first part, and ———, of ———, part— of the second part:

Witnesseth that the said part— of the first part, in consideration of the sum of ——— dollars to ——— paid by the said

part— of the second part, the receipt of which is hereby acknowledged, do— by these presents grant, bargain and sell, convey, and confirm unto the said part— of the second part, ——— heirs and assigns, the following described lots, tracts, or parcels of land, lying, being, and situate in the county of ———, and state of Missouri, to wit (*description*).

To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in any wise appertaining, unto the said part— of the second part, and unto ——— heirs and assigns forever; the said ——— hereby covenanting that ——— lawfully seised of an indefeasible estate in fee in the premises here-in conveyed; that ——— ha— good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by ——— or those under whom ——— claim—; and that ——— will warrant and defend the title to the said premises unto the said part— of the second part, and unto ——— heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— (and seal—) the day and year first above written.

Quitclaim Deed

(*Begin as in preceding*) do— by these presents remise, release, and forever quitclaim unto the said part— of the second part (*description*).

To have and to hold the same, with all the rights, immunities, privileges, and appurtenances thereto belonging, unto the said part— of the second part, and ——— heirs and assigns, forever, so that neither the said part— of the first part, nor ——— heirs, nor any other person or persons for ——— or in ——— name or behalf, shall or will hereafter claim or demand

any right or title to the aforesaid premises, or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness, *etc.*

MONTANA

In General

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. Rev. Codes 1907, § 4612. A seal is not required. Ibid. § 5023.

A fee-simple title is presumed to pass by a grant, unless it appears that a lesser estate was intended. Ibid. § 4619. From the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance: (1) That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; (2) that such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. Ibid. § 4627.

Husband and Wife

A married woman relinquishes dower by joining with her husband in the conveyance. As to the effect of her conveyance, ante, p. 62. The homestead of a married person cannot be conveyed or incumbered unless by an instrument executed and acknowledged by both husband and wife. Ibid. § 4699.

Forms

A grant of an estate in real property may be made substantially as follows:

Grant (Statutory)

I, A. B., in consideration of —— dollars now paid, grant to C. D. all the real property situated in (*insert name of county*) county, state of Montana, bounded (*or, described*) as follows (*here insert description, or, if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, "the Norris Ranch"*).

Witness my hand this (*insert day*) day of (*insert month*), 18—.

A. B.

Ibid. § 4613.

Warranty Deed (Common Form)

This indenture, made the —— day of ——, A. D. 19—, between ——, of ——, the parties of the first part, and ——, of ——, the party of the second part:

Witnesseth that the said parties of the first part, for and in consideration of the sum of —— dollars, lawful money of the United States of America, to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey warrant, and confirm unto the said party of the second part, and to his heirs and assigns forever, the hereinafter described real estate, situated in the city or town of ——, county of ——, and state of Montana, to wit (*description*).

Together with all and singular the hereinbefore described premises, together with all tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents,

issues, and profits thereof; and also all the estate, right, title, interest, right of dower, and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances thereto belonging, to have and to hold all and singular the above mentioned and described premises unto the said party of the second part, and to his heirs and assigns forever.

And the said parties of the first part, and their heirs, do hereby covenant that they will forever warrant and defend all right, title, and interest in and to the said premises and the quiet and peaceable possession thereof unto the said party of the second part, his heirs and assigns, against the acts and deeds of the said parties of the first part, and all and every person and persons whomsoever lawfully claiming or to claim the same.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein before written.

Signed, sealed, and delivered in the presence of.

Quitclaim Deed (Common Form)

(Begin as in preceding) do remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns, the following described real estate, situated in the ———, county of ———, and state of Montana, to wit *(description)*, together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, ——— property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in or to the said premises and every part and parcel thereof.

To have and to hold all and singular the said premises, with

the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness, *etc.*

NEBRASKA

In General

Deeds of real estate or any interest therein, except leases for one year or less, must be signed by the grantor or grantors, being of lawful age, in the presence of at least one competent subscribing witness, and be acknowledged or proved and recorded. Cobbey's Ann. St. 1911, § 10800.

Private seals are abolished. Ibid. § 11850.

Husband and Wife

Dower and curtesy are abolished. Ibid. § 4904. A married woman may convey her real property as a married man. Ibid. § 5318. The homestead of a married person cannot be conveyed or incumbered except by an instrument executed and acknowledged by both husband and wife. Ibid. § 6278.

Warranty Deed

Know all men by these presents that ———, of ———, for and in consideration of the sum of ——— dollars in hand paid, do— hereby grant, bargain, sell, convey, and confirm unto ———, of ———, the following described premises (*description*).

And ——— do— hereby covenant with the said ———, and ——— heirs and assigns, that ——— lawfully seised of said premises; that they are free from incumbrance, that ——— ha— good right and lawful authority to convey the same, and ——— do— hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said ——— hereby relinquishes all ——— in and to the above-described premises.

In witness whereof, I have hereunto set my hand this ——— day of ———.

Quitclaim Deed

(*Begin as in preceding*) do hereby quitclaim and convey unto _____, of _____ (*description*).

In witness, *etc.*

NEVADA

In General

Conveyances may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded. Rev. Laws, § 1017. A seal is not requisite. Ibid. § 1095.

The term "heirs," or other words of inheritance, are not necessary to create or convey an estate in fee simple. Ibid. § 1056. The words "grant, bargain, and sell," in conveyances by which any estate of inheritance or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns: First, that previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate or any right, title, or interest therein to any person other than the grantee; second, that such real estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him, and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. Ibid. § 1063.

Husband and Wife

The husband has the entire management and control of the community property, with absolute power of disposition, except as hereinafter provided, as of his own separate estate: Provided, that no deed of conveyance or mortgage of a homestead shall be valid unless both the husband and wife execute and acknowledge. Ibid. § 2160. No estate is allowed the husband as tenant by curtesy, nor any estate in dower to the wife. Ibid. § 2161. A husband or wife may hold as joint tenants, tenants in common, or as community property. Ibid.

§ 2162. The wife may, without the consent of her husband, convey, charge, incumber, or otherwise in any manner dispose of her separate property. Ibid. § 2163. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. Ibid. § 1018. As to homestead, *supra*.

NEW HAMPSHIRE

In General

Real estate may be conveyed by deed executed by any person or by his attorney, acknowledged and recorded. Pub. St. 1901, c. 137, § 1. Any public or private corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose. Ibid. c. 137, § 2. Every deed or other conveyance must be signed and sealed by the grantor, attested by two or more witnesses, acknowledged by the grantor, and recorded. Ibid. § 3.

Husband and Wife

A married woman of full age may convey her real estate. A married woman, though not of full age, may join with her husband in release of dower. A married man, though not of full age, may join with his wife in release of curtesy. Real estate may be conveyed directly by one to the other. Ibid. c. 176, § 3.

Warranty Deed

Know all men by these presents, that I, ———, of ———, for and in consideration of the sum of ——— to me in hand before the delivery hereof well and truly paid by ———, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm, unto the said ———, his heirs and assigns forever (*description*).

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging to the said ———, and his heirs and assigns, to his and their only proper use and benefit forever. And I, the said ———, and my heirs,

executors, and administrators, do hereby covenant, grant, and agree to and with the said ———, and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seised and possessed thereof in my own right in fee simple, and have full power and lawful authority to grant and convey the same in manner aforesaid; that the premises are free and clear from all and every incumbrance whatsoever; and that I, and my heirs, executors, and administrators, shall and will warrant and defend the same to the said ———, and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, ———, wife of the said ———, in consideration aforesaid, do hereby relinquish my right of dower in the before mentioned premises.

(And we and each of us do hereby release all rights of homestead secured to us, or either of us, by chapter ——— of the Public Statutes of New Hampshire, or any other statute of said state.)

In witness whereof we have hereunto set our hands and seals this ——— day of ———.

Quitclaim Deed with Covenants

(*Begin as in preceding*) have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim, unto the said ———, ——— heirs and assigns forever (*description*).

To have and to hold the said premises, with all the privileges and appurtenances thereunto belonging, to the said ———, and his heirs and assigns forever; and I do hereby covenant with the said ——— that I will warrant and defend the said premises to the said ———, and his heirs and assigns, against the lawful claims and demands of any person or persons claiming by, from, or under me.

And I, —— wife of said ——, for the consideration aforesaid, do hereby release my right of dower in said premises.

(Insert clause releasing homestead as in preceding, if applicable.)

In witness, etc.

NEW JERSEY

In General

Every deed executed and delivered conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and in equity, of the grantor (including the fee simple, if he had such an estate) of, in, and to the premises, with the appurtenances, and the word "heirs" shall not be necessary in any deed to effect the conveyance of the fee simple. P. L. 1912, c. 293.

Husband and Wife

No estate or interest of a feme covert in any lands, tenements, or hereditaments shall pass by her deed or conveyance, without a previous acknowledgment made by her on a private examination, apart from her husband, that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband, and a certificate thereof written on, or under, or annexed to the said deed or conveyance, and signed by the officer before whom it was made; and every deed or conveyance so executed, acknowledged, and certified shall release and bar her right of dower, and every deed executed by her and so acknowledged and certified shall be effectual to convey or affect the lands, tenements, or hereditaments, or other property, or her interest therein, thereby intended to be conveyed or affected: Provided, that this clause shall not be construed to enable any feme covert under the age of 21 years to convey or affect her lands, tenements, or hereditaments or other property, or any right of dower, interest, or estate therein: And provided, further, that this shall not apply to assignments or releases of mortgages by married women of mortgages held by them in their own right. P. L. 1912, c. 110. Any deed of conveyance of the lands of any married woman acknowledged and delivered

by her in which her husband joins by attorney duly constituted by power of attorney executed by him authorizing such attorney to join in the conveyance of the lands of the wife shall be as good and effectual to pass the estate of the said married woman as if her husband had personally joined in the making, execution, and delivery of such deed. Comp. St. 1910, p. 1548, § 39a. Any conveyance made by virtue and in pursuance of any letter of attorney for the sale, conveyance, assurance, acquittance, or release of any lands, tenements, or hereditaments or other property, or interest therein, executed by any married woman who joins with her husband in executing such letter of attorney, shall be as effectual to pass any inchoate right of dower or estate in dower or other estate or right of such married woman as if she were a feme sole and unmarried: Provided, such letter of attorney shall have been or be acknowledged, and such acknowledgment certified in the manner prescribed for the acknowledgment of deeds of conveyance by a married woman. Ibid. p. 1549, § 40.

Form

A scroll, or ink, or other device by way of a seal is sufficient. Ibid. p. 1540, § 20. One witness is usual, but unnecessary.

A deed may be made in the following form or to the same effect (Ibid. p. 1570, § 99):

Deed (Statutory)

This deed made the —— day of ——, in the year ——, between (*here insert names and residence of parties*):

Witnesseth that, in consideration of (*here state the consideration*), the said —— doth (*or, do*) grant and convey unto the said —— all, *et cetera* (*here describe the property and insert covenants or any other provisions*).

In witness whereof the said part— of the first part hereunto set —— hand and seal the day and year first above written.

Signed, sealed, and delivered —— in the presence of ——.

Ibid. p. 1570, § 99.

Such deed, unless an exception be made therein, shall be construed to include all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of the grantor (including the fee simple, if he have such estate) of, in, and to the said premises, with the appurtenances; and the word "heirs" shall not be necessary in any such deed to effect a conveyance of the fee simple (Ibid. p. 1570, § 100), and to include all and singular the buildings, improvements, ways, woods, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof (Ibid. p. 1570, § 101).

Whenever in any deed there shall be used the words "the grantor (*or*, the said —) releases to the said grantee (*or*, the said —) all his claims upon the said lands," such deed shall be construed as if it set forth that "the grantor (*or*, releasor) hath remised, released, and forever quitclaimed, and by these presents doth remise, release, and forever quitclaim, unto the grantee (*or*, releasee), his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (*or*, released) or intended so to be, so that neither he, nor his personal representatives, his heirs or assigns, shall at any time thereafter have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever." Ibid. p. 1570, § 102.

When a deed uses the words "the said — covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives, and assigns, and shall be deemed to be the covenantee, his heirs, personal representatives, and assigns. Ibid. p. 1570, § 103. A covenant by the grantor in a deed "that he will warrant generally the property hereby conveyed" shall have the same effect as if the grantor has covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whomsoever. Ibid. p. 1570, § 104.

A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representa-

tives, and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. p. 1571, § 105. The words "with general warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed." Ibid. p. 1571, § 106.

Common Form of Warranty Deed

This indenture, made the —— day of ——, in the year of our Lord one thousand nine hundred and ——, between ——, of the —— of ——, in the county of ——, and state of ——, of the first part, and ——, of the —— of ——, in the county of ——, and state of ——, of the second part:

Witnesseth that the said part— of the first part, for and in consideration of —— dollars, money of the United States of America, to —— in hand well and truly paid by the said part— of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said part— of the first part, therewith fully satisfied, contented, and paid, ha— given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do— give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said part— of the second part, and to —— heirs and assigns forever, all —— tract— or parcel— of land and premises, hereinafter particularly described, situate, lying, and being in the —— of ——, in the county of ——, and state of New Jersey (*description*).

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining; also all the estate, right, title, interest, property, claim, and de-

mand whatsoever of the said part— of the first part of, in, and to the same, and of, in and to every part and parcel thereof,

To have and to hold all and singular the above-described land and premises, with the appurtenances, unto the said part— of the second part, ——— heirs and assigns, to the only proper use, benefit, and behoof of the said part— of the second part, ——— heirs and assigns forever.

And the said ——— do— for ——— heirs, executors, and administrators covenant and grant to and with the said part— of the second part, ——— heirs and assigns, that ———, the said ———, the true, lawful, and right owner— of all and singular the above-described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging, and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not incumbered by any mortgage, judgment, or limitation, or by any incumbrance whatsoever by which the title of the said part— of the second part, hereby made or intended to be made, for the above-described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; and also that the said part— of the first part now ——— good right, full power, and lawful authority to grant, bargain, sell, and convey the said land and premises in manner aforesaid; and also that ——— will warrant, secure, and forever defend the said land and premises unto the said ———, heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of incumbrance whatsoever.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— and seal— the day and year first above written.

Common Form of Quitclaim Deed

(Begin as in preceding):

Witnesseth that the said party of the first part, in consideration of the sum of ——— dollars to ——— duly paid before the delivery hereof, ha— remised, released, and forever quitclaimed, and by these presents do— remise, release, and forever quitclaim, to the said party of the second part, and to ——— heirs and assigns, all ——— tract— or parcel— of land and premises, hereinafter particularly described, situate, lying, and being in the ——— of ———, in the county of ———, and state of New Jersey (*description*), with the appurtenances and all the estate, right, title, and interest, ——— of the said party of the first part therein, to have and to hold the above mentioned and described premises, with the appurtenances, unto the said party of the second part, ——— heirs and assigns forever.

In witness whereof, *etc.*

NEW MEXICO

In General

All conveyances of real estate shall be subscribed by the person transferring his title or interest therein or by his legal agent or attorney. Comp. Laws 1897, § 3942. No seal or scroll is necessary. Laws 1901, c. 62, § 11.

The words, "bargained and sold," or words to the same effect, in all conveyances of hereditary real estate, unless restricted in express terms on the part of the person conveying the same, himself and his heirs, to the person to whom the property is conveyed, his heirs and assignees, shall be limited to the following effect: First, that the grantor at the time of the execution of said conveyance is possessed of an irrevocable possession in fee simple to the property so conveyed; second, that the said real estate at the time of the execution of said conveyance is free from all incumbrance made or suffered to

be made by the grantor, or by any person claiming the same under him; third, for the greater security of the person, his heirs and assignees, to whom said real estate is conveyed by the grantor and his heirs, suits may be instituted the same as if the conditions were stipulated in the said conveyance. Comp. Laws 1897, § 3941.

Husband and Wife

There is no courtesy or dower. Laws 1907, c. 37, § 17. The wife may without the consent of her husband convey her separate property. Ibid. § 8. The husband has the management and control of the community property, but he cannot make a gift of or convey the same without a valuable consideration, unless the wife in writing consent thereto. No sale, conveyance, or incumbrance of the homestead, occupied and used as a home by the husband and wife, or which has been declared to be such by a written instrument signed and acknowledged by the husband and wife and recorded, shall be made without the written consent of the wife. Ibid. § 16.

Forms

None are prescribed.

Warranty Deed

This indenture, made this _____ day of _____, in the year _____, between _____, of the first part, and _____, of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of _____ dollars, _____ of the United States of America, to _____ in hand paid by the said part— of the second part, the receipt whereof is hereby confessed and acknowledged, do— hereby grant, bargain, sell, remise, convey, release, and confirm unto the said part— of the second part, _____ heirs and assigns forever, all the following described lot— or parcel— of land and real estate situate in the county of _____, state of New Mexico, to wit (*description*),

together with all and singular the lands, tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said part— of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said part— of the second part, ——— heirs and assigns forever. And the said part ——— of the first part, for ——— heirs, executors and administrators, doth covenant and agree, to and with the said part— of the second part, ——— heirs and assigns, that at the time of delivery of these presents ——— well seised of the premises above conveyed, as of a good, sure, perfect, and indefeasible estate of inheritance, in law, in fee simple, and ha— good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above-bargained premises in the quiet and peaceable possession of the part— of the second part, ——— heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part— of the first part shall and will warrant and forever defend.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— the day and year first above written.

Signed and delivered in presence of

TIFF.FORMS—38

NEW YORK

In General

An estate or interest in real property, other than a lease for not exceeding one year, or any trust or power, over or concerning real property, or relating thereto, cannot be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent, thereunto authorized by writing. Consol. Laws 1909, c. 50, § 242. A grant in fee or of a freehold estate must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged. Ibid. § 243.

To be entitled to record, a conveyance must state the residence address of the purchaser. Laws 1910, c. 227.

A grant of real property passes all the estate or interest of the grantor, unless the intent to pass a less estate or interest appears by the express terms or by necessary implication. Consol. Laws 1909, c. 50, § 245. The term "heirs" or other words of inheritance are not necessary to create an estate in fee. Ibid. § 240.

The private seal of a person, other than a corporation, consists of a wafer, wax, or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word "Seal," or the letters "L. S.," opposite the signature. Ibid. c. 22, § 44.

Husband and Wife

A widow shall be endowed of the third part of all the lands whereof her husband was seised of an estate of inheritance at any time during the marriage. Ibid. c. 50, § 190.

Construction of Deeds

A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not. Ibid. c. 50, § 251.

In grants of freehold interests in real property the following or similar covenants must be construed as follows: 1. *Seisin*.—A covenant that the grantor “is seised of the said premises (*described*) in fee simple, and has good right to convey the same,” must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seised of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the premises thereby conveyed, with the tenements, hereditaments, and appurtenances thereto belonging, and has good right, full power, and lawful authority to grant and convey the same by the said conveyance. 2. *Quiet Enjoyment*.—A covenant that the grantee “shall quietly enjoy the said premises” must be construed as meaning that such grantee, his heirs, successors, and assigns, shall and may at all times thereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors, or assigns, or any person or persons lawfully claiming or to claim the same. 3. *Freedom from Incumbrances*.—A covenant “that the said premises are free from incumbrances” must be construed as meaning that such premises are free, clear, discharged, and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever. 4. *Further Assurance*.—A covenant that the grantor will “execute or procure any further necessary assurance of the title to said premises” must be construed as meaning that the grantor, and his heirs or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request and at the proper costs and charges of the grantee, his heirs, successors, and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be in and to the grantee, his heirs, successors, or assigns forever, as by the grantee, his heirs, successors, or assigns, or his or their counsel learned in the law, shall be reasonably advised or required. 5. *War-*

ranty of Title.—A covenant that the grantor “will forever warrant the title” to the said premises must be construed as meaning that the grantor, and his heirs or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors, or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and forever defend. 6. Grantor has not Incumbered.—A covenant that the grantor “has not done or suffered anything whereby the said premises have been incumbered” must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever. *Ibid.* c. 50, § 253.

In any grant or mortgage of freehold interests in real estate, the words “together with the appurtenances and all the estate and rights of the grantor in and to said premises” must be construed as meaning together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim, and demand whatsoever, both in law and in equity, of the said grantor of, in, and to the said granted premises and every part and parcel thereof, with the appurtenances. *Ibid.* c. 50, § 255.

In any deed by an executor of, or trustee under, a will, the words “together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise,” must be construed as meaning together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his

decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in, and to the said granted premises and every part and parcel thereof, with the appurtenances. Ibid. c. 50, § 256.

Forms

The following forms for the conveyance of real property are provided, but the use of other forms is not invalidated. Ibid. c. 50, § 258.

Deeds of bargain and sale, and of lease and release, may continue to be used, and are to be deemed grants, subject to all the provisions of law in relation thereto. Ibid. c. 50, § 246.

Deed with Full Covenants (Statutory Form)

This indenture, made the —— day of ——, in the year nineteen hundred and ——, between ——, of (*insert residence*), of the first part, and ——, of (*insert residence*), of the second part:

Witnesseth that the said party of the first part, in consideration of —— dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (*description*), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above-granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seised of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of

Ibid. § 258.

Executor's Deed (Statutory Form)

This indenture, made the —— day of ——, nineteen hundred and ——, between ——, as executor of the last will and testament of ——, late of ——, deceased, of the first part, and ——, of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of —— dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (*description*), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above-granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of

Ibid. c. 50, § 258.

Quitclaim Deed with Covenant against Grantor's Acts

(*Begin as in deed with full covenants, supra*) doth hereby remise, release, and forever quitclaim unto the said party of the second part, his heirs and assigns forever (*description*), together with the appurtenances and all the estate and rights of the said party of the first part in and to the said premises, to have and to hold the above-described premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth hereby covenant with the said party of the second part that the said party of the first part has not done or suffered any thing whereby the above-described premises have been incumbered in any way whatever.

In witness, *etc.*

NORTH CAROLINA

In General

All deeds, contracts, or leases, before registration, must be acknowledged by the grantor, lessor, or the person executing the same, or their signatures proven on oath by one or more witnesses in the manner prescribed by law, and all deeds executed and registered according to law are valid, and pass title and estates without livery of seisin, attornment, or other ceremony whatever. Revisal 1905, § 979. When real estate is conveyed to any person, it shall be construed a conveyance in fee, whether the word "heirs" is used or not, unless the conveyance shows that the grantor meant to convey a less estate. Ibid. § 946.

Husband and Wife

Every conveyance or other instrument affecting the estate, right, or title of a married woman must be executed by herself and her husband, and proof or acknowledgment must be made as to the husband, and acknowledgment must be made by the wife, and her private examination touching her voluntary assent to such instrument must be taken separate and apart from her husband. Ibid. § 952. The probate as to the husband and acknowledgment and private examination of the wife may be taken before different officers and at different times and places, whether both officials reside in this state, or only one in this state and the other in another state or country. It is not material whether the execution of the instrument was proven as to or acknowledged by the husband before or after the acknowledgment and private examination of his wife. Ibid. § 953. When an instrument purports to be signed by a husband and wife, it may be ordered registered, if the acknowledgment of the husband is duly taken, whether the private examination of the wife is properly taken or not, but no such instrument shall be the act or deed of the wife, unless her private examination is taken according to law. Ibid. § 954. No deed made by the owner of a homestead is valid without the voluntary signature and assent of his wife, signified on her private examination according to law. Const. art. 10, § 8

Warranty Deed

STATE OF NORTH CAROLINA, }
——— County. }

This deed, made this —— day of ——, 19——, by ——, of —— county, and state of ——, of the first part, to ——, of —— county, and state of ——, of the second part:

Witnesseth that said ——, in consideration of —— dollars, to —— paid by ——, the receipt of which is hereby acknowledged, ha— bargained and sold, and by these presents do— grant, bargain, sell, and convey, to said ——, —— heirs and assigns, a certain tract or parcel of land in —— county, state of North Carolina, adjoining the lands of ——, and others, and bounded as follows, viz. (*description*).

To have and to hold the aforesaid tract or parcel of land, and all privileges and appurtenances thereto belonging, to the said ———, ——— heirs and assigns, to ——— only use and behoof forever.

And the said ———, for ——— sel— and ——— heirs, executors, and administrators, covenant— with said ———, ——— heirs and assigns, that ——— seised of said premises in fee and ha— right to convey in fee simple; that the same are free and clear from all incumbrances; and that ——— do— hereby forever warrant and will forever defend the said title to the same against the claims of all persons whomsoever.

In testimony whereof the said ——— ha— hereunto set ——— hand— and seal— the day and year first above written.

(Signatures and seals.)

Attest: ———

Quitclaim Deed

STATE OF NORTH CAROLINA, }
——— County. }

Know all men by these presents that we, ——— and ———, his wife, of ———, for divers good causes and considerations thereunto moving, and more particularly for ——— dollars received of ———, have remised, released, and forever quitclaimed, and by these presents do, for ourselves and our heirs, executors, and administrators, justly and absolutely remise, release and forever quitclaim unto the said ———, and to his heirs and assigns forever, all such right, title, and interest as we, the said ———, and ———, his wife, have or ought to have in or to all that piece, parcel, tract, or lot of land lying in ——— township, ——— county, state of North Carolina, and described as follows: *(Description.)*

To have and to hold the above-released premises unto him, said ———, his heirs and assigns, to his and their only proper

use and behoof forever, so that neither we, nor either of us, nor any other person in our name and behalf, shall or will hereafter claim or demand any right or title to the premises, or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness whereof we have hereunto set our hands and affixed our several seals this ——— day of ———.

NORTH DAKOTA

An estate in real property other than at will or for a term not exceeding one year can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. Rev. Codes 1905, § 4968. All distinctions between sealed and unsealed instruments are abolished. Ibid. § 5338. A fee-simple title is presumed to be intended to pass by a grant of real property unless it appears that a lesser estate was intended. Ibid. § 4982.

Husband and Wife

A conveyance or other instrument executed by a married woman has the same effect as if she was unmarried, and may be acknowledged in the same manner. Ibid. § 5016. Dower and curtesy are abolished. Ibid. § 5188. Neither husband nor wife need join in a conveyance of land belonging to the other. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife. Ibid. § 5052.

Corporations

Any foreign or domestic corporation may in its by-laws empower any one or more of its officers severally or conjointly to execute and acknowledge in its behalf conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens upon, titles to, or interests in real estate. Ibid. § 4969. In the absence of any by-laws, the president or secretary of any corporation, and the president, secretary, treas-

urer, or cashier of any loan, trust, or banking corporation, may execute and acknowledge such instruments when authorized by resolution of the board of directors. Ibid. § 4970. The signature of a corporation to any instrument mentioned in section 4969 shall be as follows:

——— (*full name of corporation*), by (*some officer authorized by resolution of the by-laws of the corporation to execute and acknowledge such instrument*).

——— (*official designation of person signing*).

———, Secretary.

Attest:

(*Seal.*)

Ibid. § 4972.

Forms

The execution of a grant of an estate in real property, if it is not duly acknowledged, must, to entitle it to be recorded, be proved by a subscribing witness or as otherwise provided. The absence of a seal does not invalidate or impair it. A grant of an estate in real property may be made in substance as follows:

Grant (Statutory)

This grant, made the —— day of —— in the year ——, between A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of —— dollars now received, all the real property situated in ——, and bounded (*or*, described) as follows: ——.

Witness the hand of the party of the first part. A. B.

Ibid. § 4973.

Warranty Deed (Common Form)

This indenture, made this —— day of ——, A. D. 19—, between ——, of ——, part— of the first part, and ——, of ——, part— of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of —— dollars to —— in hand paid by said part— of the second part, the receipt whereof is hereby acknowledged, do— by these presents grant, bargain, sell, and convey unto the said part— of the second part, —— heirs and assigns forever, all —— tract— or parcel— of land lying and being in the county of ——, and state of North Dakota, and described as follows, to wit: (*Description.*)

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said part— of the second part, —— heirs and assigns forever. And the said ——, part— of the first part, for —— sel—, —— heirs, executors, and administrators, do— covenant with the part— of the second part, —— heirs and assigns, that —— well seised in fee of the land and premises aforesaid, and ha— good right to sell and convey the same in manner and form aforesaid, that the same are free from all incumbrances ——, and the above-bargained and granted land and premises in the quiet and peaceable possession of said part— of the second part, —— heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said part— of the first part will warrant and defend.

In witness whereof the said part— of the first part hereunto set —— hand— the day and year first above written.

Quitclaim Deed (Common Form)

(*Begin as in preceding*) do— grant, bargain, sell, release, and quitclaim to the said part— of the second part, ——— heirs and assigns forever, all ——— right, title, interest, claim, or demand in and to the following tract or parcel of land lying and being in the county of ———, and state of North Dakota, and described as follows, to wit: (*Description.*)

To have and to hold the above-quitclaimed premises, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said part— of the second part, ——— heirs and assigns forever.

In witness whereof, *etc.*

OHIO

In General

A deed, mortgage, or lease of any estate or interest in real property must be signed by the grantor, mortgagor, or lessor, and such signing be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing also must be acknowledged by the grantor, mortgagor, or lessor. Gen. Code 1910, § 8510. Private seals other than corporate are abolished. Ibid. § 32.

Husband and Wife

A deed, mortgage, or lease of any estate or interest of a married person in real property must be signed, attested, acknowledged, and certified in the manner above prescribed. Ibid. § 8511. The husband and wife should join to release dower. See Ibid. § 8606.

Warranty Deed

Know all men by these presents:

That I, of ———, in consideration of ——— dollars, to ——— paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said ———, his heirs, and assigns forever (*description*), and all the estate, title, and interest of the said grantor, either in law or equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof; to have and to hold the same to the only proper use of the said ———, his heirs and assigns forever.

And I, the said ———, for myself and my heirs, executors, and administrators, do hereby covenant with the said ———, his heirs and assigns, that I am the true and lawful owner of the said premises, and have full power to convey the same, and that the title so conveyed is clear, free, and unincumbered; and, further, that I do warrant and will defend the same against all claim or claims, of all persons whomsoever.

In witness whereof I, the said ———, and ———, the wife (*or*, the husband) of the said ———, who hereby releases all her (*or*, his) right and expectancy of dower in the said premises, have hereunto set our hands this ——— day of ———.

OKLAHOMA

In General

Males of 21 and females, of 18 years, otherwise qualified, and all persons upon whom the rights of majority have been conferred, and corporations, to the extent and in the manner authorized by law, owning real estate in Oklahoma, may mortgage, convey, or otherwise dispose of, or make any contract relating to, the same or any interest therein. Persons of whatsoever age, legally married and otherwise qualified, may dis-

pose of and make contracts relating to real estate acquired after marriage. Rev. Laws 1910, § 1140. No subscribing witness is necessary to the validity of a deed or other instrument conveying, affecting, or relating to real estate. Ibid. § 1141. No such instrument, other than a lease for not exceeding one year, is valid until reduced to writing and subscribed by the grantors. Ibid. § 1143. Distinctions between sealed and unsealed instruments are abolished. Ibid. § 944. Every estate in land granted or conveyed is deemed an estate in fee simple and of inheritance, unless limited by express words. Ibid. § 1175.

Husband and Wife

The husband or wife may convey, mortgage, or make any contract relating to any real estate, other than the homestead, belonging to him or her, without being joined by the other. Ibid. § 1152. No deed, mortgage, or contract relating to the homestead exempt by law, except a lease for not exceeding one year, is valid unless in writing and subscribed by both husband and wife, where both are living, and not divorced or legally separated, except to the extent hereinafter provided. Ibid. § 1143. See, also, Ibid. §§ 1145, 1146. Where the title to the homestead is in one of the spouses, and the other voluntarily abandons him or her for one year, or from any cause takes up his or her residence out of the state, the former may convey, mortgage, or make any contract relating thereto without being joined therein by the other. Ibid. § 1145.

Corporations

Every deed or other instrument affecting real estate made by a corporation must have the name of the corporation subscribed either by an attorney in fact or by the president or a vice president, and when made by a public corporation its name must be subscribed by the chief officer thereof. Ibid. § 1186. The instrument, except when executed by an attorney in fact, must be attested by the secretary or clerk with the corporate seal attached. Ibid. § 1187.

Forms

A warranty deed may be substantially in the following form:

Warranty Deed (Statutory)

Know all men by these presents:

That ———, part— of the first part, in consideration of the sum of ——— dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto ——— the following described real property and premises, situate in ——— county, state of Oklahoma, to wit, ———, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said part— of the second part, ——— heirs and assigns forever, free, clear, and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and incumbrances of whatsoever nature;

Signed and delivered this ——— day of ———, 189—.

Ibid. § 1184.

A warranty deed made in substantial compliance with the provisions of this chapter conveys to the grantee, his heirs or assigns, the whole interest of the grantor in the premises described, and is deemed a covenant on the part of the grantor that at the time of making the deed he is legally seised of an indefeasible estate in fee simple of the premises and has good right and full power to convey the same, that the same is clear of all incumbrances and liens, and that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof, and will defend the title thereto against all persons who may lawfully claim the same; and the covenants and warranty shall be obligatory and binding upon any such grantor, his heirs and personal representatives, as if written at length in such deed. Ibid. § 1162.

Quitclaim Deed (Statutory)

A quitclaim deed may be substantially the same as a warranty deed, with the word "quitclaim" inserted in connection with the words "do hereby grant, bargain, sell, and convey," as follows: "Do hereby quitclaim, grant, bargain, sell, and convey"—and by omitting the words "and warrant the title to the same." Ibid. § 1185.

OREGON

In General

Conveyances of lands or of any estate or interest therein may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded. Lord's Ore. Laws, § 7100. A deed executed within the state must have two witnesses. Ibid. § 7109. Deeds may be executed without the state according to the foreign law. Ante, p. 87. A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid. § 7102. The term "heirs," or other words of inheritance, are not necessary to convey an estate in fee simple; and a conveyance passes all the estate of the grantor, unless the intent to pass a less estate appears. Ibid. § 7103. No covenant is implied in a conveyance, whether it contain special covenants or not. Ibid. § 7105.

A private seal may be made by a stamp or impression made upon wax, water, paper, or any other like substance upon which a visible and permanent impression can be made, or without an impression by a wafer or wax attached to the instrument, or by a paper attached to it by an adhesive substance, or by a scroll or other sign made with a pen or printed upon the paper; and any printed seal or scroll on the instrument at the time of signing will be presumed to have been adopted by the person signing his name before it. A scroll or other sign made in a sister state, territory, District of Columbia, or a foreign country, and there recognized as a seal, shall be so regarded in Oregon, and any instrument valid in the state where executed, without a seal, is in like manner valid in Oregon. Ibid. § 775. The seal affixed to a writing is primary evidence of a consideration. In other respects there is no difference be-

tween sealed and unsealed writings, except as to the time of commencing actions thereon. Ibid. § 776.

Husband and Wife

A husband and wife may, by their joint deed, convey her real estate as she might do by her separate deed if unmarried; but she is not bound by any covenant therein. Ibid. § 7101. An acknowledgment of a married woman to a conveyance of real property in the state shall be taken in the same manner as if she were unmarried. Ibid. § 7114. When a married woman not residing in the state joins with her husband in a conveyance, the conveyance has the same effect as if she were sole, and the acknowledgment or proof may be the same as if she were sole. Ibid. § 7117. A husband or wife may constitute the other his or her attorney in fact to sell and convey, mortgage, or bar dower or curtesy in his or her property for their mutual benefit. Ibid. § 7037. The husband and wife must join to bar her dower.

Warranty Deed

Know all men by these presents that ——— and ———, of ———, in consideration of ——— dollars, to ——— paid by ———, of ———, ha— bargained and sold, and by these presents do— grant, bargain, sell, and convey, unto said ———, ——— heirs and assigns, all the following (*description*), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and also all ——— estate, right, title, and interest in and to the same, including dower and claim of dower.

To have and to hold the above described and granted premises unto the said ———, ——— heirs and assigns forever. And ———, grantor— above named do— covenant to and with ———, the above-named grantee—, ——— heirs and assigns, that ——— lawfully seised in fee simple of the above-granted premises, that the above-granted premises are free from all incumbrances, and that ——— will, and ——— heirs,

executors, and administrators, shall warrant and forever defend the above-granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In witness whereof the grantor— above named hereunto set
—— hand— and seal— this —— day of ——.

Signed, sealed and delivered in the presence of:

_____.

PENNSYLVANIA

In General

The words "grant and convey," or either, pass a fee-simple title to the premises conveyed, if the grantor possessed such a title, although there be no words of inheritance or of perpetuity in the deed. Laws 1909, No. 53, § 1.

All deeds granting or conveying without exception or reservation include all the estate, right, title, interest, property, claim, and demand whatsoever of the grantor, in law, equity, or otherwise howsoever, of, in, and to the same, and every part thereof, together with all and singular the improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof. Ibid. § 2.

The words "grant and convey," or either, shall be adjudged an express covenant to the grantee, his heirs and assigns, that the grantor was seised of an indefeasible estate in fee simple in the property conveyed, freed from incumbrances done or suffered from the grantor, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed. Ibid. § 3. A covenant by the grantor that he "will warrant generally the property hereby conveyed" has the same effect as if he had covenanted that he, his heirs and personal representatives, will forever warrant and defend the property, and every part thereof, unto the grantee, his heirs, personal representatives, and assigns, against the lawful claims and demands of all persons whomsoever. Ibid. § 4. A covenant by the grantor that he "will warrant

specially the property hereby conveyed" has the same effect as if he had covenanted that he, his or their heirs and personal representatives, will forever warrant and defend the property and every part thereof unto the said grantee, his heirs, personal representatives, and assigns, against the lawful claims and demands of the grantor and all persons claiming or to claim by, through, or under him or them. Ibid. § 5.

Whenever there shall be used the words "release and quitclaim," the deed shall be construed as if it set forth that the grantor hath remised, released, and quitclaimed, and by these presents doth or do remise, release, and forever quitclaim, unto the grantee, his heirs and assigns, all right, title, interest, property, claim, and demand whatsoever, both in law and in equity, in or to the lands or premises released, or intended so to be, so that neither the grantor nor his personal representatives, heirs, or assigns shall at any time thereafter have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. Ibid. § 6.

Husband and Wife

Dower and curtesy exist. The wife must join in her husband's conveyance to bar dower. The husband must join in the conveyance of her separate property. As to her acknowledgment, ante, p. 90.

Forms

A seal is requisite, but an ink scroll suffices. One or more witnesses are usual, but not necessary unless the signature is by mark. The form of deed for conveying or releasing lands may be in the following words:

Deed (Statutory)

This deed, made the —— day of ——, in the year nineteen hundred and ——, between —— (*here insert name or names and residence of grantor or grantors*), and —— (*here insert name or names and residence of grantee or grantees*), witnesseth that, in consideration of —— dollars in hand paid, the receipt whereof is hereby acknowledged, the said grantor—do— hereby grant and convey (*or, release and quitclaim*) to

the said grantee— all ——— (*here give location and description of property conveyed or released, with recital of title, if desired*), ——— (*if reservations, exceptions, or special conditions, insert same here*), ——— (*if covenants of general or special warranty, insert same here*).

In witness whereof said grantor— ha— hereunto set ——— hand— and seal— the day and year first above written.

—————. (Seal.)

—————. (Seal.)

Scaled and delivered in the presence of:

—————.

—————.

Ibid. § 7.

Warranty Deed (Common Form)

This indenture made the ——— day of ———, in the year of our Lord one thousand nine hundred and ———, between ———, of ———, of the first part, and ———, of ———, of the second part, witnesseth that the said part— of the first part, for and in consideration of the sum of ———, lawful money of the United States of America, well and truly paid by the said part— of the second part to the said part— of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ——— granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents ——— grant, bargain, sell, alien, enfeoff, release, convey, and confirm, unto the said part— of the second part, ——— heirs and assigns (*description*).

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and

parcel thereof; and also all the estate, right, title, interest, ——— property, possession, claim, and demand whatsoever, both in law and equity, of the said part— of the first part of, in, and to the same premises, with the appurtenances.

To have and to hold the said premises, with all and singular the appurtenances, ——— unto the said part— of the second part, ——— heirs and assigns, to the only proper use, benefit, and behoof of the said part— of the second part, ——— heirs and assigns forever.

And the said ———, ——— heirs, executors, and administrators, do— by these presents, covenant, grant, and agree to and with the said part— of the second part, ——— heirs and assigns forever, that ———, the said ———, ——— heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said part— of the second part, ——— heirs, and assigns, against ———, the said ———, ——— heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will ——— warrant and forever defend.

In witness whereof the said part— of the first part to these presents ——— hereunto set ——— hand— and seal—. Dated the day and year first above written.

RHODE ISLAND

In General

Every conveyance for longer than one year shall be void unless made in writing duly signed, acknowledged, delivered, and recorded in the records of land evidence in the town or city where the lands are: Provided, that the same, if delivered, as between the parties and their heirs, and as against those taking by gift or devise, or those having notice thereof, shall be valid and binding, though not acknowledged or recorded.

Gen. Laws 1909, c. 253, § 2. A seal is not required. *Ibid.* c. 253, § 4. The words "give," "grant," or "exchange," in any conveyance, imply no covenant, warranty, or right of re-entry. *Ibid.* c. 253, § 13.

Husband and Wife

Dower and curtesy exist. A married woman may sell and convey directly to, or may take directly from, her husband or any other person, any estate or interest as if unmarried. *Ibid.* c. 246, § 4. The deed of a married woman conveying her separate interest must be acknowledged by her in the same manner as if she were unmarried. If any deed affecting her right of dower in any estate of her husband during his life be executed by her attorney, the letter of attorney must be acknowledged in the same manner as if she were unmarried. *Ibid.* c. 246, § 5. A married woman may bar her right of dower in her husband's estate by joining with him in the deed conveying the same and therein releasing her claim to dower, or by releasing the same by her separate deed acknowledged in the same manner as above provided. *Ibid.* c. 246, § 6. Both may join in the execution of a deed of land in which he has curtesy.

Forms

Any form of conveyance in writing, duly signed and delivered by the grantor, or the attorney of the grantor duly authorized, conveys to the grantee all the possession, estate, title and interest, claim, demand or right of entry or action of the grantor absolutely in and to the land conveyed, unless otherwise expressly limited in estate, condition, use, or trust, and, if otherwise expressly limited, shall convey such property for the time or estate or on the condition, use, or trust as declared, without any other act or ceremony, and, if also duly acknowledged and recorded, shall be operative as against third parties. *Ibid.* c. 253, § 11. A witness, though usual, is unnecessary.

Warranty Deed (With Release of Dower)

Know all men by these presents that I, ———, of ———, hereinafter called the grantor, in consideration of the sum of ——— dollars to me paid by ———, of ———, hereinafter

called the grantee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said grantee, and his heirs and assigns forever (*description.*)

To have and to hold the afore-granted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said grantee, and his heirs and assigns forever.

And I, the said grantor, do hereby, for myself and for my heirs, executors, and administrators, covenant with the said grantee, and his heirs and assigns, that I am lawfully seised in fee simple of the said granted premises; that the same are free from all incumbrances; that I have good right, full power, and lawful authority to sell and convey the same in manner as aforesaid; that the said grantee, and his heirs and assigns, shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that I, the said grantor, will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee, and his heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, ———, wife of the said ———, do hereby release all my right of dower in and to the said granted premises unto the said grantee, and his heirs and assigns forever.

In witness whereof we have hereunto set our hands and seals this ——— day of ———.

Quitclaim Deed (With Covenant)

Know all men by these presents that ———, in consideration of the sum of ——— dollars, to ——— paid by ———, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said ———, heirs and

assigns forever, all the right, title, interest, property, claim, and demand which — now have, or of right ought to have, or claim, in and to (*description*).

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto appertaining, unto and to the use of —, the said —, — heirs and assigns forever.

And —, the afore-named —, for — and for — heirs, executors, and administrators, do covenant with the said — heirs and assigns, that — will warrant and defend the afore-described premises unto the said —, — heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under —.

And —, wife of the said —, in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said —, — heirs and assigns, all — right of dower in and to the afore-described premises.

In witness whereof, *etc.*

SOUTH CAROLINA

In General

The following form or purport of a release is valid and effectual to carry from one person to another the fee simple of real estate, if exercised in the presence of and subscribed by two or more credible witnesses. This section shall be so construed as not to oblige any person to insert the clause of warranty, or to restrain him from inserting any other clause or clauses, in conveyances hereafter to be made, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms heretofore in use within this state. Whenever it appears from the attestation clause or from the other parts of any instrument in writing that it was the intention of the party or parties thereto that the instrument should be a sealed instrument, it shall be construed to be, and shall have the effect of, a sealed instrument, although no seal be actually attached thereto. Code of Laws 1912, § 3453.

Form of Conveyance

THE STATE OF SOUTH CAROLINA, }

Know all men by these presents that I, A. B., of ———, in the state aforesaid, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said C. D., all that (*here describe the premises*), together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the said C. D., his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal this ——— day of ———, in the year of our Lord ———, and in the ——— year of the independence of the United States of America.

—————. (L. S.)

Ibid. § 3453.

Husband and Wife

A married woman may convey her separate property by deed. As to renunciation of dower, ante, p. 94. A waiver of homestead must be by deed of conveyance, mortgage, or other instrument executed by both husband and wife. Const. art. 3, § 28; Code of Laws 1912, § 3715. Tenancy by the curtesy is abolished. Ibid. § 3763.

SOUTH DAKOTA

In General

An estate in real property, other than at will or for not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. Civ. Code 1910, § 938. Witnesses are not required. Distinctions between sealed and unsealed instruments are abolished. Ibid. § 1243.

Deeds, mortgages, and assignments of mortgages which do not contain the post office address of the grantee, mortgagee, or assignee are not entitled to record. Laws 1911, c. 257, § 6.

Words of inheritance or succession are not requisite to transfer a fee. Civ. Code 1910, § 934.

Husband and Wife

A conveyance or other instrument executed by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. Ibid. § 975. There is no dower or curtesy. Both husband and wife must join in a conveyance of the homestead.

Forms

Warranty deeds and quitclaim deeds may be substantially in the following forms:

Warranty Deed (Statutory)

——, grantor, of —— county, state of ——, for and in consideration of —— dollars, grants, conveys, and warrants to ——, grantee, of —— P. O., the following described real estate in the county of ——, in the state of South Dakota: ——.

Dated this —— day of ——, 19——.

(Signature.) ——.

(Acknowledgment.)

Every such instrument duly executed shall be a conveyance in fee simple of the premises described to the grantee,

his heirs and assigns, with covenants on the part of the grantor, his heirs and personal representatives, that he is lawfully seised of the premises in fee simple, and has good right to convey the same; that the premises are free from all incumbrances; that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof; and that he will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed. Laws 1911, c. 257, § 1.

Quitclaim Deed (Statutory)

_____, grantor, of _____ county, state of _____, for and in consideration of _____ dollars, conveys and quitclaims to _____, the grantee, of _____, P. O., all interest in the following described real estate in the county of _____, in the state of South Dakota: _____.

Dated this _____ day of _____, 19—.

(Signature.) _____.

(Acknowledgment.)

Every such instrument, duly executed, shall be a conveyance to the grantee, his heirs and assigns, of all right, title, and interest of the grantor in the premises described, but shall not extend to after-acquired title, unless words expressing such intention be added. Ibid. § 2.

A grant of an estate in real property may be made, in substance as follows:

Grant (Statutory)

This grant, made the _____ day of _____, in the year _____, between A. B., of _____, of the first part, and C. D., of _____, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of _____ dollars, now received, all the real

property situated in ——— and bounded (*or*, described) as follows: ———.

Witness the hand of the party of the first part.

A. B.

Civ. Code 1910, § 940.

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance: (1) That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; (2) that such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. *Ibid.* § 942.

TENNESSEE

In General

As to execution, *ante*, p. 97. Private seals, except for corporations, are abolished. Code 1896, § 3213. Words of inheritance are not requisite to convey an estate in fee, and every grant passes all the estate or interest of the grantor, unless the intent to pass a less estate or interest appears. *Ibid.* § 3672.

Husband and Wife

Every deed or other instrument executed by husband and wife, and duly acknowledged or proved and registered, binds them, their heirs and assigns. *Ibid.* § 3753. As to her acknowledgment, *ante*, p. 99. The homestead may be sold by their joint consent, by conveyance executed as required for married women. *Ibid.* § 3798.

Forms

The following or other equivalent forms, varied to suit the precise state of facts, are sufficient for the purposes contemplated, without further circumlocution (*Ibid.* § 3680):

Deed in Fee with General Warranty (Statutory)

I hereby convey to A. B. the following tract of land (*describing it*), and I warrant the title against all persons whomsoever.

Covenants of Seisin, Possession, and Special Warranty (Statutory)

I covenant that I am seised and possessed of the said land, and have a right to convey it, and I warrant the title against all persons claiming under me.

Quitclaim Deed (Statutory)

I hereby quitclaim to A. B. all my interest in the following land (*describing it*).

Mortgage (Statutory)

I hereby convey to A. B. the following land (*describing it*), to be void upon condition that I pay, *etc.*

Deed of Trust (Statutory)

For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date (*as the case may be*), I hereby convey to C. D., in trust, the following property (*describing it*). And if the note is not paid at maturity, I hereby authorize C. D. to sell the property herein conveyed (*stating the manner, place of sale, notice, etc.*), to execute a deed to the

purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

TEXAS

In General

No estate of inheritance or freehold or for a term of more than one year shall be conveyed unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. Rev. Civ. St. 1911, art. 1103. No private seal or scroll is necessary to any conveyance or instrument except such as are made by corporations. Ibid. art. 7092. A deed or conveyance must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto, or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. Ibid. art. 1109; ante, p. 101.

Every estate granted or conveyed shall be deemed a fee simple, if a less estate be not limited or do not appear to have been granted. Ibid. art. 1106.

From the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance: (1) that previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; (2) that such estate is at the time of the execution of such conveyance free from incumbrances. Such covenants may be sued upon in the same manner as if they had been expressly inserted. Ibid. art. 1112.

Husband and Wife

The husband and wife must join in the conveyance of real estate, the separate property of the wife; and the conveyance must be acknowledged by her and certified to in the mode pointed out in articles 6802 and 6805. Ibid. art. 1114; ante, p. 101. She need not join in the conveyance of his own or of the community property. See Ibid. art. 4622. The wife

must join in the conveyance of the homestead, and acknowledge in the mode pointed out in articles 6802 and 6805. *Ibid.* art. 1115; ante, pp. 101-104.

No mortgage or trust deed of the homestead, except for purchase money or improvements, is valid.

Forms

The following form, or the same in substance, is sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty:

Warranty Deed (Statutory)

THE STATE OF TEXAS, }
County of ———. }

Know all men by these presents that I, ———, of the ——— (*give name of city, town, or county*), in the state aforesaid, for and in consideration of ——— dollars to me in hand paid by ———, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said ———, of the (*give name of city, town or county*), in the state of ———, all that certain (*describe the premises*); to have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ———, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said ———, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand this ——— day of ———, A. D. 19—.

Signed and delivered in the presence of:

Ibid. art. 1107.

No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. Ibid. art. 1103.

Warranty Deed with Vendor's Lien

THE STATE OF TEXAS, }
County of ———. }

Know all men by these presents:

That ———, of the county of ———, state of ———, for and in consideration of the sum of ——— dollars to ——— paid, and secured to be paid, by ———, of ———, as follows (*describe note*), have granted, sold, and conveyed, and by these presents do grant, sell, and convey, unto the said ———, all that certain (*description*).

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ———, ——— heirs and assigns forever; and ——— do hereby bind ———, ——— heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said ———, ——— heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

But it is expressly agreed and stipulated that the vendor's lien is retained against the above-described property, premises, and improvements until the above-described *note*—, and all interest thereon, are fully paid according to ——— face and tenor, effect and reading, when this deed shall become absolute.

Witness, *etc.*

TIFF.FORMS—40

Quitclaim Deed

THE STATE OF TEXAS, }
County of _____. }

Know all men by these presents:

That _____, of the county of _____, and state of _____, in consideration of the sum of _____ dollars to _____ in hand paid by _____, of the county of _____, and state of _____, have bargained, sold, quitclaimed, and released, and by these presents do bargain, sell, quitclaim, and release, unto the said _____, all _____ right, title, interest, and estate in and to the following described tract or parcel of land, situated in _____ county, _____, to wit (*description*), together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the above-described premises unto the said _____, —h— heirs and assigns forever.

Witness, *etc*

UTAH

In General

No estate or interest in real property, other than for leases for a term of not exceeding one year, nor any trust or power over or concerning it or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by act or operation of law, or by a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same or by his lawful agent thereunto authorized by writing. Comp. Laws 1907, § 1974. Private seals are unnecessary. Ibid. §§ 1976, 3399.

There should be at least one credible witness. Every conveyance in writing whereby any real estate is conveyed or may be affected shall be acknowledged or proved and certified in the manner provided. Ibid. § 1984; ante, p. 104.

The term "heirs" or other technical words are not requisite

to transfer a fee. A fee-simple title is presumed, unless it appears from the conveyance that a lesser estate was intended. Ibid. §§ 1970, 1971.

Husband and Wife

The separate property of a married woman may be conveyed by her as if she were unmarried. Const. art. 22, § 2. One-third in value of all the legal or equitable estates possessed by the husband at any time during the marriage, and to which the wife had made no relinquishment of her rights, shall be set apart as her property in fee simple if she survive him; but she is not entitled to any interest under this section in any such estate of which he has made a conveyance when she was not a resident of Utah. Comp. Laws 1907, § 2826. The husband and wife must join in conveyance of homestead. Ibid. § 1155.

Forms

Conveyances of land may be in substantially the following forms:

Warranty Deed (Statutory)

A. B., grantor (*here insert name or names and place of residence*), hereby conveys and warrants to C. D., grantee (*here insert name or names and place of residence*), for the sum of _____ dollars, the following described tract— of land in _____ county, Utah (*here describe the premises*).

Witness the hand of said grantor this _____ day of _____, A. D. 19—.

Such deed, when executed as required by law, shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of the premises herein named, together with all the appurtenances, rights, and privileges thereto belonging, with covenants from the grantor, his heirs, and personal representatives, that he is lawfully seised of the premises; that he has good right to convey the same; that he guarantees the grantee, his heirs and assigns, in the quiet possession thereof; that the premises are free from all incumbrances; and that the grantor, his heirs and personal representatives, will

forever warrant and defend the title thereof in the grantee, his heirs and assigns, against all lawful claims whatsoever. Any exceptions to such covenant may be briefly inserted in such deed following the description of the land. Ibid. § 1981.

Quitclaim Deed (Statutory)

A. B., grantor (*here insert name or names and place of residence*), hereby quitclaims to C. D., grantee (*here insert name or names and place of residence*), for the sum of ——— dollars, the following described tract— of land in ——— county, Utah (*here describe the premises*).

Witness the hand of said grantor this ——— day of ———, A. D. 19—.

Such deed, when executed as required by law, shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described, and all rights, privileges, and appurtenances thereto belonging at the date of such conveyance. Ibid. § 1982.

VERMONT

In General

Conveyance may be made by deed executed by a person having authority to convey, or by his attorney, and acknowledged and recorded. Pub. St. 1906, § 2572. Deeds must be signed and sealed in the presence of two subscribing witnesses. Ibid. §§ 2577, 2597. A power of attorney to make a conveyance should be signed, sealed, witnessed, acknowledged, and recorded. Ibid. § 2585.

Husband and Wife

A husband and wife may, by their joint deed, convey the real estate of the wife as she might do by her separate deed if unmarried. Ibid. § 2573. The widow is entitled to one-third in value of the real estate of which her husband died seised in his own right, unless she is barred by jointure or will. Ibid. § 2921.

The homestead cannot be conveyed by the owner, if a married man, except by way of purchase-money mortgage, unless his wife joins in the execution and acknowledgment. Ibid. § 2553. The joining by a wife in such conveyance has no effect upon her right to one-third in value of the real estate of which her husband died seised. Ibid. § 2554.

Corporations

A corporation authorized to hold real estate may convey by agent appointed by vote for that purpose. Ibid. § 2576.

Warranty Deed

Know all men by these presents:

That ———, of ———, in the county of ———, and state of ———, for the consideration of ——— dollars, received to ——— full satisfaction of ———, of ———, in the county of ———, and state of ———, do give, grant, bargain, sell, and confirm unto the said ———, ——— heirs and assigns, a certain piece of land lying and being in ———, in the county of ———, and state of Vermont, and described as follows, viz. (*description*).

To have and to hold the above granted and bargained premises, with the appurtenances thereto, unto ———, the said ———, ——— heirs and assigns forever, to them and their own proper use, benefit, and behoof. And also ———, the said ———, do for ———, ——— heirs, executors, and administrators, covenant with the said ———, ——— heirs and assigns, that at and until the ensealing of these presents ——— well seised of the premises, as a good indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same is free from all incumbrances whatsoever. And, furthermore, ———, the said ———, do by these presents bind ———, ——— and heirs forever, to warrant and defend the above

granted and bargained premises to the said ———, ———
heirs and assigns, against all claims and demands whatsoever,

In witness whereof ——— have hereunto set ——— hand—
and seal— this ——— day of ———, A. D. 19—.

(*Signatures and seals.*)

Signed, sealed and delivered in the presence of:

Quitclaim Deed

(*Begin as in preceding*) have remised, released, and quit-
claimed, and by these presents do remise, release, and forever
quitclaim, unto the said ———, ——— heirs and assigns, all
——— right and title in and to a certain piece or parcel of
land situate in ———, in the county of ———, and state of
Vermont, and described as follows, namely (*description*).

To have and to hold the above remised, released, and quit-
claimed premises, with the appurtenances thereof, unto the said
grantee—, ——— heirs and assigns, to them and their own
proper use, benefit, and behoof forever; so that neither ———,
the said grantor— nor ——— heirs, nor any person or persons
claiming under ——— or them shall at any time hereafter, by
any way or means, have, claim or demand any right or title
to the aforesaid premises or appurtenances, or to any part or
parcel thereof forever.

In witness, *etc.*

VIRGINIA

In General

A conveyance or grant without words of limitation passes
the fee simple or other the whole estate or interest which the
grantor had power to dispose of, unless a contrary intention ap-
pears. Code 1904, § 2420.

Husband and Wife

Both must join to bar the wife's right of dower or in a conveyance of her separate property. Ibid. § 2502.

Forms

A scroll by way of seal is sufficient. Ibid. § 2841. Witnesses are not necessary if the instrument be acknowledged; if not, two witnesses are necessary. If the instrument is acknowledged before two witnesses, they must prove the acknowledgment before the court where the instrument is to be recorded. Ante, p. 107. A deed may be in the following form, or to the same effect (Ibid. § 2437):

Deed (Statutory)

This deed, made the —— day of ——, in the year ——, between (*here insert names of parties*), witnesseth: That, in consideration of (*here state the consideration*), the said —— doth (*or, do*) grant unto the said ——, all, *etc.* (*here describe the property, and insert covenants or any other provisions*)

Witness the following signature and seal (*or, signatures and seals*).

Ibid. § 2437.

Every such deed, unless an exception be made therein, includes all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to the lands. Ibid. § 2438.

Whenever in any deed there shall be used the words, "The said grantor (*or, the said ——*) releases to the said grantee (*or, the said ——*) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (*or, releasor*) hath remised, released, and forever quitclaimed, and by these presents doth remise, release, and forever quitclaim, unto the grantee (*or, releasee*) his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (*or, released*), or intended so to be, so that neither he nor his personal representative, his heirs or assigns, shall at any time hereafter have,

claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. Ibid. § 2439.

When a deed uses the words "the said covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives, and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives, and assigns. Ibid. § 2445. A covenant by the grantor in a deed "that he will warrant generally the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whomsoever. Ibid. § 2446. A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. § 2447. The words "with general warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed." Ibid. § 2448. As to the construction of particular covenants, Ibid. §§ 2449-2452.

Deed with Covenants

This deed, made this _____ day of _____, in the year _____, between _____, party of the first part, and _____, party of the second part, witnesseth: That, in consideration of the sum of _____ dollars, the said _____ doth grant unto the said _____, with general warranty, all (*description*).

The said _____ covenants that he has the right to convey the said land to the grantee; that he has done no act to incumber the said land; that the grantee shall have quiet possession of the said land, free from all incumbrances; and

that he, the said party of the first part, will execute such further assurance of the said land as may be requisite.

Witness the following signature and seal.

WASHINGTON

In General

All conveyances of real estate or of any interest therein shall be by deed. Rem. & Bal. Ann. Codes & St. § 8745. The term "heirs," or other technical words of inheritance, are not necessary to create and convey an estate in fee simple. Ibid. § 8753.

Husband and Wife

Each may convey his or her separate property as though unmarried. Ibid. §§ 5915, 5916. Both must join in the conveyance of community real property. Ibid. § 5918. Tenancy in dower and curtesy are abolished. Ibid. § 5922. Either may convey to the other his or her interest in community real property. Ibid. § 8766. Either may execute a power of attorney for the conveyance of his or her separate estate, without the other joining in the execution; and either may appoint the other his or her attorney. Ibid. § 8767. A conveyance under such power shall be executed, acknowledged, and certified as if the constituent were unmarried. Ibid. § 8768. Either may execute a power of attorney to the other to convey his or her interest in the community property, and either may execute a power to a third person to join with the other in the conveyance of any interest either in separate real estate of either or in the community estate, and may jointly execute a power to a third person to convey the community real property. Ibid. § 8769. The homestead of a married person cannot be conveyed or incumbered unless the instrument is executed and acknowledged by both. Ibid. § 534.

Forms

A deed shall be in writing, signed by the party bound thereby, and acknowledged by the party making it, before some person authorized. Ibid. § 8746. The use of private seals is abolished. Ibid. § 8751. Witnesses are not required. Deeds may be substantially in the following forms:

Warranty Deed (Statutory)

The grantor (*here insert the name or names and place of residence*), for and in consideration of (*here insert consideration*), in hand paid, convey and warrant to (*here insert the grantee's name or names*) the following described real estate (*here insert description*), situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19—.

_____. (Seal.)

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantee: (1) That at the time of the making and delivery of such deed he was lawfully seised of an inde-feasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all incumbrances; (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. Ibid. 8747.

Bargain and Sale Deed (Statutory)

The grantor (*here insert name or names and places of residence*), for (and) in consideration of (*here insert consideration*), in hand paid, bargain, sell, and convey to (*here insert the grantee's name or names*) the following described real estate (*here insert description*), situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19—.

_____. (Seal.)

Every deed in substance in the above form shall convey to the grantee, his heirs or other legal representatives, an estate of

inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or other legal representatives, to wit, that any grantor was seised of an indefeasible estate in fee simple, free from incumbrance done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators, and assigns, may, in any action, recover for breaches, as if such covenants were expressly inserted. Ibid. § 8748.

Quitclaim Deed (Statutory)

The grantor (*here insert name or names and place of residence*), for the consideration (*here insert consideration*), convey and quitclaim to (*here insert grantee's name or names*) all interest in the following described real estate (*here insert description*), situated in the county of ———, state of Washington.

Dated this ——— day of ———, 19—.

—————. (Seal.)

Every deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release, and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to the after-acquired title unless words are added expressing such intention. Ibid. § 8749.

WEST VIRGINIA

In General

No estate of inheritance or freehold, or for a term of more than five years, in lands, shall be conveyed unless by deed or will. Code 1906, § 3020.

A conveyance without words of limitation shall be construed to pass the fee simple or the whole estate or interest of the grantor, unless a contrary intention appears. Ibid. § 3027.

Forms

A seal is requisite, but a scroll is sufficient. Ibid. § 291. Witnesses are not required when the deed is acknowledged. Ante, p. 112. A deed may be in the following form or to the same effect (Ibid. § 3048):

Deed (Statutory)

This deed made the —— day of ——, in the year ——, between (*here insert names of parties*), witnesseth: That, in consideration of (*here state the consideration*), the said —— doth (*or, do*) grant unto the said —— all, *etc.* (*here describe the property, and insert covenants or any other provisions*). Witness the following signature and seal (*or, signatures and seals*).

Ibid. § 3048.

Every such deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to such lands. Ibid. § 3049.

Quitclaim

Whenever in any deed there shall be used the words, "The said grantor (*or, the said ——*) releases to the said grantee (*or, the said ——*) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (*or, releasor*) hath remised, released, and forever quitclaimed, and by these presents both remise, release, and forever quitclaim, unto the grantee (*or, releasee*), his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (*or, released*), or intended so to be, so that neither he nor his personal representative, his heirs or assigns, shall at any time thereafter have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. Ibid. § 3050.

Any deed or part of a deed which shall fail to conform to the provisions of this chapter shall nevertheless be as valid and effectual, and shall bind the parties thereto, as far as the rules of law and equity will permit, as if it had so conformed. Ibid. § 3060.

When a deed uses the words "the said ——— covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives, and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives, and assigns. Ibid. § 3061. A covenant by the grantor in a deed "that he will warrant generally the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whomsoever. Ibid. § 3062. A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. Ibid. § 3063. The words "with general warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed." Ibid. § 3064.

For particular covenants, see Ibid. §§ 3065–3068.

WISCONSIN

In General

Conveyances may be made by deed signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his agent or attorney, and acknowledged or proved. Stat. 1911, § 2203. A scroll or device used as a scroll is sufficient. Ibid. § 2215. Conveyances must have two witnesses. Ibid. § 2216. Execution according to law of place of execution. Ante, p. 116.

No covenant is implied in any conveyance, whether it contain special covenants or not. Ibid. § 2204.

Words of inheritance are not necessary to create or convey a fee. Ibid. § 2206.

Husband and Wife

A married woman of full age may by joint or separate deed convey her lands or any interest therein, or release her dower in any lands of her husband which have been conveyed by him, or of which he has been divested by execution or judgment, as if she were unmarried. Ibid. § 2221. She may bar her dower if of the age of 18. Ibid. § 2222. A married woman may, by letter of attorney, executed and acknowledged, empower her attorney to bar her dower, or to convey any other interest in real estate in the same manner as she might personally do. Ibid. § 2223. Curtesy and dower exist. Ibid. § 2276. The wife must join in the alienation of homestead. Ibid. § 2203.

Corporations

A conveyance by a corporation organized under any law of Wisconsin should be signed by the president or other authorized officers of the corporation, sealed with the corporate seal, and countersigned by the secretary or clerk thereof. Ibid. § 2216.

Forms

A deed of quitclaim and release of the form in common use or of the form hereinafter provided shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid. § 2207.

Conveyances may be in substantially the following forms:

Warranty Deed (Statutory)

A. B., grantor, of _____ county, Wisconsin, hereby conveys and warrants to C. D., grantee, of _____ county, Wisconsin, for the sum of _____ dollars, the following tract of land in _____ county (*here describe the premises*).

Witness the hand and seal of said mortgagor this _____ day of _____, 19—.

In presence of: _____ (Seal.)

Quitclaim Deed (Statutory)

A. B., grantor, of _____ county, Wisconsin, hereby quitclaims to C. D., grantee, of _____ county, Wisconsin, for the sum of _____ dollars, the following tract of land in _____ county (*here describe the premises*).

Witness the hand and seal of said grantor this _____ day of _____, 19—.

In presence of:

_____. (Seal.)

_____. (Seal.)

_____.

_____.

Such deeds, when executed and acknowledged as required by law, shall, when of the first of the above forms, have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of the premises therein named, together with all the appurtenances, rights, and privileges thereto belonging, with a covenant from the grantor, his heirs and personal representatives, that he is lawfully seised of the premises, has good right to convey the same; that he guarantees the grantee, his heirs, and assigns in the quiet possession thereof; that the same are free from all incumbrance, and that the grantor, his heirs and personal representatives, will forever warrant and defend the title and possession thereof in the grantee, his heirs and assigns, against all lawful claims whatsoever. Any exceptions to such covenants may be briefly inserted in such deed, following the description of the land, and, when in the second of the above forms, shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of all right, title, interest, and estate of the grantor, either in possession or expectancy, in and to the premises therein described and all rights, privileges and appurtenances thereto belonging. Ibid. § 2208.

Deed Reserving a Life Estate (Statutory)

A. B., grantor, of _____ county, Wisconsin, hereby conveys unto C. D., grantee, of _____ county, Wisconsin, for the sum of (*here also state any other consideration*) dollars,

the following tract of land in —— county (*here describe premises*).

To have and to hold said tract of land, together with the appurtenances thereto, unto the said C. D., the said A. B. reserving unto himself a life estate in said tract of land for his own life and for the life of (*here insert the name of the wife or other person for whose life a life estate is reserved*).

And the said C. D., as a part of the consideration for the grant of said tract of land, does agree to assume and pay (*here state any incumbrance that may be assumed by the grantee or any agreement that may be had in regard to the payment of taxes, assessments, etc., by the grantee*).

Witness the hand and seal of said grantor this —— day of ——, 19—. _____ (Seal.)

In presence of: _____ (Seal.)

Such deed, when executed and acknowledged as required by law, shall reserve to the grantor or other person or persons for whose lives a life estate is reserved and to the survivor of them a good and sufficient title and right to the exclusive possession of the lands conveyed until the death of all the persons for whose lives such estate is reserved; and upon the death of all the persons for whose lives such an estate is reserved the fee to such lands shall vest absolutely in the grantee. Ibid. § 2208m. -

The above forms of conveyance shall be deemed to exclude the use of any other form sufficient in law. It is the duty of all parties executing a conveyance to state therein, as near as practicable, the actual and true consideration. Ibid. § 2214.

WYOMING

In General

Conveyances may be made by deed, signed by the grantor, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded. Comp. St. 1910, §

3623. The use of private seals is abolished. Ibid. § 3641. Conveyances shall be executed in the presence of one witness, who shall subscribe his name as such, and the person executing shall acknowledge the execution thereof. Ibid. § 3633.

A deed of quitclaim and release is sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid. § 3625. No covenant is implied, whether the conveyance contain special covenants or not. Ibid. § 3626. The term "heirs," or other words of inheritance, are not necessary to create or convey an estate in fee simple. Ibid. § 3629.

Husband and Wife

A married woman may, by her deed or mortgage, convey her real estate in like manner as she might if she were unmarried. Ibid. § 3624.

There is no dower nor curtesy. The conveyance or mortgage of a homestead is void, unless the wife (if any) of the grantor shall, separate and apart from her husband, freely and voluntarily sign and acknowledge the instrument, and the officer taking her acknowledgment shall fully apprise her of her right and the effect of signing and acknowledging. The certificate of acknowledgment shall contain a clause substantially as follows: "Including the release and waiver of the right of homestead"—or other words which expressly show that the parties intended to release such right. Ibid. § 3662; ante, p. 119.

Forms

Deeds may be substantially in the following forms:

Warranty Deed (Statutory)

A. B., grantor (*here insert name or names of grantor and place of residence*), for and in consideration of (*here insert consideration*) in hand paid, conveys and warrants to C. D., grantee (*here insert grantee's name or names and place of residence*), the following described real estate (*here insert description*), situate in the county of (*here insert name of county*) state of Wyoming. (*And when the right of homestead is*

involved add the following:) Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said state.¹⁰

Dated this _____ day of _____, A. D. _____.

In presence of: _____ A. B.

Ibid. § 3658.

Such deed, when executed, shall be deemed a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seised of an indefeasible estate in fee simple in and to the premises therein described, and had good right and power to convey the same; (2) that the same were then free from all incumbrances; and (3) that the grantor warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. Such covenants shall be obligatory upon the grantor, his heirs and personal representatives. Ibid. § 3659.

Quitclaim Deed (Statutory)

A. B., grantor (*here insert grantor's name or names and place of residence*), for the consideration of (*here insert the consideration*), conveys and quitclaims to (*here insert grantee's name or names*) all interest in the following described real estate (*here insert description*), situate in the county of (*here insert name of county*), in the state of Wyoming. (*And where the right of homestead is released add the following:*) Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this _____ day of _____, A. D. _____.

In presence of: _____ A. B.

Ibid. § 3660.

¹⁰ See Comp. St. 1910, § 3668, *infra*, p. 643.

Such deed, when executed, shall be held a sufficient conveyance, release, and quitclaim to the grantee, his heirs and assigns, in fee of all legal and equitable rights of the grantor at the time of the execution and delivery of such deed in the premises therein described, but shall not extend to after-acquired title unless words are added expressing such intention. Ibid. § 3661.

A deed of quitclaim, without the word "release," is sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Ibid. § 3663.

When the grantor or grantors in any such deed or mortgage desires to release or waive their homestead rights, they or either of them may release or waive the same by inserting in the form of deed or mortgage (as the case may be) provided herein, after the words "state of Wyoming," in substance the following words: "Hereby releasing and waiving all right under and by virtue of the homestead exemption laws of this state." And such instrument shall be acknowledged in the manner provided for the acknowledgment to deeds of homestead. Ibid. § 3668.

CHAPTER XV

EASEMENTS AND LICENSES

An "easement" is a right or privilege annexed to the ownership of a parcel of land, called the dominant tenement, and binding neighboring land, called the servient tenement, of another, whereby the owner of the dominant tenement is entitled, for its advantage, to have some particular use, without possession or profit, of the servient tenement or to require its owner to refrain from some particular use of it. Easements may be created by grant, which must be by deed or will, and also by express reservation in a deed conveying land over which it is intended that the grantor shall have an easement for the benefit of other land retained by him, either on the theory of an implied grant back or of an exception. An easement passes by a grant of the dominant tenement, although not mentioned expressly or by the use of the word "appurtenances"; and the burden of an easement runs with the servient tenement, into the hands of every person to whom it comes. See Deeds, ante, p. 467. The forms in this chapter are confined to cases in which easements are the separate subject of some grant or other agreement.

A "license" is an authority to do specified acts on the land of the licensor. It differs from the grant of an easement in that it creates only personal rights and obligations, and not an interest in the land. It terminates upon the licensor's conveyance of the land to another. A mere license is revocable at the will of the licensor, even though money has been paid for it; but the licensee is entitled to notice of revocation and reasonable time to remove his goods. Even if the license be made irrevocable by contract, the remedy is only an action for breach of the contract if the license be revoked; although in some states the license is irrevocable if the licensee has expended money on the land in reliance upon the license. A license coupled with an interest in the land, as where a right to take minerals is granted, is irrevocable. A license may be by parol.

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For licenses under patents, see Patents, p. 1074; under lease, see
Landlord and Tenant, p. 726.

1. Grant of Right of Way in Perpetuity for All Purposes

Indenture made the —— day of —— between ——,
party of the first part, and ——, party of the second part:

[RECITAL OF SEISIN OF GRANTOR.] Whereas, the party
of the first part is seised of an estate in fee simple free from
incumbrances of a parcel of land described as (*description*),
and delineated on the plan annexed hereto, across which there
runs a private road shown on the said plan by the dotted
lines between the point A, where the road opens into ——
street, so-called, and the point B, where it opens into ——
lane, so-called;

[RECITAL OF SEISIN OF GRANTEE.] And whereas, the par-
ty of the second part is seised in fee simple of another parcel
of land near the first-mentioned land, described as (*descrip-
tion*);

[RECITAL OF AGREEMENT.] And whereas, the party of the first part has agreed, in consideration of the sum of \$—— to be paid to him by the party of the second part, to grant to the party of the second part an easement or right of way over the said private road for the purposes and in the manner hereinafter expressed.

[GRANT OF RIGHT OF WAY.] Now, this indenture witnesseth that, in pursuance of the said agreement and in consideration of the sum of \$—— paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part hereby grants unto the party of the second part, his heirs and assigns:

[EXTENT OF GRANT.] Full and free right and liberty for him and them, his and their tenants, servants, visitors, and licensees, in common with all others having the like right, at all times hereafter, with or without horses, cattle, or other animals, carts, carriages, or other vehicles of any description, for all purposes connected with the use and enjoyment of the said land of the party of the second for whatever purpose the said land may be from time to time lawfully used and enjoyed, to pass and repass along the said private road for the purpose of going from the said —— street to the said —— lane, or vice versa.

[HABENDUM.] To hold the said easement or right of way hereby granted unto the party of the second part, his heirs and assigns, as appurtenant to the said land of the party of the second and every part thereof.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

2. Grant of Right of Way in Connection with Dwelling House

(Begin as in preceding form, including first recital.)

[RECITAL OF SEISIN OF GRANTEE.] And whereas, the party of the second part is seised in fee simple of another parcel of land described as (*description*), upon which is erected a private dwelling house;

[RECITAL OF AGREEMENT.] And whereas, for the consideration hereinafter mentioned, the party of the first part has agreed to grant to the party of the second part such right of way over the said private road as hereinafter expressed.

[GRANT OF RIGHT OF WAY.] Now, this indenture witnesseth (*grant as in preceding form*):

[EXTENT OF GRANT.] Full and free right and liberty for him and them, his and their tenants, servants, visitors, and licensees, in common with all other persons having the like right, at all times hereafter, on foot or on horseback or in vehicles (but not with sheep, cattle, pigs, or other animals) to pass and repass along the said private road from the said ——— street to the said ——— lane for all lawful purposes connected with the use and enjoyment of the said premises of the party of the second part as a single private dwelling house, but for no other purposes.

[HABENDUM.] To hold the said right of way hereby granted unto the party of the second part and his heirs as appurtenant to his said premises.

In witness, *etc.*

3. Grant for a Footway in Substitution for a Right of Way Which is Released

This indenture is made the ——— day of ——— between ———, party of the first part, and ———, party of the second part:

[RECITAL OF SEISIN OF SERVIENT OWNER.] Whereas, the party of the first part is seised in fee simple in possession of a parcel of land described as (*description*), and delineated on the plan hereto annexed, across which there runs a path, hereinafter called the "old path," as shown by the dotted lines on the said plan from the point marked A to the point marked B on the said plan;

[RECITAL OF SEISIN OF DOMINANT OWNER.] And whereas, the party of the second part is seised in fee simple in possession of another parcel of land, described as (*description*), appurtenant to which there is a private right of footway along the said old path;

[RECITAL OF DESIRE TO SUBSTITUTE.] And whereas, the party of the first part is desirous of closing the said old path, and of substituting therefor the new path, the width, position, and direction of which are shown on the said plan by the continuous blue lines running from the point marked C to the point marked D on the said plan;

[RECITAL OF AGREEMENT.] And whereas, the party of the first part has agreed, in consideration of the party of the second part releasing his said right of way over the said old path in the manner hereinafter expressed, to grant to him such right of way over the said new path as hereinafter expressed.

Now, this indenture witnesseth as follows:

1. [GRANT OF NEW RIGHT OF WAY.] In pursuance of the said agreement, and in consideration of the release on the part of the party of the second part hereinafter expressed,

the party of the first part hereby grants to the party of the second part full and free liberty, in common with all other persons entitled to the like liberty, of passing and repassing, on foot only, at all times along the said new path for any purpose connected with the use and enjoyment of the said land of the party of the second part. To hold the said right of way hereby granted to the party of the second part, his heirs and assigns, as an easement appurtenant to the said land.

2. [RELEASE OF OLD RIGHT OF WAY.] In further pursuance of the said agreement, and in consideration of the premises, the party of the second part hereby releases unto the party of the first part all the right or easement of way over the said old path now belonging to the party of the second part as appurtenant to his said land, or otherwise howsoever. To hold the said right or easement hereinbefore expressed to be hereby released unto the party of the first part, his heirs and assigns, to the intent that the same may be extinguished.

In witness, *etc.*

(Signatures and seals of both parties.)

4. Grant of Right of Way to Railway Company

This indenture made the _____ day of _____ between _____, of _____, party of the first part, and the _____ Railway Company, a corporation organized and existing under the laws of the state of _____, party of the second part:

Witnesseth that the said party of the first part, in consideration of the sum of \$_____ paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant to the said party of the second part, its successors and assigns, full and free right, liberty, and authority to enter upon and to construct, operate, and maintain its line of railroad over and upon a strip of land _____ feet in width,

being ——— feet wide on each side of the center line of the railroad or right of way of the said party of the second part, as the same is now surveyed and located (*or, is now constructed*), across the following described lands (*description*).

To have and to hold the said easement or right of way unto the said party of the second part, its successors and assigns, as appurtenant to its railroad constructed or about to be constructed between ——— and ———, so long as the said party of the second part, its successors or assigns, shall continue to operate the said railroad.

In witness, *etc.*

5. Agreement Quieting Disputes as to Use of a Way and License

Agreement made this ——— day of ——— between ———, party of the first part, and ———, party of the second part:

[RECITAL OF OWNERSHIP OF LANDS.] Whereas, the party of the first part is the owner of certain lands (*description*), across which runs a private road leading out of the highroad from ——— to ——— and opening into the highroad from ——— to ———; and whereas, the party of the second part is the owner of certain other lands near the said premises of the party of the first part (*description*);

[RECITAL OF DISPUTES AS TO RIGHT TO USE.] And whereas, the party of the second part has from time to time during the preceding ——— years passed and repassed along the said private road for the purpose of going to and from the said secondly mentioned highroad, and disputes have arisen between the partes hereto in regard to his right so to do, and for the purpose of settling all such disputes and for the consideration hereinafter mentioned the parties hereto have entered into this agreement.

Now, it is hereby agreed as follows:

1. [ADMISSION OF NO RIGHT.] The party of the second part admits that he has no right to use the said road except by the license of the party of the first part.

2. [LICENSE TO USE.] The party of the first part agrees that the party of the second part may without further license on the part of the party of the first part use and enjoy the said road for the purpose of passing and repassing along the same with or without horses or vehicles between the said first-mentioned highroad to the said second-mentioned highroad during the period of one year from the date hereof and so on from year to year until this agreement shall be determined.

3. [CONSIDERATION.] In consideration of the foregoing the party of the second part will on the —— day of —— in every year during the continuance of this agreement pay to the party of the first part the sum of \$——, if demanded, as an acknowledgment that the enjoyment of the said way is had under this agreement, and not otherwise.

4. [AGREEMENT, HOW TERMINATED.] The party of the first part may terminate this agreement at the end of any calendar year by giving —— days' notice in writing to that effect to the party of the second part.

5. [TO RUN WITH LAND.] The burden and benefit of this agreement are intended, so far as may be, to attach and run with the said premises of the party of the first part and the party of the second part, respectively.

In witness, etc.

(Signatures of both parties.)

6. Grant of Right of Sewage

Indenture made this _____ day of _____ between _____, party of the first part, and _____, party of the second part:

[RECITAL OF SEISIN OF LANDS.] Whereas, the party of the first part is seised in fee simple of a piece of land (*description*), and the party of the second part is seised in fee simple of another piece of land adjoining thereto (*description*), as shown upon the plan hereto annexed;

[RECITAL OF SEWER.] And whereas, a sewer or drain has been constructed by the party of the first part beneath the surface of his said land, and is connected with the main or public sewer, the course of which sewer or drain is shown on the said plan by dotted lines between the points marked A and B thereon.

[GRANT.] Now, this indenture witnesseth that, in consideration of the sum of \$_____ paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part hereby grants unto the party of the second part, his heirs and assigns forever, the right of using the said sewer or drain for the passage of sewage water and soil from the said land of the party of the second part or all or any of his lands adjoining his said land, and for that purpose also the right to make and at all times repair and maintain all such connections with the said sewer or drain at the said point marked A on the said plan as may be reasonable and proper in that behalf, making good, nevertheless, at his own expense, all damage or disturbance which may be caused to the said land of the party of the first part in relation to such connections, repairs or maintenance.

In witness, *etc.*

(Signatures and seals of both parties.)

7. Grant of Right to Lay Footings of Wall in Land of Adjoining Owner

This indenture is made this —— day of —— between ——, party of the first part, and ——, party of the second part:

[RECITAL OF OWNERSHIP OF LANDS.] Whereas, the party of the second part is the owner in fee simple of a parcel of land described as (*description*), and the party of the first part is the owner in fee simple of another parcel of land adjoining thereto, abutting upon —— street, and described as (*description*), all as shown upon the plan hereto annexed;

[RECITAL OF DESIRE TO ERECT WALL.] And whereas, the party of the second part is desirous of erecting a building the south wall of which will constitute the boundary between the said lands of the parties hereto, and the footings or foundations of which wall will lie partly in and upon the said land of the party of the first part;

[RECITAL OF AGREEMENT.] And whereas, it has been mutually agreed between the parties hereto that the party of the second part shall have the right to lay the said footings or foundations in and upon the said land of the party of the first part for the consideration hereinafter expressed.

Now, this indenture witnesseth as follows:

1. [GRANT OF RIGHT TO LAY FOOTINGS AND REPAIR WALL.] In pursuance of said agreement and in consideration of \$—— paid by the party of the second part, the receipt whereof by the party of the first part is hereby acknowledged, the party of the first part doth hereby grant unto the party of the second part, his heirs and assigns, full and free liberty, right, and authority to enter into and upon the said land of the party of the first part and to excavate the same to the width of —— feet and the depth of —— feet along the

said boundary line between the said respective lands of the parties hereto, and to lay and forever maintain in such excavations at a depth of not less than —— feet from the established grade of said —— street all such footings and foundations for such wall of such dimensions and materials as the party of the second part shall see fit; and in and upon the said land of the party of the first part to do all other acts and things necessary or proper for the purpose of enabling the said wall, footings, and foundations to be speedily and efficiently built and laid and to be maintained and kept in repair.

2. [COVENANTS.] The party of the second part hereby covenants with the party of the first part that he the party of the second part, his heirs and assigns, in excavating for, building, laying, maintaining, and repairing the said wall, foundations, and footings, will do as little damage as possible to the said premises of the party of the first part, and will make good all such damage, and will restore the said premises so far as possible to their present condition to his and their reasonable satisfaction.

In witness, *etc.*

(Signatures and seals of both parties.)

8. Grant of Right of Lateral Support for a Building

Indenture made the —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part:

[RECITALS OF OWNERSHIP, ETC.] Whereas, the party of the first part is seised in fee simple of a piece of land which is described as (*description*), and which is hereinafter called the servient tenement; and whereas, the party of the second part is seised in fee simple of a piece of land adjoining the servient tenement, which is described as (*description*), and

which is hereinafter called the dominant tenement; and whereas, the party of the second part is about to erect on the dominant tenement a building the stability of which will be largely dependent upon lateral support afforded by the servient tenement.

Now, this indenture witnesseth as follows:

1. [GRANT.] The party of the first part, in consideration of the sum of ——— dollars to him paid by the party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant unto the party of the second part, his heirs and assigns, full right and privilege forever hereafter to have whatever buildings the party of the second part may at any time hereafter erect on the dominant tenement supported laterally by the subsoil of and the minerals in and under the servient tenement.

2. [EXCAVATIONS ON SERVIENT TENEMENT.] Nothing herein contained shall be construed to prevent the party of the first part from making excavations on the servient tenement for the purpose of laying foundations for any buildings which he may hereafter erect thereon, and which excavations might but for this proviso be a derogation from the grant hereby made, so long as he provides sufficient artificial support to the buildings for the time being erected on the servient tenement both during the progress and after completion of any buildings which he may so erect thereon.

3. [GRANTEE NOT TO DO DAMAGE, ETC.] The party of the second part shall not do or suffer to be done anything whereby the premises of the party of the first part shall in any wise be rendered unstable or unsafe, and he shall not build on the dominant tenement to a greater height than ——— feet.

In witness, *etc.*

9. Grant of Easement of Light

This indenture made the —— day of —— between ——, party of the first part, and ——, party of the second part:

[GRANT.] Witnesseth that, in consideration of the sum of \$—— paid by the party of the second part to the party of the first part, the receipt whereof the party of the first part hereby acknowledges, the party of the first part hereby grants to the party of the second part and his heirs:

[EXTENT OF GRANT.] Full and free right to the uninterrupted access, transmission, and enjoyment of light (to the extent of —— degrees from the zenith) over and across all that parcel of land (*description*), more particularly described and delineated in the plan annexed hereto and therein colored red, to the existing windows of the dwelling house erected upon a parcel of land of the party of the second part adjoining the said first-mentioned parcel of land on the north side thereof, and more particularly described and delineated on the said plan and therein colored blue.

[HABENDUM.] To hold the said easement hereby granted unto the party of the second part, his heirs and assigns.

In witness, *etc.*

10. Agreement Between Adjoining Householders as to Right of Eavesdrop

An agreement made the —— day of —— between ——, party of the first part, and ——, party of the second part:

[RECITAL OF EAVESDROP.] Whereas, the party of the second part is the owner of a dwelling house abutting against the southern wall of a dwelling house owned by the party of the

first part situate in ——— street, in the city of ———, and the party of the second part has affixed to the eastern side of his said house a gutter which conveys rainwater from the roof of his said house onto the eaves of the said house of the party of the first part and onto his adjoining land;

[RECITAL OF DISPUTES.] And whereas, disputes have arisen between the said parties respecting the right of the party of the second part to affix the said gutter and pipe as aforesaid.

Now, it is hereby agreed as follows:

1. [AGREEMENT THAT GUTTER IS BY LICENSE.] The gutter shall be deemed to have been originally affixed and to remain hereafter affixed as aforesaid, with the express license and consent of the party of the first part, to the intent that neither the party of the second part nor any person claiming under or through him shall acquire any right of eavesdrop or any easement or right in respect of the said gutter.

2. [COMPENSATION FOR DAMAGE.] The party of the second part shall compensate the party of the first part in respect to any damage or injury that may at any time hereafter be done to the said house of the party of the first part or anything therein or to his said land by reason of the said gutter being affixed as aforesaid.

3. [REMOVAL ON NOTICE.] The party of the second part shall within ——— days after the service of a notice in writing on him by the party of the first part requiring him so to do take down and remove the said gutter and make good all damage occasioned thereby.

In witness, etc.

(Signatures and seals of both parties.)

11. Agreement Between Adjoining Landowners as to Encroaching Fence and License

Agreement made this —— day of —— (*parties as in preceding form*):

[RECITAL OF OWNERSHIP OF LANDS.] Whereas, the party of the first part is the owner of a certain parcel of land described as (*description*); and whereas, the party of the second part is the owner of a certain other parcel of land adjoining thereto on the west side thereof described as (*description*); and whereas, the true boundary line between the said parcels of land is shown upon the plan hereto annexed;

[RECITAL OF FENCE.] And whereas, the party of the second part has by mistake built a fence running north and south across the said land of the party of the first part and inclosing a part thereof with the said land of the party of the second part, the location of which fence is correctly shown upon the said plan.

Now, it is hereby agreed as follows:

1. [ADMISSION OF NO RIGHT.] The party of the second part admits that the true boundary line between his said land and the said land of the party of the first part is as shown upon the said plan, and that the said fence stands upon the said land of the party of the first part.

2. [LICENSE TO USE.] The party of the first part agrees that the party of the second part may without further license on his part use and enjoy all that portion of the said land of the party of the first part which lies west from the said fence until this agreement shall be determined, and in the meantime may maintain the said fence where it now is.

3. [CONSIDERATION.] In consideration of the foregoing the party of the second part will in every year during the

continuance of this agreement pay to the party of the first part the sum of ——— dollars, if demanded, as an acknowledgment that the enjoyment of the said land is under this agreement, and not otherwise.

4. [AGREEMENT, HOW TERMINATED.] The party of the first part may terminate this agreement at any time by giving ——— days' notice in writing to that effect to the party of the second part, and thereupon the party of the second part shall immediately remove the said fence; and, if he shall fail so to do, the party of the first part may remove or otherwise dispose of the same as he may see fit.

5. (*To run with the land, as in Form No. 5, cl. 5, p. 650.*)

In witness, *etc.*

12. Release of Right of Way or Other Easement—By Indorsement

This indenture is made this ——— day of ——— between ———, of the one part, and ———, of the other part:

Whereas, the said ——— and the said ——— are respectively seised in fee as within mentioned.

Now, this indenture witnesseth that, in consideration of the sum of \$——— paid by the said ——— to the said ———, the receipt whereof is hereby acknowledged, the said ——— hereby releases and abandons unto the said ——— all that right of way (*or other easement, describing the right granted*) which by the within-written indenture was granted to the said ———, to the intent that such right shall henceforth cease and determine.

In witness, *etc.*

(*Signature and seal.*)

13. License to Fish

I, the undersigned, in consideration of ——— dollars, the receipt whereof is hereby acknowledged, do hereby grant unto ——— full license and authority with a rod and line to fish for and to take and carry away fish of every kind in that portion of the ——— brook, so-called, which crosses my farm in ———, and also to traverse and use the banks of the said brook for any purpose necessary to the proper exercise of this license, and to pass and repass on foot over the said farm between the said brook and the ——— road, so-called, from the ——— day of ——— to the ——— day of ———.

Dated (*etc.*)

(*Signature.*)

14. License to Club to Use Land for Playing Baseball

I, ———, of ———, as owner of the land hereinafter described, hereby license and authorize all members for the time being of the ——— Club, by themselves, their servants, agents, and friends, with all proper tools and appliances, to enter and go upon the said land at all times between the ——— day of ——— and the ——— day of ——— in every year, so long as this license shall be unrevoked, and there to practice and play at the game of baseball, and so far as may be proper for that purpose to cut and mow the grass growing there and to roll the said land, and to do all things incidental to practicing and playing the game of baseball, doing no unnecessary damage to the said land or anything being or growing thereon.

The land above referred to is (*description*).

Dated (*etc.*)

(*Signature.*)

15. License to Golf Club Reserving Rent and Revocable by Notice ¹

This indenture made the ——— day of ——— between ———, of ———, hereinafter called the owner, of the one part, and the ——— Golf Club, a corporation (*etc.*), hereinafter called the club, of the other part:

Witnesseth as follows:

1. [LICENSE FOR GOLF COURSE.] The owner hereby licenses and authorizes the club at all times during the continuance of this agreement to enter upon the land hereinafter described by its officers, members, servants, agents, and guests, and with all proper tools, machines, horses, carts, implements, and appliances to lay out and maintain a golf course, and for that purpose to improve, dig up, roll, mow, and adapt the said land to that use, and there to play golf, subject to the conditions hereinafter contained.

2. [RESTRICTIONS AS TO WASTE.] The club shall not, except so far as may be reasonably necessary for laying out and maintaining the said lands for a golf course as aforesaid, commit any waste thereon, and in particular shall not without the permission in writing of the owner cut down or destroy or injure any bushes or trees. And the club shall be answerable for any damage done to the land, except as is permitted by this agreement, by any persons entering upon the land in pursuance of this license.

3. [FIXTURES.] The club may erect and fix in and upon the land any flags, posts, fences, bridges, sheds, and tents to be used exclusively for the purposes of the club, and shall

¹ For lease of land for a golf course, see Form No. 14a, p. 775. In the case of a club, a responsible guarantor for the payment of the rent and performance of the covenants is desirable.

at or before the determination of this agreement remove the same and make good all damage done thereby.

4. [RENT.] The club shall, so long as the license hereby granted shall not be determined in manner hereinafter provided, pay to the owner the sum of _____ dollars on the _____ day of _____, the first of such payments to be made on the _____ day of _____.

5. [OWNER NOT TO INTERFERE WITH GOLF.] The owner will not pasture or turn out upon the said land any horse, cattle, or other animals, nor will he plow up any part of the said land, or grow hay or other crops thereon, or put any manure or dressing or do any other thing thereon so as to interfere with the playing of golf thereon.

6. [DETERMINATION OF AGREEMENT.] The owner may by notice in writing cancel this agreement and revoke the license hereby granted, if at any time the yearly sum agreed to be paid by the club be _____ days in arrear, or if the club shall break any of the conditions herein contained; but, except as aforesaid, this agreement shall remain in force and be irrevocable until determined by either party by _____ calendar months' notice in writing expiring on the _____ day of _____ in any year. Such notice may be given by the owner by delivering it to the secretary of the club or to any of its officers for the time being.

In witness, etc.

(Signatures and seals of both parties.)

16. Grant of Right to Construct Telephone Line in Street

Know all men by these presents that I, _____ of _____, in consideration of the sum of \$_____ to me paid by the _____ Telephone Company, etc., do hereby grant unto the said company, its successors and assigns, the right to construct, operate, and maintain its lines of telephone, including

the necessary poles and fixtures, in, upon, and over the roads, streets, or highways adjoining the following described land owned by me, to wit (*description*), and also the right to cut down or trim any trees in the said roads, streets, or highways necessary to keep the wires clear for at least ——— inches, and the right to set therein the necessary guy and brace poles and to attach to trees therein the necessary guy wires.

In witness, *etc.*

17. Grant of Right to Construct Telephone Line Over Owner's Land

Indenture made the ——— day of ——— between ———, hereinafter called the owner, of the one part, and the ——— Telephone Company, a corporation organized and existing according to the laws of the state of ———, hereinafter called the company, of the other part:

[RECITAL OF OWNERSHIP OF LAND, ETC.] Whereas the owner is seised of the following described land (*description*), and the company is desirous of constructing its lines of telephone over, across, and upon the said land (the proposed location of the said lines and of the necessary poles and fixtures being shown upon the plan hereto annexed).

Now, this indenture witnesseth as follows:

1. [GRANT.] In consideration of the sum of \$——— paid by the company to the owner, the receipt whereof is hereby acknowledged (*or*, in consideration of the sum to be paid to the owner by the company as hereinafter expressed), the owner hereby grants to the company, its successors and assigns, full and free right, liberty, and authority to enter upon, and to construct, operate, and maintain its lines of telephone, including the necessary poles, wires, guys, and fixtures, over, across, and upon the said land (from a point on the ——— boundary thereof, *etc.*, to a point on the southerly boundary

thereof; *or*, in conformity with the location of the said lines and of the necessary poles and fixtures shown upon the said plan), and to cut down or trim any trees thereon as may be necessary to keep the wires clear for at least ——— inches, and to attach guy wires to any trees thereon.

2. [PAYMENT BY COMPANY.] (In consideration of the foregoing the company will pay to the owner the sum of \$——— for each and every pole of the said lines to be placed by the company upon the said land, such payment to be made as soon as the number of poles so to be placed is ascertained.)

3. [COMPANY TO MAKE GOOD DAMAGE.] The company shall do as little damage as possible to the owner's said premises in the exercise of any right hereby granted, and shall make good as speedily as possible any damage to the said premises.

In witness, *etc.*

CHAPTER XVI

FIRE INSURANCE

Policies of fire insurance are, of course, always prepared by the companies issuing them, and in many states standard forms are prescribed by statute. The policies sometimes provide for an immediate notice of loss to be given to the company by the insured. They always provide for a statement in writing, or proof of loss, to be signed and sworn to by the insured, and to be rendered to the company, setting forth the value of the property insured; the interest of the insured, all other insurance on the property in detail, the purposes for which and the persons by whom the building insured or containing the property insured was used, the time at which the fire originated so far as known to the insured, and often other particulars. Forms of proof are usually furnished by the companies, but the policy should always be examined to see that the proof conforms with the requirements. The following forms may be varied accordingly:

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Assignment of fire insurance policy, p. 170.

1. Notice of Loss

To the —— Fire Insurance Company:

Please take notice that on the —— day of —— the house (or, building No. ——, —— street, in ——, or otherwise describe the premises or articles insured), insured in your company under policy No. ——, was damaged (or, destroyed; or otherwise describe the nature of the damage or loss) by fire. Proof of loss will be duly forwarded to you.

Dated ——.

(Signature.)

2. Proof of Loss

To the — Insurance Company, of —:

By your policy of insurance No. —, dated —, issued to —, by —, your agent at —, for the term of — (and continued by renewal certificate No. — to the — day of —), you insured —, against loss and damage by fire to the amount of — dollars, as more fully appears by the printed or written portions and conditions of said policy, as follows, viz: —.

The property thus insured belonged to —, and no other person or party had any interest therein.

The building insured (*or*, containing the property destroyed or damaged) was also occupied in its several parts by —, and for the following purposes, to wit: —.

A fire occurred on the — day of —, at about the hour of — o'clock —. m., by which the property named in the policy was destroyed or damaged as hereinafter set forth in detail.

The whole value of the property amounted to \$—, which was the actual cash value at the time of the fire, and the whole amount of loss sustained is \$—, as set forth in the annexed Schedule A.

The whole insurance on said property at the time of the fire, including that above mentioned, was \$— and no more, as set forth in the annexed Schedule B.

— claim of your company its proportion of said loss, viz., \$—, as per apportionment in Schedule B.

The fire originated as follows, viz. (*set forth the manner in which the fire originated, so far as known*).

Nothing has been done by — or with — privity or consent to violate the conditions of the policy or to render it void.

Witness — hand— at — this — day of —.
(Signature.)

STATE OF _____,
County of _____. }

_____, 19—, personally appeared _____, the signer _____ of the foregoing statement, and made solemn oath that said statement is just and true, according to the best of _____ knowledge and belief, and that no material fact is withheld that the said company should be advised of.

Before me _____, Notary Public (*or other officer*).

SCHEDULE A

Items	Sound Value		Loss	
First				
Second				
Third				

SCHEDULE B

STATEMENT OF INSURANCE AND APPORTIONMENT OF LOSS

Number of Policy	Name of Company	First Item		Second Item		Third Item		Total	
		Insures	Pays	Insures	Pays	Insures	Pays	Insurance by each Company	Loss under each Policy

3. Same—Another Form

To the _____ Insurance Company, of _____:

I, _____, the assured under your policy No. _____ of your _____ agency, commencing _____, and expiring _____,

covering \$—— on ——, hereby certify: That I have sustained loss and damage to the amount of \$—— by fire, which occurred on the —— day of ——, and originated from ——.

That the whole insurance on the property amounted to \$——, as per schedule herewith.

That the actual cash value of the property so insured at the time immediately preceding the fire was ——.

That I am the sole owner of the property insured.

That this policy is payable to ——, mortgagee.

That nothing has been done by me or with my privity or consent to violate the conditions of insurance or avoid the policy.

That I claim of your company the sum of \$—— viz.:

\$—— on ——.

\$—— on ——.

\$—— on ——.

Dated at —— this —— day of ——.

(Signature.)

Subscribed and sworn to, *etc.*

I hereby certify that the above claim is just and true.

——, Agent.

SCHEDULE

INSURANCE AND APPORTIONMENT OF LOSS

No. of Policy	Name of Company	First Item		Second Item		Third Item		Total	
		Insures	Pays	Insures	Pays	Insures	Pays	Insures	Pays

4. Same—Another Form

STATE OF ———, }
County of ———. } ss.

Be it known that on this ——— day of ———, before me ———, a notary public duly commissioned and sworn, and residing in the ——— of ———, in the county and state aforesaid, personally appeared ———, who, being duly sworn, deposes and says that the following statement and the papers therein referred to and signed with his own hand contain a particular, just and true account of his loss in the words and figures following, to wit:

I. That on the ——— day of ———, the ——— Fire Insurance Company, of ———, by its policy of insurance numbered ———, issued by ———, their agent at ———, in the state of ———, did insure the party herein and therein named against loss or damage by fire to the amount of ——— dollars (as more fully appears by the printed or written portion of said policy as follows, viz.: ———) for the term of ——— from the ——— day of ——— to the ——— day of ———, at noon, which policy was subsequently continued in force by renewal until the ——— day of ———, at noon.

II. That, in addition to the amount covered by said policy of said company, there was ——— other insurance made thereon to the amount of ——— dollars, as specified in the accompanying Schedule A showing the name of each company, and the written portions of each policy, besides which there was no other insurance thereon (*in the schedule give the name of each company, date and term of policy, rate of premium, and entire written portion of each*).

III. That the actual cash value of the property so insured amounted to the sum of ——— dollars at the time immediately preceding the fire, as will appear by the annexed Schedule B.

showing a full and accurate description of each kind of property, and the value of the same, with the damage or loss on each stated separately.

IV. That the property insured belonged to ——— exclusively, and no other person had any interest therein.

V. That the building insured or containing the property destroyed or damaged was occupied in its several parts by the parties hereinafter named, and for the following purposes, to wit, ———, and for no other purpose whatever.

VI. That on the ——— day of ——— a fire occurred by which the property insured was injured or destroyed to the amount of ——— dollars, as set forth in the statement and the several schedules and papers hereunto annexed, which the deponent declare to be a just and true account of ——— loss as far as ——— has been able to ascertain the same.

And the insured claim— of the ——— the sum of \$—— as follows:

\$—— on ———.

\$—— on ———.

\$—— on ———.

\$—— total amount claimed.

That the fire originated ———, and the said deponent— further declare— that the said fire did not originate by any act, design, or procurement on ——— part, or in consequence of any fraud or evil practice done or suffered by ———, and that nothing has been done by or with ——— privity or consent to violate the conditions of insurance or render void the policy aforesaid.

Witness ——— hand at ———, in the county of ———, and state of ———, this ——— day of ———. (Signature.)

Subscribed and sworn to, *etc.*

5. Certificate of Magistrate or Notary

STATE OF _____, }
County of _____. } ss.

I, _____, residing in _____ most contiguous to the property hereinbefore described, hereby certify that I am not concerned in the loss or claim above set forth, either as creditor or otherwise, or related to the insured or sufferers; that I have examined the circumstances attending the fire or damage as alleged, and that I am well acquainted with the character and circumstances of the insured, and do verily believe that _____ ha— by misfortune, and without fraud or evil practice, sustained loss and damage on the property insured to the amount of _____ dollars.

In testimony whereof I have hereunto set my hand and official seal this _____ day of _____.

6. Receipt on Payment of Loss

\$_____. _____, 19____.

Received from the _____ Fire Insurance Company, of _____, the sum of _____ dollars in full payment and satisfaction of all claims for loss and damage by fire which occurred on the _____ day of _____, under policy No. _____, renewal No. _____, issued at the _____ agency of said company, and in consideration of said payment said policy is hereby satisfied and canceled to the extent of amount paid. A similar receipt has been signed on the policy.

(Signature.)

7. Agreement for Submission to Appraisers

This agreement made the —— day of —— between ——, of the one part, and the —— Insurance Company, of the other part, witnesseth as follows:

—— and ——, together with a third person to be appointed by them in case of disagreement, who shall act on items of differences only, shall estimate and appraise at the true cash value the loss or damage by fire to the building (*or*, merchandise) described in policy No. —— of the said company and insured in the name of the said ——, and the estimate and appraisal, in writing of them or of any two of them, acting as hereinbefore provided, as to the amount of such loss or damage, shall be binding on the parties hereto; it being understood that this submission is without reference to any other question or matter of difference within the terms and conditions of the insurance, and is binding only as to the actual cash value and damage to such property at the time of the fire, and that this agreement does not waive, and is without prejudice to, any of the terms and conditions of the said policy.

The property on which loss or damage is to be estimated and appraised is (*description of building or merchandise as the case may be*).

The said appraisers shall take into consideration the age, condition, and location of the said building (*or*, the condition and value of the said merchandise) previous to the fire, and also the value of the walls, materials, or any portion of the said building which may be saved (*or*, and also the value of the said merchandise or any portion thereof which may be saved), and after making an estimate of the cost of replacing the said building (*or*, the said merchandise) a proper deduction shall be made by them for the difference between the value of a new or replaced building and the one insured (*or*, between the value of

new or replaced merchandise and that insured). The appraisers shall prepare their award in the form of a detailed itemized statement, in accordance herewith, and return the same to the said company.

In witness whereof the parties hereto have set their hands the day and year first above written.

8. Award of Appraisers

To the —— Fire Insurance Company:

Having carefully estimated and appraised the loss or damage by fire to the property of —— agreeably to the foregoing and attached appointment, we hereby report and return that we have appraised and determined the loss or damage thereon to be —— dollars, as shown by statement of items herewith.

Witness our hands this —— day of ——.

(Signature.)

CHAPTER XVII

GIFTS

Gifts are of three kinds, (1) gifts *inter vivos*, (2) testamentary gifts, and (3) gifts *causa mortis*; but only the first are included in this chapter. A gift of personal chattels must be by deed, unless the chattels are delivered. A gift of real property must conform with the requirements for the conveyance of such property in other cases. The lack of consideration does not affect the validity of the transfer between the parties. The questions how far in the case of personal property delivery is essential to a transfer as against creditors and purchasers and under what circumstances gifts and voluntary conveyances, although accompanied by delivery, are subject to attack by creditors, cannot be here considered.

Voluntary subscriptions by a number of persons to promote some object in which they have a common interest, such as subscriptions to charitable organizations, are usually in the form of mere promises to give; but they are generally sustained, at least when the subscription is acted upon, notwithstanding the difficulty or impossibility in many cases of finding consideration for the promises. By some courts they are sustained on the theory that the mutual promises of the subscribers form the consideration. More generally, however, it is held, upon one theory or another, that the promises become binding after the beneficiary has incurred expense or liability in reliance thereon.

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1. Gift of Personal Chattels

Know all men by these presents that I, —— of ——, in consideration of natural love and affection, hereby assign to my daughter, ——, all the household furniture and effects, books, pictures, and all other personal chattels and effects what-

soever in my dwelling house at ———, to hold the said chattels and effects unto her the said ——— absolutely.

In witness, *etc.*

(*Signature and seal.*)

2. Deed of Gift of Land

This indenture, made this ——— day of ———, between ———, of ———, party of the first part, and ———, of ———, daughter of the said ———, party of the second part:

Witnesseth that the said party of the first part, in consideration of his natural love and affection for the said party of the second part,¹ doth hereby give, grant, convey, and confirm unto the said party of the second part, her heirs and assigns, all the following described parcel of land (*description*).

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging, unto the said party of the second part, her heirs and assigns forever.

In witness, *etc.*

3. Subscription for a Church Building

We, the subscribers hereto, in consideration of the mutual promises contained herein and in any other papers of like tenor and effect, do hereby agree with each other and with the subscribers hereof and of any such other papers, and with ——— Church, a corporation, to pay to the trustees of the said ——— Church the sums set opposite our respective names for the purpose of building a new church building which the said ——— Church proposes to build upon the site of its present building. The said sums shall be payable by ——— equal annual installments as follows (*terms of payment*).

Dated the ——— day of ———.

(*Signatures and amounts.*)

¹ In most cases the deed states merely a nominal consideration of one dollar or the like.

4. Subscription to Endow a College

In consideration of the effort by the trustees of ——— College to raise a fund of \$———, and their agreement to receive, hold, and apply such fund as hereinafter provided, we, the subscribers, hereby bind ourselves to pay to the said trustees the sums opposite to our respective names, in four equal annual payments, the first to be made on the ——— day of ———.

The conditions of the subscription are the following:

1. That the moneys collected on it shall be permanently invested as a productive fund, the interest of which shall be applied to the payment of the salaries of the officers.

2. That we shall not be holden to pay the sum subscribed by us unless the aggregate of our subscriptions and of contributions to this object shall by the ——— day of ——— amount to \$———, nor until ———, of ———, shall certify that, in his judgment, responsible subscriptions or contributions amounting to \$——— shall have been made.

Dated the ——— day of ———.

(Signatures and amounts.)

5. Subscription to Erection of Factory

Whereas, the ——— Company proposes to erect a building and to operate the same as a shirt factory upon some centrally located lot within the city of ———, such building to be designed and well and substantially built for that purpose, and to be of sufficient size and capacity to place and operate therein not less than ——— sewing machines, and to be completed and fully equipped with that number of machines and with all fixtures, fittings, and appliances reasonably necessary for the operation thereof as a shirt factory on or before the ——— day of ———; and whereas, the said ——— Company further proposes upon such completion and equipment as aforesaid to

execute to the undersigned a good and sufficient bond in the aggregate amount of their subscriptions hereunder with a surety or sureties to be approved by the directors of the Business Men's Association of ———, conditioned that the said shirt factory shall be operated at its reasonable capacity during not less than ——— months in each year for a period of not less than ——— years: Now, in consideration of the premises and as an inducement to the said ——— Company so to build and operate such factory, we, the undersigned, do hereby promise and agree to pay the sums set opposite our respective names to ——— within ——— days from the date hereof; and we hereby authorize the said ——— to pay over the said sums to the said ——— Company, when such factory shall have been fully completed and equipped, and such bond shall have been duly executed and delivered to the said ——— for us as above recited, but in default thereof all said sums are to be repaid to the undersigned subscribers, respectively.

Dated this ——— day of ———.

(Signatures and amounts.)

CHAPTER XVIII

GOOD WILL

In General

The good will of a business may be local or personal, or both. Local good will attaches to the possession of the realty where the business is carried on, being based on the probability that old customers will continue to resort to the same place, and it is necessarily assignable only with the transfer of the realty. Personal good will is based on the reputation of the person by whom the business is carried on, and attaches to his business name. To a greater or less extent it may be transferred or assigned to another by granting him the right to use the name under which the business has been carried on, as well as by the personal recommendation of the purchaser by the assignor. Upon an assignment of the good will, for the purpose of protecting the purchaser in carrying on the business, the assignor usually covenants not to carry on a similar business within certain limits. The good will is an asset of a partnership, and partnership articles frequently contain provisions for its disposition on a dissolution. Post, pp.1020, 1039.

Trade-Marks

A "trade-mark" is a name, device, or symbol used by the proprietor on or in connection with goods of his manufacture for the purpose of identifying them and distinguishing them from like goods manufactured by others. A trade-mark is assignable only in connection with the good will of the business in which it is used. Statutes for the registration of trade-marks have been enacted in some states, but a trade-mark can be acquired and may exist independently of registration. The federal statutes provide for the registration of trade-marks used in commerce with foreign nations and among the several states and with Indian tribes, and for their protection. Act Feb. 20, 1905, c. 592, 33 Stat. 724, as amend. Act May 4, 1906, c. 2081, 34 Stat. 168; Act March 2, 1907, c. 2573, 34 Stat. 1252; Act Feb. 18, 1909, c. 144, 35 Stat. 627 (U. S. Comp. St. 1913, §§ 9485-9516). A registered trade-mark, as well as a mark for the registration for which application has been made, is assignable in connection with the good will of the

business in which the mark is used. The assignment must be by an instrument in writing and duly acknowledged according to the laws of the country or state in which it is executed; and an assignment is void against any subsequent purchaser for a valuable consideration without notice, unless recorded in the Patent Office within three months from the date thereof. Act Feb. 20, 1905, c. 592, § 10, 33 Stat. 727. Certificates of registration may be issued to the assignee of the applicant, but the assignment must first be entered of record in the Patent Office. *Ibid.* § 11.

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1. Assignment of Good Will and Assets of Grocery Business

Indenture made this ——— day of ——— between ———, hereinafter called the vendor, of the one part, and ———, hereinafter called the purchaser, of the other part:

[RECITAL OF LEASE.] Whereas, by an indenture of lease dated (*etc.*), and recorded (*etc.*), and made by ——— to the vendor, a certain store and premises therein described, on ——— street, in the said city of ———, were demised to the vendor, his executors, administrators, and assigns, from the ——— day of ——— for the term of ——— years, and the said lessor has consented to an assignment of the said lease to the purchaser;

[RECITAL OF BUSINESS.] And whereas, the vendor has since the date of the said indenture carried on the grocery business situate at the store and premises aforesaid;

[RECITAL OF AGREEMENT.] And whereas, the vendor has agreed with the purchaser for the sale to him of the said business, and the said lease, and the stock in trade, chattels, trade

fixtures, and utensils in or about the premises, and the book debts and contracts hereinafter mentioned, at the price of \$——;

[RECITAL OF ASSIGNMENT OF LEASE.] And whereas, by an indenture of even date herewith the vendor has assigned the said lease and the premises thereby demised to the purchaser for the residue of the said term.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] In further pursuance of the said agreement and in consideration of \$—— paid by the purchaser to the vendor, the receipt whereof the vendor hereby acknowledges, and in consideration of the purchaser's covenants hereinafter contained, the vendor hereby assigns unto the purchaser all the business of a grocer so carried on by the purchaser at —— aforesaid, and the good will thereof, and all the stock in trade, chattels, trade fixtures, and utensils now in or upon the premises, and all the book debts now owing to the vendor in respect thereof, and all contracts and engagements, benefits, and advantages which have been entered into by the vendor or to which he is entitled in respect to the said business, particulars of which book debts and contracts are specified in the schedule hereto. To hold the same unto the purchaser absolutely.

2. [VENDOR'S COVENANT NOT TO COMPETE, ETC.] The vendor hereby covenants with the purchaser that the vendor will not within —— years from the date hereof, either solely or jointly with or as manager or agent for any person or corporation, directly or indirectly carry on or be engaged or interested in the business of a grocer, or permit his name to be used in connection with any such business, within —— miles of —— aforesaid; and that the contracts entered into by him and the book debts owing to him in respect to the said business are correctly specified in the schedule hereto; and, fur-

ther, that the vendor will from time to time and at all times hereafter use his best endeavors to promote the said business and to give the purchaser the full benefit of the connection and custom of the vendor in the said business.

3. [PURCHASER'S COVENANT FOR INDEMNITY, ETC.] The purchaser hereby covenants with the vendor that the purchaser will perform the contracts specified in the schedule hereto and pay all future liabilities of every kind in connection with the said business, and will keep the vendor and his estate indemnified against the same and all actions, proceedings, claims, demands, costs, damages, and expenses in relation thereto.

In witness, *etc.*

(Signatures and seals.)

SCHEDULE

_____	_____
_____	_____
_____	_____

2. Assignment by a Firm of the Good Will and Assets of their Business to a Corporation

This indenture is made this _____ day of _____ between _____ and _____, of _____, partners under the firm name and style and constituting the partnership of A. B. & Co., parties of the first part, and the A. B. Company, a corporation organized and existing under the laws of the state of _____, party of the second part:

[RECITAL OF PARTNERSHIP.] Whereas, the parties of the first part have heretofore carried on the business of wholesale dealers and jobbers in dry goods in the city of _____ at premises owned by them known and described as *(description)*;

[RECITAL OF AGREEMENT.] And whereas, the parties of the first part have agreed to sell their said business and the

good will thereof to the party of the second part for the sum of ——— dollars, and to sell and convey to the party of the second part the above-described real estate and premises for the further sum of ——— dollars by deed of conveyance to be executed contemporaneously herewith.

1. [ASSIGNMENT.] Now, this indenture witnesseth that the parties of the first part, in consideration of the premises and of the sum of ——— dollars to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, and set over unto the party of the second part all the above-recited business and the good will and the full benefit thereof, and the right to use the trade-name heretofore used by them in said business, to wit, the name of A. B. & Co., or the name of the A. B. Company, together with all and singular the stock in trade, book and other accounts, contracts, credits, bills receivable, judgments, profits, moneys, assets, and effects of said partnership, including the furniture and property of every description now in the building upon the above-described premises. To have and to hold the same unto the party of the second part, its successors and assigns, absolutely.

2. [ASSIGNORS' COVENANTS.] And the parties of the first part hereby covenant with the party of the second part that they will not, and that neither of them will, in the said city directly or indirectly carry on, or engage or be interested in the same business heretofore carried on by them, nor permit the said name of A. B. & Co. or the name of either of the parties of the first part to be used in connection with any such business in the said city, and that they have not, except as appears by the books of the said partnership, contracted incurred, or entered into any debt, liability, or obligation which can be made a charge upon or in any way affect the assets and effects of the said partnership.

3. [ASSIGNEE'S COVENANTS.] And the party of the second part hereby covenants with the parties of the first part that the party of the second part will pay, discharge, and perform all the debts, liabilities, and obligations of said partnership heretofore contracted, incurred, or entered into by the said partnership in relation to the said business, as the same appear upon the books of the said partnership, and will at all times keep indemnified the parties of the first part against all such debts, liabilities, and obligations, and all actions, proceedings, costs, and expenses in respect thereof.

In witness, *etc.*

3. Assignment of Trade-Marks with Good Will of Business and Trade-Name

This indenture made the _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF BUSINESS AND TRADE-MARKS.] Whereas, the party of the first part has for some years past carried on the business of a manufacturer of and dealer in _____ at _____, in said city of _____, under the name or style of _____; and whereas, the party of the first part did obtain certificates of registration of the United States of the following trade-marks used in the said business of the party of the first part for the following goods, to wit (*description of goods*), which certificates are numbered and bear date respectively as follows, to wit, certificate numbered _____, and bearing date the _____ day of _____, in the year (*etc.*);

[RECITAL OF AGREEMENT FOR SALE.] And whereas, the party of the first part has agreed with the party of the second part for the sale to him for the sum of _____ dollars of the good will of the said business and the stock in trade thereof

and the said registered trade-marks and the right to use the said trade-name;

[RECITAL OF DELIVERY OF STOCK IN TRADE.] And whereas, the party of the first part has delivered to the party of the second part the stock in trade of the said business.

Now this indenture witnesseth as follows:

1. [ASSIGNMENT.] In pursuance of the said agreement and in consideration of the sum of ——— dollars to him in hand paid, the receipt whereof is hereby acknowledged, the party of the first part doth hereby assign and transfer unto the party of the second part all the said business of a manufacturer and dealer in ——— now carried on by the party of the first part at ——— aforesaid and the good will thereof, together with the exclusive right, so far as the party of the first part can confer the same, to the name and style of ———, and also all the registered trade-marks hereinbefore described, to hold the same unto the party of the second part absolutely.

2. [COVENANTS, IF REQUIRED.] See Forms 1, 2, pp. 681, 679.

In witness, etc.

4. Assignment of Trade-Mark by Separate Instrument

(Following preceding form substantially to recital of agreement for sale);

[RECITAL OF AGREEMENT FOR SALE.] And whereas, the party of the first part has agreed to sell to the party of the second part his said business and the said trade-mark for the sum of ——— dollars;

[RECITAL OF ASSIGNMENT OF GOOD WILL.] And whereas, by an indenture of even date herewith, in consideration of the sum of ——— dollars paid by the party of the second part to the party of the first part, the party of the first part assigned

to the party of the second part the good will of his said business.

[ASSIGNMENT.] Now, this indenture witnesseth that, in pursuance of the above-recited agreement and in consideration of the premises, the party of the first part hereby assigns and transfers to the party of the second part the said trademark hereinbefore described, to hold the same unto the party of the second part absolutely.

In witness, *etc.*

5. Assignment of Good Will of Medical Practice

Indenture made the —— day of ——, between ——, of ——, party of the first part, and ——, of ——, party of the second part:

[RECITAL OF PRACTICE AND AGREEMENT.] Whereas, the party of the first part for many years has carried on the practice of a general medical practitioner at ——, and has agreed with the party of the second part for the sale to him of the said practice and the good will thereof and of the dwelling house wherein he has maintained his office as such practitioner at the price of —— dollars, of which —— dollars should be deemed the price of the said dwelling house, and —— dollars the price of the said practice; and whereas, the party of the first part has conveyed the said dwelling house to the party of the second part by deed of even date herewith.

Now this indenture witnesseth as follows:

[ASSIGNMENT.] In pursuance of the said agreement and in consideration of —— dollars paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part hereby sells and assigns to the party of the second part all the said practice as a general medical practitioner so carried on by the party of the first part as

aforesaid and the good will thereof. To hold the same unto the party of the second part absolutely.

[COVENANT OF ASSIGNOR.] The party of the first part hereby covenants with the party of the second part that he will introduce him to all the patients of the party of the first part and do all in his power to procure the full benefit of the said practice to the party of the second part and to insure his success therein, and that the party of the first part will not at any time hereafter, within ——— miles from ——— aforesaid, practice as a physician, surgeon, or medical practitioner in any capacity, or attend any of his past or present patients.

In witness, *etc.*

CHAPTER XIX

GUARANTIES

A "guaranty" is a collateral undertaking by one person to be answerable for the payment of some debt or the performance of some contract or act for another person who stands first bound to pay or perform. The contract falls within the statute of frauds, which, in the form in which it is usually enacted, provides that no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person unless the agreement upon which the action shall be brought or some note or memorandum thereof shall be in writing and signed by the party to be charged, or some other person by him thereunto lawfully authorized. As a rule, the consideration must be stated.

A contract of guaranty, at least if it be not under seal, must rest upon consideration. Therefore the guaranty of a pre-existing debt must be based upon a new consideration, which, however, may be founded on an agreement to extend the time of payment or to forbear suit thereon. If money is lent or goods are delivered on the strength of an oral promise to guaranty the payment, the guaranty may be reduced to writing subsequently, and is not without consideration or invalid for that reason. When a guaranty takes the form of an offer to guaranty future advances to be made or credit to be extended to a person, and the like, it is generally, though not universally, held that the offer does not ripen into a contract merely upon the making of the advances or extending of the credit, but that notice of acceptance by the person to whom the offer is made is essential.

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1. For Payment of Money Advanced

To ———:

I hereby guaranty (to the extent of ——— dollars) the payment to you of the sum of ——— dollars, which you have this day advanced to ——— at my request and upon my promise of such guaranty, with interest at the rate of ——— per cent. per annum from the date of your sending by registered mail to me a written demand for payment of said sum of ——— dollars, and this guaranty shall not be affected by your granting time to the said ———.

Dated ———

(Signature.)

2. For Payment of Goods to be Supplied

To ——— & Co.:

I hereby guaranty (to the extent of ——— dollars) the payment to you of whatsoever sums of money shall become due and payable to you by ——— for any and all goods which you may supply to him in his business as a (retail grocer). This guaranty shall be effective without notification by you of your acceptance of the same, and shall continue until revoked by me by written notice to you, and shall not be affected by any change in the constitution of your firm or by your granting time or other indulgence given by you to him. It shall not be necessary for you to take proceedings against him before applying to me for payment for any sum the payment of which is hereby guaranteed.

Dated ———.

(Signature.)

3. Same—Another Form

To ———:

Please deliver to ——— such goods as he may want from time to time, and for valuable considerations, which I hereby acknowledge to have received, I hereby agree to become fully responsible to you for any balance, not exceeding ——— dollars, either in open accounts or in notes, which he may from time to time owe you for such purchases until you have written notice from me to the contrary. I waive all notice respecting your assent to this guaranty and all notice necessary to charge me as guarantor hereunder.

Dated ———.

*(Signature.)***4. For Payment of Debt in Consideration of Forbearance**

To ———:

In consideration of your having at my request agreed to forbear to bring any action or proceeding against ——— to enforce payment of the sum of \$——— due by him to you for goods sold and delivered, I hereby guaranty the payment to you of that sum, with interest at the rate of ——— per cent. per annum from the ——— day of ———, within ——— days from the date hereof.

Dated ———.

*(Signature.)***5. For Payment of Note**

For value received I hereby guaranty the payment of the within note.

*(Signature.)***6. For Collection of Note**

For value received I hereby guaranty the collection of the within note.

(Signature.)

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7. For Performance of Contract

In consideration of the execution of the within contract by the party of the first part therein named, I hereby guaranty the due performance by the party of the second part therein named of all the covenants and agreements on his part therein contained, and the payment of all damages, costs, and expense which by virtue of the said contract may become recoverable from him by the said party of the first part.

Dated _____.

(Signature.)

8. Continuing Guaranty for Payment of Goods to be Supplied

This agreement, made this _____ day of _____, between _____, hereinafter called the guarantor, of the one part, and _____, hereinafter called the creditor, of the other part, witnesseth that:

Whereas, the creditor has at the request of the guarantor agreed to supply to _____, hereinafter called the debtor, from time to time in the course of his business of a retail grocery with goods on credit.

Now, therefore, it is hereby agreed as follows:

1. [UNDERTAKING OF GUARANTOR.] The guarantor will pay to the creditor such sum or sums of money as shall from time to time during the continuance of this agreement become due to the creditor from the debtor for goods so to be supplied, and not paid for by the debtor. The liability of the guarantor hereunder shall not at any time exceed _____ dollars, but subject thereto this guaranty shall be a guaranty on the whole of such sum or sums.

2. [NATURE AND EXTENT OF GUARANTOR'S LIABILITY.] The guaranty hereby given shall be a continuing guaranty, but the guarantor shall not at any time be responsible for or lia

ble to pay to the creditor more than the balance which may for the time being be due to him from the debtor, not exceeding in the whole the said sum of ——— dollars, and no proceeding whatever shall be taken against the guarantor for the recovery of such sum or sums, or any part thereof, until the expiration of ——— days' notice, which shall be given in writing to him, of default having been made by the debtor in payment thereof, or of some part thereof, and requiring the guarantor to pay the same.

3. [WHEN CREDITOR MAY REQUIRE PAYMENT.] In the event of the debtor refusing or neglecting to pay any such sum or sums of money as may for the time being be due from him for goods so supplied, or of his becoming bankrupt or filing a petition in bankruptcy, or of his compounding or attempting to compromise with his creditors, the creditor shall resort to and recover from the debtor, or his estate, or any other securities held by the creditor, so much of the said sum or sums as can be obtained or recovered, before requiring payment thereof, or of any part thereof, from the guarantor.

4. [INDULGENCE TO DEBTOR.] The liability of the guarantor shall not be affected by any time or other indulgence given to the debtor, or by the acceptance by the creditor of any negotiable or other securities from the debtor or others in respect of any sum for the time being owing.

5. [CREDITOR TO KEEP GUARANTOR INFORMED.] The creditor will at all times during the continuance of this guaranty give to the guarantor when by the guarantor requested in writing so to do full and accurate information as to the amount of the indebtedness of the debtor to the creditor.

6. [DETERMINATION.] This guaranty may be determined at any time by the guarantor by notice in writing given to the creditor to that effect and payment to the creditor of the amount, if any, for the time being owing by the debtor up to

the limit specified in paragraph 1 hereof. And this guaranty shall absolutely determine on the death of the guarantor.

In witness, *etc.*

9. Joint and Several Guaranty of Advances, with Right Withdraw

In consideration of your having at our request agreed advance to ——— any sums of money he may require during the period of one year from the date hereof not exceeding the aggregate the sum of \$———:

[UNDERTAKING TO REPAY.] We, the undersigned, herel guaranty to you the repayment by the said ——— of all sum of money advanced by you to him as aforesaid, with interest at the rate of ——— per cent. per annum, subject as hereinafter provided, that is to say:

1. [NOTICE OF DEFAULT.] Notice in writing of any default on the part of the said ——— is to be given by you to us, and within ——— days from its receipt payment shall be made by us of all sums then due from us under this guaranty.

2. [GUARANTY CONTINUING.] This guaranty is a continuing guaranty within the limits aforesaid as to time and amount and our liability under it is joint and several.

3. [LIMIT OF LIABILITY.] Under no circumstances shall our total joint and several liability hereunder exceed in the aggregate the sum of \$———.

4. [WITHDRAWAL.] Each guarantor shall be at liberty any time to withdraw from all liability hereunder on payment to you of the sum of \$——— or so much thereof as shall not already have been satisfied by payment or otherwise. In the event of the death of any surety his personal representatives shall be at liberty to exercise a like power of withdrawal

and shall thereby relieve his estate from future liability under this guaranty.

Dated _____.

(Signatures of guarantors.)

To _____.

**10. Continuing Guaranty, Limited in Amount, for Goods to
be Supplied, where Guarantors Are Liable
in Unequal Sums**

In consideration of your having at our request agreed to supply _____ of _____, hereinafter called the debtor, with goods in the way of his trade carried on by him at _____:

We, the undersigned, agree with you as follows:

1. [SCOPE OF GUARANTY.] To guarantee to you the payment by the debtor of all goods so supplied by you as aforesaid, but subject to the limit on our aggregate and individual liability hereinafter expressed.

2. [NATURE AND EXTENT OF LIABILITY.] This guaranty shall be a continuing guaranty, but our aggregate liability shall not under any circumstances exceed the sum of \$_____; and the proportionate share or liability of each of us individually in respect of the said sum shall not (save in the event of any one or more of us becoming bankrupt, insolvent, or otherwise unable to discharge and satisfy his individual liability hereunder, in which case any deficiency thereby caused shall be made good by the remainder of us in proportion to our individual liability hereunder) exceed in amount the sum placed opposite our respective signatures at the foot hereof, and should the common liability be less than the said maximum aggregate sum, the share due from each one of us in respect thereof shall be in strict proportion to his individual liability hereunder, and not otherwise.

3. [GUARANTY TO APPLY TO WHOLE DEBT.] Within the aforesaid limits of liability this guaranty shall extend and be

applicable to the whole debt that shall ultimately be due to you from the debtor in respect of goods supplied by you to him as aforesaid, and not merely to so much thereof as shall be coextensive with our aforesaid maximum aggregate liability hereunder.

4. [AUTHORITY TO GRANT TIME TO DEBTOR.] You shall be at liberty without discharging us from our liability hereunder to grant time or other indulgence to the debtor in respect of goods supplied by you to him as aforesaid, and to accept payment from him in cash or by means of negotiable instruments, and to treat him in all respects as though we were jointly liable with him as debtors to you instead of being merely sureties for the debtor.

5. [WAIVER OF RIGHTS OF SURETYSHIP.] In order to give full effect to the provisions of this guaranty we hereby waive and each of us hereby waives all suretyship and other rights inconsistent with such provisions and which we might otherwise be entitled to claim and enforce.

6. [REVOCATION.] This guaranty shall at our option be revocable by _____ days' notice in writing given to you by us.

Dated _____.

(Signatures of guarantors.) (Amount guaranteed.)

CHAPTER XX

HIRE OF GOODS

A contract for the hire of personal chattels is a contract of bailment, whereby the possession of the chattels is delivered by the owner, or bailor, to the hirer, or bailee, to be used for a compensation to be paid by him, the ownership remaining in the bailor. Agreements are often drawn in the form of a contract for hire in which the owner undertakes that the goods shall become the property of the hirer conditionally on his making certain rent payments, which he obligates himself to make. These agreements are generally held to be "conditional sales" within statutes providing for the filing and record of such sales. A contract for hire giving the hirer a mere option to buy for a stipulated price, or providing that the goods shall become the property of the hirer or lessee if he makes a certain number of periodical rent payments, but not obligating him to make them, is to be distinguished from a conditional sale. See Sale of Goods, p. 1191.

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1. Agreement for Hire of Furniture

This agreement, made this —— day of ——, between
——, hereinafter called the owner, of the one part, and
——, hereinafter called the hirer, of the other part:

Witnesseth that it is hereby agreed as follows:

1. [AGREEMENT FOR HIRE.] The owner will let and the
hirer will hire the following described articles of furniture,
to wit: (*description*), for the term of —— calendar months
from the —— day of ——,

2. [DELIVERY.] The owner shall deliver the said article at his own expense at the house of the hirer at _____ the _____ day of _____.

3. [RENT.] The hirer shall pay to the owner for the hire of the said furniture a rent of _____ dollars for each month of the said term, payable on the _____ day of each month. The first payment to be made on the _____ day of _____ next.

4. [REPAIRS, ETC.] The hirer shall during the said term keep and maintain the said furniture in good state of condition and repair, reasonable wear and tear excepted, and shall at the determination of the said term replace such of the said articles as may be broken or damaged, otherwise than by reasonable wear and tear, or lost, by others of a similar nature and of equal value (or, shall pay to the owner compensation on account of any of the said articles which may be broken or damaged, otherwise than as aforesaid, or lost).

5. [INSURANCE.] The hirer shall during the said term keep the said furniture insured against fire in the sum of _____ dollars (and against burglary in the sum of _____ dollars) by companies to be approved by the owner, making the loss, if any, payable to him, and shall deliver the policies and premium receipts to him.

6. [TAXES.] The hirer shall promptly pay all taxes which shall become payable upon the said furniture during the said term.

7. [NOT TO BE FIXTURES.] The hirer shall not cause or suffer any of the said articles to be affixed to the said house in such a way that they shall become fixtures.

8. [NOT TO REMOVE.] The hirer shall not during the said term remove the said furniture or any thereof from the said house, or suffer the same to go out of his possession, except with the written consent of the owner.

9. [INSPECTION.] It shall be lawful for the owner or his agent at all reasonable times to enter the said house for the purpose of viewing the state and condition of the said furniture.

10. [DETERMINATION.] Upon any breach by the hirer of any of the stipulations herein contained, or if any execution or other legal process shall be levied upon the said articles, the owner shall be at liberty without notice to determine this agreement.

11. [RIGHTS OF OWNER ON DETERMINATION.] Upon the determination of this agreement, whether by lapse of time or under the preceding clause, the owner shall be at liberty to enter the said house and remove and carry away the said articles, and for that purpose to do all things reasonably necessary for such removal without liability for any damage caused thereby, and without prejudice to the rights of the owner in respect to any rents due or to become due from the hirer under this agreement.

In witness, *etc.*

(Signatures of both parties.)

2. Lease of Personal Property

This indenture, made the —— day of ——, between ——, of ——, party of the first part, and ——, of ——, party of the second part:

Witnesseth:

1. [LEASE, TERM, AND RENT.] That the said party of the first part hereby lets to the said party of the second part all the following described personal property (*description*) for the term of —— months, commencing on the —— day of ——, the said party of the second part paying therefor to the said party of the first part at —— the sum of —— dollars on the —— day of each month of the said term.

2. [LESSEE'S COVENANTS.] And the said party of the second part hereby covenants with the said party of the first part to pay the said rent at the times and in the manner aforesaid, and that, if the said rent or any part thereof shall at any time or times as hereinbefore provided be unpaid, the said party of the second part will pay to the said party of the first part interest on such arrears at the rate of ——— per cent. per annum from the date of default in payment thereof until the said rent shall be paid, together with reasonable charges and expenses for collecting the said rents; to pay all taxes which may be imposed upon the said property while in the possession of the said party of the second part; to use the said property in a careful and prudent manner; not to sublet, mortgage, or in any manner dispose of the same to any person, or remove or attempt to remove the same, or suffer the same to come into the custody or control of any person other than the said party of the second part without the consent in writing of the said party of the first part; not to suffer any legal process to be levied upon the same; to permit the said party of the first part at all reasonable times to enter upon the premises to inspect the said property; and to surrender the said property up to the said party of the first part at the expiration of the said term in as good condition as when he received the same, reasonable wear excepted.

3. [LESSOR'S REMEDIES ON DEFAULT.] It is hereby agreed that if any rent hereunder shall be due and unpaid, or if default shall be made in any of the covenants on the part of the party of the second part herein contained, then and in any such case the said party of the first part or his legal representatives may, immediately or at any time thereafter take possession of the said property wherever it may be found forcibly, if necessary, without being taken or deemed guilty

of any manner of trespass, and without thereby rendering himself or themselves liable to refund any sums received as rent as aforesaid, and thereupon this lease shall determine, but without prejudice to any remedies which he or they might otherwise use for arrears of rent or any breach of the covenants of the said party of the second part herein contained.

In witness, *etc.*

3. Agreement for Hire of Pianoforte to Become Property of Hirer if he Makes Optional Payments

(Begin as in Form 1, p. 695):

1. [AGREEMENT FOR HIRE.] The owner will let and the hirer will hire a pianoforte bearing the name of —— and No. ——, upon the terms and conditions following:

2. [PAYMENTS.] The hirer shall pay to the owner so long as the hirer thinks fit to continue the hire the sum of —— dollars per calendar month in advance, the first of such payments to be made on the signing hereof, and the payment for each succeeding month to be made at the expiration of each succeeding month.

3. [OBLIGATIONS OF HIRER.] The hirer shall keep the said pianoforte in good and substantial order, damage by fire included, in his own custody at his address as given herein, and shall not sell, mortgage, remove, or part with the possession of the same without the previous consent in writing of the owner, and shall permit persons authorized by the owner at all reasonable times to inspect the condition of the said pianoforte.

4. [RESUMPTION OF POSSESSION ON DEFAULT.] If default shall be made in the punctual payment of any of the monthly installments above specified, or if the hirer shall fail to observe and perform all and every of the terms and conditions

of this agreement, or shall do or suffer any act or thing whereby the owner's rights shall or may be prejudiced, it shall be lawful for the owner to resume possession of the said pianoforte, and for such purpose to enter any premises occupied by the hirer.

5. [DETERMINATION BY HIRER.] The hirer may put an end to the hiring by returning the said pianoforte at his own cost to the owner.

6. [WHEN PROPERTY TO PASS.] If ——— monthly payments shall be duly paid by the hirer in manner aforesaid, the said pianoforte shall become the property of the hirer, but until such payments shall have been made in full the same shall remain the property of the owner.

7. [HIRE TO BE PAID UP TO DETERMINATION.] If the hiring is determined by either party as hereinbefore provided all hire, as well as any damage suffered by the owner, up to the date of such determination, shall be paid by the hirer to the owner, and no repayment or credit on account of payments previously made shall be made or allowed.

In witness, *etc.*

4. Agreement for Hire of Machinery with Option to Buy

(*Begin as in Form 1, p. 695*):

1. [AGREEMENT FOR HIRE.] The owner shall let to the hirer and the hirer shall take and hire from the owner from the date hereof the machinery (*description*) which is specified in the schedule hereto annexed.

2. [RECEIPT OF OPTION MONEY.] The owner hereby acknowledges the receipt of the sum of ——— dollars for the option to purchase hereinafter contained. If the hirer shall exercise such option, credit will be given to him for such sum but otherwise such sum shall belong absolutely to the owner

3. [RENT.] So long as the hirer thinks fit to continue the hiring he shall pay to the owner without demand the sum of ——— dollars on the ——— day of every calendar month as rent for the hire of the said machinery, the first of such payments to be made on the ——— day of ———.

4. [OBLIGATIONS OF HIRER.] The hirer shall keep the said machinery in good and serviceable order and condition and make good all damage, whether by fire or accident or otherwise; shall not sell, assign, mortgage, or part with the said machinery, or suffer the same to go out of his possession; shall keep the same free from all legal process; shall permit the owner or his agent at all reasonable times to have access to the said machinery; shall duly and punctually pay all taxes payable in respect to the said machinery; and shall not without the written consent of the owner execute or suffer any mortgage or other incumbrance of the premises upon which the said machinery may be.

5. [DETERMINATION BY HIRER.] The hirer may at any time determine the hiring by delivering up the said machinery at his own risk and cost to the owner.

6. [DETERMINATION BY OWNER.] If the hirer shall be in default in punctually paying any installment of rent, or shall fail to observe and perform any of the agreements and conditions on his part herein contained, then and in any such case it shall be lawful for the owner immediately to put an end to the hiring, and for that purpose to enter upon any premises in which the said machinery may be and to seize and carry away the same.

7. [ARREARS OF RENT AND DAMAGES TO BE PAID.] If the hiring shall be determined either by the hirer or by the owner, as hereinbefore provided, no credit or repayment shall be allowed or made to the hirer, but the hirer shall pay to the

owner all arrears of rent with interest thereon at the rate of ——— per cent. per annum and any damages for the breach of this agreement up to the date of such determination.

8. [OPTION TO PURCHASE.] The hirer shall have the option of purchasing the said machinery at any time during the hiring by paying the sum of ——— dollars, and if the hirer shall exercise such option the owner shall give to the hirer credit against such purchase price for all payments theretofore made by him for rent, and also the sum paid on the signing of this agreement. Until such price shall have been paid in full the said machinery shall remain the absolute property of the owner.

9. [INSURANCE BY OWNER.] During the hiring the owner may for his own benefit insure the said machinery against loss or damage by fire in any sum not exceeding ——— dollars, and the hirer shall pay to the owner on demand all sums which he may pay for effecting such insurance. If the owner shall receive under such insurance a sum in excess of the balance of the said sum of (*purchase price*), after deducting all sums theretofore paid by the hirer for rent and the amount paid on the signing of this agreement, then such excess shall be paid by the owner to the hirer.

In witness, *etc.*

CHAPTER XXI

HUSBAND AND WIFE

The forms here given include only marriage settlements and separation agreements.

Marriage settlements are made in anticipation of marriage, their object being to vest property in trustees for the benefit of the spouses, or one of them, and usually of their issue. See *Trusts*, p. 1275. A marriage settlement is usually made by indenture. The instrument should be executed by the settlor and by the trustees, in evidence of their acceptance of the trust; and it is expedient that both the spouses should execute it, as an agreement made in consideration of marriage, which under the statute of frauds must be in writing and signed by the party to be charged. The property, real or personal, which is the subject of the settlement may be transferred to the trustee by the instrument of settlement or by separate instrument, or, in the case of securities or other property transferable by delivery, by mere delivery, the effect in either case being to vest the property in the trustees upon the terms set forth in the instrument of settlement. Marriage is a good consideration, and consequently the transfer is not deemed voluntary as against creditors, at least in so far as the settlement does not go beyond providing for the spouses and their descendants. Marriage settlements are less common here than in England, and are most frequently made for the purpose of settling the property of a wife in such manner that it will be preserved for the benefit of herself and of her children.

Separation agreements, although formerly deemed to be contrary to public policy, are now generally held to be enforceable both as to their provisions relating to property and as to the agreement to live separately. It is necessary to the validity of the agreement that the separation has already taken place or else that the agreement contemplate and be immediately followed by actual separation. An agreement for a future separation is invalid. Such agreements are usually made through the intervention of a trustee, but where the disability of a married woman from contracting directly with her husband and from bringing suit in her own name has been removed, the intervention of a trustee is unnecessary.

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1. Marriage Settlement of Personal Property of Intended Wife

Indenture made the —— day of —— between (*intended husband*), of the first part, (*intended wife*), of the second part, and —— and —— (*trustees*), of the third part:

[RECITAL OF INTENDED MARRIAGE.] Whereas, a marriage is intended to be solemnized between the said (*intended husband*) and the said (*intended wife*);

[RECITAL OF AGREEMENT TO SETTLE.] And whereas, in the treaty of such marriage it was mutually agreed that the said (*intended wife*) should settle in manner hereinafter appearing the following described personal property, namely (*description*):

[RECITAL OF TRANSFER.] And whereas, the said (*intended wife*) has transferred the said personal property to the said (*trustees*), who have consented to act as trustees of these presents.

Now, this indenture witnesseth as follows:

1. [INTERPRETATION.] In the construction of these presents the following expressions shall respectively have the following meanings: "The husband" shall mean the said (*intended husband*); "the wife" shall mean the said (*intended wife*); "the spouses" shall mean the said (*intended husband*) and the said (*intended wife*) collectively; "the trustees" shall mean and include the said (*trustees*), or the trustees of these

presents for the time being, whether original or substituted; and "the trust fund" shall mean the said personal property and all other property in which the proceeds of the same or any part thereof may at any time be invested.

2. [INVESTMENT CLAUSE.] The trustees may either retain the said personal property, or, with the consent of the spouses or the survivor of them, and after the death of such survivor at their own discretion, sell and convert the same or any part thereof from time to time, and in every such case shall invest the proceeds thereof with the like consent or at the like discretion in such bonds, mortgages, and other securities as may be proper for the investment of trust funds, and the trustees may with the like consent or at the like discretion from time to time vary and transpose any such investments for others of a like nature.

3. [INCOME DURING JOINT LIVES TO WIFE.] During the joint lives of the spouses the trustees shall pay the income from the trust fund to the wife for her separate use without power of anticipation.

4. [INCOME TO SURVIVOR FOR LIFE.] After the death of either of the spouses the trustees shall pay the income of the trust fund to the survivor during his or her life.

5. [TRUSTS AFTER DEATH OF SPOUSES.] After the death of the survivor of the spouses the trustees shall hold the trust fund upon the following trusts:

(a) [FOR ISSUE AS SPOUSES OR SURVIVOR APPOINT.] Upon trust for all or such one or more of the issue of the spouses in such manner and form (subject to the law relating to perpetuities) as the wife (*or*, as the spouses may jointly by deed with or without power of revocation, or subject to any such joint appointment, as the survivor of them) may by deed with or without power of revocation or by will appoint.

(b) [IN DEFAULT OF APPOINTMENT FOR CHILDREN.] In default of and subject to any such appointment in trust for all

the children or any the child of the spouses who, being male, shall attain the age of twenty-one years, or, being female, shall attain that age or previously marry, and, if more than one, as tenants in common, but so nevertheless that in default of appointment to the contrary no child shall be entitled to any share under this present trust without bringing into hotchpot any share appointed to him or her or his or her issue under the power hereinbefore contained.

(c) [IN DEFAULT OF ISSUE FOR WIFE OR HER APPOINTED OR NEXT OF KIN.] If there shall be no child or issue of the spouses who shall attain a vested interest under the provisions aforesaid, then subject to the trusts aforesaid the trust fund shall be held in trust for the wife, if she shall survive the husband, absolutely, but if he shall survive her, then in trust for such persons as she may by will appoint, and in default of any such appointment in trust for the persons or person who, if the wife had died a widow and intestate, would have been entitled to her personal estate and in the same shares and proportions.

6. [MAINTENANCE AND ACCUMULATION.] It is hereby declared that after the death of the survivor of the spouses the trustees shall apply the whole or such part as they may think fit and in such proportions as they may think proper of the income from the trust fund to which any children or child of the said intended marriage shall for the time being be entitled in expectancy under the trusts hereinbefore declared for towards the maintenance or education of all or some or one of such children or of such child, if only one. And the trustees may either themselves apply the same or pay the same to the guardian or guardians of any such child for the purpose aforesaid without seeing to the application thereof. And during such suspense of absolute vesting as aforesaid the trustees shall accumulate the residue, if any, of the same income by way of compound interest by investing the same as

the resulting income therefrom for the benefit of the person or persons who under the trusts herein contained shall become entitled to the fund or the share thereof from which the same income shall have been received, and may resort to the accumulations of any preceding year or years and apply the same for or towards the maintenance or education of the children or child for the time being presumptively entitled thereto in the same manner as such accumulations might have been applied had they been income arising in the year in which they shall be so applied.

7. [ADVANCEMENT.] It is hereby declared that the trustees shall have the power, with the consent in writing of the persons or person having any prior life interests or interest to raise any part or parts not exceeding together one-half of the presumptive or vested share of any child or issue of the spouses under the trusts aforesaid, and to pay or apply the same as the trustees may think best for the advancement or benefit of such child or issue.

8. [PURCHASE OF HOUSE.] It is hereby further agreed and declared that the trustees shall have the power at the request of the spouses or the survivor of them to invest any part, not exceeding \$——, of the trust fund in the purchase of a dwelling house with or without adjacent land, and to allow the spouses and the survivor of them to occupy the same.

9. [TRUSTEES' INDEMNITY.] Every trustee of these presents shall be answerable only for his own receipts, payments, and willful defaults, and for nothing else, and one trustee shall not be answerable for another.

10. [APPOINTMENT OF NEW TRUSTEES.] The number of the trustees hereunder shall be kept up to two; and whenever any vacancy shall occur there shall be nominated and appointed a new trustee, and in such case the surviving or acting trustee for the time being, with the written consent of the spouses or of the survivor of them during their or his or

her lifetime, shall by writing appoint a suitable person to be cotrustee in the place of the trustee dying, resigning, or ceasing or refusing for any cause to act, and in default of such appointment the vacancy shall be filled in the manner provided by law; but during the continuance of a vacancy the surviving or remaining trustee shall have every power herein given to the two trustees.

11. [SETTLEMENT CONDITIONED ON MARRIAGE.] If the intended marriage shall not be solemnized within —— month from the date hereof, this settlement shall be void, and the trust fund shall be held in trust for the wife absolutely.

In witness, *etc.*

(Signatures and seals of all parties.)

2. Marriage Settlement of Real and Personal Property of Intended Husband

Indenture made the —— day of ——, between —— hereinafter called the husband, of the first part, ——, hereinafter called the wife, of the second part, and —— and ——, hereinafter called the trustees, of the third part:

[RECITAL OF SEISIN OF REAL ESTATE.] Whereas, the husband is seised in fee simple of a certain parcel of land with the buildings thereon (*description*);

[RECITAL OF OWNERSHIP OF PERSONAL PROPERTY.] And whereas, the husband is absolutely entitled to the bonds, share of stock, and securities specified in the schedule hereto annexed;

[RECITAL OF INTENDED MARRIAGE AND AGREEMENT TO SETTLE.] And whereas, a marriage, hereinafter referred to as the marriage, is intended to be solemnized between the husband and the wife, hereinafter together referred to as the spouses, and it has been agreed between them that the prop

erty hereinbefore and in the said schedule described should be settled in manner hereinafter appearing.

Now, this indenture witnesseth as follows:

1. [CONVEYANCES AND ASSIGNMENT TO TRUSTEES.] Pursuant to the said agreement and in consideration of the said intended marriage, the husband doth hereby grant, remise, release, and forever quitclaim, assign, transfer, and set over unto the trustees all and singular the real and personal property hereinbefore and in the said schedule described and specified; to have and to hold the same which, with all the investments into which from time to time the same may be converted and the income therefrom, are hereinafter called "the trust fund," to the trustees and their successors or successor in the trust, in trust nevertheless to and for the uses, intents, and purposes hereinafter set forth.

2. [TRUST DURING LIVES OF SPOUSES OR SURVIVOR.] During the joint lives of the spouses and the life of the survivor of them the trustees shall hold the trust fund upon the trusts following:

(1) [FOR HUSBAND TILL MARRIAGE.] Until the marriage shall be solemnized in trust for the husband.

(2) [FOR HUSBAND FOR LIFE.] From and after the solemnization of the marriage to pay so much of the net income of the trust fund as shall accrue in the lifetime of the husband to him.

(3) [FOR WIFE DURING WIDOWHOOD.] If the wife shall survive the husband to pay so much of such net income as shall accrue after the death of the husband and while the wife shall remain a widow to the wife.

(4) [FOR WIFE IF SHE REMARRY.] If the wife shall marry again, then from and after such subsequent marriage to pay one-half only of so much of such net income as shall thereafter during her life accrue to the wife.

3. [TRUSTS AFTER DEATH OF SPOUSES.] Subject to the trusts hereinbefore declared the trustees shall hold the trust fund and the income therefrom or so much thereof respectively as shall not have been applied as hereinbefore provided upon the trusts following:

(1) [FOR ISSUE AS SPOUSES OR SURVIVOR APPOINT.] Upon trust for all or such one or more of the children or more remote issue of the spouses in all respects in such manner as the spouses by deed with or without power of revocation and new appointment shall at any time or times appoint; and in default of and until and subject to every such joint appointment as the survivor of the spouses by deed, with or without power of revocation and new appointment, or by will or codicil, shall at any time or times appoint.

(2) [IN DEFAULT OF APPOINTMENT FOR CHILDREN EQUALLY.] In default of and until any and subject to any and every such joint or sole appointment as aforesaid, in trust for all the children or any the child of the marriage who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age, and, if more than one, in equal shares:

(3) [HOTCHPOT.] Provided, always, that unless the spouses or the survivor of them shall in manner aforesaid appoint to the contrary, no child of the marriage to whom or to whose issue any part of the trust fund shall have been appointed as aforesaid shall be entitled to any share of the unappointed part of the trust fund without bringing the part so appointed into hotchpot and accounting for the same accordingly.

(4) [TRUST IN DEFAULT OF ISSUE.] In the event of and after the determination and failure of the trusts hereinbefore declared, and in the meantime subject thereto, the trustees shall hold the trust fund and the income therefrom, or from so much of the same as shall not have become absolutely vest-

ed or applied under the trusts and powers hereinbefore contained, for the husband, his personal representatives or assigns.

4. [INCOME INALIENABLE.] It is hereby declared that the income herein given shall not be alienable by any beneficiary either by assignment or by any other method, and that the said income shall not be subject to be taken by his or her creditors or by any process whatsoever.

5. [INVESTMENT CLAUSE.] (*As in the preceding form, with variations to include real property.*)

6. [POWER TO SELL AND TRANSFER.] The trustees shall have power at any time or times with the consent of the spouses or of the survivor of them and after the death of the survivor at their own discretion to sell at public or private sale, or to mortgage, lease, or pledge, any portion or the whole of the estate, real and personal, which they may hold under the trusts hereby created, and to execute and deliver good and sufficient deeds and other instruments to convey and transfer the same. And whenever it may become necessary to make any final distribution of any property held in trust under these presents, the trustees shall have like authority for the purpose of such distribution to sell and convert into money the whole or any portion of such property, whether real or personal.

7. [TRUSTEES' INDEMNITY.] (*See preceding form, clause 9.*)

8. [APPOINTMENT OF NEW TRUSTEES.] (*See preceding form, clause 10.*)

9. [MEANING OF TRUSTEES.] The term "trustees" herein shall mean and include the trustees of these presents for the time being, whether original or substituted.

In witness, etc.

(*Signatures and seals of all parties.*)

3. Marriage Settlement of Personal Property of Wife Father's Personalty

This indenture is made the ——— day of ——— betw
——, hereinafter called the husband, of the first
——, hereinafter called the wife, of the second part, —
hereinafter called the father, of the third part, and —
and ———, hereinafter called the trustees, of the fourth p

[RECITAL OF INTENDED MARRIAGE.] Whereas, a marr
hereinafter referred to as the marriage, is intended to be
emnized between the husband and the wife, hereinafter
gether referred to as the spouses;

[RECITAL OF AGREEMENT TO SETTLE.] And whereas, 1
the treaty for the marriage it was agreed that the father,
is entitled for his own benefit to the bonds, stocks, and c
personal property specified in the schedule hereto, should
tle the same in the manner hereinafter appearing, which
sonal property and the money and investments into which
whole or any part thereof may from time to time be conve
are hereinafter called the trust fund;

[RECITAL OF TRANSFER.] And whereas, in part perfe
ance of the said agreement the father has transferred to
trustees the said bonds, stocks, and other personal prop
described in the said schedule.

Now, this indenture witnesseth as follows:

1. [DECLARATION OF TRUST.] In further performanc
the said agreement, the father, in consideration both of
natural love for the wife and of the marriage, directs
the trustees shall stand possessed of the trust fund and f
time to time of the income therefrom upon the trusts fol
ing:

(a) [TILL MARRIAGE FOR SETTLOR.] Until the mari
shall be solemnized in trust for the father.

(b) [WIFE FOR LIFE.] From and after the solemnization of the marriage the trustees shall be entitled to so much of the income from the trust fund as shall accrue during the life of the wife in trust for her for her separate use, without power of anticipation during her said intended or any subsequent coverture.

(c) [AFTER DEATH OF WIFE AS SHE APPOINTS.] After the death of the wife the trustees shall stand possessed of the trust fund and of the subsequent income therefrom in trust for such persons or person as the wife by deed with or without power of revocation and new appointment or by will shall at any time or times appoint.

(d) [IN DEFAULT OF APPOINTMENT TO HER NEXT OF KIN.] In default of and subject to any and every such appointment the trustees shall stand possessed of the trust fund in trust for the persons or person who, if the wife had died intestate, would have been entitled to her personal estate and in the same shares and proportions.

(Add clauses for investment, trustees' indemnity, appointment of new trustees, meaning of "trustees." See Form No. 1, p. 704.)

In witness, etc.

SCHEDULE ABOVE REFERRED TO.

(Description of bonds, stocks, and other personal property.)

(Signatures and seals of all parties.)

4. Separation Deed Between Husband and Wife, the Husband Granting an Annuity to the Wife.

This indenture is made the —— day of —— between ——, hereinafter called the husband, of the first part, —— his wife, hereinafter called the wife, of the second part, ——, hereinafter called the trustee, of the third part:

[RECITAL OF SEPARATION AGREEMENT.] Whereas, unhappy differences have arisen between the said husband and wife and they have mutually agreed to live apart from each other and the husband has agreed to pay to the wife an annuity of \$—— during her life for the maintenance and support of herself and ——, the son (*or*, daughter) of the said husband and wife, subject nevertheless to the provisions and conditions hereinafter contained.

Now, this indenture witnesseth as follows:

1. [COVENANTS BY HUSBAND.] In pursuance of the said agreement and in consideration of the premises the husband hereby covenants with the wife and also as a separate covenant with the trustee, as follows, that is to say:

(1) [TO ALLOW WIFE TO LIVE SEPARATELY.] That the wife may at all times hereafter live apart from the husband as she were unmarried, and that she shall be free from the control and authority of the husband, and may reside at such place as she shall think fit.

(2) [NOT TO INTERFERE WITH WIFE.] That the husband shall not in any manner annoy, molest, disturb, or otherwise interfere with the wife, nor require or by legal proceedings endeavor to compel the wife to cohabit with him or to force any restitution of conjugal rights.

(3) [CUSTODY OF CHILD.] That the wife shall at all times hereafter have the sole control, management, maintenance, and

guardianship of the said child free from the control or authority of the husband: (Provided, that it shall be lawful for the trustee for the time being hereunder, if he in his uncontrolled discretion see fit, from time to time to permit the husband to have access to the said child, not exceeding ——— weeks in any one year, and subject to such restrictions as the trustee shall think fit.)

(4) [TO PAY WIFE'S DEBTS.] That the husband will within ——— days from the date hereof pay to the trustee the sum of \$—— for necessities already supplied to the wife.

(5) [TO PAY ANNUITY.] That the husband will during the life of the wife (on condition that and so long as she shall continue to lead a chaste life) pay to the wife or to such person or persons as she shall from time to time appoint in writing the yearly sum of \$—— by equal quarterly payments, in advance, payable on the first days of January, April, July, and October, for the separate use and benefit of the wife and for the maintenance of herself and the said child.

2. [COVENANTS OF WIFE AND TRUSTEE.] In consideration of the premises the wife and the trustee hereby jointly and severally covenant with the husband as follows:

(1) [TO INDEMNIFY AGAINST WIFE'S DEBTS.] That they will at all times keep the husband indemnified against all debts and liabilities which the wife may hereafter contract, and from all actions, claims, demands, costs, damages, and expenses on account thereof.

(2) [NOT TO INTERFERE WITH HUSBAND.] That neither the wife nor any person on her behalf shall at any time hereafter molest or disturb the husband, or by legal proceedings or otherwise endeavor to compel the husband to cohabit with the wife, or seek to enforce any restitution of conjugal rights, or to compel the husband to allow her any alimony or maintenance further than the said annuity as above provided.

(3) That in case the husband shall at any time be call on to and shall pay any debt or debts which the wife sh hereafter contract, then and in every such case it shall be la ful for the husband to retain out of the said annuity t amount of such debt or debts, with all costs, charges, a damages which he may incur on account thereof.

In witness, *etc.*

(*Signatures of all parties.*)

**5. Separation Deed Between Husband and Wife, the W:
Being Otherwise Provided for**

(*Begin as in preceding form.*)

[RECITAL OF AGREEMENT FOR SEPARATION.] Whereas, u happy differences have arisen between the husband and t wife by reason whereof they have agreed to live separate a apart from each other and to enter into the arrangement he inafter set forth;

[RECITAL OF ISSUE.] And whereas, the husband has sue by the wife one child only, that is to say, ———, w was born on the ——— day of ———;

[RECITAL OF SETTLEMENT ON WIFE.] And whereas, as o of the terms of the said separation the husband has this d paid and assigned to the wife for her own separate use mon and securities of the amount and value of \$——, the r ceipt whereof is hereby acknowledged.

[MUTUAL COVENANTS.] Now, this indenture witness that, in pursuance of the said agreement and for the consi erations herein appearing, the husband, so far as the stipu tions and provisions hereinafter contained ought to be p formed or observed by him, hereby covenants with the s wife, and also separately with the said trustee, and the s wife, so far as the stipulations and provisions hereinaf contained ought to be performed or observed by her, here

covenants with the said husband, and as a separate covenant with the said trustee, and the said trustee, so far as the stipulations and provisions hereinafter contained ought to be performed or observed by the said wife or the said trustee, hereby covenants with the said husband as follows, that is to say:

1. [WIFE TO BE ALLOWED TO LIVE APART.] The said wife may at all times hereafter live separate and apart from the said husband as if she were unmarried and in all respects free from the control and authority of the said husband, and may live at such place or places and may be engaged in any business or businesses as she may think fit.

2. [HUSBAND AND WIFE NOT TO MOLEST EACH OTHER.] The said husband and wife shall not molest or annoy or in any way interfere with each other in respect of anything whatever, nor shall either of them at any time hereafter require or by any means endeavor to compel the other to cohabit with him or her or seek to enforce any restitution of conjugal rights.

3. [CONDONATION OF PAST OFFENSES.] No proceedings shall be taken by or on behalf of the said husband or wife against the other of them in respect of any misconduct or alleged misconduct previous to the date of these presents, and any offense which may have been committed or permitted by either of them against the other is hereby condoned.

4. [WIFE TO MAINTAIN HERSELF AND CHILD.] The wife shall out of the provision made for her as hereinbefore recited or otherwise support and maintain herself, and also her said child while he shall be living with her or be under her control by virtue of these presents.

5. [WIFE TO HAVE HER SEPARATE PROPERTY.] The wife shall be entitled for her sole use and separate use to all property, real and personal, which is now owned by her or which

shall hereafter come to her, free from all rights of the husband by courtesy, survivorship, or otherwise, in all respects as if she were unmarried. And the husband will at his own expense, whenever requested by the trustee at any time arising hereunder, execute and do all such instruments and acts as shall be necessary or proper for giving effect to this clause.

6. [GUARDIAN OF CHILD.] If the wife shall die in the lifetime of the husband, it shall be lawful for her by her will to appoint any person or persons to act as guardian or guardians of the said child after the death of the wife; and the husband will do all in his power to confirm such appointment and will not interfere with such guardian or guardians in the custody of the said child.

7. [CUSTODY OF CHILD.] The wife shall be entitled to the sole custody and control of said child until he shall come of age, and the husband shall not in any way interfere in the management or education of the said child.

8. [INDEMNITY AGAINST WIFE'S DEBTS.] The wife and the trustee and each of them will at all times hereafter keep the husband indemnified against all debts and liabilities which the wife may hereafter contract or incur and against all actions, claims, demands, costs, and expenses in respect thereof.

9. [PROVISO FOR AVOIDANCE.] If the husband and wife shall at any time hereafter come together and cohabit with each other, or if their marriage shall be dissolved, or they shall be judicially separated by reason of any misconduct (or, reason of any misconduct of the husband occurring after the date hereof), then and in each such case all the covenants and provisions herein contained shall become void, but without prejudice to any act previously done hereunder or any proceedings on the part of the parties hereto in respect to a breach then previously committed of all or any of the said

covenants and provisions and without prejudice to the provision made for her as hereinbefore recited.

10. [NEW TRUSTEE.] In the event of the death, resignation, or inability to act of the trustee or of any trustee to be appointed in his place, the power of appointing new trustees of these presents shall be vested in the wife.

In witness, *etc.* (*Signatures and seals of all parties.*)

CHAPTER XXII

INDEMNITIES

A contract of indemnity is one by which one person agrees with another to make good all damage which the other may suffer by doing some act, exercising some forbearance, or assuming some liability at the request of the person who gives the indemnity. The contract may be in the form of a bond (ante, p. 250 et seq.), or of a mere personal agreement or covenant, as in the forms which follow. Provisions for indemnity are most frequently found in more comprehensive agreements

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1. Indemnity to Corporation on Issue of New Stock Certificate in Lieu of Lost Certificate ¹

To the _____ Company:

In consideration of a duplicate certificate, numbered _____, for _____ shares of the capital stock of the above-named company, having this day been issued to me _____ in lieu of the certificate numbered _____ for the same shares previously issued to and now owned by me, which has been lost (*or*, accidentally destroyed) by me, I hereby undertake to refund to and to indemnify the said company against all costs and expenses

¹ For bond of indemnity in such case, see Stock and Stockholders, post, p. 1267.

and all loss which may be incurred by the said company in consequence of two certificates for the same shares being outstanding at the same time. (Signature.)

2. Indemnity by Legatee to Executors on Payment of Legacy in Case of Insufficient Assets

Indenture made the —— day of —— between ——, of ——, party of the first part, and —— and ——, executors of the will of ——, deceased, hereinafter called the executors, parties of the second part:

[RECITALS OF WILL, INSUFFICIENCY OF ASSETS, AND AGREEMENT FOR INDEMNITY.] Whereas, by his will, dated the —— day of ——, and duly proved and admitted to probate in and by the probate court of the county of ——, and state of ——, the said ——, among other bequests, bequeathed to the party of the first part a legacy of \$——, and appointed the said —— and —— to be executors of his said will; and whereas, it has not yet been ascertained whether the assets will be sufficient to pay all the legacies bequeathed by the said will in full; and whereas, at the request of the party of the first part the executors have paid to the party of the first part his said legacy upon having his agreement to give indemnity as hereinafter provided.

[COVENANT TO REPAY IF ASSETS PROVE INSUFFICIENT—INDEMNITY.] Now, this indenture witnesseth that, in pursuance of the premises, the party of the first part hereby covenants with the executors that, within —— days after notice in writing shall have been given to him, his executors or administrators, or left at his or their last-known place of residence, stating that the estate of the said —— is insufficient for the payment in full of the said legacies, he will repay to the executors so much of the said legacy as shall be necessary to enable all the legatees to receive the same ratable proportions of their re-

spective legacies, and that he will at all times hereafter indemnify the executors against all actions, proceedings, claims, and demands by reason or in respect of the payment of the said legacy.

In witness, *etc.*

(*Signature and seal of legatee.*)

3. Indenture of Indemnity by Landlord Where Title Is in Dispute to Tenant against Consequences of Paying Rent

Indenture made the _____ day of _____ between _____, of _____, hereinafter called the landlord, of the one part, and _____, of _____, hereinafter called the tenant, of the other part:

[RECITALS OF LEASE, PENDING ACTION AND AGREEMENT FOR INDEMNITY.] Whereas, by a certain lease dated the _____ day of _____, certain premises described as (*description*) were demised by the landlord to the tenant for a term of _____ years from the _____ day of _____, subject to the payment of the yearly rent of \$_____; and whereas, an action is now pending in the _____ court, in which one _____ is plaintiff and the landlord is defendant, in which the said _____ claims to be the lawful owner of the said demised premises, and alleges that the landlord's title, if any, to the said premises determined since the date of the said lease and before the rent next hereinafter mentioned became due, and that the said _____ has notified the tenant not to pay the same to the landlord; and whereas, the landlord, upon the tenant agreeing to pay him the rent of \$_____ which fell due on the _____ day of _____ and the rent which will become due during the subsistence of the said lease, has undertaken to give to the tenant such indemnity as is hereinafter contained.

[COVENANT TO INDEMNIFY.] Now, this indenture witnesseth that, in pursuance of the said undertaking and in consideration

of the sum of \$——, being the rent of the said premises for the year ending the —— day of——, now paid by the tenant to the landlord, the receipt whereof the landlord hereby acknowledges, the landlord hereby covenants with the tenant that he, the landlord, will at all times hereafter indemnify and keep indemnified the tenant against all actions, proceedings, claims, demands, costs, damages, and expenses which may be brought or made against him or which he may pay, sustain, or incur by reason of his paying the said rent to the landlord as aforesaid.

In witness, *etc.*

(Signature and seal of landlord.)

4. Indemnity by Certain Beneficiaries to Trustees in Respect to Unauthorized Investment

Indenture made the —— day of —— between ——, of ——, party of the first part, ——, of ——, party of the second part, and —— and ——, of ——, hereinafter called the trustees, parties of the third part:

[RECITALS OF TRUST, ETC., AND UNAUTHORIZED INVESTMENT.]

Whereas, by his last will, dated the —— day of ——, —— bequeathed certain property therein described unto the trustees in trust to pay the income thereof to his widow, who is the party of the first part, during her life, and from and after her death in trust to divide the same in equal shares among his children who should be living at his death; and whereas, the said testator died on the —— day of ——, and left him surviving the party of the second part, and ——, who is an infant of the age of —— years or thereabouts, and no other child; and whereas, the parties of the first and second part have requested the trustees to invest the sum of \$——, now in their hands and being part of the trust estate, in the purchase of ——, and the trustees are in doubt whether the same is an investment authorized by the said will or by law, but have agreed so to do upon being indemnified as hereinafter provided.

[INDEMNITY.] Now, this indenture witnesseth that, in consideration of the premises, the party of the first part and the party of the second part hereby jointly and severally covenant with the trustees that they, the said parties of the first and of the second part, will at all times hereafter indemnify and keep indemnified the trustees and each of them from all actions, proceedings, claims, or demands by any person or persons whatsoever in respect of the said investment of the said sum of \$—— in the manner aforesaid, and against all costs, damages, or expenses which the trustees or either of them may pay, sustain, or incur by reason or in consequence of the said investment, or otherwise in relation to the premises.

In witness, *etc.*

(Signatures and seals of parties of first and second part.)

5. Indemnity to Maker of Note by Comaker Who has Assumed Payment Thereof

Indenture made the —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part:

[RECITAL OF ASSUMPTION OF NOTE AND AGREEMENT FOR INDEMNITY.] Whereas, the party of the second part has conveyed to the party of the first part by deed of even date herewith an undivided one-half interest in a certain tract of land described (*description*); and whereas, it was a part of the consideration of the said conveyance that the party of the first part should assume the full payment of a certain promissory note, dated the —— day of ——, whereby the parties hereto jointly and severally promised to pay to —— or order the sum of \$—— —— months after the date thereof, and that the party of the first part should give the party of the second part indemnity as hereinafter provided.

[COVENANT TO PAY NOTE AND INDEMNIFY.] Now, this indenture witnesseth that, in consideration of the premises, the party of the first part hereby covenants with the party of the second part that he, the party of the first part will pay the said note at maturity thereof, and that the party of the first part will at all times hereafter indemnify the party of the second part against the payment of the said note and against all actions, proceedings, interest, damages, costs, and expenses on account thereof.

In witness, *etc.*

**6. Undertaking by Drawer to Provide for Accommodation
Bill and to Indemnify Acceptor**

To ———:

In consideration of your having at the request of me, the undersigned, and for my accommodation, accepted a bill of exchange dated the ——— day of ———, drawn by me on you, for the sum of \$——, payable ——— months after the date thereof to the order of ———, I hereby undertake and agree to provide you with sufficient moneys for the full payment thereof ——— days before the same shall become due, and to indemnify you from all damages, interest, costs, charges, and expenses on account of or by reason of you having so accepted the said bill.

Dated this ——— day of ———.

(*Signature.*)

CHAPTER XXIII

LANDLORD AND TENANT

Lease

A lease is a contract by which one party, called the landlord or lessor, while reserving a reversion to himself, demises land to the other party, called the tenant or lessee, that is, confers upon him the right to the exclusive possession of land for a limited time, and receives a consideration, generally in the form of rent. Until possession is taken, the lessee has only a right of entry, but upon entry he has an estate in the land, and the relation of landlord and tenant is established.

Agreement for Lease

A lease is to be distinguished from an agreement, that is, an executory agreement, for a lease. Such an agreement does not operate by way of actual demise, but only binds the parties, the one to grant and the other to accept a tenancy according to the agreed terms; in other words, the agreement is intended only as preliminary, to be followed by the execution of a formal lease upon the performance of certain conditions precedent. On the other hand, an agreement for a lease may be intended to operate by way of present demise and to be the only record of the contract; and in such case, if the agreement be for a present tenancy, and possession is taken, and the contract is one which the courts would specifically enforce, the tenant is in the same position as if the agreed lease had actually been executed.

Form and Execution of Lease

By the English statute of frauds leases for more than three years must be in writing. This is followed in many states, but in some the period is longer and in some shorter, while in still other states all leases must be in writing. In most if not all states a deed is required for a lease creating a term of more than a specified period. It is generally provided that, for the purposes of the recording acts, a lease for more than a pre-

scribed number of years is included in the term "conveyance," and consequently the particular provisions of the statute as to witnessing, sealing, and acknowledgment of deeds are applicable to such a lease.

A lease is executed by both lessor and lessee. Usually leases are executed in duplicate, each party retaining one of the counterparts.

Contents of Lease

A lease consists of the premises—that is, the date, the names and designation of the parties, the recitals, if any, the consideration, if specified, the operative words of demise, the description of the land, and the exceptions or reservations, if any; the habendum; the reddendum; the covenants; and the provisos.

Usually the consideration consists only of the rent and the lessee's covenants, which sufficiently appears from the subsequent parts of the lease, and it is not necessary to refer in the premises to the consideration.

The technical operative word in a lease is "demise." Sometimes the word used is "let" or "lease," and sometimes the words "demise, grant, and farm-let" are used. Even in agreements which are not executory the words "agree to let" are often used. But no technical words are required to create an immediate demise; it is sufficient if the words show an intention that the lessor shall divest himself of the possession, and that the lessee shall come into exclusive possession for a certain time.

The term for which the lease is granted is usually and properly fixed by the habendum. The term may be expressed to be determinable by either party upon notice. In most states estates for years may be created for any length of time. In some states leases of lands for agricultural purposes for more than a limited period are prohibited.

The nature and amount of the rent is fixed by the reddendum, which specifies the dates of payment. Rent need not consist in the payment of money; it may consist in the delivery of chattels or the performance of services. In a lease for a long term it may be desirable to measure the rent otherwise than in actual money, as by making it so many grains of gold, or otherwise to provide for payment by a fixed standard of value. (Forms No. 12, cl. 1, p. 761, No. 9, cl. 1, p. 746.)

The remedies of the landlord for recovery of rent are by distress and action. The remedy by distress, however, has been abolished in many states. The action for rent is upon the covenant to pay rent.

Lessee's Covenants

In nearly all cases the lease contains covenants on the part of the lessee for payment of the rent, not to make alterations, to permit the landlord to enter and view, to use the premises only for permitted purposes, not to assign or sublet without the landlord's consent, and to yield up at the end of the term. What other covenants should be included will depend upon the nature of the premises, the length of the term, and the object of the demise.

A covenant to pay the rent is almost invariably inserted, although without an express covenant a covenant to pay will be implied from the reservation of rent. In the absence of agreement or of a statute to the contrary, rent will continue to be payable notwithstanding destruction of the premises by fire or other unavoidable casualty, and it is therefore desirable to provide for abatement of the rent or termination of the lease where the premises are thus rendered uninhabitable. In many states it is provided by statute that, if the building is thus destroyed or injured so as to be untenable, the lessee is not liable to pay rent unless otherwise expressly agreed, and may surrender possession.

In the absence of express agreement, the landlord is in general not under liability to the tenant as to the state of the premises, nor is he bound to repair or even to rebuild if the premises are destroyed. The liability of the tenant, in the absence of express agreement, depends on the doctrine of waste. A tenant for years is bound to do what is necessary to preserve the buildings and enable him to yield them up in the same tenable condition as they were in at the beginning of the term, allowance being made for the operation of time. Ordinarily the lease contains covenants by the one party or the other as to repairs. In the lessee's covenants to repair and to yield up at the end of the term it is usual to insert an exception of reasonable wear and tear, and also of damage by fire or the elements. In the absence of the last exception, if the lessee covenants to repair, he is liable to rebuild if the premises are burned down.

Lessor's Covenants

A covenant for quiet enjoyment is usually included, although the word "demise" and probably any word of leasing creates an implied covenant for quiet enjoyment during the estate of the lessor. Other covenants on the part of the lessor may sometimes be desirable, as a covenant to sell where the lease gives the lessee an option to purchase.

Proviso for Re-entry

A proviso for re-entry by the lessor for nonpayment of rent or nonperformance of the lessee's covenants is proper in all cases. Its effect is not to avoid the lease upon the lessee's default, but to make it voidable at the option of the lessor. The courts are, however, averse to enforcing a forfeiture, and, when the damages for breach of a covenant can be computed and readily compensated by money, will grant relief. Relief from forfeiture for nonpayment of rent is granted upon payment to the lessor or bringing into court the rent in arrears, with interest and costs. The right of re-entry for nonpayment of rent is in many states regulated by statute.

Eminent Domain

If the demised premises are taken under the power of eminent domain, the tenancy determines; while if only a part is taken the tenancy continues; and in either case the damages for the taking must be apportioned between the landlord and the tenant in proportion to the value of their estates. Where a part only is taken, as for the widening of a street, and a substantial part of a building must be torn down, complicated questions as to the rights and obligations of the lessor and the lessee arise, for which it is desirable to make provision, particularly in a long lease. (See Forms No. 9, cl. 6, p. 751, and No. 12, cl. 5, p. 766.)

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1. Agreement for Lease of Dwelling House

An agreement made the ——— day of ——— between ———, of ———, hereinafter called the landlord, of the one part, and ———, of ———, hereinafter called the tenant, of the other part:

Whereby it is agreed as follows:

1. [AGREEMENT TO DEMISE.] The landlord shall grant and the tenant shall accept a lease of the house and premises known as (*description*) for the term of ——— years from the ———

day of ———, at the yearly rent of \$———, payable by equal monthly payments on the first day of each month.

2. [TENANT'S COVENANTS.] The tenant shall enter into the following covenants: To pay the rent as aforesaid; to keep in repair outside and inside; not to alter or add to the premises without the landlord's consent; to permit the landlord to enter and view the condition of the premises; to use as a private dwelling house only; not to assign or underlet without the landlord's written consent; to yield up the premises with all fixtures, other than tenant's fixtures, and additions at the determination of the tenancy in as good condition, reasonable use and wearing and fire and other unavoidable casualties excepted, as the same now are or may be put in by the lessor (*adding whatever other covenants may be desired*).

3. [COVENANT FOR QUIET ENJOYMENT.] The landlord shall covenant for quiet enjoyment in the usual form.

4. [RE-ENTRY.] The lease shall contain a proviso for re-entry if any rent shall be in arrear for ——— days or on breach of any of the lessee's covenants.

5. [PROVISO IN CASE OF FIRE, ETC.] The said lease shall contain a proviso that in case the premises or any part thereof be destroyed or damaged by fire or unavoidable casualty so as to be unfit for use and occupation, the rent or a just and proportional part shall abate until the premises have been restored or the said lease shall be determined at the option of the lessor.

6. [EXECUTION OF LEASE.] The landlord shall cause the said lease and a counterpart thereof to be prepared at his own expense, and the same shall be executed by the landlord and tenant respectively whenever required by either party, and until the execution of the said lease the parties shall be bound by the covenants and provisos herein specified as if the same had been actually executed.

In witness whereof the said parties have hereunto and to another instrument of like tenor and effect set their hands and seals the day and year first above written.

2. Agreement for Lease of Building for Business Purposes

This agreement made this _____ day of _____ between _____, of _____, hereinafter called the lessor, of the one part, and _____, of _____, hereinafter called the lessee, of the other part, witnesseth that it is hereby agreed as follows:

1. [AGREEMENT TO DEMISE]. The lessor shall grant and the lessee shall accept a lease of all that tract or parcel of land described as (*description*), with the building thereon erected, and known as No. _____ street, in the city of _____, for the term of _____ years from the _____ day of _____, at the yearly rent of \$_____ in gold coin of the United States of the present standard of weight and fineness, in equal monthly installments in advance on the first day of each month, the first payment to be made on the _____ day of _____.

2. [LESSEE'S COVENANTS.]¹ Such lease shall contain the following covenants on the part of the lessee (*following substantially, in abbreviated form, if desired, the lessee's covenants in Form No. 9, cl. 2, p. 747*).

3. [COVENANT FOR QUIET ENJOYMENT.] The lessor shall covenant for quiet enjoyment in the usual form.

4. [PROVISO FOR RE-ENTRY.] The said lease shall contain a proviso for re-entry in the usual form (*or, if preferred, setting out the same more fully as in Form No. 9, cl. 4, p. 750*).

5. [DETERMINATION IN CASE OF FIRE.] The said lease shall contain a proviso (*setting out substantially the provisions of Form No. 9, cl. 5, p. 750*).

¹ In lieu of clauses 2-6 the agreement may simply provide: "Such lease shall be in the form hereto attached."

6. [DETERMINATION IN CASE OF TAKING BY EMINENT DOMAIN.] The said lease shall contain a proviso (*setting out substantially the provisions of Form No. 9, cl. 6, p. 751*).

7. [EXECUTION OF LEASE.] The said lease and a counterpart thereof shall be prepared by the lessor solicitor at the expense of the lessor (*or, of the lessee; or, of the lessor and lessee in equal shares*), and shall be executed by the lessor and lessee respectively on or before the _____ day of _____ (*date of commencement of term*). Pending such execution this agreement shall not be deemed to operate as a demise of the said premises.

8. [LESSEE TO PROVIDE SURETY.] (The lessee shall within _____ days from the date hereof procure some person satisfactory to the lessor to become surety for the due payment of the said rent and performance of the lessee's covenants in terms to be approved by the lessor, failing which this agreement shall at the expiration of such period of _____ days be void, save that the lessee shall pay all his costs incident to this agreement.)

In witness, *etc.*

(*Signatures of both parties.*)

3. Agreement Conferring Option to Take Lease

Agreement made the _____ day of _____ between _____, of _____, hereinafter called the lessor, of the one part, and _____, of _____, hereinafter called the lessee, of the other part:

It is hereby agreed between the lessor and the lessee as follows:

1. [OPTION TO TAKE LEASE.] In consideration of \$_____ now paid by the lessee to the lessor, the receipt whereof is hereby acknowledged, the lessor shall have the option of taking a lease of the premises known as (*description*) for a term of _____ years at the yearly rent of \$_____.

2. [EXERCISE OF OPTION.] Such option shall be exercisable by notice in writing by the lessee to the lessor at any time within ——— months from the date hereof, and if and when so exercised then the lessor shall grant and the lessee shall accept a lease of the said premises for the said term, which shall commence from the date of the exercise of the option, at the said rent.

3. [FORM OF LEASE.] The lease shall be in the form as hereto attached.

4. [EXECUTION OF LEASE.] In the event of the option being exercised the lessor shall cause the lease to be prepared in duplicate in conformity with the said form, and the lease shall be so executed by the lessor and the lessee, respectively, whenever required by either party after the date of the exercise of the option; and from such date until the execution of the lease the parties shall be bound by the covenants and agreements to be contained therein as if the same had been actually executed.

In witness, *etc.*

4. Agreement for Lease to be Granted on Determination of Existing Lease; New Tenant to Make Alterations

Agreement made the ——— day of ——— between (*as in Form No. 3, p. 734*):

[RECITALS OF EXISTING LEASE AND AGREEMENT FOR FUTURE LEASE.] Whereas, the lessor is the owner of the premises hereinafter described, subject to an indenture of lease, dated the ——— day of ———, and made between the lessor and ———, whereby the said premises were demised for a term of ——— years, which will expire on the ——— day of ———; and whereas, the lessee is desirous of taking a lease of said premises from the expiration of the said term, which the lessor is willing to grant upon the condition of the lessee making such

alterations and repairs in the premises as are hereinafter specified.

Now, it is hereby agreed as follows:

1. [AGREEMENT TO DEMISE.] The lessor shall grant and the lessee shall accept a lease of all that building and premises situate at ——— and described as (*description*), for the term of years from the ——— day of ——— (*day after expiration of existing lease*), at the yearly rent of \$———, payable by equal monthly payments, on the first day of each month, the first payment to be made on the ——— day of ——— next.

2. [ALTERATIONS AND REPAIRS.] The lessee shall within ——— days after the said ——— day of ——— make the alterations and repairs specified in the schedule hereto annexed (*or, "the following alterations and repairs in the premises," specifying them*). The tenant shall effect such repairs and alterations to the satisfaction of the ———, the lessor's architect, and pay his fees in the premises, not exceeding ———. The lessee shall be entitled to enter upon the premises on the day following the expiration of the said existing term therein, but the granting of the lease herein provided for is conditional upon the due making of the said alterations and repairs, time being of the essence of the contract; and in the event that the same shall not be made within the period hereinbefore limited, the lessor shall be entitled to re-enter upon the premises, and thereupon all the interest of the lessee therein under this agreement shall determine, and the lessor may forthwith recover possession of the premises by legal process.

3. [CONTENTS OF LEASE.] (*See Form No. 2, cls. 1-6, p. 733.*)

4. [EXECUTION OF LEASE.] The lessor shall cause the said lease to be prepared in duplicate, and it shall be so executed by the lessor and the lessee respectively when so required by either party after the completion of the alterations and repairs hereinbefore specified.

In witness, *etc.*

5. Agreement ² for Tenancy of Furnished House for Short Term and Thereafter Monthly

This agreement made the —— day of —— between ——, of ——, hereinafter called the landlord, of the one part, and ——, of ——, hereinafter called the tenant, of the other part, witnesseth as follows:

1. [LETTING, TERM, AND RENT.] The landlord lets and the tenant takes the dwelling house known as No. —— street, in the city of ——, with the furniture and effects now therein as specified in the inventory hereto annexed, to hold the same for —— calendar months from the —— day of —— and thereafter unless and until the tenancy shall be terminated by notice at the end of said period or subsequently, as hereinafter provided, at the monthly rent of \$——, payable in advance on the first day of every month, the first payment to be made on the —— day of —— next.

2. [TENANT'S COVENANTS.] The tenant agrees as follows:

(1) [TO PAY RENT.] To pay the rent reserved at the times aforesaid.

(2) [TO KEEP IN REPAIR.] To keep in good repair the glass, fittings, and fixtures belonging to the said premises.

(3) [TO PRESERVE FURNITURE.] Not to remove from the premises any part of the said furniture and effects, but to preserve the same in their present condition, reasonable wear and tear and damage by fire and other unavoidable casualty excepted, and to replace with articles of the same sort and value all such parts of the said furniture and effects as shall be broken, injured, or destroyed, except by fire or other un-

² Although the term "agreement" is used, this is a lease. It differs from a lease by indenture in that it is not under seal.

avoidable casualty, or at the option of the landlord to pay for all such articles their full value.

(4) [TO YIELD UP PREMISES.] At the determination of the tenancy peaceably to yield up the said dwelling house, in its present state of repair, and the glass, fittings, and fixtures, and also the said furniture and effects and any substituted furniture and effects, in such state of repair and condition as shall be in strict compliance with the provisions hereinbefore contained (and as to the furniture and effects so far as possible in accordance with the present state of arrangement as to rooms and position).

(5) [TO PERMIT LANDLORD TO ENTER.] To permit the landlord at all reasonable times to enter upon the premises and to examine the condition of the said furniture and effects.

(6) [NOT TO ASSIGN.] Not to assign the benefit of this agreement without the written consent of the landlord.

4. [RIGHT TO RE-ENTER.] It is mutually agreed that the landlord shall have the right to re-enter if any part of the said rent, whether formally demanded or not, shall be —— days in arrear, or if the tenant shall otherwise fail to observe the stipulations of this agreement.

5. [DETERMINATION OF TENANCY.] Either party may terminate the tenancy at the end of the said period of —— months or at the end of any subsequent month by giving the other one month's previous notice in writing expiring on one of the days on which such rent is payable, but without prejudice to any remedy which the party so giving such notice may have against the other in respect of any previous breach of this agreement.

In witness, *etc.*

6. Short General Form of Lease

This indenture made the —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part, witnesseth:

1. [DEMISE, TERM, AND RENT.] That the said party of the first part doth hereby lease and demise unto the said party of the second part that certain parcel of land described as (*description*), with the building thereon, known as No. —— in —— street, with the appurtenances, for the term of —— years, from the —— day of ——, at the yearly rent or sum of ——, to be paid in equal monthly payments on the first day of each month.

2. [RIGHT OF RE-ENTRY.] And it is hereby agreed that, if any rent shall be due and unpaid, or if default shall be made in any of the covenants on the part of the said party of the second part herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and the same to have again, repossess, and enjoy.

3. [LESSEE'S COVENANTS.] And the said party of the second part covenants with the said party of the first part to pay to the said party of the first part the said yearly rent as herein specified; that he, the said party of the second part, will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part; that he will not occupy or use, or permit to be occupied or used, the said premises, for any business deemed extrahazardous on account of fire or otherwise; that he will permit the said party of the first part or his agent to show the premises wishing to hire or purchase, and on and after the —— day of —— preceding the expiration of the said term he will permit the usual notice of "To Let" or "For Sale" to

be placed upon the walls or doors of the said premises and remain thereon without let or hindrance; and that at the expiration of the said term he will quit and surrender the premises hereby demised in as good state and condition as reasonable wear and tear thereof will permit, damage by the elements excepted.

4. [LESSOR'S COVENANT FOR QUIET ENJOYMENT.] And the said party of the first part covenants with the said party of the second part that the said party of the second part, on paying the said yearly rent and performing the said covenants on his part, shall and may peaceably and quietly have, hold, and enjoy the demised premises during the term aforesaid.

5. [DAMAGE OR DESTRUCTION BY FIRE, ETC.] And it is further agreed between the said parties hereto that, in case the building erected on the premises hereby demised shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the said party of the first part; that in case the damage shall be so extensive as to render the building untenable, the rent shall cease until such time as the building shall be put in complete repair; but in case of the total destruction of the premises by fire or otherwise the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end: Provided, however, that such damage or destruction be not caused by the carelessness, negligence, or improper conduct of the said party of the second part, his agents or servants.

6. [COVENANTS BIND REPRESENTATIVES.] And it is further agreed that the covenants and agreements herein contained are binding on the parties hereto and their legal representatives.

In witness, *etc.*

7. Another Form with Provision for Distress

This agreement made the _____ day of _____ between _____, landlord, and _____, tenant, witnesseth:

1. [DEMISE, TERM, AND RENT.] That the said landlord leases to the said tenant all that (*description*) for the term of _____ years, beginning on the _____ day of _____, and ending on the _____ day of _____, at the rent of \$_____ per month, payable in advance on the first day of each and every month.

2. [LESSEE'S COVENANTS.] And the said tenant hereby covenants with the landlord to pay the said rent at the times and in the manner hereinbefore specified; not at any time to assign this agreement or to sublet the demised premises, or any portion thereof, without the written consent of the said landlord or his representatives; not to permit the use of the premises for purposes other than those of a _____; to keep the premises in good order; and to surrender the possession of the premises at the end of the said term in as good condition as when received, reasonable wear and tear thereof and accidents happening by fire or other casualties alone excepted.

3. [DISTRESS AND WAIVER OF EXEMPTION.] It is hereby agreed that all personal property on the premises shall be liable to distress, and also all personal property, if removed therefrom, shall for _____ days after such removal be liable to distress, and may be distrained and sold for rent in arrear; and the said tenant hereby waives all right to the benefit of any laws now made or hereafter to be made exempting personal property from levy and sale for arrears of rent.

4. [DESTRUCTION OR DAMAGE BY FIRE, ETC.] It is hereby agreed that, if the building on the premises shall be destroyed or rendered untenable by fire or other unavoidable accident, all liability for rent hereunder shall cease upon payment

thereof proportionally to the day of such fire or unavoidable accident.

5. [RIGHT OF RE-ENTRY, ETC.] It is further agreed that, if the rent shall be —— days in arrear, the landlord shall have the right to distrain for the same, and that in such case, or if the tenant shall violate any of his foregoing covenants on his part, the landlord shall have the right without formal notice to re-enter and take possession.

6. [CONTINUATION AFTER EXPIRATION OF TERM.] It is further agreed that this agreement shall continue in force from term to term after the expiration of the term above mentioned: Provided, that either party shall have the right to terminate the same at the end of the term above mentioned or of any term thereafter by giving at least —— days' previous notice in writing.

In witness whereof, *etc.*

8. Lease of Dwelling House with Options for Renewal and Purchase

This indenture made the —— day of —— between ——, of ——, hereinafter called the lessor, which expression, where the context so admits, shall include his heirs and assigns, of the one part, and ——, of ——, hereinafter called the lessee, which expression shall include, where the context so admits, his executors, administrators, and assigns, of the other part, witnesseth as follows:

1. [DEMISE.] In consideration of the rent and the lessee's covenants hereinafter reserved and contained, the lessor hereby demises to the lessee a certain dwelling house situate in the said city of —— and numbered —— on —— street.

[HABENDUM.] To hold to the lessee for the term of —— years, commencing the —— day of ——.

[REDDENDUM.] Yielding and paying therefor during the said term rent at the rate of \$—— yearly and proportionally for any fraction of a year, by equal quarterly payments to be made on the first days of ——, ——, ——, and —— in each year, of which the first shall be made on the —— day of —— next.

2. [LESSEE'S COVENANTS.] The lessee hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the rent reserved on the days and in the manner aforesaid.

(2) [TO PAY TAXES, ETC.] To pay all taxes and assessments and water rates imposed or charged upon the demised premises or upon the owner or occupier in respect thereof (excepting assessments for any permanent benefit or improvement to the premises).

(3) [TO KEEP IN REPAIR.] To keep the demised premises in such repair as the same are at the commencement of the term or may be put in by the lessor during the continuance thereof, reasonable use and wear (and damage by fire or other unavoidable casualties) only excepted.

(4) [NOT TO MAKE ALTERATIONS.] Not to make or permit to be made any alterations in or addition to the demised premises without the previous consent in writing of the lessor.

(5) [NOT TO ASSIGN.] Not to assign, underlet, or part with the possession of the whole or any part of the demised premises without first obtaining the written consent of the lessor (such consent, however, not to be unreasonably withheld in the case of a respectable and responsible person).

(6) [TO PERMIT LESSOR TO ENTER AND REPAIR.] To permit the lessor and his agents at all reasonable times to enter upon the premises and to examine the condition thereof and make necessary repairs.

(7) [TO YIELD UP PREMISES IN REPAIR.] To yield up the demised premises and all addition thereto (except tenant's fix-

tures) at the determination of the tenancy in good and tenantable repair, reasonable use and wear (and damage by fire and other unavoidable casualties and condemnation or appropriation by eminent domain) excepted, as the same now are or may be put in by the lessor.

3. [LESSOR'S COVENANTS.] The lessor hereby covenants with the lessee as follows:

(1) [FOR QUIET ENJOYMENT.] That the lessee, paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part contained, shall peaceably hold and enjoy the demised premises during the said term without any interruption by the lessor or any person rightfully claiming under him.

(2) [OPTION TO LESSEE TO HAVE RENEWAL.] That the lessor will, on the written request of the lessee made ——— calendar months before the expiration of the term hereby created, and if there shall not be at the time of such request any breach or nonobservance of any of the covenants on the part of the lessee hereinbefore contained, grant to the lessee a lease of the demised premises for the further term of ——— years from the expiration of the said term at the same rent (or, the yearly rent of ——— dollars), and containing the like covenants and provisos as are herein contained, with the exception of the present covenant for renewal, the lessee on the execution of such renewed lease to execute a counterpart thereof (and to pay the lessee the sum of ——— dollars by way of premium).

(3) [OPTION TO LESSEE TO PURCHASE.] That if the lessee within ——— years from the commencement of the term hereby created shall give to the lessor ——— calendar months' notice in writing that he desires to purchase the premises herein demised, and if there shall not at the time of such notice be any existing breach or nonobservance of any of the cove-

nants on the part of the lessee hereinbefore contained, the lessor on the expiration of such notice will, upon payment of the sum of ——— dollars and of all arrears of rent to the expiration of the notice and of interest on the said sum of ——— dollars at the rate of ——— per cent. per annum from the expiration of the notice until payment, by good and sufficient (*warranty*) deed convey the demised premises to the lessee in fee simple, free from incumbrances except taxes (and assessments), if any. The lessor shall within ——— days from the giving of such notice deliver to the lessee an abstract of title to the said premises, and the lessee shall have ——— days after the delivery of the abstract in which to examine the title.

4. [PROVISO FOR RE-ENTRY.] Provided, always, and these premises are upon this condition, that if the rent reserved or any part thereof shall be unpaid for ——— days after becoming payable, whether formally demanded or not, or if any covenant on the lessee's part herein contained shall not be performed or observed, or if the lessee shall become bankrupt, then and in any of the said cases it shall be lawful for the lessor to re-enter at any time thereafter upon the demised premises or any part thereof in the name of the whole, and thereupon this demise shall absolutely determine, but without prejudice to the right of action of the lessor in respect of any breach of the lessee's covenants herein contained:

5. [PROVISO IN EVENT OF DAMAGE BY FIRE, ETC.] And provided, also, that in case the buildings on the premises or any part thereof shall be damaged by fire or other unavoidable casualty, so that the same shall thereby be rendered unfit for use and occupation, then and in such case the rent hereby reserved or a just and proportional part thereof according to the nature and extent of the injury sustained, shall be abated until the premises shall have been duly repaired and restored

by the lessor, or, in case the said premises shall be substantially destroyed, then at the election of the lessor (*or*, at the election of either the lessor or the lessee) the estate hereby created may thereupon be determined.

In witness whereof the said parties hereto and to another instrument of like tenor have hereunto set their hands and seals the day and year first above written.

9. Lease of Building for Business Purposes

This indenture made this _____ day of _____ between the _____ Company, a corporation organized and existing under the laws of the state of _____, hereinafter called the lessor, which expression, where the context so admits, shall include the reversioner for the time being immediately expectant upon the term hereby created, party of the first part, and _____, of _____, hereinafter called the lessee, which expression, where the context so admits, shall include his executors, administrators, and assigns, party of the second part:

1. [DEMISE, TERM, AND RENT.] Witnesseth that, in consideration of the covenants herein contained on the part of the lessee to be observed and performed, the lessor doth hereby demise and lease unto the lessee all that tract or parcel of land described as (*description*), with the building thereon erected, and known as No. _____ street, in the city of _____.

To have and to hold the said premises unto the lessee, his executors, administrators, and assigns, for the term of _____ years from the _____ day of _____ to the _____ day of _____.

Yielding and paying as rent therefor the sum of \$_____ yearly, payable at the office of the lessor in the said city of _____ in gold coin of the United States of the present standard of weight and fineness, or the equivalent thereof, in equal

monthly installments in advance of \$—— on the first day of each month, and at that rate for fractions of a month, in every year during the said term, the first payment to be made on the —— day of ——.

2. [LESSEE'S COVENANTS.] And the lessee, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the lessor, its successors and assigns:

(1) [TO PAY RENT.] That the lessee will pay the said rent at the times and in the manner aforesaid, except only in case of fire or other unavoidable casualty as hereinafter provided.

(2) [TO SECURE RENT BY CHATTEL MORTGAGE.] That he will secure and keep secured the rent payable under this lease by a good and sufficient chattel mortgage to be executed and delivered to the lessor upon and covering all the furniture and tenant's fixtures which are now or shall be placed in the said building by the lessee, and that the said mortgage shall at all times be maintained by the lessee a first lien upon the said furniture and fixtures.

(3) [TO PAY TAXES.] That he will pay the general taxes which shall be assessed and levied upon the demised premises during the said term as they shall fall due.

(4) [TO INSURE AGAINST FIRE—LOSS OF RENTS.] That he will during the said term insure and keep insured in the name of the lessor the said building from loss or damage by fire in at least the sum of \$—— (and also insure and keep insured the lessor against loss of rents hereunder resulting from fire in at least the additional sum of \$——) in insurance companies to be approved by the lessor, and that he will pay all the premiums necessary for those purposes within —— days after the same shall become due, and will promptly deliver to the lessor the policies of insurance and the receipts for such premiums: Provided, that if the lessee shall at any time fail to insure or keep insured as aforesaid, the lessor may do all things necessary to

effect or maintain such insurance, and any moneys expended by him for that purpose shall be repayable by the lessee on demand, and may be recovered as rent in arrear.

(5) [TO PAY LIGHT AND WATER RATES.] That he will promptly pay all gas, electric light, and water rates or charges which may become payable during the continuance of this lease for gas, electric light, and water used on the said premises.

(6) [TO KEEP IN REPAIR AND REPLACE GLASS BROKEN.] That he will keep all and singular the said building and premises, including the plumbing and steam-heating plant and elevator, in such repair as the same are at the commencement of the said term or may be put in during the continuance thereof, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and will promptly replace all glass thereof broken during the said term by other of the same size and quality.

(7) [NOT TO INJURE OR OVERLOAD.] That he will not injure, overload, or deface or suffer to be injured, overloaded, or defaced the premises or any part thereof.

(8) [TO INDEMNIFY AGAINST ACCIDENTS AND NEGLIGENCE—SNOW AND ICE.] That he will save harmless and indemnify the lessor from and against all loss, liability, or expense that may be incurred by reason of any accident with the machinery, hatchways, elevator, gas or water or other pipes, or from any damage, neglect, or misadventure arising from or in any way growing out of the use, misuse, or abuse of the city water, or from the bursting of any pipes, or from any neglect in the use of coalholes and covers, or in not removing snow and ice from the sidewalks or from the roof of the building.

(9) [NOT TO SUFFER UNLAWFUL USE, OR TO ENDANGER INSURANCE, ETC.] That he will not make or suffer any unlawful, improper, or offensive use of the premises, or any use or occupancy thereof contrary to any law of the state or any ordinance

of the said city now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the said building or to increase the premium thereof.

(10) [NOT TO MAKE ALTERATIONS, PLACE SIGNS, ETC.] Not to make any alterations or additions in or to the premises without the written consent of the lessor, nor to suffer any holes to be made or drilled in the outside stone or brick work, nor to suffer any signs to be placed upon the building except such as the lessor shall in writing approve.

(11) [NOT TO ASSIGN.] Not to assign, underlet, or part with the possession of the whole or any part of the demised premises without first obtaining the written consent of the lessor.

(12) [TO PERMIT LESSOR TO ENTER.] That the lessor at all seasonable times may enter to view the premises and to make repairs which the lessor may see fit to make, or to show the premises to persons who may wish to lease or buy, and that during three months next preceding the expiration of the term he will permit the lessor to place and keep upon the front of the building a notice that the premises are for rent or for sale.

(13) [TO YIELD UP PREMISES.] That at the expiration of the said term the lessee will peaceably yield up to the lessor or those having his estate therein the premises and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear and damage by fire and other unavoidable casualties excepted, as the same now are or may be put in by the lessor.

(14) [PROPERTY AND PERSONS ON PREMISES AT LESSEE'S RISK.] That all property of any kind that may be on the premises during the continuance of this lease shall be at the sole risk of the lessee, and that the lessor shall not be liable to the lessee or any other person for any injury, loss, or damage to property or to any person on the premises.

(15) [ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.] That no assent, express or implied, by the lessor to any breach of any of the lessee's covenants, shall be deemed to be a waiver of any succeeding breach of the same covenant.

3. [LESSOR'S COVENANT FOR QUIET ENJOYMENT.] (*Clause 4, Form No. 6, p. 740.*)

4. [PROVISO FOR RE-ENTRY.] Provided, always, and these presents are upon this condition, that if the lessee or his representatives or assigns shall neglect or fail to perform and observe any covenant herein contained which on the lessee's part is to be performed, or if his leasehold estate shall be taken on execution, or if the lessee shall be declared bankrupt or insolvent according to law, or shall make an assignment for the benefit of his creditors, then and in any such case the lessor, or those having its estate in the premises, lawfully may, immediately or at any time thereafter, and without notice or demand, enter into and upon the demised premises or any part thereof in the name of the whole, and repossess the same as of their former estate, and expel the lessee and those claiming under him and remove their effects, forcibly, if necessary, without being taken or deemed to be guilty of any manner of trespass, and thereupon this demise shall absolutely determine, but without prejudice to any remedies which might otherwise be used by the lessor for arrears of rent or any breach of the lessee's covenants herein contained:

5. [TERMINATION OF DEMISE OR SUSPENSION OF RENT IN CASE OF FIRE, ETC.] Provided, also, that in case the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the premises cannot be rebuilt or restored by the lessor within _____ days thereafter, then and in that case this demise shall determine; but if the premises can be rebuilt or restored with-

in ——— days, the lessor will at his own expense and with due diligence so rebuild or restore the premises, and a just and proportionate part of the rents hereby reserved shall be paid by the lessee until the premises shall have been so rebuilt or restored:

6. [TERMINATION OF DEMISE OR SUSPENSION OF RENT IN CASE OF TAKING BY EMINENT DOMAIN.]* Provided, also, that in case the whole or any part of the premises hereby demised shall be taken by the city or state or other public authority for any public use, then this demise shall determine (if only a part is taken, at the election of the lessee) from the time when possession of the whole or of the part so taken shall be required for such public use, and the rents, properly apportioned, shall be paid up to that time; and the lessee (whether he elects that this demise shall so determine or not) shall not claim or be entitled to any part of the award to be made for damages for such taking for public use; and such taking shall not be deemed a breach of the lessor's covenant for quiet enjoyment hereinbefore contained: (Provided, further, that if the lessee shall not so elect that this demise shall determine, the obligations and liabilities of the lessee upon his covenants hereinbefore contained shall continue in all respects notwithstanding such taking for public use):

* The following may be used as an alternative for clause 6, where the nature of the lease may make it advisable: "Provided, also, that in case the whole or any part of the demised premises shall be taken by the city or state or other public authority for public use, so that the premises cannot be substantially restored by the lessor within ——— days from the time when possession of the whole or of the part so taken shall be required for such public use, then and in that case this demise shall determine; but, if the premises can be substantially restored within ——— days, the lessor will at his own expense restore the premises, and a just proportion of the rents hereby reserved shall be abated until the premises have been so restored; and in no case shall the lessee claim or be entitled to any part of the award of damages for such taking, but the lessor shall be entitled to the entire award of damages for such taking."

7. [LESSEE'S OPTION TO PURCHASE.] Provided, further, that the lessee shall have, and the lessor hereby grants to the lessee, the exclusive right at his option, at any time during the term of this lease, to purchase the said premises for the sum of _____ dollars to be paid to the lessor upon tender by the lessor of a good and sufficient (*warranty*) deed conveying to the lessee the fee simple of the said premises, free and clear of all incumbrances, except such as may have been made or suffered by the lessee, and except taxes and assessments, if any, and this lease. In case the lessee shall elect to purchase the said premises, he shall signify his election by written notice served upon the lessor within the time above limited; and thereafter the lessor shall deliver to the lessee an abstract of title to the said premises within _____ days from the date of the service of such notice, and the lessee shall have _____ days after the delivery of such abstract in which to examine the title and to complete the purchase: Provided, always, however, that the right of the lessee to exercise the said option of purchase is expressly conditioned upon the faithful performance and observance by the lessee of all the covenants, agreements, and conditions on his part herein contained and the payment to the lessor of the rent hereby reserved up to the date of the completion of such purchase.

In witness, *etc.*

10. Lease of Warehouse Providing for Alterations by Lessee with Option to Determine

This indenture made the _____ day of _____ between
(*parties as in Form No. 8, p. 742*):

Witnesseth as follows:

1. [DEMISE, TERM, AND RENT.] The lessor hereby demises unto the lessee all that warehouse situate on the north side

of ——— street, in the city of ———, together with the yard and offices appurtenant thereto, which premises are more fully described as (*description of land*).

To hold to the lessee from the ——— day of ——— for the term of (twenty-one) years, but determinable as hereinafter provided.

Yielding and paying rent therefor (*as in Form No. 8, cl. 1, p. 743*).

2. [LESSEE'S COVENANTS.] The lessee hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] On the days and in the manner aforesaid.

(2) [TO PAY TAXES, ETC.] (*See Form No. 8, cl. 2 (2), p. 743.*)

(3) [TO MAKE SPECIFIED ALTERATIONS.] Within ——— calendar months from the commencement of the said term to expend the sum of \$——— in the cost of labor and materials in making the alterations and additions to the said warehouse of which the plans and specifications, signed by the parties hereto, are hereto attached, and, if so required, to produce to the lessor proper vouchers for such expenditures.

(4) [NOT TO MAKE OTHER ALTERATIONS.] (*As in Form No. 4, cl. 4 (4) p. 743, prefixing the words, "save as aforesaid."*)

(5) [TO KEEP IN REPAIR.] To keep the demised premises and all additions thereto and the boundary walls and fences and the drains thereof in good and tenantable repair and condition.

(6) [TO PAINT.] To paint with two coats at least of good oil paint in a workmanlike manner in the year ———, and afterwards in every (third) year of the term, all the outside wood and metal work of the demised premises and any addition thereto and other external parts usually painted; and also to paint with two coats at least of good oil paint in the

year ——— and afterwards in every (seventh) year of the term all of the inside wood and iron work of the demised premises and any addition thereto.

(7) [TO CLEANSE AT END OF TENANCY.] During the ——— calendar months immediately preceding the determination of the tenancy to cleanse and scour thoroughly the interior of the demised premises and any additions thereto, and to white-wash such parts of the interior as have heretofore usually been whitewashed.

(8) [TO PERMIT LESSOR TO ENTER, ETC.] (*Form No. 8*, cl. 2 (6), p. 743.)

(9) [TO INSURE AND REBUILD.] To insure forthwith and keep insured in the joint names of the lessor and lessee (*or*, in the name of the lessor) the demised premises from loss or damage by fire in some insurance company or companies approved by the lessor in at least the sum of \$——, and to pay all premiums necessary for that purpose within ——— days after the same shall become due, and when required to produce to the lessor or his agent the policies of insurance and the receipts for the current year's premium, and to cause all moneys received by virtue of any such insurance to be laid out forthwith in rebuilding and reinstating the premises and to make up any deficiency out of his own moneys: Provided, that if the lessee shall at any time fail so to insure and keep insured the premises, the lessor may do all things necessary to effect and maintain such insurance, and the moneys expended by him for that purpose shall be repayable by the lessee on demand.

(10) [NOT TO STORE DANGEROUS MATERIALS OR CARRY ON OFFENSIVE TRADE, BUT TO USE ONLY FOR SPECIFIED BUSINESS.] Not to keep or suffer to be kept on the premises any material of a dangerous or explosive nature or the keeping of which may contravene any law or ordinance or constitute a nuisance

to the occupiers of neighboring property, and not to carry on upon the premises any trade of a noxious or offensive nature, nor to permit the premises to be used as a residence or sleeping place by any person other than a caretaker, but to use the premises only as a warehouse in connection with the business of a ——— or such other trade or business as shall be approved in writing by the lessor.

(11) [NOT TO ASSIGN.] (*Form No. 8, cl. 4 (5), p. 743.*)

(12) [TO YIELD UP IN REPAIR.] (*Form No. 8, cl. 4 (7), p. 743.*)

3. [LESSOR'S COVENANT FOR QUIET ENJOYMENT.] (*Form No. 8, cl. 3, p. 744.*)

4. [PROVISO FOR RE-ENTRY.] (*Form No. 8, cl. 4, p. 745.*)

5. [OPTION TO DETERMINE.] If the lessee (*or, the lessor; or, either party*) shall desire to terminate this demise at the expiration of the ——— or ——— years of the said term, and shall give to the lessor (*or, lessee; or, other party*) ——— calendar months' previous notice in writing to that effect (*in case of determination by lessee add*, and shall up to the time of such determination pay the rent and perform and observe the covenants on his part hereinbefore contained), then immediately on the determination of such ——— or ——— years, as the case may be, this demise and everything herein contained shall cease and be void, but without prejudice to the remedies of either party against the other in respect of any antecedent claim or breach of covenant.

6. [SERVICE OF NOTICES.] Any notices required to be served hereunder shall be sufficiently served on the lessee, if left addressed to him on the demised premises, and shall also be sufficiently served on the lessee or on the lessor, if delivered to him personally or forwarded to him by post to or left at his last-known address in the state of ———. A notice

sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

In witness, *etc.*

11. Lease with Various Covenants by Lessee

This indenture, made this _____ day of _____, between _____, of _____, hereinafter referred to as the lessor, of the first part, and _____, of _____, hereinafter referred to as the lessee, of the second part:

1. [DEMISE, TERM, AND RENT.] Witnesseth that the lessor does hereby lease and demise unto the lessee the premises described as (*description*).

To have and to hold the same unto the lessee for the term of _____ years from the _____ day of _____.

Yielding and paying therefor the annual rent of \$_____, payable in monthly installments of \$_____ on the first day of each and every month during the said term in advance at the office of _____, or such other place as the lessor may designate, in the city of _____, the first payment to be made on the _____ day of _____.

2. [LESSEE'S COVENANTS.] In consideration of the said demise the lessee covenants and agrees with the lessor as follows:

(1) [TO PAY RENT.] To pay the said rent at the times and place and in the manner aforesaid.

(2) [TO PAY FOR WATER AND LIGHT.] To pay, in addition to the rents above specified, all water rates and gas and electric light bills levied or charged on the demised premises during the said term, and, if no such rates or bills are levied or charged specifically thereon, to pay the _____ part of all such rates and bills levied or charged on the building in which the

said premises are situated; and in case any such rates or bills shall not be so paid when due, the lessor may pay the same, and the amounts so paid shall be due and payable by the lessee with the next installment of rent.

(3) [CONDITION OF PREMISES—NO REPRESENTATIONS.] That the lessee has examined and knows the condition of the premises and has received the same in good order and repair (except as herein otherwise specified), and that no representations as to the condition or repair thereof have been made by the lessor or his agent prior to or at the execution of these presents (except as herein expressed or indorsed hereon).

(4) [TO KEEP IN REPAIR AND SANITARY.] To keep the premises in good repair, as the same are at the commencement of the term, replacing all broken glass with glass of the same size and quality as that broken, and to keep the premises and appurtenances, including catch-basins, vaults, and adjoining alleys, in a clean and healthful condition according to the city ordinances and the direction of the proper officers at his own expense.

(5) [TO REMOVE SNOW AND ICE.] Without injury to the roof, to remove snow and ice from the same when necessary, and to clear the snow and ice from the sidewalks in front of the premises.

(6) [LESSOR NOT TO BE LIABLE FOR DAMAGE, ETC.] That the lessor shall not be liable for any damage occasioned by failure to keep the premises in repair, or for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting, leaking, or running of any cistern, tank, washstand, water-closet, or waste pipe in or about the premises, or for damage occasioned by water, snow, or ice being upon or coming through the roof, skylight, trapdoor or otherwise, or for any damage arising from

acts or neglects of cotenants or other occupants of the same building or the owners or occupants of adjacent or contiguous property.

(7) [NOT TO KEEP OR USE GASOLINE, ETC.] Not to keep or suffer to be kept on the premises gasoline, naphtha, benzine, benzole, benzine varnish, or any product in whole or part of either, or gunpowder, fireworks, nitroglycerine, phosphorus, saltpetre, nitrate of soda, camphene, spirit gas, or any burning fluid or chemical oils, without the written consent of the lessor, and not to generate or evaporate or use on the premises or contiguous thereto gasoline, benzine, naphtha, or any other substance for a burning gas or vapor for lighting, other than the ordinary city gas or kerosene of lawful test.

(8) [TO USE ONLY FOR WHAT PURPOSES, ETC.] Not to allow the premises to be used for any purpose other than ———, or for any purpose that will increase the rate of insurance thereon, or for any unlawful purpose, or any purpose that will injure the reputation of the same, or will disturb other tenants or the neighborhood; not to permit the building to remain vacant or unoccupied for more than ——— consecutive days; and not to allow any sign or placard to be posted or placed upon the premises without the lessor's written consent.

(9) [NO ALTERATIONS, ETC.] Not to permit any alterations of or upon the premises, except by written consent of the lessor, and that all alterations and additions to the premises shall remain for the benefit of the lessor, unless otherwise provided in such consent.

(10) [TO ALLOW ACCESS TO LESSOR, ETC.] To allow the lessor at all seasonable times free access to the demised premises for the purpose of examining or exhibiting the same, and of making any needful repairs or alterations thereon which the lessor may see fit to make, and to permit to be placed on

the premises at all times notices of "For Sale" or "For Rent," and not to interfere with the same.

(11) [NOT TO ASSIGN, ETC.] Not to assign this lease or let or underlet the premises or any part thereof, or to permit the same in whole or in part to be occupied by any other person without in each case the written consent of the lessor first had, and not to suffer any transfer by operation of law of the interest of the lessee in the premises hereunder.

(12) [TO YIELD UP PREMISES.] At the termination of this lease by lapse of time or otherwise to yield up the premises to the lessor in as good repair and condition as the same are at the commencement of the said term, reasonable use and wear thereof and damage by fire or other casualty not occurring through the default of the lessee only excepted, and to deliver up the keys at ———.

(13) [LIEN FOR RENT—DISTRESS.] That the lessor shall have at all times the right to distrain for rent due, and shall have a valid first lien upon all personal property of the lessee, whether exempt by law or not, as security for the payment of the rent herein reserved.

(14) [TO PAY COSTS, ETC.] To pay and discharge all reasonable costs, attorney's fees, and expenses that shall be made or incurred by the lessor in enforcing the covenants and agreements hereof:

3. [PROVISO FOR RE-ENTRY.] Provided, always, and these presents are upon the express condition, that if the lessee shall fail or neglect to perform and observe any or either of the covenants on his part herein contained, it shall be lawful for the lessor at any time thereafter and without notice or demand to enter into and upon the demised premises and repossess the same as of his former estate, and to expel the lessee and those claiming under him, forcibly, if necessary, and to remove their effects, without prejudice to any remedies which

might otherwise be used for arrears of rent or previous breach of covenant.

4. [LESSOR'S COVENANT FOR QUIET ENJOYMENT.] (*See Form No. 8, cl. 3, p. 744.*)

5. [PROVISO IN CASE OF FIRE, ETC.] Provided, further, that in case the said premises shall be damaged by fire or other unavoidable casualty not rendering the same untenable, the lessor shall at his own cost repair the same; but, if the premises shall thereby be rendered untenable, the lessor at his option may terminate this lease, whereupon the rent shall cease, or may repair the premises within —— days, in which event the rent shall abate until the premises have so been made tenantable, and, if the lessor shall fail to repair the premises within the said —— days, this lease shall determine.

6. [COVENANTS BIND REPRESENTATIVES.] The covenants and agreements herein contained shall apply to and bind and inure to the benefit of the heirs, personal representatives, and assigns of the lessor and the personal representatives and licensed assigns of the lessee.

In witness, *etc.*

12. Lease of Land for Ninety-Nine Years Providing for Building to be Erected by Lessee

This indenture made this —— day of —— between ——, of ——, hereinafter called the lessor, party of the first part, and ——, of ——, hereinafter called the lessee, party of the second part:

Witnesseth as follows:

1. [DEMISE.] In consideration of the rent and the lessee's covenants hereinafter reserved and contained the lessor hereby demises and leases unto the lessee all those certain premises

situate in the city of ———, county of ———, and state of ———, described as follows (*description*).

[HABENDUM.] To have and to hold the said premises for and during the term of ninety-nine years from the ——— day of ———.

[REDDENDUM.] Yielding and paying therefor the yearly rent of ——— grains of pure, unalloyed gold, in four quarter-yearly installments, each in advance, of ——— grains each, at such office of the lessor or his agent or of such bank in the said city of ———, as the lessor may from time to time designate, on the (first) days of ———, ———, ———, and ——— in each and every year during the said term, the first payment to be made on the ——— day of ———: Provided, however, that the lessor may from time to time, at his option, require, in lieu of such quarter-yearly payment as aforesaid, the payment at the time and place aforesaid, of the sum of ——— dollars in such lawful currency of the country as the lessor may designate.

2. [LESSEE'S COVENANTS.] The lessee, to the intent that the obligations may continue throughout the term hereby created, covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the reserved rent on the days and in the manner aforesaid.

(2) [TO ERECT BUILDINGS, ETC.] At his own cost to erect upon the premises hereby demised a building in accordance with the plans and specifications of ———, architect, signed by the parties hereto (and hereto annexed), the said building to cost not less than \$———, and to complete the said building in all respects fit for immediate occupation on or before the ——— day of ———, unless prevented by accident or unavoidable causes, and in such case as soon after such date as is practicable, to execute and deliver to the lessor within ——— days from the date hereof a bond, in form and with one or more

sureties satisfactory to the lessor, conditioned for the indemnity of the lessor against all mechanics' and other liens which may arise or be created in or about the erection of the said building, and that, when completed as aforesaid, the said building and premises shall be free from all liens.

(3) [TO PAY TAXES, ETC.] To bear, pay, and discharge all existing and future taxes, assessments, duties, impositions, and burdens whatsoever assessed, charged, or imposed, whether by the nation, state, city, or any other public authority, upon the demised premises or any erections thereon, or upon the owner or occupier in respect thereof, or payable by either in respect thereof, and to deliver to the lessor at all times promptly proper and sufficient receipts and other evidence of the payment and discharge of the same.

(4) [NOT TO SUFFER LIENS OR INCUMBRANCES, ETC.] Not to suffer the demised premises or any erection or improvements thereon or the estate of the lessee in the same at any time during the said term to become subject to any lien,⁴ charge, or incumbrance whatsoever, other than a mortgage as hereinafter provided, and to indemnify and keep indemnified the lessor against all such liens, charges, and incumbrances; it being hereby expressly agreed that the lessee shall have no authority, express or implied, to create any lien, charge, or incumbrance, other than a mortgage, as aforesaid, upon the demised premises or the improvements thereon or upon the estate of the lessee in the same.

(5) [NOT TO ASSIGN, EXCEPT, ETC.] Not to assign this lease, except with the lessor's written consent, until after the said building shall be completed and the said premises and building

⁴ Under the statutes of some states this provision would not be effective to prevent the creation of a lien for labor or materials performed or furnished in works required by the lease or authorized by the lessor. In such cases a bond of indemnity, as provided in the preceding subclause (2), is desirable.

shall be free and discharged of all liens and claims arising or incurred in or about or during the construction of the said building, and also not to assign this lease at any time, except with the lessor's written consent, unless all rent and all taxes, assessments, duties, impositions, and burdens which the lessee has hereinbefore covenanted to pay, and all liens, charges, and incumbrances, other than mortgages as hereinafter provided, shall have been duly paid and discharged, and unless the assignee shall in the instrument of assignment expressly assume the lessee's covenants and obligations hereunder, and unless the instrument of assignment and assumption shall be legal and sufficient for that purpose, and shall have been first submitted to and left with the lessor for a period of ——— days before the delivery thereof to the assignee, and unless the same shall be recorded at or about the time of such delivery thereof in the proper recorder's office; it being hereby expressly agreed that any assignment, except by mortgage as hereinafter provided, or by devise, which shall be made or attempted to be made in breach of the lessee's covenants herein contained shall be void and of no effect: Provided, that the lessee may at any time by mortgage or deed in trust for that purpose mortgage his estate in the demised premises to secure any actual debt, and in such case may make (one-half) of the insurance on the buildings and improvements erected on the premises payable, in case of loss, to such mortgagee or trustee.

(6) [TO INSURE.] To keep the buildings and improvements upon the said demised premises insured against loss or damage by fire (*or*; tornado), for their full insurable value in companies satisfactory to the lessor, and to furnish the lessor with a complete list of all such insurance; to pay all the premiums necessary for those purposes immediately as they become due, and to deliver to the lessor the receipts therefor; to make all insurance payable to the lessor, except so much thereof, not exceed-

ing (one-half), as may be payable to a mortgagee or trustee, as hereinbefore provided, and to deliver to the lessor the policies of all insurance payable to the lessor: Provided, that if the lessee shall at any time fail to insure or keep insured as aforesaid, the lessor may do all things necessary to effect or maintain such insurance, and any moneys expended by him for that purpose shall be repayable by the lessee, with interest at the rate of _____ per cent. per annum on demand.

(7) [TO REPAIR AND RESTORE IN CASE OF DAMAGE OR DESTRUCTION.] In case of damage or destruction, from time to time, by fire or otherwise, to repair, restore, or rebuild the buildings and improvements on the demised premises, in accordance with plans and specifications to be approved by the lessor, with all reasonable dispatch, and in any event within _____ months from the time of such damage or destruction: Provided, that in case of any such damage or destruction the lessor shall apply any insurance money recovered by or paid to him to such repair, restoration, or rebuilding under plans and specifications approved by the lessor: And provided, further, that all insurance money recovered and not paid to the lessor shall first be so applied: And provided, also, that in case the lessee shall not so repair, restore, or rebuild within _____ months, then such insurance money recovered by the lessor may be retained by him as liquidated damages for the breach of the lessee's covenant so to repair, restore, or rebuild.

(8) [TO KEEP IN REPAIR.] To keep the said buildings so to be erected and all other buildings and erections which may at any time during the said term be erected upon the demised premises and the drains and appurtenances in good condition and repair.

(9) [NOT TO ALTER.] Not to make any alteration in the external elevation or architectural design of the buildings for the time being on the demised premises, or to injure or remove any

of the principal walls or timbers thereof without the consent in writing of the lessor.

(10) [NOT TO ERECT NEW BUILDINGS EXCEPT AS APPROVED.] Not to erect or permit to be erected on the demised premises any new buildings or to make or permit to be made any addition to the said building so to be erected or to any buildings which may at any time during the said term be erected upon the land hereby demised, except in accordance with plans and specifications previously approved by the lessor.

(11) [TO PERMIT LESSOR TO ENTER.] To permit the lessor and his agents at all reasonable times to enter upon the demised premises to view the condition of the premises and buildings.

(12) [NOT TO SUFFER UNLAWFUL USE.] Not to make or suffer any use or occupancy of the demised premises contrary to any law or ordinance now or hereafter in force.

(13) [TO INDEMNIFY AGAINST COSTS, ETC.] To indemnify the lessor against all costs and expenses, including counsel fees, lawfully and reasonably incurred in or about the premises, or in the defense of any action or proceeding, or in discharging the premises from any charge, lien, or incumbrance, or in obtaining possession after default of the lessee or the determination of this demise.

(14) [TO YIELD UP IN REPAIR.] At the determination of the tenancy to yield up the demised premises with all buildings erected thereon and additions thereto and all landlord's fixtures affixed thereto within the last ——— years of the said term in such repair and condition as shall be in accordance with the covenants hereinbefore contained.

3. [LESSOR'S COVENANTS.] The lessor hereby covenants with the lessee as follows:

(1) [FOR QUIET ENJOYMENT.] (*Form No. 6, cl. 4, p. 740.*)

(2) [THAT LESSEE ASSIGNING SHALL BE DISCHARGED.] That upon any assignment of this lease by way of absolute sale there-

of made by the lessee for the time being in conformity with the lessee's covenants and the terms hereinbefore contained the lessee making such assignment shall be free from all further obligations hereunder :

4. [POWER OF RE-ENTRY.] Provided, always, and it is expressly agreed, that if the rent hereby reserved shall be unpaid for —— days after becoming payable, whether formally demanded or not, or if any covenant on the lessee's part herein contained shall not be performed or observed, then and in any of the said cases it shall be lawful for the lessor at any time to re-enter upon the demised premises or any part thereof in the name of the whole, and thereupon this demise shall absolutely determine, but without prejudice to the right of action of the lessor in respect of any of the lessee's covenants herein contained. No waiver by the lessor of any covenant hereunder shall be a waiver of any succeeding breach of the same covenant :

5. [PROVISO IN CASE OF TAKING BY EMINENT DOMAIN.] Provided, that in case the whole of the demised premises shall at any time during the said term be taken by any public authority for any public use, the entire damages which may be awarded for such taking shall be apportioned between the lessor and the lessee, if they cannot agree upon such apportionment, by the arbitration of three persons, to whom such apportionment shall be referred, one of such persons to be nominated by the lessor, and one to be nominated by the lessee, and the third to be appointed by writing under the hands of the two so nominated before the reference is proceeded with, and the decision of any two of the arbitrators shall be binding ; and, if either the lessor or the lessee shall refuse or neglect to appoint an arbitrator within —— days after the other shall have appointed an arbitrator and served written notice upon the other requiring him to appoint an arbitrator, then upon such failure the party mak-

ing the request and having himself appointed an arbitrator may appoint another arbitrator to act on behalf of the party so failing to appoint, and the arbitrator so appointed may proceed and act in all respects as if appointed by the party so failing to make such appointment: And provided, further, that in case a part only of the demised premises shall be so taken for public use, the rights, duties, and obligations of the lessor and the lessee in the premises shall be determined, if they cannot agree in the premises, by the arbitration of three persons to be nominated and appointed as hereinbefore provided, to whom such determination shall be referred, and who shall have full power and authority to make any determination which they shall deem just and equitable, taking into consideration the quantity and value of the land taken, the extent of the injury thereby caused to the buildings, the cost of restoring the buildings and the value of the buildings if restored, the period of the unexpired term of this lease, and all the other facts and circumstances which the arbitrators shall deem material, including full power and authority to determine, among other things, as they shall deem just and equitable, any one or more of the following matters, viz.: That the whole or any part of the damages which may be awarded by the public authorities for such taking shall be applied to the restoration of the buildings which may be upon the premises at the time of such taking; that such damages shall be apportioned between the lessor and the lessee or be paid to either one of them; that the whole or any part of the rent shall be abated from the time of the taking thenceforth or for any less time; that the lease shall be otherwise modified; or that the lease shall determine—and to award and direct specific performance of any one or more of the said or any other matters which they shall determine, to the end that the rights, duties, and obligations of the parties shall be justly and equitably and finally determined upon all the facts and circumstances as they

shall then exist. The costs of the reference of the arbitrators shall be paid by the parties thereto in equal moieties.

6. [COVENANTS BIND REPRESENTATIVES.] It is hereby agreed that the covenants, stipulations, and conditions herein contained shall inure to the benefit of and shall be binding upon the heirs and assigns of the lessor and the heirs, executors, administrators, and assigns of the lessee.

In witness, *etc.*

13. Lease of Offices

This indenture made this _____ day of _____ between *(parties as in Form No. 11, p. 756)* witnesseth:

1. [DEMISE.] That the lessor doth hereby demise and lease unto the lessee the offices numbered _____ in the building known as _____, on _____ street, in the city of _____, consisting of _____ rooms, said premises to be used for the purpose of _____.

[HABENDUM.] To have and to hold the same for the term of _____ years, beginning the _____ day of _____.

[REDDENDUM.] Yielding and paying rent at the rate of \$_____ per annum, to be paid in equal monthly payments on the first day of each month, the first of such payments to be made on the first day of _____ next, and at the same rate for any part of a month unexpired at the legal determination of this lease.

2. [LESSEE'S COVENANTS.] The lessee hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the rent reserved at the times and in the manner aforesaid.

(2) [TO PAY WATER RATES.] To pay all water rates levied or payable during the said term.

(3) [REPAIRS, ETC.] (*See Form No. 8, cl. 3 (3), p. 743.*)

(4) [ADDITIONS AND ALTERATIONS.] Not to make or suffer any additions or alterations in or to the premises without the written consent of the lessor.

(5) [WASTE.] Not to make or suffer any waste of the premises.

(6) [SIGNS, ETC.] Not to suffer any holes to be drilled or made in the stone or brick work, nor any placard to be placed on the outer wall, nor any signs to be on the premises, except such as the lessor shall approve, and then only in such place and so affixed as the lessor shall prescribe.

(7) [IMPROPER USE.] Not to make or suffer any unlawful, improper, or offensive use of the premises, nor any use thereof other than as herein specified.

(8) [TO CONFORM TO REGULATIONS.] To conform to such reasonable regulations as may be established from time to time by the lessor for the general convenience of the tenants of the building.

(9) [HEATING AND LIGHTING APPARATUS.] That any heating or lighting apparatus which may be used on the premises shall be of such kind as the lessor shall approve.

(10) [NOT TO INCREASE INSURANCE RATE.] Not to suffer to be carried on upon the premises any trade or business, or anything to be done thereon, which shall increase the rate of premiums for insurance upon the building or its contents.

(11) [WATER DAMAGE, ETC.] That the lessor or those having his estate in the premises shall not be liable for any damage or injury by water or otherwise to any merchandise or property upon the premises.

(12) [TO PERMIT LESSOR TO ENTER, ETC.] To permit the lessor at all seasonable times to enter upon and examine the premises and make such repairs as he may think necessary for the protection thereof.

(13) [NOT TO ASSIGN, ETC.] Not to assign this lease or to underlet the whole or any part of the premises without the consent in writing of the lessor.

(14) [TO YIELD UP IN REPAIR.] At the end of the said term peaceably to deliver up to the lessor the demised premises, with all future erections or additions upon or to the same, in such repair as aforesaid, and vacant and unincumbered, and in good and tenantable order and condition.

3. [LESSOR'S COVENANTS.] The lessor hereby covenants with the lessee as follows:

(1) [QUIET ENJOYMENT.] That the lessee shall peaceably hold and enjoy the demised premises as aforesaid.

(2) [STEAM HEAT AND ELEVATOR.] That during business hours, except in case of unavoidable accident, the premises shall be kept duly warmed with steam heat, and that the elevator shall be kept running: Provided, that the lessor shall be subject to no liability for injury or damage of any nature arising to person or property from the use of the elevator:

4. [PROVISOS.] Provided, always, and it is expressly agreed as follows:

(1) [RE-ENTRY.] In case of a breach of any of the covenants on the lessee's part herein contained, or in case the estate hereby created shall be taken from the lessee by process of law or by proceedings in bankruptcy or insolvency or otherwise, the lessor may, while the default shall continue, or at any time after such taking, and notwithstanding any license or waiver of any prior breach of condition, without notice or demand, enter upon the premises, and thereby determine this demise, and may thereupon expel and remove, forcibly, if necessary, the lessee and his effects.

(2) [LESSEE TO INDEMNIFY.] In case of a determination of this demise by a re-entry as hereinbefore provided, the lessee shall indemnify the lessor for all loss or damage which

he may suffer during the residue of the said term by reason of such determination, whether through loss or decrease of rent or otherwise.

(3) [ABATEMENT OF RENT IN CASE OF FIRE, ETC.] In case the buildings on the premises or any part thereof shall at any time during the said term be damaged by fire or other unavoidable casualty so as to be unfit for use and occupation, and in case of loss or damage by fire the policy or policies of insurance effected by the lessor shall not have been vitiated or payment of the insurance moneys refused in consequence of some act or default of the lessee, the rent hereby reserved or a just and proportionate part thereof, according to the nature and extent of the damage sustained, shall be abated until the said premises shall have been duly repaired and restored by the lessor, or, in case the said buildings shall be substantially destroyed, then at the election of the lessor (*or*, of the lessee) this demise shall be determined.

5. [INTERPRETATION OF "LESSOR" AND "LESSEE."] It is hereby agreed that in the interpretation hereof, whenever the context so permits, the expression "the lessor" shall include his heirs and assigns, and the expression "the lessee" shall include his executors, administrators, and assigns; and that the covenants and stipulations hereof shall be binding upon and inure to the benefit of the persons included under the said expressions respectively as aforesaid.

In witness, *etc.*

14. Lease of Suite of Rooms in Apartment House

This indenture made this _____ day of _____ between
(*parties as in Form No. 11, p. 756*) witnesseth as follows:

1. [DEMISE, TERM, AND RENT.] The lessor hereby leases and demises unto the lessee the suite of rooms numbered _____ on the _____ floor of the building known as _____.

on ——— street, in the city of ———, consisting of ——— (with the coal and wine cellars and ash bin situate in the cellar of the said building and appropriated to the said suite), together with the use in common with the lessor and the other tenants in the said building of the entrance hall, stairs, and elevators leading to the demised premises.

To hold to the lessee from the ——— day of ——— for the term of ——— years.

Yielding and paying therefor yearly and proportionally for any fraction of a year the rent of \$——, by equal monthly payments of \$——, payable on the first day of each and every month during the said term, the first payment thereof to be made on the ——— day of ——— next.

2. [LESSEE'S COVENANTS.] The lessee hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the reserved rent at the times and in the manner aforesaid (at the office of the lessor without demand being made therefor).

(2) [TO OBSERVE REGULATIONS.]* To observe and strictly conform to the regulations (for the time being) governing all apartments or suites in the said building, a copy of which (as at present in force) is printed on the ——— page hereof (or, to conform to such reasonable regulations as may from time to time be established by the lessor for the general convenience and comfort of the tenants and the welfare of the said building).

(3) [TO PAY FOR GAS, ETC.] To pay all charges for gas (or, electric light) used in the demised premises as shown by the separate meter belonging thereto.

(4) [TO KEEP AND DELIVER UP IN REPAIR.] To keep the demised premises and all erections and additions made to or

* Many of the lessee's covenants may be covered by the printed regulations and omitted in the body of the lease.

upon the same in good order and condition as the same now are or shall be put in by the lessor, replacing with the same kind and quality any glass on the premises that may become broken or injured, ordinary wear and damage by fire and unavoidable casualties excepted, and in the like order and condition, except as aforesaid, to deliver up the same at the termination of the tenancy.

(5) [NOT TO ALTER OR INJURE.] Not to make or permit any alterations in the construction or arrangement of the demised premises without the previous consent in writing of the lessor, nor without like consent to cut, alter, drive nails or screws into, or otherwise mar or injure any of the walls, floors, plastering, woodwork, or any other part of the premises.

(6) [NOT TO MAKE IMPROPER USE—ANIMALS.] Not to make or suffer any unlawful, improper, noisy or otherwise offensive use of the demised premises, nor any use whatsoever other than as and for a private residence, and not to keep in or about the premises any dog or other animal.

(7) [NOT TO OBSTRUCT HALLS.] Not to allow the halls and stairways to be obstructed or to be used for any purpose other than for ingress and egress to and from the said suite.

(8) [NOT TO WASTE HEAT OR WATER—LEAKAGE.] Not to allow the heat or water supplied to the demised premises to be wasted, and to pay all damages which may result to the building or to the property of tenants below from the leakage of water in or from the said apartment, caused or suffered by the lessee or others therein, and not to hold the lessor liable for any damage by water or otherwise to any goods or property on the premises.

(9) [TO INDEMNIFY FOR DAMAGE.] To indemnify the lessor for any damage done to the demised premises or to any part of the said building caused by misuse or carelessness

on the part of the lessee or any member of his household or other person in the building by the invitation of the lessee.

(10) [TO PERMIT LESSOR TO ENTER.] To permit the lessor at all seasonable times to enter upon and examine the premises, and make necessary repairs and show the premises to others.

(11) [NOT TO ASSIGN.] Not to assign this lease nor underlet the whole or any part of the demised premises without the written consent of the lessor.

3. [LESSOR'S COVENANTS — QUIET ENJOYMENT — WATER AND HEAT.] The lessor hereby covenants with the lessee that the lessee shall peaceably hold and enjoy the demised premises, and that, except in the case of accident or during necessary repairs, the lessor will during the said term supply the said apartment with cold (and hot) water for ordinary household purposes, and will furnish heat during the heating season to the various rooms in the said suite where radiators or registers are provided by lessor.

4. [PROVISOS.]

(1) [POWER TO RE-ENTER.] (*See Form 8, cl. 4, p. 745.*)

(2) [PROVISO IN EVENT OF DAMAGE BY FIRE.] (*See Form 8, cl. 5, p. 745.*)

5. [COVENANTS EXTEND TO AND BIND, WHOM.] All covenants and agreements herein contained shall extend to and bind the heirs, executors, administrators (successors), and assigns of each party hereto.

In witness, *etc.*

14a. Lease of Land for a Golf Course *

This indenture made the _____ day of _____ between _____, of _____, hereinafter called the lessor, of the one part, and the _____ Golf Club, a corporation (*etc.*), hereinafter called the club, of the other part:

Witnesseth as follows:

1. [DEMISE.] In consideration of the rent and covenants hereinafter reserved and contained, the lessor hereby demises unto the club all those certain tracts or parcels of land (*description*). To hold the same unto the club for the term of _____ years from the _____ day of _____. Yielding therefor the yearly rent of _____, payable in four equal quarterly installments on the _____ days of _____, _____, _____, and _____ in each year, the first of such payments to be made on the _____ day of _____ next.

2. [LESSEE'S COVENANTS.] The club hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the rent reserved on the days and in the manner aforesaid.

(2) [TO USE FOR GOLF ONLY.] Not to use the said land except as a golf course, and not at any time to erect thereon any dwelling house or other buildings except a golf clubhouse and sheds, outhouses, stables, garages, and other buildings for the use of the club and the members, guests and servants thereof.

(3) [WASTE—REPAIR OF DAMAGES.] Not at any time without the permission in writing of the lessor to cut down any trees on the said land, and not to sell or take off the said land any sand, gravel, soil, or minerals of any kind, and at or before the end of the term hereby granted to repair any damages caused by the club to the said land, and to restore all

* For a license to a golf club, see Form No. 15, p. 661.

turf cut or removed therefrom, and fill up or level down all bunkers made by the club.

(4) [TO YIELD UP.] At the end or sooner termination of the said term peaceably deliver up the land to the lessor.

(5) (*Other covenants, as may be agreed.*)

3. [LESSOR'S COVENANTS.] The lessor covenants with the club as follows:

(1) [FOR QUIET ENJOYMENT.] That the club, paying the rent and observing and performing the covenants hereinbefore reserved and contained, shall peaceably and quietly enjoy the said land, and shall not be disturbed by any act of the lessor or any person claiming under him.

(2) [TO PERMIT CERTAIN WASTE.] That he will permit the club for the proper laying out and maintaining of the said golf course to cut turf, to cut down or root up any hedges or bushes upon the said land, and to commit any acts of waste thereon not expressly excluded by the covenants on the club's part hereinbefore contained.

(3) [REMOVAL OF FIXTURES.] That at or before the expiration of the term hereby granted he will permit the club to remove any clubhouse, sheds, outhouses, stables, garages and buildings, and any flags, posts, fences, bridges, stiles, gates, and other fixtures placed by the club on the said land.

4. [POWER OF RE-ENTRY.] If the club shall commit or allow to be committed any breach of any of the covenants on its part hereinbefore contained, or if the rent hereinbefore reserved or any quarterly payment thereof shall remain unpaid for —— days after the same shall become due, it shall be lawful in any such case for the lessor to re-enter upon the said land, and thereupon the term hereby granted shall be determined.

In witness, *etc.*

15. Lease of Farm

This indenture made this _____ day of _____ (*parties as in Form No. 11, p. 756*):

Witnesseth as follows:

1. [DEMISE, HABENDUM, AND REDDENDUM.] The lessor hereby leases and demises unto the lessee all that farm with the buildings thereon situate in _____ and described as (*description*); to hold the same to the lessee from the _____ day of _____ for the term of _____ years. Paying therefor during the said term the yearly rent of \$_____ by equal half-yearly payments on the _____ day of _____ and the _____ day of _____, the first payment to be made on the _____ day of _____.

2. [LESSEE'S COVENANTS.] The lessee covenants as follows:

(1) [TO PAY RENT.] To pay the rents hereby reserved on the days and in the manner aforesaid.

(2) [TO PAY TAXES.] To pay all taxes which may be imposed upon the premises when and as the same shall become due and payable.

(3) [TO KEEP IN REPAIR.] To keep in repair all the buildings on the premises (except the roofs, outer walls, and main timbers) and all fences, gates, and hedges, as the same now are or may be put in during the continuance hereof, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and to clean and keep open and in working order all ditches, gutters, drains, sewers, and water courses.

(4) [TO FARM IN HUSBANDLIKE MANNER.] To farm, cultivate, manure, and manage the whole of the premises in a good and husbandlike manner (according to the most approved methods of husbandry followed in the district), and to keep the whole in good condition (and not to allow any part of the

land to become impoverished, and to have the arable land at all times clean and free from weeds, and never sown with any prejudicial crop).

(5) [TO CULTIVATE GARDENS, ORCHARDS, ETC.] To keep all gardens and orchards and shrubberies properly cultivated, planted, stocked, and manured and in neat order, to keep well pruned and trained all fruit trees, bushes, vines, and shrubs, and to plant fresh ones of the best description of the several kinds in the place of those dying, becoming decayed, or unprofitable.

(6) [TO PRESERVE TIMBER.] To preserve all growing trees from injury by stock or otherwise, subject to the right of the lessee to cut timber as hereinafter provided.

(7) [TO INSURE.] To keep the buildings insured against loss or damage by fire in at least the sum of \$—— in a company approved by the lessor and to deposit the policy with the lessor, and to send him the receipts for the premium immediately after the same shall become payable, and to do no act which shall invalidate the policy.

(8) [NOT TO ASSIGN.] Not to assign, underlet, or part with the possession of any part of the premises without the written consent of the lessor.

(9) [NOT TO PERMIT WASTE.] Not to commit spoil or waste in any part of the premises.

(10) [TO YIELD UP IN REPAIR, ETC.] To yield up at the expiration of the tenancy all the demised premises in such a state of repair, cultivation, and management as shall be in compliance with the lessee's covenants hereinbefore contained.

3. [LICENSE TO CUT WOOD.] The lessor hereby gives to the lessee permission to cut on the woodland of the said farm so much of the timber other than nut trees as may be necessary for keeping the buildings and fences in repair and for firewood necessary to be consumed on the premises, all wood to be cut out clean, and the brush to be removed and burned:

4. [PROVISO FOR RE-ENTRY.] Provided, always, that if any rent hereby reserved shall be in arrear for —— days, whether demanded or not, or any covenant on the lessee's part herein contained shall not be performed or observed, it shall be lawful for the lessor at any time thereafter to re-enter upon any part of the demised premises in the name of the whole, and thereupon this demise shall determine.

5. [LESSOR'S COVENANTS.] The lessor hereby covenants with the lessee:

(1) [FOR QUIET ENJOYMENT.] (*See Form No. 8, cl. 4, p. 744.*)

(2) To do all necessary repairs to the roofs, outer walls (except windows), and main timbers.

6. [MEANING OF "LESSOR" AND "LESSEE."] Where the context so admits, the term "lessor" shall include his heirs and assigns, and the term "lessee" shall include his personal representatives and licensed assigns.

In witness, *etc.*

16. Lease of Farm on Shares

This indenture made this —— day of —— (*parties as in Form No. 11, p. 756*):

Witnesseth as follows:

1. [DEMISE, HABENDUM, AND REDDENDUM.] The lessor hereby demises and leases to the lessee all that farm with the buildings thereon situate in —— and described as (*description*), to hold the same to the lessee from the —— day of —— to the —— day of ——.

Yielding and paying as rent therefor during the said term one equal (one-half) share of all the crops and produce which shall be produced upon the premises as hereinafter provided, or, in lieu thereof, at the election of the lessee the sum of \$——, payable on the —— day of ——.

2. [LESSEE'S COVENANTS.] The lessee covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay to the lessor as rent one equal (one-half) share in kind of all the crops and produce which shall be produced upon the premises during the said term, to be divided there according to the usual custom of making such division in the neighborhood, and to deliver such share to the lessor upon the premises or at such other place as the lessor may direct within ——— miles of the premises within ——— days after such crops and produce shall have been harvested and threshed, husked or otherwise put in marketable condition for delivery, and not later than the ——— day of ———, or else at the election of the lessee, in lieu of such share, to pay to the lessor on the ——— day of ——— the sum of \$——.

(2) [TO FARM IN HUSBANDLIKE MANNER—TO RAISE GRAIN, ETC.] To farm and cultivate the premises in a good and farm-like manner; to till and cultivate all the tillable land now under cultivation; to seed not less than ——— acres thereof to grain, and to raise the greatest amount of grain thereon the nature of the soil and the season will permit; to haul out and distribute upon the poorest soil all the manure and compost suitable to be used; to care for all growing crops in a good and husbandlike manner; to harvest all crops in proper season; to thresh, husk, and otherwise put in proper marketable condition for delivery all the said crops and produce, and until delivery to take proper care of the lessor's share thereof.

(3) [TO KEEP UP PREMISES.] To preserve the fruit and ornamental trees, bushes, shrubs, and vines that are now or may hereafter be planted upon the premises from injury by plowing, or by cattle or other stock or otherwise; to keep the premises free from brush, burrs, and thistles; to mow or cut near the surface all weeds on the premises within the limits of the public roads thereon on or before the ——— day of ——— in

each year; and to keep all ditches and drains plowed and cleaned out.

(4) [TO KEEP STRUCTURES, ETC., IN REPAIR.] To keep in repair all the buildings and fences and hedges on the premises (provided, that the lessor shall at his own cost furnish all material for such repairs not made necessary by the default or negligence of the lessee as the lessor shall consider needful.)

(5) [TO PERMIT LESSOR TO ENTER.] That the lessor may at all seasonable times enter upon the premises for the purpose of viewing the premises or making improvements thereon, and shall have the right to plow the land after the crops thereon have been gathered.

(6) [NOT TO ASSIGN.] (*See Form No. 15, cl. 2 (8), p. 778.*)

(7) [NOT TO PERMIT WASTE.] (*See Form No. 15, cl. 2 (9), p. 778.*)

(8) [NOT TO DISPOSE OF CROPS, ETC.] Not to remove or sell or mortgage, or otherwise incumber or dispose of, any of the crops or produce raised or to be raised on the premises, or to suffer the same to be removed, attached, or levied upon under execution, while the rent herein specified or any part thereof remains unpaid.

(9) [TO YIELD UP PREMISES.] To yield up at the expiration of the tenancy all the demised premises in such a state of repair, cultivation, and management as shall be in compliance with the lessee's covenants, ordinary wear and tear and loss from fire or other unavoidable casualty only excepted.

3. [LESSOR'S COVENANT FOR QUIET ENJOYMENT.] (*See Form No. 8, cl. 3, p. 744.*)

4. [PROVISO FOR RE-ENTRY.] Provided, always, that if any covenant on the lessee's part herein contained shall not be performed or observed, the said sum of \$—— payable in lieu of the said share of the crops and produce, as hereinbefore provided, or the balance thereof remaining after deducting there-

from all or any share or shares of the said crops and produce theretofore delivered and paid to the lessor as rent, estimated at the market value thereof, shall immediately become due and payable, and it shall be lawful for the lessor to re-enter upon the premises, and thereupon this demise shall determine:

5. [PROVISO FOR SALE OF CROPS ON RE-ENTRY AND APPLICATION OF PROCEEDS.] Provided, further, that upon any such re-entry it shall be lawful for the lessor to take possession of all the crops and produce raised on the premises and then gathered (and not theretofore divided); and if any part of the crops on the premises shall not then be sufficiently matured for harvesting, or shall be ungathered, it shall be lawful for the lessor, if he shall see fit, to cultivate, harvest, and gather the same, it being expressly agreed, however, that the lessor shall be under no obligation so to do, and in either or any such case it shall be lawful for the lessor to sell the crops and produce when gathered at private or public sale, and to apply the proceeds thereof to the payment of all expenses incurred by the lessor in cultivating, harvesting, gathering, and selling the same, and to the payment of the said rent and of all damages growing out of the failure of the lessee to perform his covenants, paying the surplus, if any, to the lessee.

6. [MEANING OF "LESSOR" AND "LESSEE."] (*See Form No. 15, cl. 6, p. 779.*)

In witness, *etc.*

17. Same—Short Form

This indenture made this _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

Witnesseth that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the

second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in ———, known and described as follows, to wit (*description*).

To have and to hold the said above-described premises, with all the privileges and appurtenances belonging to the same (except such as hereinafter mentioned as reserved for the use and benefit of the said party of the first part), unto the said party of the second part, his executors, administrators, and assigns, for term of ———, commencing on the ——— day of ———, and ending on the ——— day of ———.

And the said party of the first part makes the following reservation, to wit: Reserving (*insert any reservations*).

And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, doth covenant and agree with the said party of the first part, his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for the said premises, in amount and manner as follows, to wit (*insert provisions for payment of rent in kind*).

And it is further agreed by the said party of the second part that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of the said party of the first part had and obtained thereto; that he will at all times during the term of this lease, at his own expense (except so far as may be hereinafter agreed to the contrary), maintain and repair all the buildings and fences belonging to said premises, or which may at any time during said term be erected thereon, and the said premises, and every part thereof, in as good repair as they shall be in at the commencement of the term of this lease, will peacefully deliver up to the said party of the first part, his heirs, executors, administrators, and assigns, at the termination of this

lease, loss by fire, storm, and unavoidable accident and ordinary wear and tear only excepted.

In witness, *etc.*

18. Agreement for Farming on Shares, the Owner of the Land Retaining Title to the Crops until Division

This agreement made this —— day of —— between ——, party of the first part, and ——, owner of the real estate or farm hereinafter described, party of the second part:

Witnesseth that the party of the first part hereby covenants and agrees to and with the party of the second part, for the consideration hereinafter named, well and faithfully to till and farm during the season of farming in the year ——, in good and husbandlike manner, and according to the usual course of husbandry, the following described premises and real estate (*description*).

And the party of the first part further covenants and agrees to sow and plant the said lands in such crops as the said party of the second part shall direct.

The party of the first part also agrees to furnish at his own cost and expense all proper and convenient tools, teams, utensils, farming implements, and machinery (except as hereinafter otherwise provided); to carry on and cultivate the said farm during the said season, and to furnish and provide all proper assistance and hired help in and about the cultivation and management of the said farm, and to farm and cultivate the said land to the best advantage, and according to his best skill and judgment; to maintain and keep up the fences so as to protect such crops from injury and waste, and to watch, care for, and protect the same; to protect the fruit and shade trees thereon, and to cut no trees, and to commit no waste or damage on the said real estate, and to suffer none to be done; to crop and cultivate the said lands, and to harvest, thresh, and secure the

crops grown thereon in farmerlike style, and in the best possible manner during said season; to stack up on the said premises the share of the party of the second part of the hay cut on the premises during the said season, and after taking off the crops to plow immediately, in good and proper manner, not less than ——— inches deep, so much of such parts of the said farm suitable for a succeeding crop as shall be plowed at the time the said party of the first part takes possession thereof; to keep up and maintain in good repair all structures, stables, cribs, fences, and improvements on the said farm; and generally to do and perform all proper and ordinary work, labor, care, and skill requisite, usual, or necessary to work and crop the said premises in a proper manner and style and to the best interests of the party of the second part; and further agrees not to remove any straw or manure from the said farm, and not to sell or remove, or suffer to be sold or removed, any of the product of the said farm or premises, of any kind, character, or description, until the division thereof, without the written consent of the party of the second part, and until such division the title and possession of all the hay, grain, crops and produce, raised, grown, or produced on the said premises shall be and remain in the party of the second part.

In consideration of the faithful and diligent performance of the foregoing covenants and agreements by the party of the first part, the party of the second part agrees upon reasonable request thereafter made to give and deliver on the said farm one equal (one-half) share of all grains, vegetables, and other crops so raised and secured upon the said land during the said season.

In witness, *etc.*

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19. Statutory Form of Lease (District of Columbia⁷ and Maryland)

This lease made this _____ day of _____, in the year _____, between _____, of _____, and _____, of _____, witnesseth that the said _____ doth lease unto the said _____, his executor, administrator, and assigns, all that (*here describe the property*) for the term of _____ years, beginning on the _____ day of _____, in the year _____, and ending on the _____ day of _____, in the year _____, the said _____ paying therefor the sum of _____ on the _____ day of _____ in each and every year (*or, month, as the case may be*).

Witness our hands and seals.

_____. (Seal.)

_____. (Seal.)

19a. Statutory Form of Lease (Virginia⁸ and West Virginia)

This deed made the _____ day of _____, in the year _____, between (*here insert the names of parties*), witnesseth that the said _____ doth (*or, do*) demise unto the said _____, his personal representative and assigns, all, *etc.* (*here describe the property*), from the _____ day of _____, for the term of _____, thence ensuing, yielding therefor during the said term the rent of (*here state the rent and mode of payment*).

Witness the following signature and seal (*or, signatures and seals*).

⁷ Code 1901, as amend. to 1911, § 556. Substantially the same form is given in Maryland. Ann. Civ. Code 1910, art. 21, § 65.

⁸ Code 1904, § 2440. Substantially the same form is given in West Virginia. Code 1906, § 3051.

20. Lease by Mortgagor and Mortgagee

This indenture made the —— day of —— between ——, of ——, hereinafter called the lessor, of the first part, ——, of ——, hereinafter called the mortgagee, of the second part, and ——, of ——, hereinafter called the lessee, of the third part, witnesseth:

[RECITAL OF MORTGAGE.] Whereas, by a certain indenture of mortgage dated the —— day of ——, and recorded in (*set forth record*), the lessor mortgaged to the mortgagee the premises hereinafter described, subject to the provisos in the said indenture of mortgage contained.

1. [DEMISE.] Now, therefore, the lessor hereby demises and the mortgagee at the request of the lessor hereby demises and confirms unto the lessee (*description of premises, habendum, and reddendum as in appropriate form of lease*).

2. [LESSEE'S COVENANTS.] The lessee for himself and his assigns and to the intent that the obligations may continue throughout the term hereby created covenants with the lessor, his heirs and assigns, and also as a separate covenant with the mortgagee, his heirs, personal representatives, and assigns, as follows: (*Lessee's covenants as in appropriate form of lease; the covenant to insure providing for a policy with the appropriate mortgagee's clause, and the liberty to enter and view being conferred on the lessor, his heirs and assigns, until the giving of the notice hereinafter provided for, and thereafter on the mortgagee.*)

3. [COVENANT FOR QUIET ENJOYMENT.] Each of them, the lessor and the mortgagee, so far as relates to the acts of himself and of persons claiming under him, covenants with the lessee that the lessee, paying the rent hereby reserved and performing and observing the several covenants and stipulations herein on his part contained, shall peaceably hold and enjoy the

demised premises during the said term without any interruption by the lessor or the mortgagee or any person claiming under either of them (*or, if the mortgagee does not enter into the covenant, the lessor covenants with the lessee that, etc., "without any interruption by the lessor or any person claiming under him"*):

4. [PROVISOS.] Provided, always, and it is expressly agreed as follows:

(1) [RENT TO BE PAID TO LESSOR UNTIL NOTICE.] Until the mortgagee shall by notice in writing given to the lessee require payment to himself of the reserved rent, the same shall be paid to the lessor, his heirs and assigns, whose receipt shall be a sufficient discharge therefor.

(2) [PREMISES TO BE YIELDED UP TO LESSOR, UNLESS NOTICE.] If at the expiration of the tenancy no such notice as aforesaid shall have been given, the lessee shall deliver up the demised premises under his covenant in that behalf hereinbefore contained to the lessor, his heirs or assigns.

(3) [POWERS OF LESSOR UNTIL NOTICE.] Until such notice as aforesaid has been given, any consent or act required to be given or done or any notice required to be given by or to the lessor hereunder may be effectually given or done by or given by or to the lessor, his heirs or assigns.

(4) [POWER OF RE-ENTRY.] (*As in appropriate form of lease, the power being given until such notice as aforesaid to the lessor, his heirs or assigns, and thereafter to the mortgagee.*)

In witness, *etc.*

21. Same—Another Form *

This indenture made this _____ day of _____ between _____, of _____, hereinafter called the lessor, of the first part, _____, of _____, hereinafter called the lessee, of the second part, and _____, of _____, hereinafter called the mortgagee, of the third part, witnesseth:

[RECITAL OF MORTGAGEE.] (*See Form No. 20, cl. 1, p. 787.*)

[RECITAL OF MORTGAGEE'S CONSENT.] And whereas, at the request of the lessor the mortgagor has consented to execute these presents to the end that this lease shall have priority over the said mortgage.

1. [DEMISE, HABENDUM, REDDENDUM, LESSEE'S COVENANTS, LESSOR'S COVENANTS, PROVISIO FOR RE-ENTRY, ETC.] (*As in appropriate form of lease in ordinary cases.*)

2. [MORTGAGEE'S CONSENT THAT LEASE SHALL HAVE PRIORITY.] The mortgagee hereby consents and agrees that this lease shall have priority over the said indenture of mortgage to all intents and purposes as if this lease had been first executed, and the said indenture of mortgage had by its express terms been made subject to this lease.

In witness, *etc.*

22. Lease by Joint Tenants

This indenture made this _____ day of _____ between _____ and _____, of _____, hereinafter called the lessors, of the one part, and _____, of _____, hereinafter called the lessee, of the other part, witnesseth as follows:

* This form may be appropriately used in states where a mortgage creates a mere lien. In many cases the securing of a good lease may be an inducement to the mortgagee to consent to give it priority over his mortgage, and the lessee may make this a condition to his execution of the lease.

1. [DEMISE, ETC.] The lessors hereby demise unto the lessee (*description of premises, habendum, reddendum, and lessee's covenants as in appropriate form of lease*).

2. [LESSORS' COVENANTS.] The lessors hereby covenant with the lessee that the lessors or one of them will (*covenants as in appropriate form of lease, substituting in the covenant for quiet enjoyment, "without interruption by the lessors or any person lawfully claiming under them or either of them"*).

3. [PROVISOS.] (*As in appropriate form of lease, the power of re-entry being given to, and any proviso for notice providing for service on, "the lessors or either of them."*)

In witness, etc.

23. Lease by Tenants in Common

This indenture made this _____ day of _____ between _____ and _____, of _____, who are seised in fee simple as tenants in common in equal shares of the hereditaments hereby demised, and who are hereinafter called the lessors, of the one part, and _____, of _____, hereinafter called the lessee, of the other part, witnesseth as follows:

1. [DEMISE, ETC.] The lessors according to their several estates and interests do and each of them doth hereby demise unto the lessee (*description of premises, habendum, and reddendum as in appropriate form of lease*).

2. [LESSEE'S COVENANTS.] The lessee for himself and his assigns hereby covenants with the lessors and also covenants separately with each of them (*covenants as in appropriate form of lease*).

3. [LESSORS' COVENANTS IN GENERAL.] The lessors hereby covenant with the lessee as follows (*as in appropriate form of lease, except covenant for quiet enjoyment*).

4. [QUALIFIED COVENANT FOR QUIET ENJOYMENT.] Each of the lessors separately and so far only as regards his respective share of the demised premises, and in respect only of the acts and defaults of himself and persons claiming under him, covenants with the lessee that the lessee, paying the rent hereby reserved and performing the covenants on his part herein contained, shall peaceably hold and enjoy the demised premises without any interruption by the lessors or either of them or any person claiming under them or either of them.

5. [PROVISOS.] (*As in appropriate form of lease, the power of re-entry being given to, and any proviso for notice providing for service on, "the lessors or either of them."*)

In witness, etc.

24. Lease to Joint Tenants

This indenture made the —— day of —— between ——, of ——, hereinafter called the lessor, of the one part, and —— and ——, of ——, hereinafter called the lessees, of the other part, witnesseth as follows:

1. [DEMISE.] The lessor hereby demises unto the lessees (*description*).

[HABENDUM.] To hold unto the lessees for the term of —— years from the —— day of —— as joint tenants (*reddendum as in appropriate form of lease*).

2. [LESSEES' COVENANTS.] The lessees for themselves and the survivor of them and their and his executors, administrators, and assigns hereby (jointly and severally) covenants with the lessor (*lessees' covenants as in appropriate form of lease*).

3. [LESSOR'S COVENANTS.] (*As in appropriate form of lease.*)

4. [PROVISOS.] (*As in appropriate form of lease.*)

In witness, etc.

25. Lease to Tenants in Common

This indenture made this _____ day of _____ between
(*parties as in Form No. 24, p. 791*), witnesseth as follows:

1. [DEMISE.] The lessor hereby demises unto the lessees
(*description*).

[HABENDUM.] To hold unto the lessees for the term of
_____ years from the _____ day of _____ as cotenants in
common (*reddendum as in appropriate form of lease*).

2. [LESSEES' COVENANTS.] The lessees for themselves and
their respective executors, administrators, and assigns jointly
and severally covenant with the lessor (*covenants as in ap-
propriate form of lease*).

3. [LESSOR'S COVENANTS.] The lessor hereby covenants
with the lessees and also a separate covenant with each of
them (*covenants as in appropriate form of lease*).

4. [PROVISOS.] (*As in appropriate form of lease.*)

In witness, *etc.*

26. Lease by Way of Renewal or Extension of Existing Term—By Indorsement

Indenture made this _____ day of _____ between _____,
the lessor named in the within-written indenture of lease, of
the one part, and _____, the lessee named therein, of the other
part:

[RECITAL OF AGREEMENT FOR RENEWAL.] Whereas, the
lessee has requested the lessor to grant a lease to him (in ac-
cordance with the lessor's covenant in that behalf contained
in the within-written indenture) of the premises therein de-
scribed for the term of _____ years from the (*last day of
existing term*) on the terms hereinafter expressed, which the
lessor has agreed to do.

Now, this indenture witnesseth as follows:

1. [DEMISE.] In pursuance of the premises the lessor demises unto the lessee all and singular the premises described in and demised by the within-written indenture.

To hold unto the lessee from the —— day of ——, subject to the payment on the same days and in like manner of a yearly rent of the same amount as reserved by the within written indenture, the first payment of rent hereunder to be made on the —— day of ——, and subject to and with the benefit of the like covenants on the part of the lessor and the lessee respectively (other than the covenant for renewal) and such provisos and conditions in all respects, including the proviso for re-entry, as are contained in the within-written indenture.

2. [MUTUAL COVENANTS TO PERFORM.] It is hereby mutually covenanted and agreed between the lessor and lessee, and so that the obligations hereunder shall continue throughout the term hereby created and be binding on their respective successors in interest, that they will respectively perform and observe the several covenants, provisos, and stipulations in the within-written indenture contained as fully as if the same had been herein repeated in full, with such modifications only as are necessary to make them applicable to this demise:

3. [PROVISO IN CASE OF RE-ENTRY UNDER OLD LEASE.] Provided, that if the term of —— years created by the within-written indenture shall be determined under the proviso for re-entry therein contained, these presents shall become absolutely void.

In witness, *etc.*

**261½. Deed of Covenant for Payment of Additional Rent in
Consideration of Alterations to be Made by Lessor**

This indenture made the _____ day of _____ (*parties as in Form No. 8, p. 742*):

[RECITAL OF LEASE.] Whereas, by an indenture of lease dated (*etc.*) and made between the lessor, of the one part, and the lessee, of the other part, all that (*description*) was demised unto the lessee for the term of _____ years from the _____ day of _____, at the yearly rent of _____ dollars, subject to the lessee's covenants and the conditions therein contained.

Now, this indenture witnesseth as follows:

1. [LESSOR TO EXECUTE ALTERATIONS.] In consideration of the covenants of the lessor and the provisions hereinafter contained, the lessor hereby covenants with the lessee to execute, in conformity with the plans and specifications of _____, architect, already approved and initialed by the lessor and lessee, and to complete within _____ months from the date hereof, the following alterations and additions of and to the above-described premises, to wit (*specify the same*).

2. [COVENANT TO PAY ADDITIONAL RENT.] In consideration of the covenant of the lessor hereinbefore contained, the lessee covenants with the lessor to pay to the lessor, from and after the due execution of the said alterations and additions, during the residue of the term granted by the said lease, the yearly rent of _____ dollars by equal monthly payments upon the days appointed for the payment of the rent by the said lease; the said yearly rent of _____ dollars to be paid in addition, and not in substitution, for the yearly rent of _____ dollars reserved by the said lease.

3. [COVENANTS IN LEASE TO APPLY.] Upon the due completion in manner aforesaid of the said alterations and additions, the lessee's covenants and the provisions and stipula-

tions contained in the said lease which are now applicable to the said premises shall continue to be applicable and enforceable in respect to the said premises when so altered, and shall extend to all additions which may be made thereto hereunder.

4. [RIGHT OF RE-ENTRY.] The right of re-entry by the said lease reserved to the lessor shall be exercisable by the lessor, as well in case of the nonpayment of the said additional rent or of the breach of any of the covenants on the part of the lessee herein contained as in case of nonpayment of the rent reserved by the said lease or of a breach of any of the covenants on the part of the lessee therein contained.

In witness, *etc.*

27. Under Lease Varying Covenants of Superior Lease

This indenture made the —— day of —— between
(*parties as in Form No. 8, p. 742*):

Witnesseth as follows:

1. [RECITAL OF SUPERIOR LEASE.] Whereas, by an indenture of lease dated the —— day of —— (and recorded, *etc.*), between ——, who is hereinafter referred to as the superior lessor, and the above-named lessor as lessee thereunder, the premises hereinafter described were demised to the lessor for the term of —— years, subject to the covenants and provisos thereof.

2. [DEMISE, TERM, AND RENT.] Now, therefore, the lessor hereby demises unto the lessee all the land and premises situate in —— described as (*description*).

To hold to the lessee from the —— day of —— for the term of —— years, being the unexpired term of the above-recited indenture of lease.

Yielding and paying therefor (*as in Form No. 8, cl. 1, p. 743*).

3. [LESSEE'S COVENANTS.] The lessee for himself and his assigns hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] To pay the rent hereby reserved on the days and in the manner aforesaid.

(2-4) (*Insert covenants, similar to those in superior lease, e. g.: To pay taxes, etc.; To keep in repair; Not to make alterations. See Form No. 8, cl. 2 (2-4), p. 743. If necessary, the covenants of the superior lease must be varied so as to impose on the underlessee in direct terms the obligations of the superior lease.*)

(5) [TO PERMIT LESSORS TO ENTER AND REPAIR.] To permit the lessor, the superior lessor, and their respective agents (*as in Form No. 8, cl. 2 (6), p. 743*).

(6) [NOT TO ASSIGN.] Not to assign, underlet, or part with the possession of the whole or any part of the demised premises without first obtaining the written consent of the lessor and the superior lessor.

(7) [TO PERFORM COVENANTS OF LESSEE IN SUPERIOR LEASE.] To perform and observe the covenants and stipulations on the part of the lessee in the said indenture of lease, excepting the covenant for the payment of rent reserved thereby (*excepting also other covenants, if necessary*), and to keep the lessor indemnified against all claims, damages, costs, and expenses in respect of the nonperformance or nonobservance thereof.

4. [LESSOR'S COVENANTS.] The lessor hereby covenants with the lessee as follows:

(1) [FOR QUIET ENJOYMENT.] That the lessee, paying the rent hereby reserved and performing and observing the covenants and stipulations herein on his part contained, shall peaceably enjoy and hold the demised premises during the term hereby created without any interruption by the lessor or su-

perior lessor or either of them or any person rightfully claiming from or under either of them.

(2) [TO PAY RENT AND OBSERVE COVENANTS IN SUPERIOR LEASE.] To pay the rent reserved by the above-recited indenture of lease as therein provided (and to perform and observe the lessee's covenants and stipulations contained in the said indenture so far as the same ought to be performed and observed by the lessor herein).

5. [PROVISO FOR RE-ENTRY.] (*See Form No. 8, cl. 4, p. 745.*)

6. [PROVISO IN EVENT OF DAMAGE BY FIRE, ETC.] (*See Form No. 8, cl. 5, p. 745.*)

In witness, *etc.*

28. Mining Lease

This indenture made the _____ day of _____ between _____, hereinafter called the lessor, of the first part, and _____, hereinafter called the lessee, of the second part, witnesseth:

1. [DEMISE AND TERM.] That the lessor, in consideration of the rents, royalties, covenants, and agreements hereinafter reserved and expressed to be paid and performed by the lessee, hereby lets and demises unto the lessee the following described mine and mining property, situated in _____ mining district, in the county of _____, and state of _____, to wit (*description*), together with the appurtenances. To have and to hold unto the lessee for the term of _____ years from the date hereof, expiring on the _____ day of _____.

2. [LESSEE'S COVENANTS.] And the lessee covenants with the lessor as follows, to wit:

(1) [TO WORK MINE.] To enter upon the said mine or premises and work the same in manner necessary to good and economical mining, so as to take out the greatest amount of

ore possible, with due regard to the safety, development, and preservation of the said premises as a workable mine.

(2) [TO WORK CONTINUOUSLY.] To work and mine the said premises as aforesaid steadily and continuously from the date of this lease; it being expressly agreed that any failure to work the said premises with at least ——— persons employed underground for the space of ——— consecutive days shall be deemed a breach of this covenant.

(3) [TO KEEP ACCOUNTS, ETC.] To keep correct accounts and to render to the lessor monthly (*or, quarterly*) statements, accompanied by vouchers, showing the amount of all ore taken from the premises and the yield thereof, and the cost of hauling and milling the same, and to pay to the lessor as rent for the said premises (*set forth payments to be made*).

(4) [TO TIMBER.] Sufficiently to timber the said mine and to repair all old timbering wherever necessary.

(5) [TO ALLOW LESSOR TO ENTER.] To allow the lessor and his agents to enter into all parts of said mine to inspect it.

(6) [NOT TO ASSIGN.] Not to assign this lease, or any interest thereunder, and not to sublet the said premises or any part thereof, without the written assent of the lessor, and not to allow any other person to take possession of the said premises or any part thereof under any pretense whatever.

(7) [TO HOLD CROSS-LODES, ETC., OF LESSOR.] To occupy and hold all cross or parallel lodes, dips, spurs, feeders, crevices, or mineral deposits of any kind which may be discovered in working under this lease, or in any tunnel run to intersect the said ——— lode, by the lessee or any person or persons under him in any manner at any point within ——— feet of the center line of the said lode, as the property of the lessor, with the privilege to the lessee of working the same as appurtenance to the said premises during the term of this lease, and not to locate or record the same, or allow the same to be located or recorded, except in the name of the lessor.

(8) [TO KEEP DRAINED, ETC.] To keep at all times the drifts, shafts, tunnels, and other passages and workings of the said premises thoroughly drained and clear of loose rock and rubbish of all kinds.

(9) [TO DELIVER UP.] To deliver up to the lessor the said premises, with the appurtenances and all improvements, in good order and condition, with all shafts and tunnels and other passages thoroughly clear of rubbish and drained, and the mine in all points ready for immediate continued working (accidents not arising from negligence alone excusing) without demand or further notice, on the said ——— day of ———, at noon or at any time previous, upon demand for forfeiture.

3. [RIGHT OF RE-ENTRY.] Upon the violation by the lessee or any other person under him of any covenant herein contained, the term of this lease shall at the option of the lessor expire, and the lease and premises, with the appurtenances, shall become forfeited to the lessor, and the lessor may thereupon demand possession of and re-enter upon the said premises and dispossess all persons occupying the same, with or without force, and with or without process of law.

In witness, *etc.*

29. Same—Another Form

This indenture made the ——— day of ——— between ———, party of the first part, and ———, party of the second part, witnesseth:

[DEMISE AND TERM.] That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, and of one dollar in hand paid to the said party of the first part, the receipt whereof is hereby acknowledged, doth hereby grant and convey to the said party of the second part, his heirs, executors, administrators, and assigns, the right of

entering in and upon the lands hereinafter described for the purpose of searching for mineral and fossil substances and of conducting mining and quarrying operations, to any extent he may deem advisable (but not to hold possession of any part of the said lands for any other purpose whatsoever), for the term of —— years from the date hereof, paying for the site of such buildings or works as may be necessary thereto a reasonable rent. The said lands are situated (*description*).

[LESSEE'S COVENANTS.] And the said party of the second part hereby covenants that he, his heirs, executors, administrators, or assigns, will pay, or cause to be paid, to the said party of the first part, his heirs or assigns (*set forth payments to be made*); and that no damage shall be done to or upon the said lands and premises other than may be necessary in conducting the said operations:

[DETERMINATION OF LEASE.] Provided, and this indenture is made under the express condition, that if no mineral or fossil substance be mined or quarried, as now contemplated by the said parties, within the period of —— years from the present time, then these presents and everything contained therein shall determine and be forever null and void.

In witness, *etc.*

29a. Same—Another Form

This agreement made this —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part, witnesseth:

1. [DEMISE AND TERM.] That the party of the first part, for and in consideration of the sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, and for other valuable considerations hereinafter set forth, doth hereby grant, demise, and let unto the said party of the second part, his executors, administrators, and assigns, the sole and exclusive

right of digging, boring, and otherwise prospecting for coal, iron, salt, petroleum, lead, or other valuable mineral substances upon the following described tracts of land (*description*). To have and to hold the said premises for the said purposes only unto the said party of the second part, his executors, administrators, and assigns, for and during the full term of ——— years next ensuing from the day and year first above written. Hereby granting to the said party of the second part, his executors, administrators, and assigns, the right to search, dig, bore, mine, and excavate for the said coal, iron, salt, petroleum, lead and other valuable mineral substances in as many places as they may deem proper, and to extract and remove the same from the said premises, and the right to use and occupy so much of the said tracts for buildings and improvements as may be necessary for the efficient and economical working of the same, and also all such rights of way through and across the said tracts of land as may be necessary to obtain and remove therefrom the coal, iron, salt, petroleum, lead, and other minerals, together with all other rights and privileges necessary for, or incident to, obtaining, preserving, removing, and disposing of the said coal, iron, salt, petroleum, lead, and other substances in and upon the said demised premises in the most convenient, suitable, and advantageous manner.

2. [ROYALTIES, ETC.] In consideration of said grant and demise, the said party of the second part covenants and agrees to commence and make search for coal, iron, salt, petroleum, lead, and other minerals in and upon the said demised premises within ——— months from the date hereof; and to pay and render unto the said party of the first part, his legal representatives or assigns, for each and every bushel of merchantable coal of ——— pounds, mined or produced, except such coal as may be removed in digging pits, shafts, or entries into such mines, or shall be used as fuel in the working of the mines, a royalty of ——— for each bushel, and for all other

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valuable minerals mined or produced a royalty of ——— part of the amount thereof, said royalties to be paid on the ——— day of each month for all the coal or minerals produced in the month preceding.

3. [LESSEE NOT TO CAUSE UNNECESSARY INJURY, ETC.] And the said party of the second part further covenants and agrees not to molest, injure, or interfere with the said party of the first part, or his heirs or assigns, in the full use, occupation, and enjoyment of the said lands and the buildings and improvements thereon further than it may be necessary for the efficient and successful working of the said mines, and to pay any damages that may be done to any crops or other property on the said premises, if the same shall be caused by the negligence or other fault of the said party of the second part: Provided, that such damage shall be determined by three arbitrators, one to be chosen by each of the parties to this agreement, and the other by the two arbitrators so elected, and, furthermore, that no shaft, pit, or entry to any mine shall be made or sunk within ——— yards of any dwelling house on the said premises without the consent of the party of the first part, his heirs, legal representatives, or assigns being first had and obtained.

4. [LESSEE'S RIGHT TO REMOVE FIXTURES AND TERMINATE.] It is also mutually covenanted and agreed that the said party of the second part, his legal representatives or assigns, may at any time during the continuance of this agreement move or cause to be removed from the demised premises any buildings, fixtures, machinery, or materials which he or they shall have placed upon the said premises, and that, should they fail to find such valuable substances as would, in their judgment, justify a further development, or from any cause desire to terminate this agreement, they shall have the right to do so by first giving notice in writing to the party of the first part, his heirs or assigns, and upon payment in full of any and all

royalties which may have become due this agreement shall be considered at an end and of no binding force upon either of the parties hereto.

In witness, *etc.*

29b. Mining Lease (Iron Ore) ¹⁰

This indenture made this _____ day of _____ between _____, party of the first part, and _____, party of the second part:

Witnesseth as follows:

1. [DEMISE.] The party of the first part, in consideration of the sum of one dollar to him paid by the party of the second part, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained to be performed and observed by the party of the second part, doth hereby lease and demise to the party of the second part the following described land and premises situate in the county of _____ and state of _____ (*description*), which premises are leased to the party of the second part for the purpose of exploring for, mining, taking out, and removing therefrom the merchantable shipping iron ore which is or which may hereafter be found on, in, or under the said land, together with the right to construct all buildings, and to make all excavations, openings, ditches, drains, railroads, wagon roads, and other improvements upon the said premises which are or may become necessary or suitable for the mining and removing of iron ore from the said premises, and the right during the continuance of this lease to cut and use the timber found upon that portion of the said premises, consisting of _____ acres and described as (*description*) so far as may be necessary for fuel for other than smelting purposes, and also

¹⁰ This follows substantially the so-called Longyear lease commonly used in Minnesota.

for the construction of all buildings required in the operation of any mine or mines found on the premises hereby demised, and also for drains, tramways, supports, and railroads within such mine or mines or connecting such mine or mines with the main line or lines of railroad over or upon which the said ore may be transported. To have and to hold the premises hereby demised unto the party of the second part for the term of ——— years from and after the ——— day of ———, but subject to determination as hereinafter provided.

2. [COVENANTS OF LESSEE.] The party of the second part, in consideration of the premises, hereby covenants and agrees to and with the party of the first part as follows:

(1) [ROYALTIES.] The party of the second part will on the ——— days of ———, ———, ———, and ——— in each year, or on the day following if that day falls on Sunday or on a legal holiday, during the said term, or during the period which this lease shall continue in force, pay to or for the use of the party of the first part, at such bank in the city of ——— as the party of the first part may from time to time in writing designate, for all the ore mined and removed from the said land during the three months next preceding the first day of the month in which such payment is to be made as aforesaid at the rate of ——— cents per ton up to ——— thousand tons and at the rate of ——— cents per ton for all the ore exceeding said ——— thousand tons so mined and removed in any one year, each ton to be reckoned at 2,240 pounds.

(2) [STATEMENTS AND ACCOUNTS.] The party of the second part at the time of such payment shall render and transmit to the party of the first part a true and exact statement of the amount of iron ore removed during the period for which such payment shall be made. The party of the second part shall cause the ore so taken away by the party of the second part to be weighed by the railroad company transporting the same

from the said land, which weights shall determine the quantity as between the parties hereto, and the party of the second part shall furnish the party of the first part monthly statements showing the aforesaid weights; the right, however, being conceded to the party of the first part to inspect, review, and test the correctness of such railroad company's scales and weights at any time and in such manner as the party of the first part sees fit to adopt, it being understood that any error in these respects, when ascertained, shall be recognized and corrected in the accounts of the parties hereto.

(3) [MINIMUM AMOUNT TO BE MINED AND PAID FOR.] During the period of the continuance of this lease there shall be mined and removed from the said land at least ——— thousand tons of iron ore within one year from the first day of ——— next, and at least ——— thousand tons for each and every year thereafter; and in case the party of the second part shall not remove from the said land the quantity of iron ore per annum as herein stipulated, commencing from the time specified, the party of the second part shall nevertheless pay to the party of the first part a royalty of ——— cents per ton upon ——— thousand tons per annum up to and until this lease shall expire or be terminated in manner hereinafter expressed: Provided, however, that if in any one or more years more iron ore is thus paid for than is actually mined and removed in such year or years, then and in such case the iron ore so paid for and not removed may be removed in any subsequent year during the continuance of this lease without other payment therefor, but such ore so permitted to be removed in any subsequent year in consideration of such prepayment must be in excess of the stipulated ——— thousand tons agreed to be annually taken from the said land under this lease.

(4) [AMOUNT IN EXCESS OF MINIMUM TO BE MINED AND PAID FOR.] The party of the second part shall each and every

year take out and remove as much iron ore in excess of the ——— thousand tons aforesaid as can be mined and removed profitably to the party of the second part, paying therefor at the quarter dates aforesaid and at the rates aforesaid for each and every ton so mined and removed.

(5) [TAXES.] The party of the second part shall pay all taxes, general and specific, upon the land so demised which may be assessed either against the said land or the improvements thereon, or on the ore produced thereon, or on any personal property at the said mines, from and after the ——— day of ——— during the continuance of this lease.

(6) [MINES TO BE PROPERLY WORKED.] The party of the second part shall open, use, and work the said mines in such manner only as is usual and customary in skillful and proper mining operations of similar character when conducted by the proprietors themselves, and so as not to do, cause, or permit any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operating of the same mine or mines, and in the working of the said mines the party of the second part shall deposit all earth, rocks, and other useless material and rubbish in such places and in such manner as will not conflict with or embarrass the future operating of the said mines.

(7) [RIGHT OF LESSOR TO ENTER AND INSPECT.] The party of the first part shall have and expressly reserves the right by himself, his agents or servants, to enter into and upon the above-demised premises and any and all parts thereof at all times, to inspect and survey the same, and to measure the quantity of ores that shall have been mined or removed therefrom, not unnecessarily or unreasonably hindering or interrupting the works or operations of the lessees.

(8) [SURRENDER ON TERMINATION.] At the termination of this lease the party of the second part shall peaceably and quiet-

ly surrender the possession of the said land to the party of the first part.

(9) [TO RECORD CERTIFICATE ON TERMINATION.] When this lease shall for any cause terminate, the party of the second part shall enter or cause to be entered a certificate of that fact upon the proper book of record in said ——— county: Provided this lease shall have been there recorded.

3. [LESSOR'S LIEN.] It is understood that the party of the first part reserves, and shall at all times have, possess, and hold, a lien upon all ore mined, and on all improvements made on the said premises by the party of the second part, as security for any unpaid balances of money due under this lease, such balances being deemed and treated as balances of purchase money, which lien may be enforced against such property as liens conferred by chattel mortgages are or may be enforced under the laws of the said state of ———.

4. [RIGHT OF LESSEE TO CONTRACT WITH OTHERS FOR WORKING MINES.] The party of the first part covenants and agrees to and with the party of the second part that the party of the second part shall have the right under this lease to contract with others to work such mine or mines or any part thereof, or to subcontract the same, and the use of the said land or any part thereof for the purpose of mining for iron ores, with the same rights and privileges as are herein granted to the party of the second part, and that the uninterrupted right of the party of the second part to take, use, and carry away the iron ore herein provided for shall continue unsuspended, notwithstanding any disagreement between the parties respecting the same or this lease: Provided the party of the second part shall pay for all ore taken or agreed to be taken at the time or times and in the manner stipulated in and by this lease.

5. [TERMINATION BY LESSEE.] It is hereby agreed and understood that the party of the second part shall have the right

at any time (after the —— day of ——) to terminate this lease in so far as it requires the party of the second part to mine ore upon the said land or to pay a royalty therefor, by giving —— days' written notice to that effect to the party of the first part either in person or by mailing the same addressed to him at ——, and thereupon this lease and demise shall terminate, and all arrearages and sums which may be due under the same up to the date of such termination as specified in such notice shall be paid upon settlement and adjustment thereof.

6. [LESSEE'S RIGHT OF REMOVAL ON TERMINATION.] It is further agreed and understood that upon the termination of this lease, whether by the acts of the parties or either of them or by limitation, the party of the second part shall have —— days in which to remove all engines, tools, machinery, railroad tracks, and structures erected or placed by the party of the second part upon the said land, but shall not remove or impair any supports placed in the mines, nor any timbers or frameworks necessary to the use and maintenance of the shafts or other approaches to the mines, nor any tramways within the mines.

7. [CONDITION FOR RE-ENTRY.] This lease is granted upon the express condition that, if the rent hereby reserved, the said royalties being treated as rent, or any part thereof, or the taxes shall be and remain unpaid after the days and times when, by the preceding covenants, the same shall be paid (and if the same shall remain in default for more than —— days), or in the event of the termination of this lease as hereinbefore provided, or in case the party of the second part shall fail to perform or observe any of the covenants or conditions herein expressed on the part of the party of the second part to be performed or observed, then and from thenceforth, and in either or any such event, it shall be lawful for the party of the first

part at his option to re-enter into and upon the said demised premises, with or without any previous notice or process, and the same to have and possess again as of his first and former estate, and the party of the second part and all persons claiming under the party of the second part wholly to exclude therefrom.

8. [TO RUN WITH LAND.] The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon all sublessees and grantees under the party of the second part.

9. [TO BIND REPRESENTATIVES AND ASSIGNS.] All the grants, covenants, stipulations, and conditions herein expressed shall apply to and bind the heirs, executors, administrators, (successors), and assigns, as the case may be, of the respective parties hereto.

In witness, *etc.*

30. Bond and Lease of Mining Property

Know all men by these presents that ———, of ———, party of the first part, is held and firmly bound unto ———, of ———, party of the second part, in the penal sum of \$———, lawful money of the United States, for the payment of which sum well and truly to be made by the party of the first part to the party of the second part, his heirs, executors, administrators, or assigns, the party of the first part hereby binds himself, his heirs, executors, administrators, and assigns, firmly by these presents.

[RECITALS OF AGREEMENT TO SELL AND OF DEPOSIT.] Whereas, the above-bounden party of the first part, on the day of the date hereof, has agreed to sell to the said party of the second part the following described property, situate in ——— mining district, in the county of ———, and state of ——— (*description*), for the sum of \$———, which said sum is to be paid to

the party of the first part, or deposited to his credit in the ——— Bank, of ———, in the manner following, to wit (*set forth payments to be made*);

[RECITALS OF AGREEMENT FOR DEED IN ESCROW.] And whereas, the party of the first part has further agreed to execute and acknowledge within ——— days from the date hereof, unto the party of the second part, a good and sufficient deed of all the foregoing property, showing a clear and perfect title, free from all incumbrance (except as against the United States), which deed shall be placed, within ——— days from the date hereof, with ——— in escrow, to be delivered to the party of the second part, or his assigns, on the payment in full of the said purchase money;

[RECITALS OF OTHER TERMS.] And whereas, the party of the first part has further agreed to place the party of the second part, or his assigns, in full and peaceable possession of the said property, to mine, remove, and sell ore therefrom; the party of the second part, or his assigns, to commence work on the said premises before the ——— day of ———, and thereafter to work the same continuously in a thorough and workmanlike manner, employing at least ——— men underground, working at least ——— shifts to the man each calendar month, and to permit the party of the first part to have access to all parts of the said property at all times, and to allow no person not in privity with the parties hereto to take or hold possession of the said property or any part thereof under any pretense whatever, and during the continuance of this bond and lease to deposit in the said ——— Bank to the credit of the party of the first part ——— of the net smelter or mill returns of all ore taken from the said property as and when received, said sum so deposited to be a part payment of the said purchase money.

[CONDITION.] Now, therefore, the condition of the above obligation is such that, if the party of the second part, or his representatives or assigns, shall fail to comply with the terms of the aforesaid agreement or any of them, time being of the essence hereof, and if the party of the first part shall well and faithfully perform the same, then this obligation shall be null and void, otherwise remain in full force and effect; and in case of such failure all sums deposited as aforesaid shall be retained by the party of the first part as liquidated damages, and the party of the second part shall forthwith surrender possession of the said premises.

In witness whereof the party of the first part has hereunto set his hand and seal this —— day of ——.

(To be acknowledged by the party of the first part.)

31. Oil and Gas Lease

This indenture made this —— day of —— between ——, of ——, hereinafter called the lessor, of the first part, and ——, of ——, hereinafter called the lessee, of the second part, witnesseth as follows:

1. [DEMISE, TERM, ETC.] The lessor, in consideration of the rents and covenants herein to be paid and performed by the lessee, doth hereby grant, lease, and demise unto the lessee the premises hereinafter described, for the purpose and with the exclusive right of drilling, mining, and operating for and procuring oil and gas to any extent which the lessee may deem advisable, and with the (exclusive) right to lay, erect, and maintain all necessary pipes, pipe lines, tanks, power stations, structures, fixtures, machinery, and appliances for drilling, mining, and operating for oil and gas and for pumping, preserving, storing, and transporting the same on and from the said premises, which are situate in —— and described as (*description*).

To have and to hold the same unto the lessee, his personal representatives and assigns, for the term of —— years from the date hereof (and as much longer as oil or gas is found or produced thereon in paying quantities).

Yielding and paying to the lessor the rents and royalties hereinafter specified.

2. [FURTHER RIGHTS GRANTED.] The lessor further grants to the lessee the right to use free of cost for the lessee's operations on the premises gas, oil, and water produced thereon, but not water from wells now thereon, including the right to drill for water on the premises, and also the right to remove all machinery and fixtures placed by the lessee on the premises, including the right to draw and remove casings.

3. [LESSEE'S COVENANTS.] The lessee hereby covenants with the lessor as follows:

(1) [TO PAY RENT.] Until the completion of a well producing oil or gas in marketable quantities, to pay to the lessor the sum of \$—— per annum, payable by equal quarterly payments in advance, the first of such payments to be on the —— day of ——.

(2) [TO PAY FOR OIL.] To deliver to the lessor free of cost in tanks at the well one equal (one-eighth) part of all oil obtained or produced on or from the said premises, or, at the option of the lessee, to pay to the lessor in cash at the well the prevailing market price thereof.

(3) [TO PAY FOR GAS WELLS, ETC.] To pay to the lessor the sum of \$—— per annum, payable by equal quarterly payments in advance, for each completed gas well wherein gas only is found, producing gas in marketable quantities, and to permit the lessor to have from any such well free of cost gas sufficient for his own domestic purposes through connections made at his own cost and risk.

(4) [TO PAY FOR GAS, ETC.] To pay to the lessor the sum of \$—— per annum, payable by like quarterly payments, for each completed oil well wherein gas also is found, producing gas in marketable quantities.

(5) [TO PAY DAMAGES.] To pay the lessor for all damages caused by the lessee to growing crops upon the premises.

(6) [TO DRILL, WHEN AND HOW.] To drill for oil or gas within —— months from the date hereof; to drill no well and to store no oil nearer than —— feet to the dwelling house or barns now on the premises, except with the consent of the lessor; and, when requested by the lessor, to bury all pipes below plow depth on tillable lands:

4. [PROVISO FOR RE-ENTRY.] Provided, always, that in case the rents and royalties hereby reserved or any part thereof shall be unpaid, or if any covenant on the lessee's part herein contained shall not be performed, it shall be lawful for the lessor to re-enter upon the premises, and thereupon this lease shall absolutely determine, but without prejudice to the right of action of the lessor in respect of any breach of the lessee's covenants:

5. [PROVISO FOR SURRENDER.] Provided, further, that the lessee may at any time surrender this lease by delivering to the lessor a written notice of such surrender, and paying to him all sums due up to that time and the further sum of \$——, and after such surrender the lessee shall be under no further liability hereunder.

6. [AGREEMENT BINDS WHOM.] The covenants, conditions, and agreements made and entered into by the parties hereto shall bind their respective heirs, representatives, and assigns.

In witness, *etc.*

32. Release and Waiver by Landlord of Breaches of Covenant by Tenant

This indenture is made the —— day of —— between ——, of ——, hereinafter called the landlord, of the one part, and ——, of ——, hereinafter called the tenant, of the other part:

[RECITAL OF LEASE.] Whereas, by an indenture of lease dated the —— day of —— and made between (*parties to lease*), all those premises (*description*) were demised unto the tenant for the term of —— years from the —— day of —— at the yearly rent thereby reserved, and subject to the tenant's covenants therein contained, including a covenant (*state covenant broken*);

[RECITAL OF BREACH AND AGREEMENT.] And whereas, a breach (*or, breaches*) of the above-mentioned covenant has (*or, have*) been committed, viz. (*state particulars of breach*), and the landlord has agreed to execute such a release of the said breach(es) as is hereinafter contained.

[RELEASE AND WAIVER.] Now, this indenture witnesseth that, in pursuance of the said agreement and in consideration of \$—— now paid by the tenant, the receipt whereof is hereby acknowledged, the landlord hereby waives and releases all existing rights and remedies for damages, forfeiture, or otherwise which the landlord has or could enforce against the tenant in respect of the said breach(es) of covenant (or any other breach heretofore committed or suffered of any of the tenant's covenants and agreements contained in the said lease), and hereby ratifies and confirms the said lease: Provided, that this waiver and release shall not extend to or prejudice any rights of the landlord in respect of any future breach of any of the tenant's covenants and agreements.

In witness, *etc.*

33. Guaranty for Payment of Rent and Observance of Terms of Tenancy

In consideration of your acceptance at my request of —— as tenant of your house and premises (*description*) upon the terms and at the rent mentioned in an agreement in writing dated the —— day of ——, and made between you, of the one part, and the said ——, of the other part:

I hereby guarantee the punctual and faithful observance and performance by the said —— of the said terms and the payment by him of the said rent at the times mentioned in the said agreement. And I also hereby undertake to be responsible to you as surety for the said —— for the payment by him of all sums of money, costs, damages, and expenses that may become due to you from him by reason of his having become your tenant under the said agreement.

This guaranty shall not be revocable by notice or by reason of my death, but it shall remain in full force until the expiration of the tenancy of the said —— under the said agreement.

(*Signature.*)

To (*landlord*).

34. Same—By Indorsement

In consideration of the letting of the premises described in the within lease to ——, the within-named party of the second part, and of the sum of one dollar to me paid by the within-named party of the first part, I, ——, do hereby covenant and agree to and with the said party of the first part and his legal representatives that, if default shall at any time be made by the said party of the second part in the payment of the rent and the performance of the covenants contained in the within lease on his part to be paid and performed, I will well and truly pay the said rent or any arrears thereof that may remain

due unto the said party of the first part, and also all damages that may arise in consequence of the nonperformance of the said covenants or either of them, without requiring notice of any such default from the said party of the first part.

Witness my hand and seal this —— day of ——.

35. Same—Another Form

In consideration of the granting of the within lease, I hereby guaranty the punctual payment of the rent reserved by and the due performance of the covenants on the part of the lessee therein contained. And I further guaranty the payment of all damages, costs, and expenses which by virtue of the said lease or the occupation by the said lessee of the demised premises may become recoverable from him by the lessor therein named.

Dated ——.

(Signature.)

36. Same—By Guarantors with Unequal Liability

This agreement made this —— day of ——, between ——, party of the first part, and ——, party of the second part, and ——, party of the third part, witnesseth that:

[RECITAL OF LEASE.] Whereas, by a lease dated the —— day of ——, and made between the said party of the third part, hereinafter called the lessor, and ——, hereinafter called the lessee, the lessor demised the premises described as (*description*) to the lessee for a term of —— years at a rent of \$—— per annum, payable as therein mentioned, and subject to the covenants and conditions therein contained; and

[RECITAL OF AGREEMENT.] Whereas, the lessor in fact granted the said lease at the request of the said parties of the first and second parts, hereinafter called the guarantors, and on condition of receiving such guaranty as herein contained.

Now, therefore, it is hereby agreed as follows:

1. [GUARANTY OF RENT, ETC.] The guarantors hereby guaranty to the lessor the payment of the rent reserved by the said lease on the days therein appointed and the due performance and observance of the covenants by the lessee therein contained.

2. [PROPORTIONATE LIABILITY.] The aggregate liability of the guarantors to the lessor hereunder shall not in any case or under any circumstances exceed \$——, of which as between themselves the said party of the first part shall be liable for not more than \$——, and the said party of the second part shall be liable for not more than \$——, and any liability of the guarantors shall be borne and paid by them in the like proportions.

3. [INDULGENCE TO LESSEE, ETC.] The liability of either of the guarantors hereunder shall not be affected by any time or indulgence given to the lessee or to the other of the guarantors by the lessor, and shall as between themselves and the lessor be that of principal debtors.

4. [RIGHTS OF SURETIES WAIVED.] The guarantors shall not in respect to any payment made by them hereunder have any right on the ground of suretyship or otherwise to stand in the place of the lessor so as to compete with him as creditors of the lessee unless and until all the claims of the lessor under the said lease shall have been fully paid and satisfied.

In witness, *etc.*

(Signatures of all parties.)

37. Assignment of Lease—By Deed Poll

Know all men by these presents that I, ——, of ——, for and in consideration of the sum of \$—— to me paid by ——, of ——, the receipt whereof is hereby acknowledged, do by these presents assign, transfer, and set over unto the said —— a certain indenture of lease, bearing date the ——

day of —— (and recorded in ——), made by ——, of ——, to me, of those certain premises situate in —— and described as (*description*), with all and singular the premises therein mentioned and described and the buildings thereon, together with the appurtenances.

To have and to hold the same unto the said ——, his executors, administrators, and assigns, from the —— day of —— for and during all the remainder of the term of —— years mentioned in the said indenture of lease. Subject, nevertheless, to the rents, covenants, conditions, and provisions therein mentioned.

And I do hereby covenant and agree to and with the said —— that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever (by me made or suffered).

In witness, *etc.*

38. Assignment of Lease—By Indorsement

This indenture made the —— day of ——, between the within-named ——, hereinafter called the assignor, of the first part, and ——, hereinafter called the assignee, of the second part:

Witnesseth that, in consideration of \$—— paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the assignor hereby assigns to the assignee all and singular the hereditaments and premises described in and demised by the within-written indenture of lease for the residue of the term of —— years thereby created. To have and to hold the same to the assignee for the residue now unexpired of the term of —— years within mentioned, subject to the payment of the rent and performance of the lessee's covenants, conditions, and stipulations in the within-written indenture re-

served and contained. And the assignee hereby covenants with the assignor to keep him, his executors and administrators, indemnified against the said rents, covenants, conditions, and stipulations and all actions, proceedings, claims, and expenses in respect thereof.

In witness, *etc.*

**39. Assignment of Lease and Guaranty by Assignor with Assumption by Assignee of Lessee's Covenants
—By Indorsement**

For value received I, ——, the lessee named in the within lease, hereby assign all my right, title, and interest in and to the same unto ——, and I hereby guarantee the performance by the said —— of all the covenants on the part of me the said lessee therein mentioned.

In consideration of the above assignment and of the written consent of the lessor named in the said lease, above indorsed hereon, I, ——, hereby assume and agree to perform all the said covenants and conditions of the said lease on the part of the said lessee therein mentioned.

Witness our hands and seals. *etc.*

40. Assignment of Lease by Indorsement, the Lessor Joining to Release the Lessee and Taking New Covenants from the Assignee

This indenture made the —— day of —— between the within-named ——, hereinafter called the assignor, of the first part, the within-named ——, hereinafter called the lessor, of the second part, and ——, hereinafter called the assignee, of the third part.

1. [ASSIGNMENT AND HABENDUM.] (*As in Form No. 38, p. 818.*)

2. [RELEASE OF LESSEE BY LESSOR.] In consideration of the covenants herein contained and of the premises, the lessor, with the intention of discharging the personal liability of the lessee, his executors and administrators, but not further or otherwise, hereby releases the lessee, his estate and effects, from all liability in respect of the rent reserved by and the covenants, conditions, and stipulations contained in the within written indenture, and all actions, proceedings, claims, and demands in respect of any breach, whether present or future, of any such covenants, conditions, and stipulations.

3. [COVENANTS BY ASSIGNEE TO PAY RENT AND OBSERVE COVENANTS.] The assignee hereby covenants with the lessor to pay the rent reserved by the within-written indenture on the days and in the manner therein provided, and to perform and observe all the covenants, conditions, and stipulations therein contained and on the lessee's part to be performed and observed.

4. [SAVING POWERS OF LESSOR.] Neither the said release nor anything herein contained shall prejudice or affect the original reservation of rent or the binding effect of the several stipulations within contained on the demised premises and the persons from time to time entitled thereto in the right of the lessor to re-enter upon the demised premises under the power of re-entry reserved to him by the within-written indenture for nonpayment of the said rent or breach or nonobservance of any of the said covenants, conditions, or stipulations.

In witness, *etc.*

41. Assignment of Leaseholds by Lessee

Indenture made the —— day of —— between ——, of ——, hereinafter called the assignor, of the one part, and ——, of ——, hereinafter called the assignee, of the other part:

[RECITAL OF LEASE.] Whereas, by an indenture of lease dated the —— day of ——, and recorded (*set forth record*), made between —— and the assignor, all the premises described as (*description*) were demised to the assignor for the term of —— years from the —— day of ——, at the yearly rent of \$——, and subject to the covenants, conditions, and stipulations therein contained and binding on the assignor, the lessee therein, his executors, administrators, and assigns.

[ASSIGNMENT.] Now, this indenture witnesseth that, in consideration of the sum of \$—— paid by the assignee to the assignor, the receipt whereof is hereby acknowledged, the assignor hereby assigns to the assignee all and singular the hereditaments and premises comprised in and demised by the said lease.

To hold the same to the assignee for the residue now unexpired of the said term, subject to the payment of the rent and performance and observance of the covenants, conditions, and stipulations in the said lease reserved and contained and henceforth on the assignee's part to be paid, performed, and observed.

[ASSIGNEE'S COVENANTS.] And the assignee covenants with the assignor henceforth during the continuance of the said term to pay the rents reserved and to perform and observe the covenants, conditions, and stipulations in the said lease contained and on the part of the lessee therein to be performed and observed, and to keep indemnified the assignor against

all actions, claims, and demands whatsoever in respect of the said rents, covenants, conditions, and stipulations, or anything relating thereto.

In witness, *etc.*

42. Assignment of an Agreement for a Lease

This indenture made the —— day of —— between ——, of ——, hereinafter called the assignor, of the one part, and ——, of ——, hereinafter called the assignee, of the other part:

[RECITAL OF AGREEMENT FOR LEASE.] Whereas, by an agreement in writing dated the —— day of ——, and made between ——, of ——, of the one part, and the assignor, of the other part, the said —— agreed with the assignor to grant a lease to the assignor of all (*description of premises*) for the term of —— years at the yearly rent of \$——, and it was agreed that the said lease should contain the covenants, conditions, and stipulations specified in the said agreement.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] In consideration of the sum of \$—— paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the assignor hereby assigns to the assignee the said recited agreement and all the benefit thereof. To hold the same to the assignee for his absolute benefit, subject to the payment of the said rent and the performance and observance of the said covenants, conditions, and stipulations.

2. [ASSIGNOR'S COVENANT AGAINST INCUMBRANCES AND TO PROCURE LEASE.] The assignor hereby covenants with the assignee that the assignor has not done or knowingly suffered any act or thing whereby he is prevented from assigning the said agreement in manner aforesaid, and that the assignor will

use his best endeavor to induce and procure the said lessor to grant a lease of the premises to the assignee.

3. [ASSIGNEE'S COVENANT OF INDEMNITY.] The assignee, with the object and intention of affording to the assignor, his executors and administrators, a full and sufficient indemnity, hereby covenants with the assignor to perform and observe all the covenants, conditions, and stipulations in the said recited agreement expressed and on the part of the assignor to be performed and observed.

In witness, *etc.*

43. Same—By Indorsement

Memorandum of an agreement made the —— day of —— between the within named ——, hereinafter called the assignor, of the one part, and ——, of ——, hereinafter called the assignee, of the other part:

Whereby, in consideration of \$—— paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the assignor hereby sells and assigns to the assignee the benefit of the within written agreement and all remedies for enforcing the same, and agrees (at the expense of the assignee) to procure from the within named —— (*lessor*) a grant of the said lease to the assignee, and the assignee agrees with the assignor to perform and observe all the covenants, conditions, and stipulations contained in the said agreement and to indemnify the assignor from all liability in respect thereof.

In witness, *etc.*

44. Assignment of Ground Rents with a Demise to Enable the Purchaser to Recover the Rent

This indenture made the _____ day of _____ between _____, of _____, hereinafter called the vendor, of the one part, and _____, of _____, hereinafter called the purchaser, of the other part:

[RECITAL OF LEASE CREATING GROUND RENT.] Whereas, by an indenture of lease dated the _____ day of _____, between the vendor, of the one part, and _____, of _____, of the other part, the vendor demised unto the said _____, all that (*description as in lease*). To hold the same unto the said _____, his executors, administrators, and assigns, from the _____ day of _____ for a term of _____ years, at the yearly rent of \$_____, by two equal half-yearly payments on the _____ day of _____ and the _____ day of _____.

1. [DEMISE.] Now, this indenture witnesseth that, in consideration of the sum of \$_____ paid by the purchaser to the vendor, the receipt whereof is hereby acknowledged, the vendor hereby grants and demises unto the purchaser all and singular the lands and premises mentioned and comprised in the said indenture of lease. To hold the same unto the purchaser, his executors, administrators, and assigns, subject nevertheless to the said indenture of lease and the term thereby created, but with the benefit of the rent thereby reserved and of all the powers, provisions, covenants, and conditions therein contained, from the _____ day of _____ next for the unexpired residue of the term granted by the said indenture of lease and one day more.¹¹

2. [COVENANT OF VENDOR.] And the vendor hereby covenants with the purchaser that the said indenture of lease and the rents and covenants therein respectively reserved and con-

¹¹ A reversion is created for the purpose of recovering the rent.

tained on the part of the lessee to be paid and performed are now valid and subsisting and in no wise determined, released, or extinguished.

In witness, *etc.*

(Signature and seal of vendor.)

45. Conveyance in Fee Simple Subject to a Lease at Ground Rent with Benefit of the Lease

This indenture made the —— day of —— between *(parties as in preceding form).*

[RECITAL OF LEASE CREATING GROUND RENT.] *(As in preceding form.)*

1. [CONVEYANCE.] Now, this indenture witnesseth that, in consideration of the sum of \$—— paid to the vendor by the purchaser, the receipt whereof is hereby acknowledged, the vendor doth hereby grant, bargain, sell, and convey unto the purchaser all that lot or piece of ground situate in —— and in the said recited indenture of lease and hereinbefore described.

To have and to hold the granted premises, with all the rights, easements, and appurtenances thereto belonging, to the purchaser, his heirs and assigns, to his and their own use and behalf forever, and with the benefit of the rent reserved by the said indenture of lease and of the covenants, conditions, stipulations, and powers therein contained and on the part of the lessee therein to be observed and performed.

2. [COVENANTS OF VENDOR.] *(Insert such covenants appropriate to the form of deed as may be desired, adding the covenant of the preceding form.)*

In witness, *etc.*

46. Surrender of Lease

This indenture made the _____ day of _____ between _____, of _____, of the first part, and _____, of _____, of the second part:

[RECITAL OF LEASE.] Whereas, by an indenture of lease dated the _____ day of _____, the said party of the second part did demise unto the said party of the first part those certain lands and premises described as (*description*) for the term of _____ years from the _____ day of _____ at the yearly rent of \$_____, subject to the lessee's covenants and the conditions therein contained.

[SURRENDER.] Now, these presents witness that, in consideration of the sum of \$_____ paid by the said party of the second part to the said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part hereby surrenders and yields up to the said party of the second part all and singular the said lands and premises described in and demised by the said indenture of lease.

To have and to hold unto the said party of the second part, his heirs and assigns, for all the unexpired residue of the said term, to the intent that the said term may merge and be extinguished in the freehold and inheritance of the said premises.

[COVENANT OF LESSEE.] And the said party of the first part doth hereby, for his heirs, executors, and administrators, covenant with the said party of the second part, his heirs and assigns, that the said party of the first part has not at any time heretofore done or suffered any act or thing whatsoever whereby the said lands and premises hereby surrendered or any part thereof are or may be in anywise impeached, charged, affected, or incumbered.

In witness whereof the said parties, *etc.*

47. Same—By Indorsement

Know all men by these presents that I, ———, the lessee named in the within lease, in consideration of the sum of \$———, the receipt whereof is hereby acknowledged, do hereby surrender and yield up unto ———, the lessor therein named, the land and premises thereby demised, to the intent that the term thereby created shall merge and be extinguished in the freehold of the said premises.

In witness, *etc.*

48. License to Assign

I, the undersigned, hereby give my license and authority to an assignment by (*tenant*) of all his estate in the premises demised by an indenture of lease dated the ——— day of ———, and made between (*parties to lease*) unto ———, of ———: Provided, that this license is restricted to the particular assignment hereby authorized, and save as aforesaid the covenant in said indenture against assignment or underletting shall remain in full force.

Dated the ——— day of ———.

(*Signature of landlord.*)

49. License to Underlet

I, the undersigned, hereby consent to an underlease for the term of ——— years from the ——— day of ———, by (*tenant*) to (*underlessee*), of the premises demised by an indenture of lease dated the ——— day of ———, and made between (*parties to lease*): Provided, that this license is restricted to the particular underlease hereby authorized (*concluding as in preceding form*).

49a. Same—By Indorsement

I, the lessor named in the within lease, hereby authorize and permit the lessee therein named to sublet the premises therein leased to ——— for the term of ———, the said lessee being still holden responsible for the faithful performance and observance of all his covenants and agreements therein contained.

Dated the ——— day of ———.

50. Assent of Lessor to Assignment—By Indorsement

I, ———, the lessor named in the within lease, hereby consent to the assignment of the said lease by ———, the lessee therein named, to ——— (on the express condition, however, that the said assignor shall remain liable for the prompt payment of the rent and the performance of the lessee's covenants as therein mentioned, and) that no further assignment of the said lease or subletting of the premises or any part thereof shall be made without my written consent first had thereto.

In witness, *etc.*

51. Same—Another Form

I, ———, the lessor named in the within lease, hereby assent to the above-written assignment thereof.

Dated this ——— day of ———.

52. License to Make Alterations

This indenture made the ——— day of ——— between ———, of ———, hereinafter called the landlord, of the one part, and ———, of ———, hereinafter called the tenant, of the other part.

[RECITAL OF LEASE AND OF COVENANT AGAINST ALTERATIONS.] Now, this indenture witnesseth as follows:

1. [GRANT OF LICENSE.] The landlord grants unto the tenant license to execute in and upon the said demised premises the several alterations and works mentioned in the plans and specifications hereto attached, on condition that the same shall be completed (within the period of —— calendar months from the date hereof and) in conformity with the said plans and specifications or to other plans to be approved by ——, architect, and under the superintendence and in all respects to the satisfaction of such architect.

2. [TENANT'S COVENANTS.] The tenant hereby covenants with the landlord as follows: (1) To complete the said alterations and works (within the period and) in the manner hereinbefore specified; (2) to do all things necessary and to make all payments required for obtaining the consent of the companies in which the buildings are insured to the said alterations and works before beginning the same; (3) at the expiration or sooner determination of the said lease, unless released from compliance with this stipulation by the landlord, at his own cost to reinstate and make good the demised premises and restore the same to the same state and condition as they are now in.

3. [LESSEE'S COVENANTS TO APPLY.] It is hereby agreed and declared that all the lessee's covenants and the conditions contained in the said indenture of lease which are now applicable to the premises comprised therein shall continue to be applicable to the same when and as altered, and shall extend to all additions which may be made thereto in the course of such alterations.

In witness, *etc.*

(Signatures and seals of both parties.)

53. Notice to Quit by Landlord or His Agent

To _____:

I hereby give you notice (on behalf of _____) to quit and deliver up possession, on the _____ day of _____ next, of the premises at No. _____ street, in the city of _____, which you now hold as my (*or, his*) tenant.

Dated the _____ day of _____.

(Signature of landlord or agent.)

54. Notice to Quit by Tenant

To _____:

I hereby give you notice that, on the _____ day of _____ next, I shall quit and deliver up possession of the premises at (*etc.*), which I now hold as your tenant.

Dated, *etc.*

(Signature.)

55. Notice to Quit by Landlord to Tenant from Year to Year

To _____:

I hereby give you notice to quit and deliver up possession of the premises at (*etc.*), which you now hold of me as a tenant from year to year, on the _____ day of _____ next (*or, when the date of the commencement of the tenancy is in doubt, at the end of the year of your tenancy which will expire next after the end of one-half year, or, quarter year, or, month from the date of the service of this notice.*)

Dated, *etc.*

(Signature.)

**56. Notice to Quit by Tenant from Year to Year to
Landlord**

To ———:

I hereby give you notice that I shall quit and deliver up possession of the premises at (*etc.*) which I now hold as your tenant from year to year, on the ——— day of ——— (*as in preceding form*).

**57. Notice to Landlord to Determine Lease in Accordance
with Proviso in that Behalf**

To ———:

I hereby give you notice that I desire that the term created by an indenture of lease, dated (*etc.*), and made between yourself of the one part and myself of the other part, shall determine on the ——— day of ———, in accordance with the proviso in that behalf therein contained.

Dated, *etc.*

**58. Notice by Landlord to Tenant to Repair Where Lease
Contains Covenant to Repair on Notice**

To ———:

I hereby give you notice that the repairs specified in the schedule hereto are necessary to be done to the premises now occupied by you at (*etc.*); and I require you to execute the same forthwith, and to do all other acts necessary to put the premises into tenantable repair in accordance with the covenant in that behalf contained in your lease of the said premises dated (*etc.*).

Dated, *etc.*

SCHEDULE

_____	_____
_____	_____
_____	_____

**59. Notice to Landlord of Tenant's Election to Exercise
Option to Purchase**

To _____:

I hereby give you notice that, in pursuance of the option in that behalf contained in an indenture of lease dated (*etc.*), and made between yourself, as lessor, and myself, as lessee, I elect to purchase the premises thereby demised to me on the terms therein specified; and I request you to execute to me on or before the _____ day of _____ a deed of the said premises in accordance with the provisions in the said indenture contained.

Dated, *etc.***60. Notice to Landlord by Tenant of Election to Take
Renewed Lease**

To _____:

I hereby give you notice that, pursuant to the covenant or proviso for renewal contained in a certain indenture of lease dated (*etc.*), and made between yourself, as lessor, and myself, as lessee, I elect to accept a renewed lease of the premises therein demised to me for the further term of _____ years on the terms and conditions therein specified, and I hereby require you to grant to me the said lease, and I engage to execute the same in duplicate.

Dated, *etc.*

**61. Notice by Purchaser of Premises Requiring Payment
of Rent to Himself**

To ———:

I hereby give you notice that by deed dated (*etc.*), and recorded (*etc.*), the house and premises at (*etc.*), now in your occupation as tenant were conveyed by the said ———, your former landlord, to me, and I hereby require you to pay all rent which is now due and payable and which shall hereafter become payable for or on account of the said premises to me or my duly authorized agent.

Dated, *etc.*

TIFF. FORMS—53

CHAPTER XXIV

MORTGAGES (REAL ESTATE)

Only mortgages on real estate are included in this chapter. For mortgages on personal property, see p. 324 et seq.

Although the laws of the several states differ as to the nature of the security given by a mortgage, mortgages follow the form of deeds of conveyance, with those provisions which are peculiar to mortgages superadded, namely: The condition or defeasance, expressing that the deed is to be void if the mortgagor pays the debt secured or performs the other conditions thereof; the mortgagor's covenants or other agreements in respect to payment and performance, and such other matters as may be agreed upon; and usually a power of sale to be exercised in case of default. In some states, however, a mortgage must be foreclosed by suit or action, and a power of sale finds no place.

The forms of mortgages differ in the different states, and in some a deed of trust running to a trustee is used instead of a mortgage in ordinary form running directly to the creditor. In several states there are short statutory forms of mortgages or deeds of trust which may be used. The formalities of execution are the same as in the case of deeds of conveyance. Ante, p. 466.

Forms in use in the different states are found on pages 868, 974. Preceding these forms will be found some forms and provisions adapted to special matters.

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I

Forms and Provisions Adapted to Special Matters

1. Proviso for Payment of Debt and Interest

Provided always, and these presents are upon this express condition, that if the said ———, ——— heirs, executors, administrators, or assigns, shall pay or cause to be paid to the said ———, ——— executors, administrators, or assigns, the sum of ——— dollars on the ——— day of ——— (*or*, in ——— years from the date hereof), with interest thereon payable semiannually on the ——— day of ——— and ——— in each year at the rate of ——— per cent. per annum, then these presents to be void; otherwise to remain in full force.

2. Proviso That Whole Debt Shall Become Due on Default in Payment or in Performance of Any Covenant

And it is hereby expressly agreed that, if any default be made in the payment of the said principal sum or interest, or of any part thereof, on the day whereon the same is made payable as hereinbefore expressed, or in the performance of any of the covenants on the part of the said party of the first part (*mortgagor*) herein contained (and such default shall continue for the period of —— days), then and in either or any such case the said party of the second part, his executors, administrators, or assigns, may elect without notice that the whole of the said principal sum hereby secured and then remaining unpaid, together with the accrued interest thereon, shall become due and payable forthwith, and, in addition to the other remedies hereinbefore provided, may enforce payment thereof and of all sums expended under the terms of this indenture by foreclosure or otherwise.

3. Proviso for Payment of Debt and Interest According to Principal and Interest Notes and Performance of Covenants

Provided, nevertheless, that if the said party of the first part (*or*, the said grantor; *or*, I) —— heirs, executors, administrators, or assigns, shall pay unto the said party of the second part (*or*, the said grantee), —— executors, administrators, or assigns, the sum of —— dollars, according to the terms of —— principal promissory notes of even date herewith, executed by the said party of the first part (*or*, the said grantor; *or*, me) to the order of the said party of the second part (*or*, the said grantee) for that sum, and payable on the —— day of ——, and interest thereon from date until paid at the rate of —— per cent. per annum, payable semiannually on

the ——— day of ——— and ——— in each year according to the terms of ——— interest coupon notes hereto attached of even date herewith, both principal and interest being payable in gold coin of the United States of or equal to the present standard of weight and fineness, with current exchange on ———, and shall perform and observe all the covenants and agreements on ——— part herein contained, then this deed shall be void.

4. Proviso for Payment of Current Account to Bankers

Provided, always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall pay to the said parties of the second part, the survivor of them and their and his executors, administrators, or assigns, on demand, all such sums as now are or shall from time to time hereafter become owing to them on the balance of his current account with them, whether in respect of moneys advanced or paid to or for the use of the said party of the first part or charges incurred on his account, or in respect of negotiable instruments drawn, accepted, or indorsed by him or on his behalf and discounted or paid or held by them either at his request or in the course of business or otherwise, or in respect of moneys which the said party of the first part shall become liable to pay to the said parties of the second part in any manner whatsoever, and whether such moneys shall be paid or incurred on his behalf alone or jointly with any other person or persons or corporation, together with the usual interest, commission, and charges, then these presents shall be void.

5. Exemption of Mortgagor from Personal Liability

It is hereby expressly agreed that the said sum of \$—— and interest hereby secured shall not constitute a debt, and shall not be recoverable from the said party of the first part, his heirs, executors, or administrators, but is and shall be solely a charge on the said premises hereinbefore conveyed.

6. Covenant for Further Assurance

And, further, that the said (*mortgagor*), his heirs, executors, administrators, and assigns, will at all times on request of the said (*mortgagee*), his executors, administrators, and assigns, and of any person deriving title hereunder or the power of sale herein contained, execute and do all such assurances, deeds, and things for further or more perfectly assuring the said premises hereby mortgaged and every part thereof to him and them in the manner in which this present conveyance is expressed to be made as by him or them or any of them shall be reasonably required.

7. Covenant to Insure

To keep the buildings now or hereafter erected on the mortgaged premises insured against loss by fire (and windstorm) in the name of the mortgagee in at least the sum of \$—— (*or*, to the full insurable value thereof) in a company or companies approved by the mortgagee; to make all payments required for the above purposes immediately (*or*, not later than —— days) after the same shall be due; and as and when issued (*or*, on demand) to deliver to the mortgagee the policy or policies of such insurance and the receipt for each such payment. And if the mortgagor shall make default in any of the above matters, the mortgagee may at his discretion insure and

keep insured all or any of the said buildings to the amount aforesaid, and his expense of so doing shall be added to the principal debt hereby secured, and bear interest at the same rate.

8. Covenant to Pay Debt, Insurance, and Taxes

And the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant with the said party of the second part, his executors, administrators, and assigns, as follows:

(1) [TO PAY NOTES.] To pay the said principal and interest in accordance with the terms of the said notes.

(2) [TO KEEP INSURED.] To keep the buildings now or hereafter erected on the premises herein described insured against loss by fire in at least the sum of \$—— in companies approved by the said party of the second part, and to deliver all policies of insurance thereon as and when issued (whether in excess of the said sum or not) and the premium receipts therefor to the said party of the second part, to whom the said policies shall be made payable.

(3) [TO PAY TAXES, ETC.] To pay all taxes and assessments which may be assessed or levied or imposed upon the said premises within at least —— days after the same become due or payable, and to produce the receipts for such payments within that time to the said party of the second part.

(4) [PAYMENT OF INSURANCE AND TAXES BY MORTGAGEE.] And in the event of any failure to effect and pay for such insurance, or to pay such taxes or assessments as aforesaid, or any part thereof, that then and in either or any such event the said party of the second part, or his executors, administrators, or assigns, may effect and pay for such insurance and pay such taxes and assessments, and the sum or sums so paid shall be deemed a part of the principal debt hereby secured, and shall

bear interest at the same rate, and the same shall be immediately due and payable and collectible with and in the same manner as the said principal debt.

9. Covenant to Keep in Repair

That during the continuance of this mortgage the mortgagor will keep all buildings for the time being subject thereto in good and substantial repair, and that, if he shall neglect so to do, the mortgagee may at his discretion 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 mortgagee in possession, and that his expenses of so doing shall be repaid to him by the mortgagor on demand, and until so repaid shall be added to the principal sum hereby secured and bear interest at the same rate.

10. Covenant of Mortgagor to Pay and Perform Conditions of Prior Mortgage with Provision in Case of Default

And the said party of the first part, for himself, his heirs, executors, administrators, doth covenant with the said party of the second part, his executors, administrators, and assigns, that at all times during the continuance of this mortgage he or they will pay the interest on the said prior mortgage to which the said premises hereby conveyed are subject, and will pay the principal debt thereby secured, and will perform all other the covenants and conditions thereof on his or their part therein contained. And it is hereby expressly agreed that, if and whenever any default shall be made in the performance of this covenant, then the said party of the second part, his executors, administrators, or assigns, may elect without notice that the whole of the principal sum hereby secured, together with the accrued

interest thereon, shall become payable forthwith, and may enforce payment thereof and of all sums expended under the terms hereof by foreclosure or otherwise.

11. Provision That Mortgagee May Enter and Collect Rents on Default

And it is hereby further expressly agreed that, if any default shall be made in the payment of said principal sum or the interest thereon,¹ or of any such tax or assessment or insurance moneys, or of any part thereof, at the respective times hereinbefore provided therefor, then and in any or either such event the said party of the second part shall have the right forthwith to enter into and to take possession of the said mortgaged premises, and demand, collect, sue for, and receive the rents and profits thereof, and apply the same, after deducting all necessary charges and expenses, on account of all sums which shall then be due under the terms of this mortgage.

12. Provision for Appointment of Receiver of Rents and Profits

And it is hereby further expressly agreed that, if any such default shall occur, the said party of the second part, his executors, administrators, and assigns, upon filing a complaint in any court of competent jurisdiction to foreclose this mortgage, may apply for and shall be entitled as a matter of right and without notice to the appointment of a receiver of the rents, issue, and profits of the mortgaged premises, with power to receive and recover the same, to dispossess tenants, to lease the prem-

¹ In some states where the mortgagor cannot be divested of possession before foreclosure and sale this provision would be ineffective, except in so far as it might be of aid in securing the appointment of a receiver of the rents and profits.

ises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be deemed necessary, who, after deducting all charges and expenses attending the execution of such trust as receiver, shall apply the residue of the said rents, issues, and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such foreclosure and sale.

13. Definition of Parties to Include Representatives, etc.

This indenture made the _____ day of _____ between _____, of _____, hereinafter called the mortgagor, which expression shall, where the context so admits, include his heirs, executors, administrators, and assigns, of the one part, and _____, of _____, hereinafter called the mortgagee, which expression shall, where the context so admits, include his (heirs), executors, administrators, and assigns, of the other part.

14. Mortgage Providing for Future Advances

This indenture made the _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITALS OF NOTE.] Whereas, the said party of the first part has executed his certain promissory note bearing even date herewith for the principal sum of _____ dollars, payable to the order of the said party of the second part on the _____ day of _____, with interest thereon at the rate of _____ per cent. per annum, payable semiannually on the _____ days of _____ and _____ in each year until the principal sum shall be paid;

[RECITAL AS TO FUTURE ADVANCES.] And whereas, the said party of the second part may hereafter during the continuance of these presents make further advances to the said party of the first part, and it is intended that the same, with interest, shall be secured hereby.

[CONVEYANCE.] Now, this indenture witnesseth that the said party of the first part, in consideration of the said sum of ——— dollars to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey (*conveyance and covenants of title as in other appropriate form*):

[PROVISO FOR PAYMENT OF DEBT AND ADVANCES.] Provided, nevertheless, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall pay to the said party of the second part, his executors, administrators, or assigns, the said principal sum and interest, according to the terms of the said promissory note, and also pay to him or them on or before the ——— day of ——— such further sum or sums of money, if any, as the said party of the second part may hereafter during the continuance of these presents advance to the said party of the first part on the security hereof, with interest on such further sum or sums from the time when they may be respectively advanced at the aforesaid rate, payable semiannually on the ——— days of ——— and ——— in each year until such sum or sums so advanced shall have been respectively and fully paid, and perform and observe all the covenants and agreements on the part of the mortgagor herein contained, then these presents shall be void.

[COVENANTS OF MORTGAGOR.] And the said party of the first part, for himself, his heirs, executors, administrators, and assigns, doth further covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, to pay the said note and interest as they become

due, and also on or before the said ——— day of ——— to repay all such further advances, with the interest thereon as hereinbefore provided (*other covenants as may be agreed*).

[POWER OF SALE.] But if default shall be made in the payment of the said sum or sums of money, or interest thereon, or any part thereof, at the time and in the manner hereinbefore specified (*power of sale as in appropriate form*).

In witness, etc.

15. Mortgage to Secure Indorser

This indenture made this ——— day of ——— (*parties as in Form No. 14, p. 845*).

[RECITAL OF INDORSEMENT.] Whereas, the said party of the second part, at the request and for the accommodation of the said party of the first part, has on the day of the date hereof indorsed a certain promissory note, made by the said party of the first part for the sum of \$——, bearing even date herewith, and payable ——— days thereafter to the order of ———.

[CONVEYANCE, ETC.] (*As in appropriate form.*)

[PROVISO FOR PAYMENT OF NOTE.] Provided, nevertheless, that if the said party of the first part shall take up and pay the said note at the maturity thereof, then this deed shall be void.

[POWER OF SALE.] But if default shall be made by the said party of the first part in the payment of the said note or the interest thereon or of any part thereof at the time therein specified, and the same shall be paid by or collected from the said party of the second part, the said party of the second part, his heirs, executors, administrators and assigns, are hereby authorized and empowered to sell the hereby granted premises at public auction (*power of sale as in appropriate form*), and out of the moneys arising from such sale to

retain such sum or sums of money as may have been paid by or collected from the said party of the second part, as above mentioned, together with all costs and charges of such collection and of such foreclosure, including an attorney's fee of \$——, and to pay the overplus, if any, to the said party of the first part, his heirs, executors, administrators, or assigns.

In witness, *etc.*

16. Mortgage for Purchase Money

(*Follow any appropriate form, inserting after the description.*) being the same premises conveyed to the said (*mortgagor*) by the said (*mortgagee*) and ——, his wife, by deed of even date with these presents, which are given to secure the payment of (part of) the purchase money of the said premises.

17. Mortgage to Several Trustees or Others Who Advance Moneys on a Joint Account

This indenture made the —— day of —— between ——, of ——, hereinafter called the mortgagor, which expression shall, where the context so admits, include his heirs, executors, administrators, and assigns, of the one part, and ——, ——, and ——, of ——, hereinafter called the mortgagees, which expression shall, where the context so admits, include the survivors and survivor of them, and the (heirs), executors, and administrators of such survivor, and their or his assigns, of the other part:

Witnesseth that the said mortgagor, in consideration of the sum of —— dollars paid by the mortgagees out of moneys belonging to them on a joint account, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey unto the mortgagees all that (*proceeding as in other appropriate form of mortgage*).

18. Mortgage of Leasehold by Way of Assignment ²

This indenture made the —— day of —— (*parties as in Form No. 14, p. 845*):

[RECITAL OF LEASE.] Whereas, by an indenture of lease, dated (*etc.*), and recorded (*etc.*), and made between ——, of the one part, as lessor, and the said party of the first part, of the other part, as lessee, the said —— demised to the said party of the first part the land and premises hereinafter described for and during the term of —— years from the —— day of —— at the yearly rent of \$——, and subject to the performance and observance of the lessee's covenants and the conditions therein contained.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] The said party of the first part, in consideration of the sum of —— dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby assign, transfer, and set over unto the said party of the second part all and singular the land and premises comprised in and demised by the said lease, to wit (*description*), and the buildings thereon, together with the appurtenances, and also the said indenture of lease. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, from the —— day of —— for the unexpired residue of the said term of —— years granted by the said lease.

2. [COVENANTS OF TITLE, ETC.] And the said party of the first part, for himself, his heirs, executors, and administrators,

² A mortgage of a leasehold may be created by an assignment of the entire term or by the creation of a subterm, the entire term less one or two days. The former may be the better course where the rent is small and the lessee's covenants are not burdensome. On the other hand, a subdemise relieves the mortgagee of personal liability to the lessor.

doth covenant with the said party of the second part, his executors, administrators, and assigns, that the said lease is now valid and subsisting; that all the rent thereby reserved and payable prior to the date hereof has been paid, and that all the other the lessee's covenants and the conditions therein contained have been observed and performed; that the said premises and leasehold are now free and clear of all incumbrances; and that the said party of the first part has good right and lawful authority to assign and transfer the same in manner and form aforesaid:

3. [PROVISO FOR PAYMENT OF DEBT AND PERFORMANCE OF COVENANTS.] Provided, nevertheless, that if the said party of the first part, his heirs, executors, or administrators, shall pay to the said party of the second part, his executors, administrators, or assigns, the sum of —— dollars, and interest thereon according to the terms of a certain promissory note made by the said party of the first part (*state terms*), and shall perform and observe all the covenants, agreements, and conditions herein contained, then this deed shall be void; otherwise to remain in full force and effect.

4. [MORTGAGOR'S COVENANTS.] And the said party of the first part, for himself, his heirs, executors, and administrators, doth further covenant with the said party of the second part, his executors, administrators, and assigns, as follows:

(1) [TO PAY DEBT.] To pay the said sum of —— dollars, and interest thereon, as the same shall become payable.

(2) [TO INSURE.] To insure and keep insured against fire the buildings now or hereafter erected upon the said premises in at least the sum of \$—— in companies approved by the said party of the second part, his executors, administrators, or assigns, and to deposit the policies of such insurance as and when issued with him or them, to whom the loss, if any, thereunder shall be payable.

(3) [TO KEEP IN REPAIR.] To keep the said buildings in good and tenantable repair, and that it shall be lawful for the said party of the second part, his executors, administrators, and assigns, at all reasonable times to enter upon and view the state of the premises, and that upon receiving notice from him or them of any defect in the repair or condition of the premises the said party of the first part, his executors, administrators, or assigns, will make good such defect.

(4) [TO PAY TAXES, ETC.] To pay all taxes and assessments levied or assessed on the said premises or any part thereof immediately upon the same becoming due or payable, and to produce the receipts for such payments to the said party of the second part, or his executors, administrators, or assigns.

(5) [NOT TO SUFFER WASTE, ETC.] Not to commit or suffer any strip or waste of the said premises or to do or permit to be done thereon anything that may in any way impair the security of this mortgage.

(6) [TO PAY RENT AND PERFORM LESSEE'S COVENANTS.] To pay the said yearly rent of \$—— by the said indenture of lease reserved in accordance with the terms and covenants therein contained, and to observe and perform all the other the covenants, agreements, and conditions in the said indenture contained on the part of the lessee therein to be observed and performed, and to keep indemnified the said party of the second part, his executors, administrators, and assigns, against all actions, proceedings, costs, claims, and damages by him or them incurred or sustained in respect of the nonpayment of the said rent or the nonobservance or nonperformance of the said covenants, agreements, and conditions, or any of them.

5. [RECEIVERSHIP IN EVENT OF CERTAIN DEFAULTS—RIGHT OF MORTGAGEE TO PAY RENT, ETC.] And it is hereby further expressly agreed that in the event of any failure on the part of the said party of the first part, his heirs, executors, administrators,

or assigns, to insure the said buildings and to deliver the said policies, or to keep the said buildings in repair, or to pay the said taxes and assessments, or to pay the said rent by the said indenture of lease reserved, as hereinbefore provided, then and in either or any such event the said party of the second part, his executors, administrators, or assigns, shall be at liberty to apply for and shall be entitled as a matter of right to the appointment by any court having jurisdiction of a receiver of the rents and profits of the said premises, or in any or either such event the said party of the second part, his executors, administrators, or assigns, may, without notice effect and pay for such insurance, effect and pay for such necessary repairs, pay such taxes and assessments, and pay such rent by the said indenture reserved, and the sum or sums of money so paid for any and all such purposes, with interest thereon at the rate of —— per cent. per annum from the time of the payment thereof, shall be deemed a part of the debt hereby secured, and shall be immediately due and payable and collectible with and as a part of and in the same manner as the said principal debt.

6. [POWER OF SALE, ETC.] But if any default shall be made in the payment of the said principal sum or of any installment of interest thereon, or in the payment of any of the said rent reserved by the said indenture of lease, or in the performance or observance of any of the covenants and agreements on the part of the said party of the second part herein contained, then and in either or any such event, and in addition to the other remedies hereinbefore provided, the said party of the second part, his executors, administrators, and assigns, may elect, without notice, that the said principal sum, together with the interest accrued thereon, shall become due and payable at once, and may enforce payment thereof and of all sums by him or them expended under the terms hereof by foreclosure or otherwise, and then and in either or any such event the said party of the

second part, his executors, administrators, or assigns, are hereby authorized and fully empowered to sell the premises hereby assigned at public auction and to convey the same to the purchaser agreeably to the statute in such case provided (*or otherwise setting out power of sale*), and out of the moneys arising from such sale to retain the principal sum hereby secured, the interest thereon then accrued, all such sums as shall have been by him or them paid for insurance, repairs, taxes, and assessments and rent, with interest thereon as hereinbefore provided, and all other sums which shall then be due under the terms of this mortgage, together with the costs and charges of such foreclosure, including an attorney's fee of \$——, and to pay the overplus, if any, to the said party of the first part, his executors, administrators, or assigns.

In witness, *etc.*

19. Mortgage of Leasehold by Way of Subdemise^a

This indenture made the —— day of —— (*parties as in Form No. 14, p. 845*).

[RECITAL OF LEASE.] (*As in preceding form.*)

Now, this indenture witnesseth as follows:

[SUBDEMISE.] The said party of the first part, in consideration of the sum of —— dollars to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby demise unto the said party of the second part all and singular the land and premises comprised in and demised by the said lease. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, for the unexpired residue of the term of —— years granted by the said lease, except the last day thereof (*other provisions of mortgage substantially as in preceding form*).

In witness, *etc.*

^a See note under preceding form.

20. Mortgage of Ground Rents Payable under and of Reversion Expectant on Termination of a Ninety-Nine Years' Lease

This indenture made the —— day of —— (*parties as in Form No. 14, p. 845*):

Whereas, the said party of the first part is the owner in fee simple of the lands and premises hereinafter described, subject to the indenture of lease hereinafter recited; and whereas, by an indenture of lease dated (*etc.*), and recorded (*etc.*), and made between the said party of the first part (*or other original lessor*), of the one part, and (*the lessee*), of the other part, the said party of the first part (*or other original lessor*) demised the said land and premises hereinafter described to the said (*lessee*) for the term of ninety-nine years from the —— day of —— at the yearly rent of \$——, and subject to the covenants and conditions therein contained.

Now, this indenture witnesseth that the said party of the first part, in consideration of the sum of \$—— to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey unto the said party of the second part all the (*description*). To have and to hold the same unto the said party of the second part, his heirs and assigns forever, subject to the said term created by the said recited indenture of lease, but with the benefit of the rents reserved thereby and the covenants and conditions to be performed and observed by the lessee contained therein (*other provisions as in appropriate form of mortgage*).

In witness, *etc.*

21. Assignment of Mortgage as Collateral Security

This indenture made the —— day of —— between (*parties as in Form No. 14, p. 845*):

Witnesseth as follows:

1. [ASSIGNMENT.] The said party of the first part, in consideration of the sum of \$—— to him paid, the receipt whereof is hereby acknowledged, doth hereby assign, transfer, and set over to the said party of the second part a certain indenture of mortgage made by —— to the said party of the first part, dated (*etc.*), and recorded (*etc.*), together with the note or obligation therein described and the money due and to grow due thereon, with the interest, and all the right, title, and interest of the said party of the first part in and to the premises in the said indenture described, with the full benefit of all powers, rights, and remedies expressly or impliedly contained therein and conferred thereby upon the said party of the first part. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned.

2. [ASSIGNOR'S COVENANTS.] And the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant with the said party of the second part, his executors, administrators, and assigns, that there is now owing on the said note and mortgage the principal sum of \$——, with interest thereon from the —— day of ——, and that the said party of the first part has good right to sell and assign the same:

3. [PROVISO FOR PAYMENT OF DEBT.] Provided, nevertheless, that if the said party of the first part, his executors, administrators, or assigns, shall pay to the said party of the second part the sum of \$—— according to the terms of a certain promissory note (*state terms*), then this assignment shall be void, the

same being given for the purpose of securing the payment of the said sum and interest.

4. [POWER OF SALE.] · But if any default shall be made in the payment of the said principal sum or of any installment of interest thereon when due and payable, or in the performance of the conditions and covenants of the said mortgage hereby assigned, then and in either or any such event the said party of the second part, his executors, administrators, and assigns, may elect without notice that the said principal sum hereby secured, with the interest then accrued thereon, shall be due and payable at once, and, in addition to the other remedies herein provided, he or they are hereby authorized and empowered to sell the said mortgage and note hereby assigned, and also the land and premises included in the said mortgage in the event of the same having been foreclosed as hereinafter provided, at public auction in ———, first giving notice of the time and place of such sale once each week for three successive weeks in a public newspaper published in said ———, and to assign and convey the said note and mortgage or the said land and premises, as the case may be, absolutely and in fee simple to the purchaser at such sale, and out of the moneys arising from such sale to retain the principal sum hereby secured, and the interest thereon, with the costs and expenses of such sale, including an attorney's fee of \$———, and to pay over the surplus, if any, to the said party of the first part, his executors, administrators, and assigns, and in that event the said party of the second part, his executors, administrators, or assigns, may become the purchaser at such sale, and no other purchaser shall be answerable for the application of the purchase moneys.

[FORECLOSURE OF ASSIGNED MORTGAGE.] In the event of any default in the performance or observance of the conditions or covenants of the said mortgage hereby assigned, whether before or after any default in the performance or observance of

the conditions and covenants hereof, the said party of the second part, his executors, administrators, or assigns, may take any remedy by foreclosure or otherwise by the said mortgage conferred for the recovery of the debt and interest thereby secured, or to enforce or realize the security therefor, but it shall not be incumbent on him or them so to do.

In witness, *etc.*

22. Corporate Mortgage and Deed of Trust Securing Bonds ⁴

This indenture made this —— day of —— by and between the —— Company, a corporation duly organized and existing under and pursuant to the laws of state of ——, and having its principal office at ——, in the county of ——, and state of ——, hereinafter called the company, party of the first part, and the —— Company, a corporation duly organized and existing under and pursuant to the laws of the state of ——, hereinafter called the trustee, party of the second part:

[RECITAL OF RESOLUTION OF DIRECTORS AUTHORIZING BONDS, ETC.] Whereas, the company, being desirous to borrow money for the purpose of paying a certain indebtedness necessarily incurred by it, and for the extension and transaction of its business and for its other corporate purposes, and has by resolution ⁵ of its board of directors authorized the execution and issue of its negotiable bonds, each of the denomination of \$——, numbered consecutively 1 to ——, amounting in the aggregate to \$——, dated the —— day of ——, and payable —— years after date, with interest at the rate of ——

⁴ This short form is adapted to simple cases. The general subject of corporate mortgages securing bonds is too extensive to be here included.

⁵ The resolution may be set forth in extenso if preferred.

per cent. per annum, payable semiannually on the first days of _____ and _____ of each year in accordance with interest coupons attached, both principal and interest payable in gold coin of the United States of or equal to the present standard of weight and fineness, all of which bonds are to be signed in its name by its president and sealed with its corporate seal to be affixed and attested by its secretary, with the certificate of the trustee indorsed thereon, and to be secured by mortgage or deed of trust upon the property hereinafter described, which bonds, interest coupons, and certificates are to be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

STATE OF _____.

Number _____.

\$_____.

THE _____ COMPANY.

First Mortgage _____ per Cent. _____ Year Gold Bond.

The _____ Company, a corporation organized and existing under and pursuant to the laws of the state of _____, for value received hereby promises to pay to the bearer at the office of the said _____ Company (*or*, of the _____ Trust Company), in the city of _____, in the state of _____, the sum of _____ dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the _____ day of _____ in the year _____, and to pay interest thereon at the rate of _____ per cent. per annum from the _____ day of _____, in the year _____, in like gold coin, semiannually, on the _____ days of _____ and _____ in each year upon the presentation and surrender of the respective coupons for such interest hereto attached as they severally mature. (Both the principal and interest of this bond are payable without deduction for any tax or taxes which the said _____ Company or

the trustee herein mentioned may be required or permitted to pay or retain therefrom under any present or future law of the United States or of any state, county, municipality, or other taxing authority therein.) This bond is one of a series of bonds of like date and tenor, of the denomination of _____ dollars (numbered consecutively 1 to _____, both inclusive) known as first mortgage _____ per cent. _____ year gold bonds, issued and to be issued to an amount not exceeding in the aggregate the principal sum of _____ dollars (at any one time outstanding), all of which bonds are issued and to be issued under and equally secured by a mortgage and deed of trust dated the _____ day of _____, executed by the said _____ Company to the said _____ Trust Company, as trustee, to which mortgage and deed of trust reference is made for a description of the properties (and franchises) mortgaged, the nature and extent of the security, the rights of the holders of the bonds under the same, and the terms and conditions under which the bonds are issued and secured. This bond and the said coupons shall be transferable by delivery. This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the said trustee herein indorsed.

In witness whereof the _____ Company has caused this bond to be signed in its corporate name by its president, and its corporate seal to be hereto affixed and attested by its secretary, and has also caused the signature of its treasurer to be engraved upon the annexed coupons, all as of the _____ day of _____ in the year _____.

The _____ Company,

By _____, President.

(*Corporate seal.*)

Attest:

_____, Secretary.

Interest Coupon

The _____ Company will pay to the bearer at the office of the said _____ Company (*or, of the _____ Trust Company*), in the city of _____, in the state of _____, on the _____ day of _____, 19—, (without deduction for taxes as provided in the bond,) _____ dollars in gold coin, being six months' interest then due on its first mortgage _____ per cent. _____ year gold bond number _____.
(*Number of coupon.*)
_____, Treasurer.

Trustee's Certificate

This is to certify that the within bond is one of the bonds described in the within-mentioned mortgage and deed of trust, dated the _____ day of _____, 19—, and executed by the _____ Company to the undersigned as trustee.

The _____ Trust Company,
Trustee.

By _____,
Secretary (*or other proper officer*).

[RECITAL OF CONSENT OF STOCKHOLDERS.] And whereas, at a special meeting of the stockholders of the company, duly called for that purpose and held at the said principal office of the company on the _____ day of _____, a resolution was duly adopted by the stockholders owning all (*or, at least three-fourths; or otherwise as the requirement may be, setting forth the resolution, if preferred*) of the stock of the company consenting to this mortgage and trust deed and to the execution and issue of the said bonds;

[RECITAL OF RESOLUTION OF DIRECTORS.] And whereas, at a meeting of the said directors of this company duly called for that purpose and held on the _____ day of _____ the draft or form of this mortgage and deed of trust was sub-

mitted to the board, and it was duly resolved that the same be executed by the president of the company in its name, that its corporate seal be hereunto affixed and attested by the secretary, and that this deed be duly acknowledged and delivered on behalf of the company to the trustee.

[CONVEYANCE.] Now, therefore, this indenture witnesseth that the company, in consideration of the premises and of one dollar to it in hand paid by the trustee, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, doth hereby grant, bargain, sell, convey, assign, transfer, and set over unto the trustee, and its successor or successors, forever, all and singular the following described lands, property and premises (*description*), together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the same unto the trustee and its successor or successors and assigns forever.

[IN TRUST FOR BONDHOLDERS.] But in trust, nevertheless, for the benefit, security, and protection of the persons, corporations, firms, and partnerships who may be or become holders of the bonds and interest coupons aforesaid, or any or either of them, and for enforcing the payment thereof when payable, in accordance with the true intent and meaning hereof, and of the said bonds and interest coupons, and without preference of any of the said bonds over any of the others, by reason of priority in the time of the issue or negotiation thereof or otherwise, and upon and for the trusts and purposes and upon the covenants and agreements hereinafter contained.

[COVENANTS OF MORTGAGOR—FURTHER ASSURANCE.] And the company, for itself, its successors and assigns, doth covenant with the trustee and its successors, that (*insert usual covenants of title as in appropriate form*); and, further, that the company will from time to time upon reasonable request make,

do, execute, and deliver all such further conveyances, acts, deeds, and assurances as may be necessary or proper to effectuate the security and lien hereby intended to be created and to facilitate the execution of the said trust:

[PROVISO FOR PAYMENT AND PERFORMANCE, ETC.] Provided, however, and these presents are upon the express condition that, if the company, its successors or assigns, shall pay or cause to be paid to the holders of the said bonds and interest coupons the principal and interest which shall become due thereon at the times and in the manner therein provided, and shall observe and perform all and singular the covenants, agreements, and conditions in the said bonds and herein on the part of the company to be observed and performed, then these presents shall become void, but otherwise shall remain in force.

[TRUST AGREEMENT.] The company, for itself, its successors and assigns, and the trustee, for itself and its successor or successors in the trust, do hereby covenant and agree each with the other and others, and with the several persons, corporations, firms, and partnerships who shall become the holders of the aforesaid bonds and interest coupons, as follows:

1. [WHAT BONDS SECURED.] This mortgage and deed of trust shall secure the payment of the principal and interest of all bonds of the denomination and terms hereinbefore expressed which may from time to time be issued hereunder, but not to exceed in the aggregate the sum of \$——.

2. [BONDS TO BE CERTIFIED.] The said bonds may be executed and delivered from time to time by the company to the trustee, and shall be certified as hereinbefore provided and delivered by the trustee, who shall first cut off and cancel all interest coupons by their terms maturing before such delivery, and whose certificate shall be conclusive evidence that such bonds have been issued hereunder and are entitled

to the security hereof and the benefits of the trust hereby created, and only such bonds so certified shall be hereby secured and entitled to the benefits of such trust.

3. [COVENANT TO PAY CLEAR OF TAXES.] (The company will pay the said bonds, principal, and interest according to the terms thereof without deduction from the said principal or interest of any tax or taxes which the company or the trustee may be required or permitted to pay or retain therefrom under any present or future law of the United States, or any state, county, municipality, or other taxing authority therein.)

4. [COVENANT TO PAY TAXES, ETC.] The company will pay all taxes, assessments, and charges which may be imposed upon the premises and franchises hereby mortgaged or any part thereof whereby the security or lien hereof might be diminished or impaired before the same shall be or become in arrears.

5. [COVENANT AGAINST INCUMBRANCES AND FOR REPAIR, ETC.] The company will not suffer any lien or incumbrance upon the said mortgaged premises or any part thereof superior to the security or lien hereof to accrue or be created, or do or suffer any act or thing whereby the security hereof may be diminished or impaired, and will keep the said premises in good condition and repair.

6. [COVENANT TO INSURE.] The company will keep all buildings and movable property hereby mortgaged or which may be at any time upon the said premises insured against loss by fire in a company or companies approved by the trustee in at least the sum of \$—— (or, in an amount equal to the principal of such bonds for the time being outstanding), depositing the policies with the trustee, to whom in case of loss the same shall be payable: Provided, that all moneys received by the trustee by virtue of any such insurance, in the discretion of the trustee, may be applied in making good the

loss or damage in respect of which the same shall have been received, or may be retained by the trustee and invested in investments proper for the investment of trust funds for the security of the bondholders hereunder.

7. [AUTHORITY OF TRUSTEE TO MAKE CERTAIN PAYMENTS.]

If the company shall fail to pay any taxes, assessments, or charges which may be imposed upon the said premises, or shall suffer any lien or incumbrance to accrue or be created thereon, or shall suffer any other act or thing whereby the security hereof may be diminished or impaired, or shall fail to keep the said premises in good condition and repair, or shall fail to keep the said premises insured, or to deposit the policies with the trustee, all as hereinbefore provided, the trustee may without notice pay and satisfy such taxes, assessments, charges, and liens, effect such insurance, effect such repairs, and pay any other sum or sums of money necessary for the preservation and protection of the security and lien hereof, and the sum or sums of money so paid for any such purpose, with interest thereon from the time of payment at the rate of ——— per cent. per annum shall be deemed a part of the debt secured hereby, and the same shall be immediately due and payable and collectible with and in the same manner as the principal debt hereby secured.

8. [MORGAGOR TO HAVE POSSESSION UNTIL DEFAULT.] Until default shall be made in the payment of the bonds hereby secured or any of them, or the interest thereon, at the times and in the manner therein provided, or in the observance or performance of any of the covenants, agreements, and conditions hereof to be observed and performed by the company, the trustee shall permit and suffer the company, its successors and assigns, to possess, operate, and enjoy the premises and property hereby mortgaged, and to receive and use the income, rents, (tolls,) issues, and profits thereof.

9. [POWER OF TRUSTEE TO RELEASE FROM MORTGAGE.] If the company shall at any time during the continuance of this security be desirous of selling, disposing of, or dealing otherwise than in the usual course of business with any part of the mortgaged premises, the trustee may, if satisfied that the bondholders' security will not thereby be prejudiced, assent to such sale, disposition, or other dealing, and may, when necessary, release the property or assets in question from the trusts hereof, on such terms in case of a release as to the company bringing in money or other property to replace that released as the trustee may see fit to require.

10. [PERSONALTY TO BE DEEMED REALTY.] The personal property hereinbefore described and constituting part of the mortgaged premises shall for the purposes hereof be deemed to be fixtures and part of and appurtenant to the real estate hereby mortgaged (and in the event of any sale under the power of sale herein contained the whole mortgaged premises shall be sold together).

11. [TRUSTEE TO ENFORCE RIGHTS OF BONDHOLDERS ON REQUEST—WHEN NO REQUEST.] If default shall be made in the payment of any interest on the said bonds hereby secured as and when the same shall become due and payable, or in the observance or performance of any of the covenants, agreements, or conditions in the said bonds or herein on the part of the company contained (and such default shall continue for ——— months), or if any default shall be made in the payment of the principal of any of the said bonds as and when the same shall become due and payable, then and in either or any such event the holders of (one-third) in amount of the said bonds then outstanding may by an instrument or instruments in writing signed by them and addressed and delivered to the trustee declare the principal of all the said bonds due and payable, and may also request the trustee to proceed forthwith to

enforce the payment of the principal and interest of all the said bonds and of all other sums hereby secured; and upon such declaration being made the principal of all the said bonds then outstanding shall forthwith become due and payable, anything therein or herein to the contrary notwithstanding, and the trustee shall (upon receiving proper indemnity) proceed forthwith to enforce the rights of the bondholders hereunder by sale or entry, or both, or by judicial proceedings, according to such request: Provided, always, that it shall be lawful for the trustee at any time or times, upon the occurrence of any such default as aforesaid, and without any such request, to proceed to enforce the rights of the said bondholders by any of the aforesaid remedies or in any other manner as the trustee, being advised by counsel learned in the law, shall deem for the best interest of the said bondholders.

12. [POWER OF SALE.] In the event of any such default as aforesaid, in addition to the other remedies herein provided, all of which remedies shall be cumulative, and not exclusive one of the other, the trustee and his successor or successors are hereby authorized and fully empowered to sell the said mortgaged premises at public auction at —— in the city of ——, first giving notice of the time and place of such sale as required by law (and also notice thereof by publication in two newspapers published in said —— at least once each week for —— successive weeks next preceding such sale, and to adjourn such sale from time to time in the trustee's discretion and without further notice), and upon such (adjourned or other) sale to convey and transfer the property and premises hereby mortgaged to the purchaser or purchasers thereof by good and sufficient deed or deeds in fee simple and absolutely, freed from all right or claim of equity of redemption of the company, its successors or assigns, and without liability upon the purchaser or purchasers to see to the application

of the purchase money, and to apply the proceeds of such sale as follows, to wit:

First. To the payment of the costs and expenses thereof, including reasonable compensation to the trustee, his agents, attorneys, and counsel, and all other expenses, advances, and liabilities made or incurred by the trustee in managing and maintaining the property, including all such sums as shall have been paid for taxes, assessments, charges, liens, insurance, repairs, and the protection and preservation of the security, with interest thereon, as hereinbefore provided.

Second. To the payment of the principal and accrued interest of and upon the said bonds which shall then be outstanding and unpaid, whether the same by the tenor thereof be then due or to become due, and, if such proceeds be not sufficient to pay such amount in full, to pay such principal and interest pro rata without preference or priority of one bond over another.

Third. To pay the overplus, if any, to the company, its successors or assigns.

13. [APPOINTMENT OF RECEIVER.] Upon the commencement of any suit or other judicial proceeding to enforce the rights of the trustee or of the bondholders hereunder, the trustee shall be entitled as a matter of right to the appointment of a receiver of the mortgaged premises, and of the rents, income, (tolls,) issues, and profits thereof.

14. [REIMBURSEMENT OF TRUSTEE.] The trustee shall be entitled to be reimbursed for all proper disbursements and expenses made or incurred hereunder or in the discharge of the trust hereby created, and to receive reasonable compensation for all services performed in the discharge of such trust; and the company hereby covenants and agrees to pay the same to the trustee.

15. [REMOVAL OF TRUSTEE AND NEW APPOINTMENT.] The trustee at any time acting hereunder may be removed by an

instrument in writing signed by the holders of (three-fifths) in amount of the said bonds then outstanding. In the event of such removal, or if the trustee's resignation or disability to act, a new trustee or new trustees may be appointed by an instrument in writing signed by the holders of like amount of the said bonds, and in default of such appointment by any court of competent jurisdiction in the county of ——— and state of ——— upon the application of any of the holders of the said bonds.

16. [ACCEPTANCE OF TRUST.] The trustee hereby accepts the trust hereby created, and covenants faithfully to execute the same.

In witness whereof the said party of the first part has caused its corporate name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed and attested by its secretary, and the said party of the second part, in token of its acceptance of the trust hereby imposed upon it, has caused its corporate name to be hereunto subscribed by its president, and its corporate seal to be hereunto affixed and attested by its secretary, on the day and year first above written.

II

Statutory Forms of Mortgages and Deeds of Trust and Other Forms in Use in the Several States

ALABAMA

Mortgage

THE STATE OF ALABAMA, }
——— County. }

Know all men by these presents that whereas, the undersigned ——— justly indebted to ——— in the sum of ——— dollars, as evidenced by ——— promissory note— of even date

herewith, and payable as follows, to wit (*description*); and whereas, the said ——— desirous of securing the prompt payment of said note— when same fall— due.

Now, therefore, in consideration of said indebtedness, and to secure the prompt payment of the same at maturity, the said ——— ha— bargained and sold, and ——— do hereby grant, bargain, sell, and convey, unto the said ———, the following described real estate, situated in ——— county, and state of Alabama, to wit (*description*); warranted free from all incumbrance and against any adverse claims.

To have and to hold the above granted premises unto the said ———, ——— heirs and assigns forever.

And for the purposes of further securing the payment of said note— do hereby agree to pay all taxes or assessments when imposed legally upon said premises, and should ——— make default in the payment of same, the said ——— may at ——— option pay off the same, and to further secure said indebtedness first above named ——— agree to keep said property insured for at least ——— dollars, loss, if any, payable to said ——— as ——— interest may appear; and if ——— fail to keep said property insured as above specified, then the said ——— may at ——— option insure said property for said sum for ——— own benefit, the policy, if collected, to be credited on said indebtedness, less cost of collecting same; all amounts so expended by ——— shall become a debt to ——— additional to the indebtedness hereby specially secured, and shall be covered by this mortgage and bear interest from date of payment by said ———, and be due and payable at the maturity of ———.

Upon condition, however, that if the said ——— pay said note— and reimburse said ——— for any amounts ——— may have expended as taxes and insurance and interest thereon, then this conveyance be null and void; but should default

be made in the payment of any sum expended by the said ———, or should said note— or any part thereof, or the interest thereon, remain unpaid at maturity, or should the interest of said ——— or ——— assigns in said property become endangered by reason of the enforcement of any prior lien or incumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events the whole of said indebtedness shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by law in case of past-due mortgages, and the said ———, personal representatives, agents, or assigns, shall be authorized to take possession of the premises hereby conveyed, and after giving ——— days' notice, by publication once a week, for three consecutive weeks, of the time, place, and terms by publication in some newspaper published at ———, in said county and state, to sell the same in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First to the expense of advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes, or other incumbrances, with interest thereon; third, to the payment of said note— in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the said ———. And ——— further agree that said ———, personal representatives, agents, or assigns, may bid at said sale and purchase said property, if the highest bidder therefor; and ——— further agree to pay a reasonable attorney's fee to said ———, or ——— assigns, for the foreclosure of this mortgage in chancery. Should the same be so foreclosed, said fee to be a part of the debt hereby secured.

Witness ——— hand— and seal— this the ——— day of ———, A. D. 19—.

ARIZONA

Mortgage (Statutory)

(For statutory form, see ante, p. 519.)

Another Form of Mortgage

Know all men by these presents that ———, of ———, mortgagor—, for and in consideration of the sum of ——— dollars to ——— in hand paid by ———, of ———, mortgagee—, do— hereby grant, sell, and convey unto the said ——— all that (*description*). To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ———, mortgagee—, ——— heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note in words and figures following, to wit (*copy*).

And the said mortgagor— agree— and do— hereby covenant to keep the buildings thereon insured in favor of the mortgagee—, in a good company, to be selected by the mortgagee—, in a sum not less than ———, during the life of this mortgage, and in case said mortgagor— fail— to secure said insurance, the mortgagee— ——— hereby authorized to procure the same.

And this instrument shall be void if said promissory note, principal and interest, be well and truly paid when due according to the tenor and effect thereof. But it is distinctly understood and agreed that if the interest on said promissory note, or the principal thereof, shall not be punctually paid when the same shall become due, as in said promissory note mentioned, or in case of the failure of the said mortgagor— to pay before delinquent any taxes or assessments levied against said

premises, then and in such case the principal sum of said note and the interest thereon shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said mortgagee—, ——— heirs, executors, administrators, and assigns, for the recovery of the same, either by suit on said note, or on this mortgage and note; and in any suit or other proceedings that may be had for the recovery of the said principal sum and interest thereon it shall and may be lawful for the said mortgagee—, ——— heirs, executors, administrators, or assigns, to include in the judgment that may be recovered attorney's fees not exceeding ——— per cent. thereon upon the amount found due the plaintiff on said note and this mortgage, or in case of settlement after suit is brought, but before judgment rendered, then ——— per cent. on the amount found due at the time of settlement, as well as all payments that the said mortgagee—, ——— heirs, executors, administrators, or assigns, may be obliged to make for ——— security, or on account of any taxes, insurance, charges, incumbrances, or assessments whatsoever on the said premises legally laid or made thereon.

Witness ——— hand— this ——— day of ———.

ARKANSAS

Mortgage

Know all men by these presents: That I, ———, of ———, for and in consideration of the sum of one dollar to me in hand paid, and the premises hereinafter set forth, do hereby grant, bargain, and sell unto ———, of ———, and unto his heirs and assigns forever, the following property (*description*).

And I hereby covenant with the said ——— that I will forever warrant and defend the title to the said property against all lawful claims. And I, ———, wife of the said ———,

for the consideration aforesaid, do hereby release unto the said _____ all my right of dower and homestead in and to the said lands.

The sale is on the condition that whereas, I am justly indebted unto said _____ in the sum of _____ dollars, evidenced by my promissory note (*state terms*).

Now, if I shall pay said moneys, at the times and in the manner aforesaid, then the above conveyance shall be null and void. And in case of nonpayment, then the said grantee, or his assignees shall have power to sell said property at public sale, to the highest bidder, for cash, at _____, in the _____ of _____, county of _____, and state of Arkansas, public notice of the time and place of said sale having first been given _____ days by advertising in some newspaper published in said county, by at least two insertions, or by notices posted in ten public places in said county, at which sale the said grantee or his assignee may bid and purchase as any third person might do. I hereby authorize the said grantee or his assignees to convey said property to any one purchasing at said sale, and to convey an absolute title thereto, and the recitals of his deed of conveyance shall be taken as prima facie true. And the proceeds of said sale shall be applied: First, to the payment of all costs and expenses attending said sale; second, to the payment of said debt and interest; and the remainder, if any, shall be paid to said grantor. We hereby waive any and all rights of appraisal or redemption under the laws of the state of Arkansas, and especially of redemption under the act of the General Assembly of the state of Arkansas approved May 8, 1899.

Witness our hands (and seals) on this _____ day of _____, 19—.

CALIFORNIA**Mortgage (Statutory)**

This mortgage made the — day of —, 19—, by —, of —, mortgagor, to —, of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (*description*), as security for the payment to him of — dollars on the — day of —, with interest thereon at the rate of — per cent. per annum according to the terms and conditions of a certain promissory note of even date with the mortgage, in words and figures following, to wit (*describing it*). (Signature.)

Civ. Code, § 2948.

Mortgage—Another Form

This indenture made the — day of —, 19—, between —, of —, the part— of the first part, and —, of —, the part— of the second part, witnesseth: That the part— of the first part, for and in consideration of the sum of — dollars, of the United States of America to — in hand paid, the receipt whereof is hereby acknowledged, do— by these presents grant unto the said part— of the second part, — heirs and assigns forever, all that (*description*).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said part— of the second part, — heirs and assigns forever.

This conveyance, however, is intended as a mortgage to se-

cure the payment of a certain promissory note (*describing or copying it*).

This mortgage is also intended to secure the payment of all liens, incumbrances, charges and the counsel fee herein mentioned, said counsel fee to become payable and be allowed if suit be commenced to foreclose this mortgage; and these presents shall be void if such payment— be made, according to the tenor and effect thereof; but in case default be made in the payment of the said principal or any installment of interest as provided, then the whole sum of principal and interest shall be due at the option of the said part— of the second part, or assigns, and suit may be immediately brought and a decree be had to sell the said premises, with all the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale to retain the said principal and interest, although the time for payment of said principal sum may not have expired, together with the costs and charges of making such sale, and of suit for foreclosure, including counsel fees at the rate of ——— per cent. upon the amount which may be found to be due for principal and interest by the said decree, and also the amounts, both principal and interest, of all such payments of liens or other incumbrances as may have been made by said part— of the second part by reason of the permissions hereinafter given, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said part— of the first part, ——— heirs, executors, administrators, or assigns.

And it is hereby agreed that the said part— of the second part, ——— heirs, executors, administrators, or assigns, may pay if any, and discharge at maturity, all liens or other incumbrances now subsisting or hereafter to be laid or imposed upon ——— of land and premises, ———, and which may be, in effect, a charge thereupon, and to insure and to keep insured

the buildings now or to be erected on said mortgaged premises, for at least the sum of ——— dollars, and to pay the premiums on such insurance, and such payments shall be allowed, with interest thereon at the rate of ——— per cent. per ———; and such payments, and interest, and the counsel fees, costs, and other expenditures mentioned in this mortgage, shall be considered as secured by these presents, and shall be a charge and preferred lien upon said premises, and shall be repayable, in the same kind of money or currency in which the same may have been paid, and may be deducted from the proceeds of the sale above authorized.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— the day and year first above written.

COLORADO

Trust deeds running to the public trustee are usual. This officer is appointed by the Governor in certain counties, and in other counties the county treasurer is public trustee.

Trust Deed to Public Trustee

This indenture made this ——— day of ———, in the year ———, between ———, whose address is ———, county of ———, and state of Colorado, part— of the first part, and the public trustee in the city and county of Denver, party of the second part:

Witnesseth that whereas, the said ——— ha— executed ——— promissory note— bearing even date herewith, payable to the order of ——— (*state terms*);

And whereas, the said ——— ——— desirous of securing not only the prompt payment of said promissory note—, but also of effectually securing and indemnifying the said ——— for or on account of any assignment, indorsement, or guaranty of said promissory note—.

Now, therefore, the said part— of the first part, in consideration of the premises, and for the purpose aforesaid, and in the further consideration of one dollar to ——— in hand paid by the party of the second part, the receipt whereof is hereby confessed, ha— granted, bargained, sold, and conveyed, and hereby do— grant, bargain, sell, and convey, unto the said party of the second part, in trust forever, all the premises situate in the city and county of Denver, and state of Colorado, known and described as follows, to wit (*description*).

To have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging; in trust, nevertheless, that in case of default in the payment of said note— or any of them, or any part thereof, or in the payment of the interest thereon, according to the tenor and effect of said note— or any of them, or in case default shall be made in, or in case of the violation or breach of, any of the terms, conditions, covenants or agreements herein contained, then, upon notice and demand in writing filed with the said party of the second part by the beneficiary hereunder, or the legal holder of the indebtedness secured hereby, that such beneficiary or legal holder has declared a violation of any of the covenants herein contained, and has elected to advertise said premises for sale, and demands such sale, it shall and may be lawful for said party of the second part, to sell and dispose of the said premises (en masse or in separate parcels as said Public Trustee may think best), and all the right, title and interest of said part— of the first part, ——— heirs, or assigns therein, at public auction at the front door of the County Court House, in the City of ——— in the County of ——— and State of Colorado, or on said premises, or any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, four weeks' public notice having been previously given of the time and place of such

sale, by advertisement, weekly, in some newspaper of general circulation at that time published in said City and County, a copy of which printed notice, as soon as printed, shall be mailed to said part— of the first part (and all subsequent encumbrancers), at the address— given in the trust deed—, and to make and give to the purchaser or purchasers of such lands, tenements, and premises at such sale, a certificate or certificates in writing, describing such lands, tenements and premises purchased, and the sum or sums paid therefor, and the time when the purchaser or purchasers (or other persons entitled thereto) shall be entitled to a deed or deeds therefor, unless the same shall be redeemed as is provided by law; and said Public Trustee shall, upon demand by the person or persons holding the said certificate or certificates of purchase, when said demand is made, or upon demand, by the person entitled to a deed to and for the premises sold, at the time such demand is made, the time for redemption having expired, make and execute to such person or persons a deed or deeds of the lands, tenements and premises sold, which said deed or deeds shall be in the ordinary form of a conveyance, and shall be signed, acknowledged and delivered by the said Public Trustee, as grantor, and shall convey and quit-claim to such person or persons entitled to such deed, as grantee, the said lands, tenements and premises sold as aforesaid, and all the right, title, interest, benefit and equity of redemption of the part— of the first part, ——— heirs and assigns therein, and shall recite the sum or sums for which the said lands were sold, and shall refer to the power of sale herein contained, and to the sale or sales made by virtue thereof; and in case of an assignment of such certificate or certificates of purchase, or in case of the redemption of such lands, tenements and premises sold hereunder, by a subsequent encumbrancer, such assignment or redemption shall also be referred to in such deed or deeds; but

the notice of sale need not be set out in such deed or deeds, and the said Public Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges and costs of making said sale and advertising said premises, pay to the beneficiary hereunder or the legal holder of said note— the principal and interest due on said note— according to the tenor and effect thereof, and all moneys advanced by such beneficiary or legal holder of said note— for insurance, taxes, and assessments, with interest thereon at ——— per cent. per annum, rendering the overplus (if any) unto the said part— of the first part, ——— legal representatives or assigns, which sale or sales, and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the said part— of the first part, ——— heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said part— of the first part, or any of them. The holder or holders of said note or notes may purchase said property or any part thereof; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money.

And the said part— of the first part, for ———, and for ——— heirs, executors, and administrators, covenant— and agree— to and with the said party of the second part that at the time of the ensembling of and delivery of these presents ——— well seised of the said premises in fee simple, and ——— good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, hereby fully and absolutely waiving and releasing all rights and claims ——— may have in or to said premises as a homestead exemption under and by virtue of any act of the General Assembly of the state of Colorado now existing, or which may hereafter be passed in relation thereto, and that the

same are free and clear of all liens and incumbrances whatever (except as hereinafter specified, to wit, *etc.*).

And the said part— of the first part will in due season pay all taxes and assessments on said premises, and, at the request of the legal holder of said note—, will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such company or companies as the holder of said note— may from time to time direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said part— of the first part, and will assign and deliver the policy or policies of insurance to the beneficiary hereunder as further security for the indebtedness aforesaid. And in case of the refusal or neglect of said part— of the first part or either of them thus to insure or assign or deliver the policies of insurance, or to pay such taxes or assessments, then the holder— of said note— or any of them may procure such insurance, or pay such taxes or assessments, and all moneys thus paid, with interest thereon at ——— per cent. per annum, shall become so much additional indebtedness, secured by this deed of trust, and shall be paid out of the proceeds of the sale of the lands and premises aforesaid, if not otherwise paid by said part— of the first part.

And it is stipulated, covenanted and agreed that in case of default in any of said payments of principal or interest, according to the tenor and effect of said promissory note— aforesaid, or any of them, or any part thereof, or of a breach or violation of any of the covenants or agreements herein, by the part— of the first part, ——— executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured, and the interest thereon to the time of sale, may at once, at the option of the legal holder thereof, become due and payable, and the said premises be sold in the

manner and with the same effect as if the said indebtedness had matured.

This deed of trust is executed and delivered under an act of the General Assembly of the state of Colorado entitled "An act concerning deeds of trust and other instruments of like purport, and repealing all acts and parts of acts in conflict therewith," approved March 5, 1894, and all of the provisions of said act are hereby made applicable to this deed of trust.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— (and seal—) the day and year first above written.

CONNECTICUT

Mortgage Deed

To all people to whom these presents shall come, greeting:

Know ye that I, ———, of ———, for the consideration of ——— dollars received to my full satisfaction of ———, of ———, do give, grant, bargain, sell, and confirm unto the said ——— all that parcel of land (*description*).

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him, the said grantee, his heirs and assigns forever, to his and their own proper use and behoof. And also I, the said grantor, do for myself, my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that at and until the ensembling of these presents I am well seised of the premises, as a good indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written, and that the same is free from all incumbrances whatsoever.

And, furthermore, I, the said grantor, do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to him, the said grantee,

his heirs and assigns, against all claims and demands whatsoever.

The condition of this deed is such that whereas, the said grantor is justly indebted to the said grantee in the sum of ——— dollars, as evidenced by his promissory note for ——— dollars of even date herewith, payable to said grantee or order (*stating other terms*).

Now, therefore, if said note shall be well and truly paid according to its tenor, then this deed shall be void, otherwise to be and remain in full force and effect.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

DELAWARE

Mortgage

This indenture made the ——— day of ——— between ———, party of the first part, and ———, party of the second part:

Whereas, the said party of the first part in and by a certain obligation or writing obligatory under his hand and seal duly executed, bearing even date herewith, stands bound unto the said party of the second part in the sum of ——— dollars lawful money of the United States of America, conditioned for the payment of the sum of dollars (*state terms of payment*), as by reference to the said recited obligation and the condition thereof will more fully appear.

Now, this indenture witnesseth that the said party of the first part, for and in consideration of the aforesaid debt or principal sum of ——— dollars, and for the better securing the payment of the same, with interest as aforesaid, unto the said party of the second part, his executors, administrators, and assigns, in discharge of the said recited obligations, as also of

the further sum of fifty cents unto the said party of the first part now paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said party of the second part, his heirs and assigns, all that (*description*).

Together with all and singular the improvements, ways, woods, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold the said improvements, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the said party of the second part, his heirs and assigns forever :

Provided always, nevertheless, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall and do well and truly pay or cause to be paid, unto the said party of the second part, his executors, administrators, or assigns, the aforesaid debt or principal sum of ——— dollars on the day and time hereinbefore mentioned and appointed for the payment thereof, with interest, according to the condition of the said recited obligation, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine, and become absolutely void and of no effect, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

DISTRICT OF COLUMBIA

Mortgage, With or Without Power of Sale (Statutory)

This mortgage made this _____ day of _____, in the year _____, witnesseth that whereas, I, _____, of _____, am indebted unto _____, of _____, in the sum of _____, payable _____, for which I have given to said _____ my (*promissory notes or bonds, or other instruments*) (*here describe obligation*). Now, in consideration thereof, I hereby grant unto the said _____ all that (*here describe property*), provided, that if I shall punctually pay said (*notes or other instruments*) according to the tenor thereof, then this mortgage shall be void. And if I shall make default in such payment the said _____ is hereby authorized and empowered to sell said property at public auction on the following terms (*here insert them*), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal. _____ (Seal.)

Code 1901, as amend. 1911, § 556.

Deed of Trust (Statutory)

(*Form, ante, p. 533.*)

Deed of Trust—Another Form

This deed, made this _____ day of _____, A. D. _____, by and between _____, of _____, part— of the first part, and _____, of _____, part— of the second part:

Whereas, the part— of the first part ——— justly indebted unto ——— in the full sum of ——— dollars, as evidenced by ——— promissory note— (*state terms*);

And whereas, the part— of the first part desire— to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid by the said part— of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property hereinafter mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

Now, therefore, this indenture witnesseth that the part— of the first part, in consideration of the premises and of one dollar, lawful money of the United States of America, to ——— in hand paid by the part— of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, ha— granted, and do— hereby grant unto the part— of the second part, ——— or the survivor of them, the following described land and premises, situate in the ——— of ———, District of Columbia, known and distinguished as (*description*), together with all the improvements in any wise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the part— of the first part of, in, to, or out of the said land and premises.

In and upon the trusts, nevertheless, hereinafter declared, that is to say: In trust to permit said ———, or assigns, to use and occupy the said described land and premises, and the rents, issues, and profits thereof to take, have, and apply to and for ——— their sole use and benefit until default be made in

the payment of ——— promissory note— hereby ——— secured or any installment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

And upon the full payment of all of said note— and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said ———, or assigns, at ——— their cost.

And upon this further trust, upon any default or failure being made in the payment of ——— note— or of any installment of principal or interest thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefor, of any money advanced as herein provided for, or of any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter the said part— of the second part ——— or the trustee acting in the execution of this trust shall have the power and it shall be ——— or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time and place, and after such previous public advertisements as the part— of the second part, ——— or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple, upon compliance with the terms of sale, to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money, and of the proceeds of said sale or sales: Firstly, to pay all proper costs, charges, and expenses, including all fees and costs herein provided for, and all moneys advanced for

taxes, insurance, and assessments, with interest thereon as provided herein, and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of ——— per centum on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of said ——— note—, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said note— shall, upon such sale being made before the maturity of said note—, be and become immediately due and payable at the election of the holder thereof; and, lastly, to pay the remainder of said proceeds, if any there be, to said ——— or assigns upon the delivery and surrender to the purchaser, his, her, or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

And the said ——— do— hereby agree at ——— own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire in the full sum of ——— dollars, in the name and to the satisfaction of the part— of the second part, or substituted trustee, in such fire insurance company or companies as the said part— of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied, and also to pay all taxes and assessments, both general and special, that may be assessed against or become due on said land and premises during the continuance of this trust, and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby se-

cured, and bear interest at the rate of ——— per centum per annum from the time of such payment.

And it is further agreed that if the said property shall be advertised for sale as herein provided, and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

And the said part— of the first part covenant— that ——— will warrant specially the land and premises hereby conveyed, and that ——— will execute such further assurances of said land as may be requisite or necessary.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— and seal— on the day and year first hereinbefore written.

FLORIDA

Mortgage

This indenture made this ——— day of ——— between ———, hereinafter called the mortgagor, and ———, hereinafter called the mortgagee:

Witnesseth that the mortgagor, for and in consideration of the sum of one dollar to him in hand paid by the said mortgagee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the mortgagee, his heirs and assigns forever, the following described land (*description*). And the mortgagor doth hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever:

Provided, always, that if mortgagor, his heirs, executors, administrators, or assigns shall pay unto the mortgagee, his executors, administrators, or assigns, a certain promissory note, dated the ——— day of ———, for the sum of ———

dollars, payable (*state terms of payment*), by the mortgagor, and shall perform, comply with, and abide by each and every the stipulations, agreements, conditions, and covenants of said promissory note and of this mortgage, and shall pay all taxes which may accrue on said land and all costs and expenses the mortgagee may be put to in collecting said promissory note by foreclosure of this mortgage or otherwise, including a reasonable attorney's fee, then this mortgage and the estate hereby created shall cease and be null and void.

In witness whereof the mortgagor hereunto sets his hand and seal the day and year first above written.

GEORGIA

A mortgage executed in the state must be executed in the presence of, and attested by or proved before, a notary public, or justice of any court in the state or a clerk of the superior court, and must be executed in the presence of one other witness. Civ. Code 1910, § 3257. If executed without the state the same rules apply as to deeds (*ante*, p. 536), except that clerks of courts of record and notaries public are not included among the officers by whom it may be attested or before whom it may be acknowledged. *Ibid.* § 3264. A mortgage creates a mere lien, and is not good against the wife's dower, which she cannot waive. *Ibid.* § 5254.

Mortgage

STATE OF GEORGIA, }
County of _____. }

In consideration of the sum of _____ dollars to _____ paid, as well as for the better securing the payment of the debt hereinafter mentioned, _____, of the county of _____, hereby sell and convey unto _____, of the county of _____, heirs and assigns, the following described property, to wit (*description*), with all the rights and appurtenances to said property

belonging; to have and to hold said property to said ———, heirs and assigns forever.

But this conveyance is made for the following purpose, and none other: ——— indebted to said ———, in the sum of ——— dollars, which is evidenced by ——— payable as follows, ———, with interest at ——— per cent. per annum, and this conveyance is made to secure the payment of that debt. ——— hereby waive and renounce for ——— and family and all homestead and exemption rights that ——— may have under the Constitution or Laws of the United States or of the state of Georgia in or to said property as against the debt above mentioned.

Now, if ——— shall pay said debt, with its interest, when it shall become due, then this deed to be void, but, if ——— should not thus pay the same, then this deed to be of force; and the right to foreclose the same for said principal debt and interest, and the cost and expenses of collection, including ten per cent. attorney's fees, shall exist.

In witness whereof ——— have hereunto set ——— hand— and affixed ——— seal— this ——— day of ——— 19—.

IDAHO

Mortgage

This indenture made the ——— day of ———, 19—, between ———, of ———, the part— of the first part, and ———, of ———, the part— of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of ——— dollars to ——— in hand paid by the said part— of the second part, the receipt whereof is hereby acknowledged, do— hereby grant, bargain, sell, and convey unto the said part— of the second part, and to ——— heirs and assigns forever, all that (*description*), together with

the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining.

This grant is intended as a mortgage to secure the payment of a certain promissory note of even date herewith executed and delivered by the said part— of the first part to the said part— of the second part (*state terms of payment or copy*).

And these presents shall be void if such payment be made. But in case default shall be made in the payments of said principal sum of money, or any part thereof, as provided in said note, or if the interest be not paid as herein specified, then it shall be optional with the said part— of the second part, ——— executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, and immediately to enter into and upon all and singular the above-described premises, and to sell and dispose of the same according to law, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit, including ——— dollars attorney's fees, and also the amounts of all such payments of taxes, assessments, incumbrances, or insurance as may have been made by said part— of the second part, ——— heirs, executors, administrators, or assigns, with the interest on the same as hereinafter provided, rendering the overplus of the purchase money if any there shall be, unto the said ———, part— of the first part, ——— heirs, executors, administrators, or assigns.

(*Add provisions for payment of taxes, assessments, incumbrances, and insurance as may be desired.*)

In witness whereof the said part— of the first part ha— hereunto set ——— hand— and seal— the day and year first above written.

ILLINOIS

Mortgage (Statutory)

The mortgagor (*here insert name or names*) mortgages and warrants to (*here insert name or names of mortgagee or mortgagees*), to secure the payment of (*here recite the nature and amount of indebtedness, showing when due and the rate of interest, and whether secured by note or otherwise*), the following described real estate (*here insert description thereof*), situated in the county of ———, in the state of Illinois.⁶

Dated this ——— day of ———, A. D. 19—.

A. B. (L. S.)

If the mortgage contains the words "and warrants," the same shall be construed the same as if full covenants of seisin, good right to convey, against incumbrances, of quiet enjoyment, and general warranty, as expressed in section 9 (ante, p. 542), were fully written therein; but if the words "and warrants" are omitted, no such covenants shall be implied. Hurd's Rev. St. 1911, c. 30, § 11.

Mortgage—With Power to Appoint Receiver

(*Follow preceding form, and add the following:*) hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the state of Illinois, and all right to retain possession of said premises after any default in payment or breach of any of the covenants or agreements herein contained.

But it is expressly provided and agreed that, if default be made in the payment of the said ——— promissory note—, or of any part thereof, or the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste or nonpayment of taxes or assess-

⁶ As to release of homestead, ante, p. 42.

ments on said premises, or of a breach of any of the covenants or agreements herein contained, then and in such case the whole of said principal sum and interest secured by the said ——— promissory note— in this mortgage mentioned shall thereupon, at the option of the said mortgagee—, ——— heirs, executors, administrators, attorneys, or assigns, become immediately due and payable. And this mortgage may be immediately foreclosed to pay the same by said mortgagee—, ——— heirs, executors, administrators, attorneys, or assigns. And it shall be lawful for the said mortgagee—, ——— heirs, executors, administrators, attorneys, or assigns, to enter into and upon the premises hereby granted, or any part thereof, and to receive and collect all rents, issues, and profits thereof.

Upon the filing of any bill to foreclose this mortgage in any court having jurisdiction thereof, such court may appoint ——— or any proper person receiver, with power to collect the rents, issues, and profits arising out of said premises during the pendency of such foreclosure suit, and until the time to redeem the same from any sale that may be made under any decree foreclosing this mortgage shall expire; and such rents, issues, and profits, when collected, may be applied toward the payment of the indebtedness and costs herein mentioned and described. And upon the foreclosure and sale of said premises there shall be first paid out of the proceeds of such sale all expenses of advertisement, selling, and conveying said premises, and ——— dollars attorneys' or solicitors' fees, to be included in the decree, and all moneys advanced for taxes, assessments, and other liens; then there shall be paid the principal of said note—, whether due and payable by the terms thereof or not, and the interest thereon.

Dated, *etc.*

Trust Deed

This indenture witnesseth that the grantor—, ———, of ———, for and in consideration of the sum of ——— dollars in hand paid, convey— and warrant— to ———, trustee, of ——— county, Illinois, and to his successors in trust herein after named, the following described real estate (*description*). Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the state of Illinois.

In trust, nevertheless, for the purpose of securing performance of the covenants and agreements herein.

Whereas, the grantor— ——— justly indebted upon ——— principal promissory note— (*state terms*).

The grantor— covenant— and agree— as follows: To pay said indebtedness, and the interest thereon as herein and in said notes provided; to pay promptly all taxes and assessments against said premises, and, on demand, to exhibit receipts therefor; that waste to said premises shall not be committed or suffered; and to keep all buildings at any time on said premises insured against loss by fire, in companies to be approved by the holder of, and in amount equal to, said indebtedness, and deliver to the holder of said indebtedness the policies for that amount, payable in case of loss to the holder of said indebtedness as his interest may appear. In the event of failure so to insure, or pay taxes or assessments, the grantee or the holder of said indebtedness may procure such insurance, or pay such taxes or assessments, or discharge or purchase any tax lien or title affecting said premises; and all money expended in so doing, the grantor— agree— to repay immediately, without demand, and the same, with interest thereon from the date of payment, at ——— per cent. per annum, shall be so much additional indebtedness secured hereby.

In the event of a breach of any of the aforesaid covenants

or agreements the whole of said indebtedness, including principal and all accrued interest, shall, at the option of the legal holder thereof, without notice, become immediately due and payable, and with interest thereon from the time of such breach, at —— per cent. per annum, shall be recoverable by foreclosure hereof, or by suit at law, or both, the same as if all of said indebtedness had then matured by express terms.

It is agreed by the grantor— that all expenses and disbursements paid or incurred in behalf of complainant in connection with proceedings for the foreclosure hereof, including reasonable solicitor's fees and cost of procuring or completing abstract, shall be paid by the grantor—; and the like expenses and disbursements occasioned by any suit or proceeding wherein the grantee, or any holder of any part of said indebtedness, as such, may be a party, shall also be paid by the grantor—. All such expenses and disbursements shall be an additional lien upon said premises, and included in any decree that may be rendered in such foreclosure proceeding, which proceeding shall not be dismissed, nor a release hereof given, until all such expenses and disbursements have been paid. The grantor—waive— all right to the possession of, and income from, said premises pending such foreclosure proceedings, and until the period of redemption from any sale thereunder expires, and agree— that a receiver shall be appointed to take possession or charge of said premises, and collect such income, and the same, less receivership expenses, pay to the person entitled to a deed under the certificate of sale, or in reduction of the redemption money if said premises be redeemed.

In the event of the death or absence from said —— county of the grantee, or of his refusal or failure to act, then ——, of said —— county, is hereby appointed to be first successor in this trust, and invested with all the powers granted to said grantee, and if for any like cause said first successor fail or re-

fuse to act, the person who shall then be the acting recorder of deeds of said _____ county is hereby appointed to be second successor in this trust with like powers. And when all the aforesaid covenants and agreements are performed, the grantee, or his successor in trust, shall release said premises to the party entitled, on receiving his reasonable charges.

Witness the hand— and seal— of the grantor— this _____ day of _____, A. D. 19—.

INDIANA

Mortgage (Statutory)

A. B. mortgages and warrants to C. D. (*here describe the premises*), to secure the repayment of (*here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the repayment*).

Such mortgage, dated, signed, sealed, and acknowledged, is a good and sufficient mortgage, with warranty of perfect title in the grantor and against all previous incumbrances. If the words "and warrants" are omitted, the mortgage is good, but without warranty. Burns' Ann. St. 1908, § 3961.

IOWA

Mortgage (Statutory)

(*Ante*, p. 545.)

Mortgage—Another Form

This indenture made this _____ day of _____ between _____, of _____, of the first part, and _____, of _____, of the second part:

Witnesseth that the said part— of the first part, for the consideration of _____ dollars, the receipt whereof is hereby ac-

knowledge, do— by these presents grant, bargain, sell, and convey unto the said part— of the second part, ——— heirs and assigns forever, the following described real estate (*description*).

To have and to hold the premises above described, with all the appurtenances thereunto belonging, unto the said second part—, and to ——— heirs and assigns forever; the said part— of the first part hereby covenanting that the above-described premises are free from any incumbrance, and ——— will warrant and defend the title unto the said part— of the second part, ——— heirs and assigns, against all persons whomsoever lawfully claiming the same.

This grant is intended as security for the payment of ——— certain promissory note— (*state terms*).

And the said part— of the first part hereby agree— to pay all taxes that may be assessed upon said premises before they become delinquent, and also at ——— own expense to keep the buildings on said premises insured against fire in an insurance company approved by and for the benefit of said part— of the second part, ——— personal representatives or assigns, in the amount of \$——, until this mortgage is paid or otherwise extinguished; and in case it shall become necessary by reason of the failure of the said part— of the first part so to do for the mortgagee, his personal representatives or assigns, to pay such taxes or insurance, the part— of the first part hereby agree— to refund to ——— all sums so expended, with interest at the rate of ——— per cent. per annum, and this mortgage shall be security for all sums so expended.

Now, therefore, if the said part— of the first part shall well and truly pay or cause to be paid the said note— with the interest thereon, according to ——— tenor and effect, and shall perform the other things agreed herein to be performed by the said part— of the first part, then these presents shall be null

and void; otherwise of full force and virtue. If the said part— of the first part shall fail to pay any portion of the above-mentioned sums, either principal or interest, at the times they shall become due respectively as aforesaid, or shall neglect to pay all taxes assessed on said property before the same shall become delinquent, or shall neglect to keep the said buildings insured as herein provided, then the whole sum, both principal and interest, shall at once become due and payable, and the said part— of the second part, ——— heirs or assigns, may proceed by foreclosure, or in any other lawful mode, to make the amount of said note—, together with all interest and costs, and all insurance, taxes, and assessments accrued or paid by said part— of the second part on said real estate, together with interest at the rate of ——— per cent. per annum on all insurance, taxes, and assessments so paid by the said part— of the second part, together with a reasonable fee for plaintiff's attorney, out of the aforesaid real estate.

And ——— hereby relinquishes all contingent rights including dower, homestead, or distributive share, in and to the real estate herein mentioned, subject to the above reservations and conditions.

In witness, *etc.*

KANSAS

Mortgage (Statutory)

A. B. mortgages and warrants to C. D. (*here describe the premises*), to secure the payment (*here insert the sum for which the mortgage is granted or the notes or other evidences of debt, or description thereof, sought to be secured, also the date of payment*).

Such mortgage, dated, signed, and acknowledged, is a good and sufficient mortgage to the grantee, his heirs, assigns, executors, and administrators, with warranty from the grantor and

his legal representatives of a perfect title and against all previous incumbrances. If the words "and warrants" are omitted, the mortgage is good without warranty. Gen. St. 1909, § 5196.

KENTUCKY

A mortgage must refer to the source of title. Ante, p. 549. The name, residence, and post office address of the person or corporation owning the debt secured and liable for the taxes thereon must be stated in the mortgage as a condition of record. An assignment of the mortgage must give the same information, or the original owner remains liable for the taxes to accrue thereon. Acts 1906, c. 22. The wife joins to bar dower. Homestead should be waived.

Mortgage

This indenture made and entered into this — day of —, 19—, between —, of —, of the first part, and —, of —, whose post office address is —, of the second part:

Witnesseth that the party of the first part, for and in consideration of — dollars indebtedness to the party of the second part as follows (*state terms*), and to secure the payment of the same, has granted, bargained, and sold, and by these presents doth grant, bargain, and sell, to the party of the second part, all of the following described real estate (*description*), being the same property conveyed to the party of the first part by — deed dated the — day of — and recorded in the — county court in deed book No. —, p. — (*or otherwise state the source of title*). To have and to hold to the party of the second part, his heirs and assigns forever, with general warranty.

This indenture is conditioned as follows: Whereas, the party of the first part is indebted to the party of the second part as aforesaid.

Now, if party of the first part, or any one for him, shall pay said indebtedness at maturity, then this indenture shall be void, else remain in full force. And the party of the first part hereby waives and relinquishes to the party of the second part all claims he has or may have to said property under the homestead laws of this state.

In testimony whereof the party of the first part has hereunto subscribed his name the day and year first above written.

LOUISIANA

(*See Deeds, ante, p. 550.*)

Mortgage

UNITED STATES OF AMERICA, }
STATE OF LOUISIANA, }
Parish of Orleans.

Be it known that on this twenty-fifth day of the month of May, in the year of our Lord one thousand nine hundred and fifteen, and of the independence of the United States of America the one hundred and thirty-ninth:

Before me, Theodore A. Schubert, a notary public, duly commissioned and qualified, in and for parish of Orleans, La., therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared August Faber, of lawful age, and a resident of New Orleans, La.

Which said appearer declared and acknowledged that he is justly and truly indebted unto James Smith in the full and true sum of five thousand dollars, borrowed money, which the said James Smith has this day loaned and advanced to the said August Faber, and for the reimbursement whereof the said August Faber, has made and subscribed his one (1) certain

promissory note for the sum of five thousand dollars, payable to the order of and indorsed by himself, dated this day and made payable at the city of New Orleans in one year (1 yr.) after date, with interest thereon at the rate of seven per cent. per annum from date until paid, which said note, after having been paraphed "Ne varietur," by me, notary, to be herewith identified, was delivered unto James Smith, here present hereby acknowledging the receipt thereof.

Now, in order to secure the full and punctual payment of above-described note in capital and interest, together with all attorney's fees and premiums of insurance, as hereinafter specified, the said August Faber declares that he does by these presents mortgage, effect, and specially hypothecate, in favor of the said James Smith, and to inure to the use and benefit of any and all holder or holders of the said note, the said James Smith being here present and accepting the following described property, to wit (*description*).

The said property so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note in capital and interest, the said mortgagor hereby binding himself not to sell, alienate, mortgage, or incumber the same to the prejudice of these presents.

And the said mortgagor moreover binds himself, in case it should become necessary to institute suit for the recovery of the amount of said note or any part thereof, to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at ten per cent. on the amount sued for.

The said mortgagor further binds himself to keep the buildings on above-described property constantly insured against the loss by fire, and to transfer such insurance to the mortgagee or any other holder or holders of above-described note up to the full amount of such note, said mortgagor hereby authoriz-

ing said mortgagee or any holder or holders of above-described note to cause said insurance to be effected on his default at a premium not exceeding three per cent.

And the said mortgagor did further declare that he does by these presents consent, agree, and stipulate that in the event of said promissory note not being punctually paid at its maturity it shall be lawful for, and he does hereby authorize, the said mortgagee or any other holder or holders thereof, to cause all and singular the said hereinbefore described and herein mortgaged property to be seised and sold by executory process without appraisement, to the highest bidder, payable cash. And in the event of all taxes not being punctually paid by the mortgagor herein when they become due, the mortgagee or holder or holders of said note is authorized to pay same with full subrogation to all the mortgagee's rights thereunder.

Now, to secure the faithful performance of the foregoing obligations, and the reimbursement and payment of said note and lawyer's fees and premiums of insurance, as above specified, the mortgagor does by these presents further specially mortgage and hypothecate the hereinbefore described property unto and in favor of said mortgagee or holder or holders of said promissory note, hereby confessing judgment for the full amount of said note in capital and interest, together with all costs, attorney's fee, taxes, and premiums of insurance.

According to the certificates of register of conveyances and recorder of mortgages in and for Orleans parish annexed hereto, it appears that said property has not been heretofore alienated by the present mortgagor and is clear of all incumbrances.

According to city and state tax researches hereto annexed all taxes are paid up to and inclusive of those due in the year 1915.

According to certificates from the United States district and circuit courts hereto attached there are no unsatisfied judgments standing in those courts against the mortgagor herein.

The mortgagor declared on oath that he has been married but once, and that time to Elizabeth Berley, who is still alive, and living with him in this city.

The mortgagee declared on oath that he has never been married.

Thus done and passed in my office at New Orleans, La., on the day, month, and year herein first above written, in the presence of Messieurs Edgar M. Cahn and Wm. F. Conkerton, competent witnesses, who hereunto sign their names with the said appearers, and me, notary, after reading of the whole.

Witnesses:

EDGAR M. CAHN.

AUGUST FABER.

WM. F. CONKERTON.

JAMES SMITH.

THEODORE A. SCHUBER, Notary Public. (*Seal.*)

Mortgage Note

\$5,000.00

New Orleans, La., May 25th, 1915.

One year after date I promise to pay to the order of myself, five thousand dollars (\$5,000.00) at New Orleans, La., with interest at the rate of seven (7%) per centum per annum from date until paid for value received.

(*Signed*) AUGUST FABER.

(*Indorsed*) AUGUST FABER.

Across the face of the note should appear the following words and figures: "Ne varietur. To identify it with an act of mortgage passed before me this day. New Orleans, La., May 25, 1915. (*Signed*) Theodore A. Schubert, Notary Public."

MAINE**Mortgage**

Know all men by these presents that ———, of ———, in consideration of ——— dollars paid by ———, of ———, the receipt whereof ——— do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said ———, ——— heirs and assigns forever (*description*).

To have and to hold the afore granted and bargained premises, with all the privileges and appurtenances thereof, to the said ———, ——— heirs and assigns, to ——— and their use and behoof forever.

And ——— do covenant with the said grantee—, ——— heirs and assigns, that ——— lawfully seised in fee of the premises; that they are free of all incumbrances; that ——— have good right to sell and convey the same to the said grantee— to hold as aforesaid; and that ——— and ——— heirs shall and will warrant and defend the same to the said ———, ——— heirs and assigns forever, against the lawful claims and demands of all persons:

Provided, nevertheless, that if the said ———, ——— heirs, executors, or administrators, pay to the said ———, ——— heirs, executors, administrators, or assigns, the sum of ——— dollars from the day of the date hereof, with interest on said sum at the rate of ——— per centum per annum, during said terms and for such further time as said principal sum or any part thereof shall remain unpaid, payable ——— annually, then this deed, as also ——— certain promissory note— bearing even date with these presents, given by the said ——— to the said ——— to pay the sum and interest at the time aforesaid, shall ——— be void; otherwise shall remain in full force.

In witness whereof ———, the said ——— and ———, wife

of the said ——— joining in this deed as grantor—, and relinquishing and conveying ——— right by descent and all other rights in the above-described premises, have hereunto set ——— hand— and seal— this ——— day of ———.

MARYLAND

No mortgage shall be valid except as between the parties thereto, unless there be indorsed thereon an oath or affirmation of the mortgagee that the consideration in said mortgage is true and bona fide as therein set forth ; and unless there be indorsed on all mortgages executed since March 27, 1902, the following additional oath or affirmation, to wit:

—that the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage.

This affidavit may be made at any time before the mortgage is recorded, before any one authorized to take the acknowledgment of a mortgage, and the affidavit shall be recorded with the mortgage. Ann. Civ. Code 1910, art. 21, § 32. This mortgage tax has been abolished except as to certain counties. Ibid. art. 81, § 187 et seq. The affidavit required by the preceding section may be made by one of several mortgagees, by any agent of a mortgagee. When made by an agent, he shall, in addition to the affidavit above mentioned, make affidavit, to be indorsed upon the mortgage, that he is agent of the mortgagee or mortgagees, or some one of them. The president or other officer of a corporation, or the executor of the mortgagee, may make such affidavit. Ibid. art. 21, § 33.

Acknowledgment of Mortgage with Affidavit of Mortgagee or Agent ¹

STATE OF ———, }
County of ———. } ss.

I hereby certify that on this ——— day of ———, in the year ———, before the subscriber (*insert the style of the officer*) personally appeared ———, the mortgagor named in the foregoing mortgage, and acknowledged the foregoing mortgage to be ——— act. And at the same time appeared ———, the mortgagee— named in the foregoing mortgage (*or, the agent of the mortgagee named in the foregoing mortgage*) and made oath in due form of law that (he is the agent of the aforesaid mortgagee, and that) the consideration in said mortgage is true and bona fide as therein set forth.

Forms

The following forms or forms to like effect are sufficient; and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed, or introduced. Any other forms conforming to the rules hereinbefore laid down, or to the rules of law, are sufficient. Ann. Civ. Code 1910, art. 21, §§ 66, 67.

Deed of Trust to Secure Debts, Indemnify Securities, or Other Purposes (Statutory)

This deed made this ——— day of ———, in the year ———, by me, ———, witnesseth, that whereas (*here insert the consideration for making the deed*), I, the said ———, do grant unto ———, as trustee, the following property (*here describe the property*), in trust for the following purposes

¹ The assignee of a mortgage must make a similar oath.

(here insert the purposes of the trust, and any covenant that may be agreed upon).

Witness my hand and seal.

Test:

A. B.

(Seal.)

Ibid. § 57.

Mortgage of Real Estate (Statutory)

This mortgage made this — day of — by me, —, witnesseth, that in consideration of the sum of — dollars now due from me, the said —, to —, I, the said —, do grant unto the said — (*here describe the property*): Provided, that if I, the said —, shall pay, on or before the — day of —, to the said —, the sum of — dollars, with the interest thereon from —, then this mortgage shall be void.

Witness my hand and seal.

(Seal.)

Ibid. § 62.

Mortgage—Fee (City of Baltimore)

This mortgage made this — day of — by and between —, of the city of Baltimore, in the state of Maryland, of the first part, and —, of —, of the second part:

Whereas (*recite the indebtedness and any promissory notes accompanying the mortgage*).

Now, this mortgage witnesseth that, in consideration of the premises and of the sum of one dollar, the said — do grant and convey unto the said —, heirs and assigns in fee simple all that parcel of ground (*description*).

To have and to hold the aforesaid parcel of ground and premises unto and to the proper use and benefit of —,

heirs and assigns forever. Together with the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances, and advantages thereto belonging or in any wise appertaining:

Provided, that if the said ———, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, the aforesaid principal sum of ——— dollars, and all the installments of interest thereon, when and as each of them shall respectively be due and payable as aforesaid, and shall perform each and all of the covenants herein on ——— part to be performed, then this mortgage shall be void.

And the said ——— do— hereby declare ——— assent to the passing of a decree by the circuit court of Baltimore City or the circuit court number two of Baltimore city for a sale of the property hereby mortgaged, in accordance with chapter 123, sections 720 to 732, inclusive, of the Laws of Maryland, passed at the January session in the year 1898, or any supplements or additions thereto. And in case of any default being made in the payment of the aforesaid mortgage debt, principal or interest, in whole or in part, at the time or times limited and mentioned for the payment of the same, as aforesaid, or in case of any default being made in any covenant or condition of this mortgage, then the whole mortgage debt hereby intended to be secured shall be deemed due and payable, and sale of said mortgaged property may be made by the trustee or trustees named in such decree as may be passed as aforesaid for the sale of said property, or upon such default as aforesaid a sale may be made by the said part— of the second part, ——— executors, administrators, or assigns, or by ——— or agent, under article LXVI, sections 6 to 10, inclusive, of the Maryland Code Public General Laws, or under any other general or local law of the state of Maryland relating to mortgages. And upon any sale of said property under the powers

hereby granted, the proceeds shall be applied as follows, to wit: First, to the payment of all expenses incident to said sale, including a commission to the party making sale of said property equal to the commission usually allowed trustees for making sale of property by virtue of a decree of a court having equity jurisdiction in the state of Maryland, and a reasonable attorney's fee to the attorney instituting or conducting the foreclosure proceedings; second, to the extinguishment of all claims of the part— of the second part, ——— executor, administrators, or assigns hereunder, whether the same shall have then matured or not; and, third, the balance, if any, to the said part— of the first part, ——— executors, administrators, or assigns.

And it is agreed that until default be made in the premises the said part— of the first part, ——— executors, administrators, or assigns, shall possess the aforesaid property upon paying, in the meantime, all taxes and assessments, public dues and charges levied or assessed, or to be levied or assessed, on said hereby mortgaged property, which taxes, mortgage debt, and interest, public dues, charges, and assessments ———, the said part— of the first part, covenant— to pay when legally payable.

And the said part— of the first part further covenant— to insure, and pending the existence of this mortgage to keep insured, the improvements on the hereby mortgaged property to the amount of at least ——— dollars, and to cause the policy to be effected thereon to be so framed or indorsed as, in case of fire, to inure to the benefit of the said ———, ——— executors, administrators, or assigns, to the extent of ——— lien or claim hereunder.

Witness ——— hand— and seal—.

Test.

Assignment of Mortgage (Statutory)

I hereby assign the within mortgage to the assignee.

Witness my hand and seal this ——— day of ———.

(Seal.)

Ibid. § 34.

No assignment of any mortgage executed since March 27, 1902, except for the purpose of foreclosure, shall be valid, except as between the parties thereto, unless there be indorsed thereon the following oath or affirmation, to wit: "That the assignee has not required the mortgagor," etc., following the form given in section 32, *supra*. This oath or affirmation may be made by any agent or attorney of the assignee, who shall, in addition thereto, make oath or affirmation that he is the agent or attorney of the assignee. Ibid. § 35.

Release of Mortgage (Statutory)

I hereby release the above (*or*, within) mortgage.

Witness my hand and seal this ——— day of ———.

(Seal.)

Ibid. § 36.

Such release may be written by the mortgagee or his assignee upon the record of the mortgage, and attested by the clerk of the court, or may be indorsed on the original mortgage. Ibid. §§ 37, 38.

MASSACHUSETTS**Mortgage (Statutory)**

———, of ——— county, for consideration paid, grant to ———, of ———, with mortgage covenants, to secure the payment of ——— dollars in ——— years, with ——— per cent. interest per annum, payable semiannually, as provided in ——— note of even date, the land in (*description and incumbrances, if any*). This mortgage is upon the statutory condi-

tion, for any breach of which the mortgagee shall have the statutory power of sale.

_____, wife of said mortgagor, _____ release to the mortgagee all rights of dower and homestead and other interests in the mortgaged premises.

Witness _____ hand— and seal— this _____ day of _____.

(Acknowledgment.)

(Seal.)

Acts 1912, c. 502, § 6.

Every mortgage in substance in the above form has effect of a mortgage deed to the use of the mortgagee and his heirs and assigns, with mortgage covenants as defined in section 18 of this act (post, p. 912), to secure the payment of the money or the performance of any obligation therein specified. Ibid. c. 502, § 6.

Condition

Provided, nevertheless, except as otherwise specifically stated in the mortgage, that if the mortgagor, or his heirs, executors, administrators, or assigns, shall pay unto the mortgagee, or his executors, administrators, or assigns, the principal and interest secured by the mortgage, and shall perform any obligation secured, at the time provided in the note, mortgage, or other instrument or any extension thereof, and shall perform the condition of any prior mortgage, and until such payment and performance shall pay when due and payable all taxes, charges, and assessments to whomsoever and whenever laid or assessed, whether on the mortgaged premises or on any interest therein, or on the debt or obligation secured thereby, shall keep the buildings on said premises insured against fire in a sum not less than the amount secured by the mortgage, or as otherwise provided therein for insurance, for the benefit of the mortgagee, and his executors, administrators, and assigns, in such form and at such insurance offices as they shall approve, and at least two days before the expiration of any pol-

icy on said premises shall deliver to him or them a new and sufficient policy to take the place of the one so expiring, and shall not commit or suffer any strip or waste of the mortgaged premises, or any breach of any covenant contained in the mortgage or in any prior mortgage, then the mortgage deed, as also the mortgage note or notes, shall be void.

Power

But upon any default in the performance or observance of the foregoing or other condition, the mortgagee, or his executors, administrators, successors, or assigns, may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the premises, or at such place as may be designated for that purpose in the mortgage, first complying with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity.

The foregoing "condition" shall be known as the statutory condition, and may be incorporated in any mortgage by reference.

The foregoing "power" shall be known as the statutory power of sale, and may be incorporated in any mortgage by reference.

The parties may insert in such mortgage any lawful agreement or condition. Ibid. c. 502, § 6.

In a conveyance of real property the words "mortgage covenants" shall have the full force, meaning, and effect of the following words, and shall be applied and construed accordingly:

"The mortgagor for himself, and his heirs, executors, administrators, and successors, covenants with the mortgagee, and

his heirs, successors, and assigns, that he is lawfully seised in fee simple of the granted premises; that they are free from all incumbrances, that the mortgagor has good right to sell and convey the same, and that he will, and his heirs, executors, administrators, and successors shall, warrant and defend the same to the mortgagee, and his heirs, successors, and assigns, forever against the lawful claims and demands of all persons, and that the mortgagor, and his heirs, successors, or assigns, in case a sale shall be made under the power of sale, will upon request execute, acknowledge, and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and that the mortgagee, and his heirs, executors, administrators, successors, and assigns, are appointed and constituted the attorney or attorneys irrevocable of the said mortgagor to execute and deliver to the said purchaser a full transfer of all policies of insurance on the buildings upon the land covered by the mortgage at the time of such sale." Ibid. c. 502, § 18.

Mortgage in Common Use

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said ——— all that parcel (*description*).

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said ———, and ——— heirs and assigns, to their own use and behoof forever.

And ——— hereby, for ———, and ——— heirs, executors, and administrators, covenant with the grantee—, and ——— heirs and assigns, that ——— lawfully seised in fee simple of the granted premises; that they are free from all incumbrances; that ——— have good right to sell and convey the same as aforesaid; and that ——— will, and ——— heirs, executors, and administrators shall, warrant and defend the same to the grantee— and ——— heirs and assigns forever against the lawful claims and demands of all persons:

Provided, nevertheless, that if ———, or ——— heirs, executors, administrators, or assigns, shall pay unto the grantee—, or ——— executors, administrators, or assigns, the sum of ——— dollars in ——— years from this date, with interest semiannually at the rate of ——— per cent. per annum, and until such payment shall pay all taxes and assessments to whomsoever laid or assessed, whether on the granted premises or on any interest therein or on the debt secured hereby, shall keep the buildings on said premises insured against fire in a sum not less than ——— dollars for the benefit of the grantee—, and ——— executors, administrators, and assigns, in such form and at such insurance offices as they shall approve, and at least ——— days before the expiration of any policy on said premises shall deliver to ——— or them a new and sufficient policy to take the place of the one so expiring, and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained, then this deed, as also ——— note of even date herewith, signed by ———, whereby ——— promise to pay to the grantee— or order the said principal sum and installments of interest at the times aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition the grantee—, or ——— executors, administrators, or assigns, may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all improvements that may be thereon, by public auction in said ———, first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said ———, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar ——— and all persons claiming under ——— from all right and interest in

the granted premises, whether at law or in equity. And out of the money arising from such sale the grantee— or ——— representatives shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them by reason of any default in the performance or observance of the said condition, rendering the surplus, if any, to ———, or ——— heirs or assigns; and ——— hereby, for ———, and ——— heirs and assigns, covenant with the grantee—, and ——— heirs, executors, administrators, and assigns, that, in case a sale shall be made under the foregoing power, ——— or they will upon request execute, acknowledge, and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and said grantee, and ——— assigns, are hereby appointed and constituted the attorney or attorneys irrevocable of the said grantor to execute and deliver to the said purchaser a full transfer of all policies of insurance on the buildings upon the land covered by this mortgage at the time of such sale.

And it is agreed that the grantee—, or ——— executors, administrators, or assigns, or any person or persons in ——— or their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase money, and that, until default in the performance of the condition of this deed, ———, and ——— heirs and assigns, may hold and enjoy the granted premises and receive the rents and profits thereof.

And for the consideration aforesaid I, ———, wife of the said ———, do hereby release unto the grantee—, and ——— heirs and assigns, all right of or to both dower and homestead in the granted premises, and all other rights and interests therein.

In witness whereof ———, the said ———, hereto set ——— hand— and seal— this ——— day of ———.

MICHIGAN

Mortgage (Statutory)

A. B. mortgages and warrants to C. D. (*here describe the premises*), to secure the repayment of (*here recite the sum for which the mortgage is granted, or notes or other evidences of debt, or a description thereof, sought to be secured, also the date of repayment*).

Such mortgage, dated, signed, sealed, and acknowledged, is a good and sufficient mortgage to the grantee, his heirs, assigns, executors, and administrators, with warranty of perfect title in the grantor, and against all previous incumbrances. If the words "and warrants" are omitted, the mortgage is good, but without warranty. C. L. § 9017. Unless a mortgage contains an express covenant for the payment secured, no such covenant is implied, and unless a bond or other separate instrument to secure such payment be given, the mortgagee's remedies are confined to the mortgaged lands. Ibid. § 8960. To entitle it to record, a mortgage must contain the name and address of the mortgagee. Acts 1887, No. 262. A tax of 50 cents for each \$100 or major fraction thereof of the principal debt is imposed, which must be paid before record. Acts 1911, No. 91.

Another Form—With Interest, Tax, and Insurance Clauses

——, of ——, part— of the first part, mortgage— and warrant— to ——, of ——, part— of the second part, the following described land and premises situated in the —— of ——, county of ——, state of Michigan, viz. (*description*), together with all tenements, hereditaments, and appurtenances thereunto belonging, to secure the repayment of the sum of —— dollars, with interest at the rate of —— per cent. per annum, payable annually on the —— day of ——, after the date hereof, according to the conditions of —— certain promissory notes bearing even date herewith, executed by said —— to said part— of the second part, to which

these presents are collateral, and also to secure the fulfillment of the following agreements on the part of said part— of the first part, made in consideration of said sum of money, the receipt of which is hereby acknowledged, viz.:

It is agreed that, if the interest ——— above stipulated to be paid shall remain unpaid for the space of ——— days after the same shall fall due, the whole amount of principal, viz., ——— dollars, as well as said interest, shall thereupon become due and payable forthwith, notwithstanding the time first above limited for the payment of said principal shall not then have expired.

It is agreed that said part— of the first part shall pay all taxes and assessments which shall be levied on said premises whenever the same shall be payable, and in case said part— of the second part shall pay the same the amount so paid shall be a lien on said premises, secured hereby and payable forthwith with interest at the rate of ——— per cent. per annum.

It is agreed that, should any proceeding be taken to foreclose this mortgage, said first part— shall pay to said second part— ——— dollars attorney fee.

It is further agreed that the said part— of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire in an amount and by insurers approved by said part— of the second part, and assign the policy and certificates thereof to the said part— of the second part; and in default thereof the whole amount of principal, viz., ——— dollars, as well as the interest thereon, shall thereupon become due and payable forthwith, at the option of the said part— of the second part, notwithstanding the time first above limited for the payment of said principal shall not then have expired.

Upon default being made in any agreement herein or in case of nonpayment of said sum of ——— dollars, or the interest

or any part thereof, at the time, place, and in the manner above specified, it shall be lawful for said part— of the second part, ——— heirs, executors, administrators, or assigns, and said part— of the first part do— empower said part— of the second part, ——— heirs, executors, administrators, or assigns, to grant, bargain, sell, and convey said premises at public vendue and on said sale to make and execute to the purchaser, his heirs and assigns, forever, good and sufficient deeds of conveyance pursuant to the statute, rendering the surplus moneys (if any there should be) to said part— of the first part, ——— heirs, executors, or administrators, after deducting the amount then due, said attorney fee, and the costs and charges of said vendue.

In witness whereof said part— of the first part ha— hereunto set ——— hand— and seal— this ——— day of ———, in the year ———.

MINNESOTA

A tax of 15 cents is imposed on each \$100, or fraction thereof, of the principal debt. If it matures more than five years from the date of the mortgage, the tax is at the rate of 25 cents. The tax is payable at or before the time of filing for record or registration. Gen. St. 1913, §§ 2302-2307.

Mortgage

This indenture made this ——— day of ——— between ———, of ———, part— of the first part, and ———, of ———, part— of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of ——— dollars to ——— in hand paid by the said part— of the second part, the receipt of which is hereby acknowledged, do— by these presents grant, bargain, sell, and convey to the said part— of the second part, ——— heirs and assigns forever, all ——— tract— or parcel— of land (*description*).

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said part— of the second part, ——— heirs and assigns forever.

And the said ———, part— of the first part, for ———, ——— heirs, executors, and administrators, do— covenant with the said part— of the second part, ——— heirs and assigns, as follows: First, that ——— lawfully seised of the said premises; second, that ——— ha— good right to convey the same; third, that the same are free from all incumbrances; fourth, that the said part— of the second part, ——— heirs and assigns, shall quietly enjoy and possess the same; and, fifth, that the said part— of the first part will warrant and defend the title to the same against all lawful claims:

Provided, nevertheless, that if said ———, part— of the first part, or ——— heirs, executors, administrators, or assigns, shall pay to the said part— of the second part, or ——— executors, administrators, or assigns, the sum of ——— dollars, according to the terms of ——— promissory note— of even date herewith, executed by the said ———, part— of the first part, to the order of the said part— of the second part, for the sum of ——— dollars, payable (*state terms*), and shall also keep and perform all and singular the covenants and agreements hereinafter contained, then this deed shall be null and void; but otherwise shall remain in full force and effect.

And the said part— of the first part, for ——— heirs, executors, administrators, and assigns, do— further covenant and agree with the said part— of the second part, ——— executors, administrators, and assigns, that ——— will pay the said sum of money and interest thereon at the times and in the manner above specified, together with all costs and expenses of collection, if any there shall be; that ——— will pay, as part of the debt hereby secured, in case of any foreclosure of this

mortgage, begun or completed, all costs and expenses thereof, and ——— dollars as an attorney's fee; that ——— will insure the buildings now on said premises and any which may be erected thereon and keep the same insured against loss by fire until the debt hereby secured is paid for at least the sum of ——— dollars, in a company or companies approved by the said part— of the second part, and will deliver to ——— the policies for said insurance, making and keeping the same payable in case of loss to the said party of the second part; that ——— will pay all taxes and assessments levied upon said premises, or any part thereof, at least ——— days before any penalty would accrue thereon by law, and will produce to the said part— of the second part the receipts for such payments; that ——— will permit no waste nor do nor permit to be done anything which may in any way impair the security of this mortgage; and that if the said part— of the first part shall fail so to insure said premises, or to deliver said policies, or to pay said taxes and assessments, or to produce upon request said evidences of payments, then and in either or any such event the said part— of the second part, ——— heirs, executors, administrators, or assigns, may, without notice, effect such insurance, and pay such taxes and assessments, and the sum or sums of money so paid for any of such purposes, with interest thereon from the time of such payment at the rate of ——— per centum per annum, shall be immediately due and payable, and shall be deemed a part of the debt secured hereby, and shall be collectible with, as part of, and in the same manner as the original debt which this mortgage is given to secure.

And the said part— of the first part do— further agree that if default shall be made in the payment of said principal sum or of any installment of interest, or in the performance of any of the covenants or agreements of the said part— of the first

part herein contained (and such default shall continue for ——— days), then and in either or any such case, and in addition to the remedies hereinbefore provided, the said part— of the second part, ———, executors, administrators, or assigns, may elect, without notice, that the principal sum hereby secured, together with the interest accrued thereon, shall be immediately due and payable, and may enforce payment thereof, and of all sums expended under the terms of this indenture, by foreclosure or otherwise, and that then, and in either or any such event, the said part— of the second part, ———, executors, administrators, or assigns, are hereby authorized and fully empowered to sell the hereby granted premises at public auction, and to convey the same to the purchaser in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal sum hereby secured, the interest then accrued, all such sums as shall have been paid for insurance, taxes, or assessments, with interest thereon as hereinbefore provided, and all other sums which shall then be due under the terms of this mortgage, together with all statutory costs and charges for such foreclosure, and the attorney's fee hereinbefore mentioned, and to pay the overplus, if any there be, to the said part— of the first part.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— the day and year first above written.

MISSISSIPPI**Deed of Trust (Statutory)**

(*See ante*, p. 576.)

Deed of Trust with Power of Sale

Whereas, ———, of ———, owe ———, of ———, the sum of ——— dollars, evidenced by (*state particulars*); and whereas, ——— anxious to secure the payment of said indebtedness at the maturity thereof: Therefore, in consideration of five dollars to ——— paid by ——— (trustee), the receipt whereof is hereby acknowledged, ——— convey and warrant unto said ——— (trustee) the land described as (*description*).

This conveyance is in trust. Should ——— pay said indebtedness and interest owing thereon at maturity, this conveyance shall be void; otherwise, at the request of said ——— or either of them, the said ——— (trustee), or any successor appointed in his place, shall sell said land, or a sufficiency thereof to satisfy the indebtedness aforesaid then unpaid, after having published notice of the time, place, and terms of sale in some newspaper published in said county for three consecutive weeks next preceding the date of said sale, and by posting one notice thereof at the county courthouse door of said county for said time, and out of the proceeds arising from such sale the costs and expenses of executing this deed of trust shall be first paid, next the amount of said indebtedness then remaining unpaid, and, lastly, any balance remaining shall be paid to ———.

The said ———, or either of them ——— hereby authorized to appoint another trustee in the place of said ——— (trustee), if from any cause the said ——— (trustee), shall

not be present, able, and willing to execute this trust; and such appointee shall have full power as trustee herein.

Witness ——— signature the ——— day of ———.

MISSOURI

Deed of Trust

This deed of trust made and entered into this ——— day of ———, by and between ———, of ———, part— of the first part, ———, of ———, part— of the second part, and ———, of ———, part— of the third part:

Witnesseth that the said part— of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to ——— paid by the said part— of the second part, the receipt of which is hereby acknowledged, do— by these presents grant, bargain, and sell, convey, and confirm, unto the said part— of the second part, the following described real estate (*description*).

To have and to hold the same, with the appurtenances, to the part— of the second part, and to ——— successor or successors in this trust, and to ———, and ——— grantees and assigns, forever.

In trust, however, for the following purposes: Whereas, the said ———, part— of the first part, ha— this day executed and delivered to the said part— of the third part ——— promissory note (*state terms*).

Now, therefore, if the said part— of the first part or any one for ——— shall well and truly pay off and discharge the debt and interest expressed in the said note, with all the interest thereon, when the same become due and payable, according to the true tenor, date, and effect of said note, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said part— of the first

part. But should the said part— of the first part fail or refuse to pay the said debt, or the said interest, or any part thereof, when the same shall become due and payable according to the true tenor, date, and effect of said note, then the whole of said principal and accrued interest shall, at the option of the legal holder— of said note, become at once due and payable, and this deed shall remain in force; and the said part— of the second part, at the request of the legal holder— of the said note, may enter into possession of the property hereinbefore described, and sell the same or any part thereof, at public vendue, to the highest bidder, at ———, in the ——— of ———, county of ———, and state of Missouri, for cash, first giving ——— days' public notice of the time, terms, and place of said sale, and of the property to be sold, by advertisement in some newspaper printed and published in the county of ———, and state of Missouri, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee— in relation to the nonpayment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as prima facie evidence of such facts, and such trustee— shall out of the proceeds of said sale pay: First, the cost and expenses of executing this trust, including legal compensation to the trustee— for ——— services; and, next, ——— shall apply the proceeds remaining over to the payment of said debt and interest; and the remainder, if any, shall be paid to the said part— of the first part, or ——— legal representatives.

And the said part— of the second part covenant— faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties have hereunto set their hands the day and year first above written.

Mortgage

Know all men by these presents that ———, of ———, for and in consideration of the sum of ——— dollars, to the said ——— in hand paid by ———, of ———, do— hereby grant, bargain, and sell unto the said ——— the following (*description*).

To have and to hold the property and premises hereby conveyed, with all the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining, unto the said ———, ——— heirs and assigns forever, upon this express condition: Whereas, the said ——— on the ——— day of ——— executed and delivered to the said ——— ——— certain promissory note (*state terms*).

Now, if the said ———, ——— executors or administrators, shall pay the sum of money specified in said note and all the interest that may be due thereon, according to the tenor and effect of the said note, then this conveyance shall be void; otherwise it shall remain in full force and virtue in law.

In witness, *etc.*

MONTANA

Mortgage (Statutory)

This mortgage made the ——— day of ———, in the year ———, by A. B., of ———, mortgagor, to C. D., of ———, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (*here describe the property*), as security for the payment to him of ——— dollars on (*or, before*) the ——— day of ———, in the year ———, with interest thereon (*or, as security for the payment of an obligation, describing it, etc.*).A. B.

Rev. Codes 1907, § 5748.

NEBRASKA**Mortgage**

Know all men by these presents that ———, of ———, in consideration of ——— dollars in hand paid, do hereby grant, bargain, sell, and convey unto ——— the following described real estate (*description*).

Together with all the appurtenances thereunto belonging; and ——— do hereby covenant with the said ———, ——— heirs and assigns, that ——— lawfully seised of said premises, that they are free from incumbrance, and ——— do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever:

Provided, always, and these presents are upon this condition, that whereas, said ——— executed and delivered to said ——— ——— promissory note— for the payment of (*state terms*).

Now, if the said ——— shall well and truly pay, or cause to be paid, the said sum of money in said note mentioned, with the interest thereon, according to the tenor and effect of said note—, then these presents to be null and void. But if said sum of money, or any part thereof, or any interest thereon, is not paid when the same is due, then and in that case the whole of said sum and interest shall, and by this indenture does, immediately become due and payable without notice; or, if all taxes and assessments levied upon said real estate, including all taxes and assessments levied upon this mortgage, or the debt secured by this mortgage, are not paid at the time when the same are by law made due and payable, then in like manner the whole of said sum shall immediately become due and payable without notice, at the election of the mortgagee, ——— executors, administrators, or assigns, and in case of such de-

fault in payment of any installment of principal or interest, or of taxes, ——— may forthwith proceed to foreclose this mortgage.

Signed this ——— day of ———.

NEVADA

(See *California, ante*, p. 874.)

NEW HAMPSHIRE

Mortgage with Release of Dower and Homestead

Know all men by these presents that ———, of ———, for and in consideration of the sum of ——— dollars to ——— in hand before the delivery hereof well and truly paid by ———, of ———, the receipt whereof ——— do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm unto the said ———, ——— heirs and assigns forever (*description*).

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to ———, the said ———, and ——— heirs and assigns, to ——— and their only proper use and benefit forever. And ———, the said ———, and ——— heirs, executors, and administrators, do hereby covenant, grant, and agree to and with the said ———, and ——— heirs and assigns, that until the delivery hereof ——— the lawful owner of the said premises, and ——— seised and possessed thereof in ——— own right in fee simple, and have full power and lawful authority to grant and convey the same in manner aforesaid; that the premises are free and clear from all and every incumbrance whatsoever; and that ———, and ——— heirs, executors, and administra-

tors, shall and will warrant and defend the same to the said ———, and ——— heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, ———, wife of the said ———, in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release all rights of homestead secured to us or either of us by chapter 138 of the Public Statutes of New Hampshire, or any other statute of said state.

Nevertheless, it is to be considered, and the condition of the foregoing deed is such, that if the said ———, ——— heirs, executors, and administrators shall well and truly pay unto the said ———, ——— heirs and assigns, the sum of ——— dollars (*state terms*), then the foregoing deed is to be void and of no effect; otherwise to remain in full force and virtue.

In witness whereof ——— have hereunto set ——— hand— and seal— this ——— day of ———.

NEW JERSEY

Mortgage with Insurance Clause

This indenture made the ——— day of ——— between ———, of ———, of the first part, and ———, of ———, of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of ——— dollars to ——— in hand well and truly paid by the said party— of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said part— of the first part, therewith fully satisfied, contented and paid, ha— given, granted, bargained, sold, aliened, enfeoffed, conveyed,

and confirmed, and by these presents do— give, grant, bargain, sell, alien, enfeoff, convey, and confirm to the said part— of the second part, and to ——— heirs and assigns forever, all ——— tract or parcel of land and premises (*description*).

Together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging, or in any wise appertaining. Also all the estate, right, title, interest, property, claim, and demand whatsoever of the said part— of the first part of, in, and to the same, and of, in, and to every part and parcel thereof. To have and to hold all and singular the above-described tract— or lot— of land and premises, with the appurtenances, unto the said part— of the second part, ——— heirs and assigns, to the only proper use, benefit, and behoof of the said part— of the second part, ——— heirs and assigns forever:

Provided, always, and it is agreed by and between the parties to these presents, that if the said ———, ——— heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the said part— of the second part, or to ——— certain attorney or attorneys, heirs, executors, administrators, or assigns, the sum of ——— dollars in ——— year— from the date hereof, with lawful interest for the same, at the rate of ——— per centum per annum, payable semiannually, according to the condition of a certain bond bearing even date herewith, in the penal sum of ——— dollars, without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, then and from thenceforth these presents and said obligation, and everything herein and therein contained, shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding.

And the said part— of the first part, ——— heirs, executors, and administrators, do— covenant and grant to and with the said part— of the second part, ——— heirs and assigns, that

the said part— of the first part ——— heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof, and that the said part— of the second part, ——— heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance, or denial of the said part— of the first part, ——— heirs or assigns, or of any other person or persons whatsoever.

And it is also agreed by and between the parties to these presents that the said part— of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire in some safe and responsible insurance company or companies, to an amount not less than ——— dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, and in default thereof it shall be lawful for the said part— of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— and seal— the day and year first above written.

NEW MEXICO

Mortgage

This indenture made this _____ day of _____ between _____, of _____, of the first part, and _____, of _____, of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of _____ dollars, to _____ in hand paid by the said part— of the second part, the receipt whereof is hereby confessed and acknowledged, and for the further consideration of the debt and trust hereinafter mentioned and created, ha— granted, bargained, sold, conveyed, and confirmed, and by these presents do— grant, bargain, sell, convey, and confirm, unto the said part— of the second part, and to _____ heirs and assigns forever, all the following described lot—, tract—, and parcel— of land (*description*). Together with all and singular the lands, tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said part— of the first part, either in law or in equity, of, in, and to the above granted, bargained, sold, and described premises with the appurtenances, to have and to hold the said premises above granted, bargained, sold, and described, with the appurtenances, unto the said part— of the second part, and _____ heirs and assigns forever:

Provided, however, and these presents are upon the condition: Whereas, the said part— of the first part _____ justly indebted unto the said part— of the second part in the sum of _____ dollars, as evidenced by _____ promissory note— bearing date (*state terms*); and whereas, the said part— of the

first part ——— anxious to secure the payment of said sum of money in said promissory note— mentioned, when the same shall become due and payable, with all interest that may accrue thereon.

Now, therefore, if the said part— of the first part, ——— heirs, executors, administrators, or assigns, shall pay all taxes and assessments due and to become due, and that may accrue on said property during the continuance of this mortgage, when the same are legally payable, and shall well and truly pay or cause to be paid to the said part— of the second part, or to ——— order, the said sum of money in said promissory note— specified, when the same shall become due and payable, together with all interest that may have accrued thereon, according to the tenor and effect of said promissory note—, then and in that case this indenture shall be and become void and of no effect, but in case of default by the said part— of the first part, ——— heirs, executors, administrators, or assigns, in the payment of any tax or assessment as aforesaid, when the same shall be due and payable, or in the payment of the said principal sum— of money or any part thereof in said promissory note— specified, or in the payment of any interest that may have accrued thereon, when the same shall become due and payable, then and in each of said cases all of said indebtedness, principal and interest, whether the same be due and payable according to tenor and effect of said promissory note— or not, shall, at the option of said part— of the second part, immediately become and be due and payable, and then and in that case the said part— of the second part, or ——— agent or legal representative, shall be and hereby ——— authorized and empowered to enter upon and take possession of said granted, bargained, sold, and described premises, and after having given notice of the time, place, and manner of sale thereof, by ——— hand bills posted in public places in the

county of ——— at least ——— days prior to the sale, or by a notice of said sale published in some newspaper printed in the county of ——— for at least ——— days prior to the time of said sale, expose and sell at public auction to the highest bidder for cash the said granted, bargained, sold, and described premises, provided that the said part— of the second part may be a purchaser at any such sale, and execute and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds therefor, and out of the proceeds of such sale to pay the costs and expenses of said sale and the proceedings relative thereto, including ——— dollars attorney's fees, and the said indebtedness and promissory note— and interest accrued thereon and unpaid, and including all sums paid by the said part— of the second part for taxes, and the residue or remainder of said proceeds, if any there are, to pay over to the said part— of the first part, ——— heirs, executors, administrators or assigns.

In witness, *etc.*

NEW YORK

The following form of mortgage is provided, but the use of other forms is not invalidated (Consol. Laws 1909, c. 50, § 258):

Mortgage (Statutory)

This indenture made the ——— day of ———, in the year nineteen hundred and ———, between ———, of ———, party of the first part, and ———, of ———, party of the second part:

Whereas, the said ——— is justly indebted to the said party of the second part in the sum of ——— dollars lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned

for the payment of the said sum of ——— dollars on the ——— day of ———, nineteen hundred and ———, and the interest thereon, to be computed from ———, at the rate of ——— per centum per annum, and to be paid ———.

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any installment of principal, interest, taxes, or assessments as hereinafter provided.

Now, this indenture witnesseth that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (*or*, successors) and assigns forever (*description*), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. To have and hold the above-granted premises unto the said party of the second part, his heirs and assigns forever: Provided, always, that if the said party of the first part, his heirs, executors, or administrators, shall pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said party of the first part covenants with the party of the second part as follows:

1. That the said party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the said party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any installment of principal or of interest for —— days, or after default in the payment of any tax or assessment for —— days after notice and demand.

In witness whereof the said party of the first part hath hereto set his hand and seal the day and year first above written.

In the presence of

Ibid. c. 50, § 258.

In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows: 1. The words "and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any installment of principal or of interest for —— days, or after default in the payment of any tax or assessment for —— days after notice and demand," must be construed as meaning that, should any default be made in the payment of any installment of principal or any part thereof, or in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment which now is or may be hereafter imposed upon the premises hereinafter described become due or payable, and should the said interest remain unpaid and in arrear for the space of —— days, or such tax or assessment remain unpaid and in arrear for —— days after written notice by the mortgagee or obligee, his executors, administrators, successors, or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors, or assigns, become and be due and payable immediately there-

after, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding. 2. A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor for himself, his heirs, executors, and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors, and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators, or successors, to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors, or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be), and out of the money arising from such sale to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors, or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors, and assigns, and against all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them. 3. A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors, and assigns, will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire to an amount and in a

company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors, or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing that the mortgagee, or his executors, administrators, successors, or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors, or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectable thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors, or assigns, or of assignment and delivery of policies as aforesaid, the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors, or assigns, immediately become due and payable. 4. A covenant that the mortgagor "will execute any further necessary assurance of the title to said premises, and will forever warrant said title," must be construed as meaning that the mortgagor shall and will make, execute, acknowledge, and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors, or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title, or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him, will warrant and defend. *Ibid.* c. 50, § 254.

As to the construction of the words "together with the appurtenances," etc., ante, p. 596.

The use of the following form of instrument for mortgages on leases of real property is lawful, but this section does not prevent or invalidate the use of other forms:

Mortgage on Lease of Real Property (Statutory)

This indenture made the — day of —, in the year one thousand — hundred and —, between —, of (*insert residence*), of the first part, and —, of (*insert residence*), of the second part: Whereas, — did, by a certain indenture of lease, bearing date the — day of —, in the year one thousand nine hundred and —, demise, lease, and to farm-let unto —, and to — executors, administrators, and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances; to have and to hold the same unto the said —, and to — executors, administrators, and assigns, for and during and until the full end and term of — years from the — day of —, one thousand nine hundred and —, fully to be complete and ended, yielding and paying therefor unto the said —, and to — or assigns, the yearly rent or sum of —;

And whereas, the said part— of the first part justly indebted to the said part— of the second part in the sum of — lawful money of the United States of America, secured to be paid by — certain bond or obligation bearing even date herewith, conditioned for the payment of the said sum of — on the — day of —, nineteen hundred and —, and the interest thereon to be computed from — at the rate of — per centum per annum and to be paid —.

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes, or assessments or rents as hereinafter provided.

Now, this indenture witnesseth that the said part— of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or ob-

ligation, with interest thereon, and also for and in consideration of the sum of one dollar paid by the said part— of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer, and set over unto said part— of the second part, and to his heirs (*or*, successors) and assigns forever (*description*).

Together with the appurtenances and all the estate and rights of the part— of the first part of, in, and to said premises under and by virtue of the aforesaid indenture of lease.

To have and hold the said indenture of lease and renewal and the above-granted premises unto the said part— of the second part, his heirs and assigns, for and during all the rest, residue, and remainder of the said term of years yet to come and unexpired in said indenture of lease and in the renewals therein provided for, subject, nevertheless, to the rents, covenants, conditions, and provisions in the said indenture of lease mentioned:

Provided, always that if the said part— of the first part shall pay unto the said part— of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted shall cease, determine, and be void.

And the said part— of the first part covenant— with the said part— of the second part as follows:

First. That the part— of the first part will pay the indebtedness as hereinbefore provided.

And if default shall be made in the payment of any part thereof the said part— of the second part shall have power to sell the premises therein described according to law.

Second. That the said premises now are free and clear of all incumbrances whatsoever, and that ——— ha— good right

and lawful authority to convey the same in manner and form hereby conveyed.

Third. That the part— of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Fourth. That the part— of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within —— days after said rent or charges are payable.

Fifth. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee after default in the payment of any installment or principal, or after default in the payment of interest for —— days, or after default in the payment of any rent or other charge made payable by said indenture of lease for —— days, or after default in the payment of any tax or assessment for —— days after notice and demand.

In witness whereof the said part— of the first part to these presents ha— hereunto set —— hand— and seal— the day and year first above written.

Sealed and delivered in the presence of

Ibid. c. 50, § 273.

In any mortgage on a lease of real property the words "together with the appurtenances and all the estate and rights of the part— of the first part of, in, and to said premises under and by virtue of the aforesaid indenture of lease" must be construed as meaning together with all and singular the edifices, buildings, rights, members, privileges, and appurtenances thereunto belonging or in any wise appertaining, and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor of, in, and to the said demised premises, and every part and parcel thereof, with the appurtenances, and also the said indenture of lease, and the renewal therein provided for, and every clause, article and condition therein expressed and contained. Ibid. c. 50, § 272.

In mortgages on leases of real property and in bonds secured thereby the following or similar covenants or agreements must be construed as follows: 1. In Default of Payment Mortgagee to Have Power to Sell.—A covenant that the mortgagor "will pay the indebtedness as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money therein mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said mortgagee or obligee, his legal representative or assigns, to sell, transfer, and set over all the rest, residue, and remainder of the said term of years then yet to come, and all other, the right, title, and interest of the said mortgagor or obligor of, in, and to the same, at public auction, according to the act in such case made and provided, and, as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted, and appointed, to make, seal, execute, and deliver to the purchaser or purchasers thereof a good and sufficient assignment, transfer, or other conveyance in the law, for the said premises, with the appurtenances, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and against all persons claiming or to claim the premises or any part thereof by, from, or under him or them, or any of them. 2. Mortgagor to Keep Buildings Insured.—A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee" must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee

and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest. 3. Mortgagor to Pay Rent and Charges on Premises.—A covenant that the mortgagor “will pay the rent and other charges mentioned in and made payable by said indenture of lease within —— days after said rent or charges are payable” must be construed as meaning that the said mortgagor or obligor and his legal representatives and assigns will pay or cause to be paid and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments, or other charges that now are a lien, or hereafter shall or may be levied, assessed, or imposed and become a lien upon the premises above described or any part thereof, and in default thereof, for the space of —— after such taxes or assessments or —— after the said rent or rents or any of them shall have become due and payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns, may, at option, and without notice, pay such rent, or rents, taxes, assessments, or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall be deemed to be secured by these presents, and shall be collectable in the same manner and at the same time and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned. 4. Agreement That Whole Sum Shall Become Due.—The words “and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any installment of principal or after default in the payment of interest for —— days, or after default in the payment of any rent or other charge made payable by said indenture of lease for —— days, or after default in the payment of any tax or assessment for —— days after notice and demand,” must be construed as

meaning that, should any default be made in the payment of any installment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent, or other charge aforesaid remain unpaid and in arrear for the space of ——— days, or such tax or assessment remain unpaid and in arrear for ——— days after written notice by the mortgagee or obligee, his executors, administrators, or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent, and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding. Ibid. c. 50, § 271.

NORTH CAROLINA

Mortgage

NORTH CAROLINA, }
——— County. }

This indenture made this ——— day of ——— by and between ——— and ———, his wife, of ———, parties of the first part, and ———, of ———, part— of the second part:

Witnesseth that whereas, said ———, parties of the first part, are justly indebted to said part— of the second part in the sum of ——— dollars, as evidenced by ——— bond— of even date herewith, bearing interest from date at ——— per cent. per annum, and due and payable on the ——— day of ———;

And whereas, said parties of the first part are anxious to secure the payment of said bond— at maturity:

Now, therefore, in consideration of the premises and for the purposes aforesaid, and for the sum of ten dollars to the parties of the first part paid by the part— of the second part, the receipt of which is hereby acknowledged, said parties of the first part have given, granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do hereby give, grant, bargain, sell, alien, convey, and confirm, upon said part— of the second part, ——— heirs and assigns forever, a certain piece or tract of land (*description*).

To have and to hold said land and premises to the said part— of the second part, ——— heirs and assigns forever. And said ———, parties of the first part, do covenant to and with said part— of the second part, ——— heirs and assigns: That ——— the owner— and seised of said premises in fee simple; that ——— ha— the right to convey the same; that the same are free of any incumbrance whatsoever; and that ——— will forever warrant and defend the title to the same from the lawful claims of all persons whomsoever.

But this deed is made on this special trust: That if said parties of the first part shall well and truly pay to said part— of the second part, or ——— legal representatives, the bond— hereinbefore described at ——— maturity, then this deed to be null and void.

But if default shall be made in the payment of said bond—, or the interest on the same, or any part of either, at maturity, then and in that event it shall be lawful for and the duty of said part— of the second part to sell said land hereinbefore described to the highest bidder for cash at the courthouse door in ——— county, first advertising said sale by posting notice thereof at the courthouse door and three other public places in said county for thirty days immediately preceding such sale, and also publishing said notice for four weeks in some newspaper published in said county, and convey the same to the

purchaser in fee simple, and out of the moneys arising from said sale to pay said bond— and interest on same, together with costs of sale, and pay surplus (if any) to said parties of the first part, or ——— legal representatives.

In testimony whereof said parties of the first part hereto subscribe their names and affix their several seals.

NORTH DAKOTA

A mortgage of real property may be made substantially in the following form:

Mortgage (Statutory)

This mortgage made the ——— day of ———, in the year ———, by A. B., of ———, mortgagor, to C. D., of ———, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (*here describe the property*) as security for the payment to him of ——— dollars on or before the ——— day of ———, in the year ———, with interest thereon (*or, as security for the payment of an obligation, describing it*).

A. B.

Rev. Codes 1905, § 6174.

OHIO

Mortgage

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said ———, ——— heirs and assigns forever (*description*), and all the estate, title, and interest of the said grantor, either in law or equity, of, in, and to the said premises, together with all the privileges and

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appurtenances to the same belonging, and all the rents, issues, and profits thereof; to have and to hold the same to the only proper use of the said ———, ——— heirs and assigns forever.

And the said ———, for himself, and his heirs, executors, and administrators, doth hereby covenant with the said ———, ——— heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, free, and unincumbered; and, further, that he doth warrant and will defend the same against all claim or claims of all persons whomsoever: Provided, nevertheless, that if the said ——— shall pay to the said ——— the sum of ——— dollars according to the terms of a certain promissory note (*state terms of payment*), then this mortgage shall be void.

In witness whereof the said ——— and ———, his wife, who hereby releases all her right and expectancy of dower in the said premises, have hereunto set their hands this ——— day of ———.

OKLAHOMA

A mortgage may be substantially in the following form:

Mortgage (Statutory)

Know all men by these presents that ——— and ———, of ——— county, in the ——— of ———, part— of the first part, have mortgaged and hereby mortgage to ———, of ——— county, ——— of ———, part— of the second part, the following described real estate and premises, situated in ——— county, state of Oklahoma, to wit, ———, with all the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same ———. This mortgage is given to secure the principal sum of ——— dollars, with in-

terest thereon at the rate of ——— per centum per annum, payable ——— annually from ——— according to the terms of ——— certain promissory note—, described as follows, to wit, ———.

Dated this ——— day of ———, 19—.

Rev. Laws, 1910, § 4015.

OREGON

Mortgage

This indenture made this ——— day of ——— between ———, of ———, party of the first part, and ———, of ———, party of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of ——— dollars to him in hand paid, the receipt whereof is hereby acknowledged, has bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said party of the second part, the following described premises (*description*). Together with tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the same, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment of the sum of ——— dollars in accordance with the tenor of a certain promissory note (*state terms*).

Now, if the sums of money due upon the said promissory note shall be paid according to the terms thereof, this conveyance shall be void; but in case default shall be made in payment of the principal or interest as above provided, then the said party of the second part, his executors, administrators, and assigns, may sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from

such sale retain the said principal and interest, together with the costs and charges of making such sale, and a reasonable sum as attorney's fees, and the overplus, if any there be, pay over to the said party of the first part, his heirs or assigns; and the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant and agree to pay said party of the second part, his executors, administrators, or assigns, the said sum of money as above mentioned.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

PENNSYLVANIA

Mortgage

This indenture made the —— day of —— between ——, of ——, of the first part, and ——, of ——, of the other part:

Whereas, the said ——, in and by a certain obligation or writing obligatory under —— hand— and seal— duly executed, bearing even date herewith, stand— bound unto the said —— in the sum of —— dollars lawful money of the United States of America, conditioned for the payment of the just sum of —— dollars lawful money as aforesaid, within —— years from the date thereof, together with interest thereon, payable —— at the rate of —— per cent. per annum, and also all premiums paid by the said ——, —— executors, administrators, or assigns, for maintaining an insurance against loss or damage by fire, to an amount not exceeding —— dollars, upon the premises hereinafter described, and for the production to the said ——, —— executors, administrators, or assigns, on or before the —— day of —— in each year of receipts for all taxes of the current

year assessed upon the mortgaged premises, without any fraud or further delay: Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of any interest on the said sum for the space of _____ after the same shall fall due, or in the payment of any premium of insurance as aforesaid, or in the production of any such receipts for taxes as aforesaid, then and in such case the whole principal debt aforesaid shall, at the option of the said _____, _____ executors, administrators, or assigns, become due and payable immediately; and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding: And provided, further, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in payment either of said principal sum _____ at maturity or of said interest, or of premiums of insurance, or in the production of any such receipts for taxes, within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon said obligation, or by virtue of said warrant of attorney, or a writ of scire facias is properly issued upon this indenture of mortgage, an attorney's commission for collection, viz., _____ per cent., shall be payable, and shall be recovered in addition to all principal and interest, and premiums of insurance then due, besides costs of suit, as in and by the said _____ recited obligation and the condition—thereof, relation being thereunto had may more fully and at large appear.

Now, this indenture witnesseth that the said _____, as well for and in consideration of the aforesaid debt or _____ sum of _____ dollars, and for the better securing the payment of the same, with interest, unto the said _____, _____ executors, administrators, and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one

dollar unto ——— in hand well and truly paid by the said ——— at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, ——— granted, bargained, sold, aliened enfeoffed, released, and confirmed, and by these presents ——— grant, bargain, sell, alien, enfeoff, release, and confirm unto the said ———, ——— heirs and assigns, all that certain lot or piece of ground, with the messuage or tenement thereon erected situate (*description*).

Together with all and singular the ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold the said hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said ———, ——— heirs and assigns, to and for the only proper use and behoof of the said ———, ——— heirs and assigns forever :

Provided always, nevertheless, that if the said ———, ——— heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, unto the said ———, ——— executors, administrators, or assigns, the aforesaid debt or principal sum of ——— dollars on the day—and time— hereinbefore mentioned and appointed for payment of the same, together with interest and premiums of insurance as aforesaid, and shall produce to him or them all such receipts for taxes as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said recited obligation— shall cease, determine, and become void, anything hereinbefore contained to the con-

trary thereof in any wise notwithstanding: Provided, further, that in case of default in the payment of the aforesaid debt or principal sum or of interest thereon as aforesaid, or in the payment of any premium of insurance as aforesaid, or in the production of any such receipts for taxes as aforesaid, thereupon it shall be lawful for the said ———, ——— executors, administrators, or assigns, to sue out forthwith a writ of scire facias upon this present indenture of mortgage, and to proceed at once thereon to recover the principal moneys hereby secured, and all interest or premiums of insurance due thereon, together with an attorney's commission for collection, viz., ——— per cent., besides costs of suit, without further stay, any law or usage to the contrary notwithstanding.

In witness whereof the said part— of the first part to these presents ——— hereunto set ——— hand— and seal—. Dated the day and year first above written.

RHODE ISLAND

Mortgage

Know all men by these presents that I, ———, of ———, hereinafter called the mortgagor, in consideration of ——— dollars to me paid by ———, of ———, hereinafter called the mortgagee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said mortgagee, and his heirs and assigns forever all that (*description*).

To have and to hold the afore-granted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said mortgagee, and his heirs and assigns, forever.

And I, the said mortgagor, do hereby for myself and for my heirs, executors, and administrators, covenant with the said mortgagee and his heirs and assigns that I am lawfully seised

in fee simple of the said granted premises; that the same are free from all incumbrances; that I have good right, full power, and lawful authority to sell and convey the same in manner as aforesaid; that the said mortgagee and his heirs and assigns shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises; and that I, the said mortgagor, will, and my heirs, executors, and administrators shall, warrant and defend the same to the said mortgagee, and his heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, ———, the wife of the said mortgagor, do hereby release all my right of dower in and to the said granted premises unto the said mortgagee, and ——— heirs and assigns forever:

Provided, nevertheless, and this conveyance is made upon the express condition, that if the said mortgagor, or his heirs, executors, administrators, or assigns, shall pay unto the said mortgagee, or ——— executors, administrators, or assigns, the sum of ——— dollars, wherefor the said mortgagor has made his negotiable promissory note for said sum, bearing even date with these presents, and made payable to the order of ——— in ——— years from the date hereof, with interest thereon at the rate of ——— per centum per annum, payable semiannually, until said principal sum is paid, whether at or after maturity, and all installments of interest in arrear, whether before or after maturity, to bear interest at the rate aforesaid until paid, and shall also pay all taxes and assessments of every kind levied or assessed upon or in respect of said premises, then this deed, as also said promissory note, shall become and be absolutely void to all intents and purposes whatsoever.

But if default shall be made in the payment of the said principal sum or of said interest, at the time or times and in the manner aforesaid, or of the taxes or assessments aforesaid, as

the same become payable, or of any or either of them, or of any part thereof, or if breach shall be made of the covenant for insurance hereinafter contained, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to sell together or in parcels, all and singular the premises hereby granted or intended to be granted, or any part or parts thereof, at public auction upon the premises, ———, and to bid for and become the purchaser or purchasers at any such sale (and no other purchaser or purchasers shall be answerable for the application of the purchase money), first giving notice of the time and place of sale by publishing the same at least once each week for three successive weeks in some one of the public newspapers published in ———, with power to adjourn such sale from time to time, provided that the publishing of said notice shall be continued, together with a notice of the adjournment or adjournments, at least once each week in the same newspaper, and in his or their own name or names, or as the attorney or attorneys of the said mortgagor (for that purpose by these presents duly authorized and appointed with full power of substitution and revocation), to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of said premises in fee simple, and to receive the proceeds of such sale or sales, and from such proceeds to retain all sums hereby secured, whether then due or to fall due thereafter, or the part thereof then remaining unpaid, and also the interest then due on the same, together with all expenses incident to such sale or sales, and for fees of counsel and attorneys, and all costs or expenses incurred in the exercise of said powers, and all taxes, assessments, and premiums for insurance, if any, either theretofore paid by the said mortgagee, his executors, administrators, or assigns, or then remaining unpaid, upon said granted premises, rendering and paying the surplus of said proceeds of sale, if any there be,

over and above the amounts so to be retained as aforesaid, together with a true and particular account of such sale or sales, expenses and charges, to the said mortgagor, and his heirs, executors, administrators, or assigns, which sale or sales made as aforesaid shall forever be a perpetual bar both in law and equity against the said mortgagor, his heirs, executors, administrators, and assigns, and all persons claiming said premises so sold by, from, or under him, them, or any of them.

And I, the said mortgagor, for myself, and for my heirs, executors, administrators, and assigns, hereby covenant with the said mortgagee, and his heirs, executors, administrators, and assigns, that I and they will upon request execute such deed or deeds confirmatory of said sale or sales as may be required.

And, furthermore, I, the said mortgagor, for myself, and for my heirs, executors, administrators, and assigns, hereby covenant with the said mortgagee, and his executors, administrators, and assigns, that insurance against loss by fire shall be kept and maintained on the buildings now or hereafter erected on the premises aforesaid in such office or offices as the said mortgagee, and his executors, administrators, or assigns, shall approve, in a sum not less than ——— dollars, and that the policy or policies of such insurance shall be assigned and transferred or made payable in case of loss to the said mortgagee, or his executors, administrators, or assigns, as collateral security hereto, and in default thereof hereby agree that the said mortgagee, or his executors, administrators, or assigns, may effect such insurance in the name of the said mortgagor, and his heirs and assigns, payable in case of loss to the said mortgagee, and his executors, administrators, or assigns, and that the premium or premiums paid therefor shall be a further charge upon said granted premises secured by these presents.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

SOUTH CAROLINA

Mortgage

THE STATE OF SOUTH CAROLINA, }
County of ———. }

To all whom these presents may concern I, ——— of ———, send greeting:

Whereas, I, the said ———, in and by a certain bond or obligation bearing date the ——— day of ———, stand firmly held and bound unto ———, of ———, in the penal sum of ——— dollars, conditioned for the payment of the full and just sum of ——— dollars (*state terms*), as in and by the said bond and condition thereof reference being thereunto had, will more fully appear.

Now, know all men that I, the said ———, in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said ——— according to the condition of the said bond, and also in consideration of the further sum of three dollars to me, the said ———, in hand well and truly paid by the said ——— at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said ———, all that (*description*).

Together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in any wise incident or appertaining.

To have and to hold all and singular the premises above mentioned unto the said ———, his heirs and assigns forever.

And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said ———, his heirs and assigns.

against myself, and my heirs, and against every person lawfully claiming or to claim the same, or any part thereof.

And it is agreed by and between the said parties that the said mortgagor, his heirs, executors, or administrators, shall and will forthwith insure the buildings on the said premises and keep the same insured from loss or damage by fire in at least the sum of ——— dollars, in a company or companies to be approved by the said mortgagee, and assign the policy of insurance to the said mortgagee, his executors, administrators, or assigns, and in default thereof the said mortgagee, his executors, administrators, or assigns, may cause the same to be insured in his or their own name, and reimburse themselves for the premium and expenses of such insurance under the mortgage:

Provided, always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators, or assigns, the said debt or sum of money aforesaid, with interest thereon, if any shall be due, according to the true intent and meaning of the said bond and condition thereunder written, and all sums of money provided to be paid by the mortgagor, his heirs, executors, administrators, or assigns, under the covenants of this mortgage, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue. And it is agreed by and between the said parties that the said mortgagor, his heirs and assigns, shall hold and enjoy the said premises until default of payment shall be made.

And it is further agreed and covenanted by and between the said parties that until the debt hereby secured be paid the said mortgagor, his heirs, executors, administrators, or assigns, shall and will pay all taxes on the property hereby mortgaged,

when due and payable, and in case he or they fail to do so, the said mortgagee, his executors, administrators, or assigns, may pay said taxes, together with any costs or penalties incurred thereon or any part thereof and reimburse themselves for the same under this mortgage.

And it is further agreed and covenanted between the said parties that in case the debt secured by this mortgage or any part thereof is collected by suit or action, or this mortgage be foreclosed or put into the hands of an attorney for collection, suit, action, or foreclosure, the said mortgagor, his heirs, executors, administrators, or assigns, shall be chargeable with all costs of collection, including ——— per cent. of the principal and interest on the amount involved as attorney's fees, which shall be due and payable at once, which charges and fees, together with all costs and expenses, are hereby secured and may be recovered in any suit or action hereupon or hereunder.

Witness my hand and seal this ——— day of ———, in the year of our Lord ———, and in the ——— year of the sovereignty and independence of the United States of America.

SOUTH DAKOTA

Mortgages shall be in substantially the following forms. In order to be entitled to record, a mortgage or an assignment must contain the post office address of the mortgagee or assignee.

Mortgage (Statutory)

This mortgage made this ——— day of ———, in the year 19—, by ———, of ——— county, and state of ———, mortgagor, to ———, of ——— P. O., county of ———, and state of ———, mortgagee:

Witnesseth that said mortgagor— hereby mortgage— to said mortgagee— the following described premises situated in the

county of ———, and state of South Dakota, to wit, ———, as security for the payment to said mortgagee— at ———, ——— of the principal sum of ——— dollars, and interest thereon at ——— per cent. per annum from date, according to ——— certain promissory note— bearing even date herewith, due ———, 19—.

Said mortgagor— further agree— to pay all taxes and assessments that may be levied upon said premises before the same shall become delinquent (and to keep the buildings, if any, upon said premises safely insured for the benefit of said mortgagee— in the sum of ——— dollars against loss by fire ———, and deliver the insurance policies to said mortgagee—).

In case of the mortgagor's failure to pay said taxes or assessments before the same become delinquent, or to pay insurance premiums for insurance on said buildings, said mortgagee— or assignee may do so, and the amounts so paid, with interest at ——— per cent. from date of payment, shall be added to and deemed a part of the money secured by this mortgage. Said mortgagor— hereby relinquish— rights of homestead in said premises, and warrant— that —he— ——— the owner— in fee of said premises, and that the same are free from all incumbrances ———.

In case of default in the payment of said principal sum of money or any part thereof or interest thereon at the time or times above specified for payment thereof, or in case of non-payment of any taxes, assessments, or insurance as aforesaid, or of breach of any covenant or agreement herein contained, then and in either case the whole, principal and interest, of said note—, shall at the option of the holder thereof immediately become due and payable, and this mortgage may be foreclosed by action, or by advertisement as provided by chapter 28 of the Code of Civil Procedure of the Revised Codes of 1903, State of South Dakota, and this paragraph shall be

deemed as authorizing and constituting a power of sale as provided in said chapter and any acts amendatory thereof.

(Acknowledgment.)

(Signature) _____.

Laws 1911, c. 257, § 3.

TENNESSEE

Mortgage and Deed of Trust (Statutory)

(*Ante*, p. 622.)₁

Deed of Trust

For and in consideration of one dollar to —— paid, the receipt of which is acknowledged, and the other considerations hereinafter mentioned, —— have this day bargained and sold, and do hereby transfer and convey, to ——, and his successors in trust, certain property in the state of Tennessee, —— county, ——, described as follows, to wit (*description*).

To have and to hold said property to the said ——, trustee, and his successors in trust, forever. —— covenant that —— lawfully seised of the said property, have a good right to convey it, and that the same is unincumbered. —— further covenant and bind ——, —— heirs and representatives, to warrant and defend the title to said property to the said ——, or his successor in trust and his assigns, forever, against the lawful claims of all persons.

But this conveyance is made in trust for the following uses and trusts, and for no other purpose, to wit (*state terms*).

Now, if —— shall pay the sum— aforesaid when due, according to the terms of said note—, then this instrument is to be of no further force or effect. But if —— fail to pay the said sum— of money when due as aforesaid, or any part of said sum—, according to the terms above expressed, then,

upon such default, this conveyance remains in full force and effect, and the said trustee, or his successor in trust, is hereby authorized and empowered, upon giving _____ days' notice, by _____ publication in _____, _____ county, Tennessee, to sell said property at the courthouse door in said county to the highest bidder, for cash, and free from the equity of redemption, homestead, dower, and all other exemptions of every kind, which are hereby expressly waived, and the said trustee, or his successor in trust, is authorized to make a deed to the purchaser. The creditor may bid at any sale under this conveyance. _____ agree that the trustee may at any time after default in payment of principal or interest as each falls due respectively enter and take possession of said property, and shall only account for net rents received by him.

And _____ agree to keep all the buildings on said property insured in some reliable fire insurance company or companies for the sum of \$_____ until the sum herein secured is fully paid, and to have the loss made payable on the policy to said trustee for the benefit of the owners and holders of the debt herein secured. _____ agree to keep the improvements on said property in good repair and preservation, and to pay all taxes and assessments, and to pay them when due, and in case _____ fail to do either, then said trustee, or the creditor herein secured, may do either, and charge and treat the amount so expended as a part of the debt herein secured.

In case of sale under this deed of trust, the proceeds will be applied by the trustee:

First. To pay all the costs and charges of executing this trust, including attorney's fees and the expense of any litigation which may arise on account of the execution and enforcement of this trust.

Second. To pay said debt, or any balance thereof then remaining unpaid.

Third. The residue to be paid to ——— or order. And in case of the death, absence, inability, or refusal to act of the said trustee at any time when action under the foregoing powers and trusts may be required, the owner of the debt herein secured is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to ——— shall be vested in said successor.

In the event of a sale of said property under and by virtue of this trust, then the said part— of the first part, and all persons holding under ———, shall be and become the tenants at will of the purchaser of the same from and after the execution and delivery of a deed to such purchaser, said tenancy to be determined at the option of said purchaser upon five days' written notice.

This ——— day of ———, 19—.

(Signatures.)

TEXAS

Deed of Trust

THE STATE OF TEXAS, }
County of ———. }

Know all men by these presents that ———, of ———, for and in consideration of the sum of one dollar in hand paid by ———, of ———, trustee, and of the indebtedness hereinafter mentioned, have granted, sold, and conveyed, and by these presents do grant, sell, and convey, unto the said ———, trustee, his successors and assigns forever the following described property, to wit (*description*).

To have and to hold said premises unto him, the said ———, trustee, his successors or assigns forever, together with all and singular the rights, tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining. And ——— do hereby bind ———, ——— heirs, executors, and

administrators to warrant and forever defend all and singular the said premises unto the said trustee, his assigns and successors, against every person whomsoever lawfully claiming or to claim the same or any part thereof. This conveyance is in trust, however, for the following purposes, and upon the following conditions, to wit:

If ———, the said ———, shall well and truly pay or cause to be paid, when the same shall become due according to the tenor and effect thereof, ——— promissory note— executed by ———, payable to the order of ———, and described as follows (*state terms*), and the agreements and covenants on ——— part shall be well and truly performed, then this conveyance shall become null and void, and shall be released at the cost of the said ———. But if default shall be made in the payment of said note—, or any of them, or any installment of interest thereon, when the same shall become due, or in case of the breach of any of the agreements or covenants herein mentioned, or in any case herein provided, then at the request of the legal holder of said note—, or any of them, the said trustee, or his successor or successors appointed hereunder, is hereby authorized and empowered to sell the property above described to the highest bidder, for cash in hand, at the time and place and in the manner and after the advertisement now required by law. And it is hereby agreed that the said trustee, or his successor, may sell said property together or in lots or parcels, as to him shall seem expedient, and after said sale as aforesaid shall execute and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in law to the property so sold, in fee simple, with the usual warranties, and shall receive the proceeds of said sale, and out of the same shall pay: First, all charges, costs and expenses of executing this trust, including a reasonable fee to the trustee; second, the note— above described, and all sums of money due or to become due hereunder, with interest as agreed; and,

third, shall render the overplus, if any, unto ———, ——— legal representatives or assigns, upon reasonable request.

And ——— further covenant with said trustee that ——— will at all times during the continuance of this trust keep the buildings and improvements now on, or hereafter to be erected on, said premises, insured against loss by fire to the extent insurance can be obtained thereon, in companies acceptable to and with loss payable to said trustee, or his successors, for the benefit of the holder or holders of said note—, and deliver the policies to said trustee, or his successors, and to pay, before the same shall become delinquent, all taxes and assessments that may be laid within the state of Texas upon said premises or any part thereof. And it is agreed that if the said grantor— shall fail to effect said insurance and deliver such policies as herein provided, or to pay such taxes, then the said insurance may be effected, and said taxes may be paid by the legal holder of said note—, or any of them, and sums so expended shall become part of the debt hereby secured, and shall draw interest at the rate of ——— per cent. per annum from date so expended until paid.

And it is specially agreed that if default be made in the payment of any principal or interest on said note—, or any of them, or in the performance of the covenants or agreements herein contained, or any of them, then, at the option of the legal holder of said note—, the whole of the debt herein secured shall become due and payable, and may be collected by suit or by proceeding hereunder.

And it is stipulated and agreed that in case of any sale hereunder all prerequisites to said sale shall be presumed to have been performed, and that in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of money secured, or as to the request of the trustee to enforce this trust, or as to the proper and due appoint-

ment of any substitute trustee, or as to the advertisement of sale, or time, place, and manner of sale, or as to any other preliminary act or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

And it is further stipulated and agreed that in case of the death, resignation, removal, or absence of said trustee from the county of ———, Texas, or his refusal or failure or inability to act, then such person as may be appointed by the holder of said note—, or any of them, shall be and is hereby appointed and made successor in trust to said trustee, with all powers herein conferred upon said trustee.

Witness ——— hand— this ——— day of ———, A. D. 19—.

UTAH

A mortgage may be in substantially the following form:

Mortgage (Statutory)

A. B., mortgagor (*here insert name or names and place of residence*), hereby mortgages to C. D., mortgagee (*here insert name or names and place of residence*), for the sum of ——— dollars, the following described tract— of land in ——— county, Utah (*here describe the premises*).

This mortgage is given to secure the following indebtedness (*here state amounts and form of indebtedness, maturity, rate of interest, by and to whom payable, and where*).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of ——— dollars attorney's fee in case of foreclosure.

Witness the hand of said mortgagor this ——— day of ———, A. D. 19—.

And, when executed as required by law, shall have the effect of a conveyance of the land therein described, together

with all the rights, privileges, and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns, and legal representatives, for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed upon the land described during the continuance of the mortgage shall be paid previous to the day appointed for the sale of such lands for taxes, and may be foreclosed as provided by law and with the same effect, upon any default being made in any of the conditions thereof as to payment of either principal, interest, taxes, or assessments. Comp. Laws 1907, § 1983.

VERMONT

Mortgage

Know all men by these presents that ———, of ———, for the consideration of ——— dollars received to ——— full satisfaction of ———, of ———, do give, grant, bargain, sell, and confirm unto the said ———, ——— heirs and assigns, a certain piece of land in ———, in the county of ———, and state of Vermont, described as follows (*description*).

To have and to hold the above granted and bargained premises, with the appurtenances thereto, unto ———, the said ———, ——— heirs and assigns forever, to them and their own proper use, benefit, and behoof. And also ———, the said ———, do for ———, ——— heirs, executors, and administrators, covenant with the said ———, ——— heirs and assigns, that at and until the ensealing of these presents ——— well seised of the premises as a good, indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same is free from all incumbrances whatsoever. And, furthermore, ———, the said ———, do by these presents bind ———, and heirs forever, to warrant and defend the same against all lawful claims and demands whatsoever.

The conditions of this deed are such that if the said ———

shall pay (*state terms*), then this deed to be null and void; otherwise to remain in full force and virtue.

In witness whereof ——— have hereunto set ——— hand and seal this ——— day of ———.

VIRGINIA

A deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect:

Deed of Trust (Statutory)

This deed made the ——— day of ———, in the year ———, between ——— (*the grantor*), of the one part, and ——— (*the trustee*), of the other part, witnesseth: That the said ——— (*the grantor*) doth (*or, do*) grant unto the said ——— (*the trustee*) the following property (*here describe it*). In trust to secure (*here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon*). Witness the following signatures and seals (*or, signature and seal*).

Code 1904, § 2441.

Deed of Trust—Another Form

This deed made this ——— day of ———, in the year ———, between ——— (*the grantor or grantors*), part— of the first part, and ——— (*the trustee or trustees*), part— of the second part:

Witnesseth that said part— of the first part do— grant unto the said part— of the second part, with general warranty, the following property, to wit (*description*), in trust to secure to the holder of the hereinafter described promissory notes the payment of the sum of ——— dollars (*state terms*).

In the event that default shall be made in the payment of the

above-mentioned notes as they shall become due and payable, then the trustees, or either of them, on being required so to do by the holder of the said notes, his executors, administrators, or assigns, shall sell the property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid that in case of a sale the same shall be made after first advertising the time, place, and terms thereof for ———, and upon the following terms, to wit: For cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said notes, and if at the time of such sale any of the said notes shall not have become due and payable, and the purchase money be sufficient, such part or parts of the said purchase money as will be sufficient to pay off and discharge such remaining notes shall be made payable at such time or times as the said remaining notes will become due, the payment of which part or parts shall be properly secured, and in case the net proceeds of sale shall be insufficient to pay off all of the said notes in full, then the same shall be applied towards the payment of the said notes in the order of their maturity, it being intended hereby to create a priority in favor of each of said notes over any other note which may become due and payable subsequent thereto; and if there be any residue of said purchase money, the same shall be made payable at such time and secured in such manner as the said part— of the first part, ——— executors, administrators, or assigns, shall prescribe and direct, or, in case of ——— failure to give such direction, at such time and in such manner as the said trustees, or either of them, shall think fit. The said part— of the first part covenant— to pay all taxes, assessments, dues, and charges upon the said property hereby conveyed so long as ———, or ——— heirs or assigns, shall hold the same, and

further covenant— and agree— to keep the buildings on the property hereby conveyed insured for the full amount of \$—— for the further protection of the said holder of the said notes, and in the event of —— failure to do so, then the trustees, or either of them, or the beneficiary under this deed, may effect or renew such insurance from time to time, so long as the said debt or any part thereof remains unpaid; and the insurance premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property, if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If no default shall be made in the payment of either of the above-mentioned notes or insurance premiums, then upon the request of the part— of the first part a good and sufficient deed of release shall be executed to —— at —— own proper costs and charges.

Witness the following signature— and seal—.

Release of Trust Deed

This deed made this —— day of ——, in the year ——, between —— (*trustee*), of the first part, —— (*beneficiary*), of the second part, and —— (*grantor in trust deed*), of the third part: Whereas, the said ——, in order to secure the said —— the payment of the sum of —— dollars, did by deed bearing date on the —— day of ——, and recorded in the office of the clerk of ——, in D. B. No. ——, page ——, convey in trust to the said ——, —— heirs and assigns, certain real estate described in the said deed, as follows (*description*); and whereas, the said sum of money has been fully paid by the said ——, and he, the said ——, desires that the said property should be released from the said deed of trust.

Now, therefore, this deed witnesseth that for and in consid-

eration of the premises, and in further consideration of one dollar to them in hand paid, the said ——— and ——— do release unto the said ——— all their claim upon the said property.

Witness the following signatures and seals.

WASHINGTON

Mortgages may be in the following form, substantially:

Mortgage (Statutory)

The mortgagor (*here insert name or names*) mortgages to (*here insert name or names of mortgagee or mortgagees*) to secure the payment of (*here recite the nature and amount of indebtedness, showing when due, rate of interest, and whether secured by note or not*) the following described real estate (*here insert description*), situated in the county of ———, state of Washington.

. Dated this ——— day of ———, 19—.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. Rem. & Bal. Ann. Codes & St. § 8750.

Mortgage (Another Form)

This indenture made this ——— day of ——— between ———, part— of the first part, and ———, part— of the second part:

Witnesseth that the said part— of the first part, for and in consideration of the sum of ——— dollars to ——— in hand paid by the said part— of the second part, the receipt whereof is hereby acknowledged, do— by these presents grant, bargain, sell, convey, and confirm unto the said part— of the second

part, and to ——— heirs and assigns, the following described real estate (*description*), together with all and singular tenements, hereditaments, and appurtenances thereunto belonging.

This conveyance is intended as a mortgage to secure the payment of ——— dollars, together with interest thereon at the rate of ——— per cent. per ——— from date until paid, according to the terms and conditions of ——— certain promissory note— bearing date ———, made by ———, payable to the order of ———. And these presents shall be void if such payment be made according to the terms and conditions thereof. But in case default be made in the payment of the principal or interest of said promissory note—, or any part thereof, when the same shall become due and payable, according to the terms and conditions thereof, then the said part— of the second part, ——— executors, administrators, and assigns, are hereby empowered to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale to retain the whole of said principal and interest, whether the same shall be then due or not, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the part— making such sale, on demand, to the said part— of the first part, ——— heirs or assigns. And in any suit or other proceeding that may be had for the recovery of said principal sum and interest, on either said note— or this mortgage, it shall and may be lawful for the said part— of the second part, ——— heirs, executors, administrators, or assigns, to include in the judgment that may be recovered counsel fees and charges of attorneys and counsel employed in such foreclosure suit, the sum of ——— dollars (or in case of settlement or payment being made after suit has been commenced, and before the final decree has been entered thereon, an attorney's fee of ——— dollars shall be taxed as part of the costs in such suit), as well as all payments that the said part—

of the second part, ——— executors, administrators, or assigns, may be obliged to make for ——— or their security by insurance or on account of any taxes, charges, incumbrances, or assessments whatsoever on the said premises or any part thereof.

In witness whereof the said part— of the first part ha— hereunto set ——— hand— (and seal—) the day and year first above written.

WEST VIRGINIA

Deed of Trust (Statutory)

(A form of deed of trust to secure debts or indemnify sureties is provided by statute. Such deed may be in the form given or to the same effect. Code 1906, § 3052. The form is the same as that of Virginia, ante, p. 966.)

Trust Deed

This deed made this ——— day of ———, 19—, between ———, of the first part, and ———, trustee, of the second part:

Witnesseth that the said ———, for and in consideration of ——— dollars, do— grant unto the said ———, trustee, the following described property (*description*).

And the said part— of the first part do— covenant and agree to warrant, generally, the title to the property hereby conveyed to the said ———, trustee, in trust to secure the payment of ——— several promissory notes for the sum of ——— dollars each, bearing even date herewith, executed by the said ———, and payable to the order of ———, with interest thereon from date (*state terms*).

And the said ——— do— hereby covenant and agree that, in case —he— make default in the payment of the whole or any part of any of the said promissory notes and the interest thereon, when the same becomes due, then the said ———

may sell at public auction, for cash, the property hereby conveyed, giving notice of such sale as prescribed by law.

Witness the following signature— and seal— the day and year above written.

WISCONSIN

A mortgage may be in substantially the following form:

Mortgage (Statutory)

A. B., mortgagor, of _____ county, Wisconsin, hereby mortgages to C. D., mortgagee, of _____ county, Wisconsin, for the sum of _____ dollars, the following tract of land in _____ county (*here describe the premises*).

This mortgage is given to secure the following indebtedness (*here state amount or amounts and form of indebtedness, whether on note, bond, or otherwise, time or times when due, rate of interest, by and to whom payable, etc.*).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of _____ dollars attorney's fees in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this _____ day of _____ 19__.

In presence of: _____ (Seal.)
_____. (Seal.)
_____.

Such mortgage, when executed and acknowledged as required by law, shall have the effect of a conveyance of the land therein described, together with all the rights, privileges, and appurtenances thereunto belonging in pledge to the mortgagee, his heirs, assigns, and legal representatives for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed upon the land described during the continuance of the mortgage shall be paid previous to the day appointed by law for the sale of lands for taxes as fully as the forms of mortgage now and heretofore in common use in this state, and may be foreclosed

in the same manner and with the same effect upon any default being made in any of the conditions thereof as to payment of either principal, interest, or taxes. Stat. 1911, § 2209.

WYOMING

Mortgages of lands may be substantially in the following form:

Mortgage Deed (Statutory)

A. B., mortgagor (*here insert the name or names and place of residence of the mortgagor or mortgagors*), to secure the payment of (*here insert the amount of the mortgage indebtedness, when due, the rate of interest, and whether or not a note has been given therefor*), does hereby mortgage to C. D., mortgagee (*here insert the name and place of residence of the mortgagee*), the following described real estate situate in the county of (*here insert the name of the county in which the lands mortgaged are situated*), state of Wyoming, to wit (*here insert a description of the property mortgaged*).

The mortgagor agrees to pay all taxes and assessments on said premises and to keep the buildings thereon insured in a sum not less than (*here insert the amount of the insurance to be carried*) during the life of this mortgage, in favor of and payable to the mortgagee; and in case the mortgagor shall fail to pay such taxes and assessments, and to keep said premises insured as aforesaid, the mortgagee may insure said buildings and pay said taxes and assessments, and all sums so paid shall be added to and considered as a part of the above indebtedness hereby secured, and shall draw interest at the same rate.

In case default shall be made in the payment of the above sum hereby secured, or in the payment of the interest thereon, or any part of such principal or interest, when the same shall become due, or in case default shall be made in any of the

covenants and agreements hereof, then the whole indebtedness hereby secured, with the interest thereon, shall become due and payable, and the mortgagee may proceed, pursuant to law, to foreclose on and sell said property, and out of the proceeds of such sale he shall pay all sums due hereunder, together with all costs of sale and foreclosure, including ——— dollars as attorney's fees. (*And where the right of homestead is released, add the following:*) Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this ——— day of ———, A. D. ———.

In presence of:

_____.

A. B.

Comp. St. 1910, § 3666.

Every mortgage of lands in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient mortgage in fee to secure the payment of the moneys therein specified; and if the same shall contain after the word "mortgage" where it first appears in said form the words "and warrants," such mortgage shall be construed the same, to all intents and purposes, as if full covenants of seisin, good right to convey against incumbrances, quiet enjoyment, and general warranty, as expressed in sections 3658 and 3659, were fully written therein; but if the words "and warrants" are omitted, no such covenants shall be implied. Ibid. § 3667.

A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect:

Deed of Trust (Statutory)

This deed made the ——— day of ———, in the year of ———, between ——— (*the grantor*), of the one part, and ——— (*the trustee*), of the other part, witnesseth: That the said ——— (*the grantor*) doth (*or, do*) grant unto the said ——— (*the trustee*) the following property (*here describe it*), in trust to secure (*here describe the debts to be secured or the*

sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon). Witness the following signatures and seals (*or, signature and seal*).

Ibid. § 3688.

III

Mortgage Notes and Bonds

Mortgage Note

\$———. ———, 19——.
——— years after date, for value received, ——— promise to pay to the order of ——— the sum of ——— dollars (at ———), with interest thereon at the rate of ——— per cent. per annum, payable semi-annually, during said term, and for such further time as said principal sum or any part thereof shall remain unpaid. (Signature.)

Secured by mortgage on ———.

Mortgage Coupon Note

No. ———. ———, 19——. \$——.
——— after date, for value received, ——— promise to pay to the order of ——— the sum of ——— dollars, at the ——— Bank in ———, with interest thereon at the rate of ——— per cent. per annum from date until said principal sum is fully paid, said interest being payable semiannually on the ——— days of ——— and ——— in each year, according to the tenor of ——— interest coupon notes of ——— dollars each attached hereto and bearing even date herewith. And it is expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, and such default shall continue for ——— days, then and in that event said principal sum of ——— dollars shall at the election of the holder at once and without no-

tice become due and payable, anything hereinbefore contained to the contrary notwithstanding. (Signature.)

Secured by mortgage on real estate of even date herewith.

Interest Coupon

No. of Note —.

Coupon No. —.

\$——.

—— 19—.

On the —— day of ——, 19—, —— promise to pay to the order of —— dollars, at the —— Bank in ——, being for interest due on that day according to the tenor of a principal note of \$—— of even date herewith. This coupon to draw interest at —— per cent. per annum after maturity.

Value received. —.

Mortgage Coupon Note

\$——.

——, 19—.

On the —— day of ——, 19—, for value received, I promise to pay to the order of ——, at the ——, in United States gold coin of the present standard weight and fineness, the principal sum of —— dollars, with current exchange on New York City, and interest on said principal sum from the date hereof until paid at the rate of —— per cent. per annum, payable semiannually according to the terms of —— interest coupon notes executed simultaneously herewith and attached hereto.

It is hereby agreed that, if any installment of said interest is not paid when due, then at the option of the holder of this note the said principal sum, with all interest due or accrued thereon, shall become due and payable at once without notice.

(Signature.)

Interest Coupon

\$———. ———, 19——. No. ——.

On the —— day of ——, for value received, I promise to pay to the order of ——, at the ——, the sum of —— dollars in United States gold coin of the present standard weight and fineness, with current exchange on New York City, being the interest due at maturity hereof on principal note for \$—— of even date herewith.

Mortgage Bond (New York)

Know all men by these presents that I, ——, of ——, am held and firmly bound unto ——, of ——, in the sum of —— dollars, lawful money of the United States, to be paid to the said ——, or his executors, administrators, or assigns, for which payment to be made I bind myself, and my heirs, executors, and administrators, firmly by these presents. Sealed with my seal. Dated the —— day of ——.

The condition of the above obligation is such that, if the above-bounden ——, his heirs, executors, or administrators, shall pay or cause to be paid unto the above-named ——, his executors, administrators, or assigns, the sum of —— dollars on the —— day of ——, 19——, with interest thereon at the rate of —— per cent. per annum, payable semi-annually (*etc.*), then the above obligation to be void; otherwise to remain in full force and virtue.

And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said obligee after default in the payment of interest for —— days, or after default in the payment of any tax or assessment which may be levied or imposed upon the premises described in the mortgage accompanying this bond for —— days after notice and demand.

And it is also agreed that the said party of the first part will keep the buildings on the premises described in said mortgage insured against loss by fire for the benefit of the mortgagee therein.

And it is further understood and agreed that, if default shall be made in the payment of said principal sum, or any part thereof, or of any interest which shall accrue thereon, or any part thereof, or of any taxes and assessments on the premises above referred to, or any part thereof, or of the interest thereon, or any part thereof, at the respective times herein specified for the payment thereof, the said obligee, and his legal representatives or assigns, shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and receive the rents, issues, and profits thereof, and apply the same, after payment of all necessary charges and expenses, on account of the principal and interest of this bond and the mortgage accompanying the same; and the said obligee, and his legal representatives or assigns, shall be at liberty and have the right immediately after any such default, upon a complaint filed or any other legal proceedings commenced for the foreclosure of said mortgage, to apply for, and shall be entitled as a matter of right and without regard to the value of the premises, or the solvency or insolvency of said obligor or any owner of the mortgaged premises, and on ——— days' notice to said obligor, his legal representatives or assigns, in any court of competent jurisdiction, to have granted a receiver of the rents, issues, and profits of the said mortgaged premises, with power to lease said premises for a term to be approved by the court, with power to pay taxes and assessments which are or may become a lien on said premises, and to keep the same insured, and with power to take proceedings to dispossess tenants, and make all necessary repairs, and with such other powers as may be deemed necessary, who, after de-

ducting all charges and expenses attending the execution of the said trust as receiver, shall apply the residue of said rents and profits to the payment and satisfaction of this bond and the mortgage accompanying the same, or to any deficiency which may arise after applying the proceeds of the sale of said premises to the amount due, including interest and costs and expenses of the foreclosure and sale.

Bond and Warrant (Pennsylvania)

Know all men by these presents that ———, of ———, held and firmly bound unto ———, of ———, in the sum of ——— dollars lawful money of the United States of America, to be paid to the said ———, certain attorney, executors, administrators, or assigns, to which payment well and truly to be made ——— bind ———sel—, ——— heirs, executors, and administrators, firmly by these presents. Sealed with ——— seal—. Dated the ——— day of ———.

The condition of this obligation is such that, if the above-bounden ———, ——— heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above-named ———, certain attorney, executors, administrators, or assigns, the just sum of ——— dollars lawful money as aforesaid, in ——— years from the date hereof, together with interest thereon, payable ——— annually at the rate of ——— per cent. per annum, and also all premiums paid by the said ———, ——— executors, administrators, or assigns, for maintaining an insurance against loss or damage by fire, to an amount not exceeding ——— dollars, upon the premises described in the accompanying indenture of mortgage, without any fraud or further delay, and shall produce to the said ———, ——— executors, administrators, or assigns, on or before the ——— day of ——— of each and every year, receipts for all taxes of the current year assessed upon the mort-

gaged premises, then the above obligation to be void, or else to be and remain in full force and virtue: Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of ——— interest on said sum for the space of ——— after the same shall fall due, or in the payment of any premium of insurance as aforesaid, or in such production to the ———, ——— executors, administrators, or assigns, on or before the ——— day of ——— of each and every year, of such receipts for such taxes of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid, shall, at the option of the said ———, ——— executors, administrators, or assigns, become due and payable immediately, and payment of said principal, and all interest thereon, may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding: And provided, further, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in payment, either of said principal sum at maturity, or of said interest, or of said premiums of insurance, or in production of said receipts for taxes within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon this obligation, or by virtue of the warrant of attorney hereto attached, or a writ of scire facias is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., ——— per cent., shall be payable, and shall be recovered in addition to all principal, interest, and premium of insurance then due, besides costs of suit.

And, further, ——— do by these presents empower ———, of ———, or any other attorney of any court of record in the state of ——— or elsewhere, to appear for ——— therein and confess judgment against ——— for the said penal sum, with costs of suit and release of all errors, and ——— do hereby

waive the right of inquisition on real estate, and all laws exempting real or personal property from levy and sale on execution. *(Signature and Seal.)*

Sealed and delivered in the presence of us.

IV

Assignment of Mortgage

An assignment of a mortgage or deed of trust usually takes the form of a deed poll which in terms assigns the mortgage deed or deed of trust and the promissory note or bond thereby secured, and an assignment in this form, executed with the formalities prescribed for a conveyance, would appear to be everywhere sufficient. It is generally enough to describe the mortgage by reference to the parties, date, and record without describing the land. Covenants on the part of the assignor, as that so much is owing, and that he has good right to assign, are often added; and the instrument sometimes includes a power of attorney running to the assignee. The forms in use in the different states differ somewhat. In several states a short form of assignment which may be used is given by statute.

Assignment of Mortgage

Know all men by these presents that I, ———, of ———, in consideration of the sum of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said ——— a certain indenture of mortgage made by ——— to me, dated the ——— day of ———, and filed for record on the ——— day of ———, and recorded in ——— the (registry of deeds) in book ———, page ———, together with all and singular the premises therein described and the note (*or*, bond) or obligation therein mentioned and the moneys due and to become due thereon, with the interest.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

Same—By Assignee

Know all men by these presents that I, ———, of ———, in consideration of the sum of ——— dollars, to me paid by (assignee), of ———, the receipt whereof is hereby acknowledged, do hereby assign, transfer and set over unto the said (assignee) a certain indenture of mortgage made by ———, of ———, as mortgagor to ——— of ———, as mortgagee, dated the ——— day of ———, and filed for record in the (registry of deeds) on the ——— day of ———, and recorded therein in book ———, page ———, and assigned by the said mortgagee to me by deed of assignment dated the ——— day of ———, and filed for record in the said (registry of deeds) on the ——— day of ———, and recorded therein in book ———, page ———, together with all and singular the premises in said mortgage described and the note (*or*, bond) or obligation therein mentioned and the moneys due and to become due thereon, with the interest.

In witness, *etc.*

Same—With Power of Attorney and Covenant by Assignor

(Follow as in preceding form, adding as follows:)

[POWER OF ATTORNEY.] And I hereby appoint the said (assignee) my attorney irrevocable, in my name or otherwise, but at his own cost, to take all proper ways and means for the recovery of the said moneys and interest, and in case of payment to discharge the said mortgage as fully as I could do if these presents were not made.

[COVENANTS OF ASSIGNOR.] And I do, for myself, my heirs, executors, and administrators, covenant with the said ———, his executors, administrators, and assigns,⁸ that there is now

⁸ The following is a fuller form: "That the said note and mortgage are valid and subsisting; that I have good right to assign the

owing on the said note (*or*, bond) and mortgage the principal sum of _____ dollars, with interest thereon from the _____ day of _____, and that I have good right to sell and assign the same.

In witness, *etc.*

Same—By Indorsement

In consideration of the sum of _____ dollars to me paid by _____, the receipt whereof is hereby acknowledged, I, _____, the within-named mortgagee, do hereby sell, assign, transfer, and set over unto _____, of _____, the within indenture of mortgage, together with the note or obligation therein mentioned and the moneys due and to become due thereon.

In witness, *etc.*

Assignment of Mortgage (Illinois)

Know all men by these presents, that I, _____, of _____, the party of the first part, in consideration of the sum of _____ dollars, to me in hand paid by _____, of _____, the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged do hereby grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his heirs, executors, administrators, and assigns, a certain indenture of mortgage bearing date the _____ day of _____, made by _____, of _____, to me, and all my right, title, and interest to the premises therein described, as follows, to wit (*description*), which said mortgage is recorded in the recorder's office of the county of _____, in the state of Illinois, in book No. _____ of mortgages, at page _____.

same; that I have not done or suffered any act or thing whereby the said mortgage has been released or discharged in whole or in part; and that the sum of _____ dollars, with interest from the _____ day of _____, remains unpaid thereon."

Together with the note or obligations therein described, and the money due or to grow due thereon, with the interest, to have and to hold the same unto the said party of the second part, his executors, administrators, or assigns, forever, subject only to the provisos in the said indenture of mortgage contained.

And I do, for myself, my heirs, executors, and administrators, covenant with the said party of the second part, his heirs, executors, administrators, and assigns, that there is now actually due and owing on said note and mortgage, in principal and interest, ——— dollars, and that I have good right to assign the same.

And I do hereby make, constitute, and appoint the said party of the second part, his true and lawful attorney, irrevocably, in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and, in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

Assignment of Mortgage (Maryland) °

This deed made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth that, in consideration of the sum of ——— dollars, I, the said ——— do hereby grant and assign unto ———, of ———, all my right, title, and interest in a certain mortgage made to me by ———, of ———, dated the ——— day of ———, and recorded among

° Statutory form of assignment by indorsement, ante, p. 910. As to the oath to be made by the assignee, ante, p. 910.

the land records of ——— in liber ——— No. ———, folio ———, *etc.*

Witness my hand and seal the day and year first above written.

MASSACHUSETTS

Assignment of Mortgage (Statutory)

———, holder of a mortgage from ——— to ———, dated ———, recorded with ——— deeds, book ———, page ———, assign said mortgage and the note and claim secured thereby to ———.

Witness ——— hand and seal this ——— day of ———.

(*Acknowledgment.*)

(*Seal.*)

Acts 1912, c. 502, § 9.

In an assignment of a mortgage of real property the word "assign" shall be a sufficient word to transfer the mortgage, without the words "transfer and set over." Ibid. c. 502, § 20.

Same—Another Form

Know all men by these presents that I, ———, of ———, the mortgagee named in a certain mortgage given by ———, of ———, to me, dated the ——— day of ———, and recorded with ——— deeds, libro ———, folio ———, in consideration of ——— dollars paid by ———, of ———, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said ——— the said mortgage deed, the real estate thereby conveyed, and the note and claim thereby secured.

To have and to hold the same to the said ——— and his heirs and assigns to their own use and behoof forever, subject, nevertheless, to the conditions therein contained and to redemption according to law.

In witness whereof I hereto set my hand and seal this ——— day of ———.

Assignment of Mortgage (New Jersey)

Know all men by these presents that I, ———, of ———, party of the first part, in consideration of the sum of ——— dollars lawful money of the United States of America to me in hand paid by ———, of ———, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said party of the second part a certain indenture of mortgage bearing date the ——— day of ———, made by ———, of ———, to me on lands in ——— to secure the payment of the sum of ——— dollars, which mortgage is recorded in the clerk's (*or*, register's) office of the county of ———, in book ——— of mortgages, pages ———; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his heirs, executors, administrators, and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney irrevocable, in my name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of all the said money and interest, and in case of payment to discharge the same as fully as I might or could do if these presents were not made. And I do hereby covenant, promise, and agree to and with the said party of the second part that there is now due and owing upon the said bond and mortgage the sum of ——— dollars, with interest thereon from the ——— day of ———.

In witness whereof I have hereunto set my hand and seal the ——— day of ———.

Assignment of Mortgage (New York)

Know all men by these presents that I, ———, of ———, party of the first part, in consideration of the sum of ——— dollars to me in hand paid by ———, of ———, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said party of the second part, a certain indenture of mortgage bearing date the ——— day of ———, made by ———, of ———, to me, and duly recorded in the office of the ——— of the ———, county of ———, on the ——— day of ———, in liber ——— of mortgages, page ———, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney irrevocable, in my name or otherwise, but at his proper cost and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as I might or could do if these presents were not made.

The part— hereto of the second part reside— as follows (*state residence*).

In witness whereof I have hereunto set my hand and seal the ——— day of ———.

Assignment of Bond and Mortgage (Pennsylvania)

Know all men by these presents that I, ———, of ———, the mortgagee named in the indenture of mortgage hereinafter mentioned, for and in consideration of the sum of ——— dollars lawful money unto me in hand paid by ———, of ———, at the time of the execution hereof, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, transfer, and set over unto the said ———, his heirs, executors, administrators and assigns, a certain indenture of mortgage given and executed by ———, of ———, dated the ——— day of ———, and recorded in the office of the recorder of deeds in the county of ———; also the bond or obligation in the said indenture of mortgage recited, and all moneys due and to grow due thereon, with the warrant of attorney to the said obligation annexed, together with all rights, remedies, and incidents thereunto belonging, and all my right, title, interest, property, claim, and demand in and to the same.

To have, hold, receive, and take all and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be, with the appurtenances, unto the said ———, his heirs, executors, administrators, and assigns, to and for ——— their only proper use, benefit, and behoof forever, subject, nevertheless, to the equity of redemption of said ———, mortgagor in the said indenture of mortgage named, and ——— heirs and assigns therein.

In witness whereof I have hereunto set ——— hand and seal this ——— day of ———.

Sealed and delivered in the presence of us:

(Two witnesses.)

SOUTH DAKOTA

Assignment of Mortgage (Statutory)¹⁰

For and in consideration of ——— dollars to ——— in hand paid, ——— do— hereby assign unto ———, of ——— P. O., a certain indenture of mortgage and the notes secured thereby, executed by ——— to ——— on the ——— day of ———, A. D. 19—, upon ———, and recorded in book ——— of mortgages on page ———, in the office of register of deeds of ——— county, state of South Dakota, on the ——— day of ———, 19—, at ——— o'clock — m.

Dated this ——— day of ———, A. D. 19—.

(Acknowledgment.)

(Signature). ———

Laws 1911, c. 257, § 4.

WISCONSIN

An assignment of a mortgage may be substantially in the following form:

Assignment of Mortgage (Statutory)

For value received I, A. B., of ———, Wisconsin, hereby assign to C. D., of ———, Wisconsin, the within mortgage (*or*, a certain mortgage executed to ——— by C. F. and wife, of ——— county, Wisconsin, the ——— day of ———, 19—, and recorded in the office of the register of deeds of ——— county, Wisconsin, in volume ——— of mortgages, on page ———), together with the ——— and indebtedness therein mentioned.

Witness my hand and seal this ——— day of ———, 19—.

In presence of:

A. B. (Seal.)

¹⁰ Ante, p. 957.

Such assignment is sufficient to vest in the assignee for all purposes all the rights of the mortgagee under the mortgage described and the amount of the indebtedness due thereon at the date of the assignment. Such assignment, when indorsed upon the original mortgage, shall not require an acknowledgment in order to entitle the same to be recorded. St. 1911, § 2210.

V

Satisfaction of Mortgage

In states where a mortgage has the character of a conveyance of the legal estate, a release, discharge, or satisfaction usually has the form of a deed of reconveyance or release of the mortgaged premises. In other states the instrument often takes the form of a certificate certifying that the debt has been paid. In either case the instrument should in most states be executed with the formalities prescribed for conveyances. In many states by statute a mortgage may also be released by entry in the margin of the record signed by the holder. In several states a short form of satisfaction which may be used is given by statute.

Satisfaction of Mortgage (California)

Know all men by these presents that I, ———, of ———, do hereby certify that a certain mortgage bearing date the ——— day of ———, made and executed by ———, of ———, party of the first part therein, to me, the party of the second part therein, and recorded in the office of the county recorder of the ——— county of ———, state of California, in book ——— of mortgages, on page ———, on the ——— day of ———, together with the debt thereby secured, is paid in full and discharged.

In witness thereof I have hereunto set my hand the ——— day of ———.

Release of Mortgage (Maryland)¹¹

This release of mortgage made this _____ day of _____ by _____, of _____:

Whereas, the said _____ is the holder of a mortgage from _____ to _____ dated the _____ day of _____, and recorded among the _____ records of _____ in liber No. _____ folio _____; and whereas, the said _____, having fully paid and satisfied the said mortgage, is entitled to have the property thereby affected released from the operation and effect thereof:

Wherefore, now, this release witnesseth that, for and in consideration of the premises and the sum of one dollar, the said _____ doth hereby release the said mortgage and grant the property thereby affected unto the said _____, to be held by _____ in the same manner as if the said mortgage had never been made.

Witness the hand and seal of the said releasor.

MASSACHUSETTS**Discharge of Mortgage (Statutory)**

_____, holder of a mortgage from _____ to _____, dated _____, recorded with _____ deeds, book _____, page _____, acknowledged satisfaction of the same.

Witness _____ hand— and seal— this _____ day of _____.

(Acknowledgment.)

(Seal.)

Acts 1912, c. 502, § 10.

¹¹ Statutory form, ante, p. 914.

Same—Another Form

Know all men by these presents that I, ———, of ———, the mortgagee named in a certain mortgage given by ——— to me, dated the ——— day of ———, and recorded with ——— deeds, book ———, page ———, do hereby acknowledge that I have received from ———, the mortgagor named in said mortgage, full payment and satisfaction of the same; and in consideration thereof I do hereby cancel and discharge said mortgage, and release and quitclaim unto the said ———, and his heirs and assigns forever, the premises thereby conveyed.

In witness whereof I hereunto set my hand and seal this ——— day of ———.

Satisfaction of Mortgage by Assignee (Minnesota)

I hereby certify that the debt secured by that certain mortgage executed by ———, as mortgagor, to ———, as mortgagee, bearing date the ——— day of ———, filed for record in the office of the register of deeds in and for the county of ———, and state of Minnesota, on the ——— day of ———, at ——— o'clock ——— minutes — m., and recorded in book ——— of ———, on page ——— thereof, and by said mortgagee assigned to me by deed of assignment bearing date the ——— day of ———, filed for record in the office of the said register of deeds on the ——— day of ———, at ——— o'clock ——— minutes — m., and recorded in book ——— of ———, on page ——— thereof, has been paid and satisfied in full, and that I hereby authorize and direct the said register of deeds to discharge the said mortgage of record.

In witness whereof I have hereunto set my hand this ——— day of ———.

MISSOURI

Mortgages and deeds of trust may be satisfied on the margin of the record. If satisfied by the assignee, the notes must be produced for cancellation, or affidavit of their payment and loss must be made.

Discharge of Mortgage (New Jersey)

Know all men by these presents that I, ———, of ———, do hereby certify that a certain mortgage bearing date the ——— day of ———, made and executed by ———, of ———, to me, and recorded in the office of the clerk (*or*, register) of the county of ———, in book ——— of mortgages, page ———, on the ——— day of ———, at ——— o'clock — m., is paid and satisfied; and I do hereby consent that the same may be discharged of record.

Witness my hand and seal this ——— day of ———.

Satisfaction of Mortgage by Assignee (New York)

STATE OF NEW YORK, }
County of ———. } ss:

I do hereby certify that a certain indenture of mortgage bearing date the ——— day of ———, made and executed by ———, of ———, and recorded in the office of the clerk (*or*, register) of the county of ———, in liber ——— of mortgages, page ———, on the ——— day of ———, and assigned to me by assignment dated the ——— day of ———, and recorded in said office in liber ——— of mortgages, page ———, is paid; and I do hereby consent that the same be discharged of record.

Dated the ——— day of ———.

TIFF. FORMS—63

NORTH CAROLINA

When satisfied, the mortgagee, his agent or assigns, must enter satisfaction on the record. On exhibition of the mortgage, accompanied by the bond or note a secured, with the indorsement of payment and satisfaction thereon, by the payee, mortgagee, or assignee, the register shall enter satisfaction on the margin of the record. Revisal 1905, § 1046.

Satisfaction of Mortgage (Ohio)

Know all men by these presents that I, ———, of ———, do hereby certify that a certain mortgage deed, dated the ——— day of ———, recorded on the ——— day of ———, in record of mortgages, volume ———, page ———, in the office of the recorder of ——— county, Ohio, executed by ———, of ———, to me, on the following real estate, situated in the said county of ——— (*description*), has been fully paid and satisfied, and the recorder is authorized to discharge the same of record.

In testimony whereof I have hereunto set my hand this ——— day of ———.

Satisfaction of Mortgage (Pennsylvania)

Know all men by these presents that I, ———, of ———, do hereby certify that a certain indenture of mortgage bearing date the ——— day of ———, made and executed by ———, of ———, to secure the payment of ——— dollars, and recorded in the office of the recorder of deeds, etc., in and for said county of ———, in mortgage book ———, page ———, on the ——— day of ———, the receipt of the payment thereof and satisfaction in full of debt and interest on the above-stated mortgage do hereby acknowledge. And I do by these presents authorize the recorder of deeds in and for said county

of ——— to enter satisfaction in full of the above-stated mortgage and discharge the same from record.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

SOUTH CAROLINA

A mortgage is discharged by satisfaction indorsed thereon by the mortgagee executed with the formalities of a deed.

Satisfaction of Mortgage

The bond which the within mortgage was executed to secure having been paid in full, I hereby declare the said mortgage satisfied and the lien thereof discharged.

Witness my hand and seal this ——— day of ———.

SOUTH DAKOTA

Satisfaction of Mortgage (Statutory)

———, of ———, state of ———, hereby certifies that a certain mortgage, bearing date the ——— day of ———, 19—, executed by ——— to ———, of ———, upon the following real property situated in the county of ———, in the state of South Dakota, to wit, the ———, and recorded in the office of the register of deeds of said ——— county ——— in book ——— of mortgages, page ———, on the ——— day of ———, 19—, at ——— o'clock and ——— minutes — m., is, with the indebtedness thereby secured, fully paid, satisfied, and discharged.

Dated this ——— day of ———, 19—.

(Acknowledgment.) (Signature.) ———.

Laws 1911, c. 257, § 5.

Release of Trust Deed (Virginia)

This deed made this _____ day of _____ between _____, of _____, of the first part, and _____, of _____, of the second part, and _____, of _____, of the third part: Whereas, the said party of the third part in order to secure to the said party of the second part the payment of the sum of _____ dollars, did by deed bearing date on the _____ day of _____, and re-recorded in the office of the clerk of _____ in deed book No. _____, page _____, convey in trust to the said party of the first part, his 'heirs and assigns, certain real estate described in the said deed as follows (*description*); and whereas, the said sum of money has been fully paid by the said party of the third part to the said party of the second part, and he, the said party of the second part, desires that the said property should be released from the said deed of trust.

Now, therefore, this deed witnesseth that for and in consideration of the premises, and in further consideration of one dollar to him in hand paid, the said party of the first part, with the consent of the said party of the second part doth release unto the said party of the third part all his claim upon the said property.

Witness the following signatures and seals.

Discharge of Mortgage (Vermont)

I hereby certify that the following described mortgage is paid in full and satisfied, viz.:

A mortgage given by _____, as mortgagor, to me, as mortgagee, dated the _____ day of _____, and recorded in book _____, page _____, of the land records of the town of _____.

Witness my hand and seal this _____ day of _____.

Satisfaction of Mortgage (Washington)

Know all men by these presents that I, ———, of ———, mortgagee, do hereby certify that the mortgage made and executed by ———, of ———, as mortgagor, to me, as mortgagee, to secure the payment of ——— dollars, and of record in the office of the auditor of ——— county, Washington, in volume ——— of mortgages, on page ———, with the note secured thereby, is fully paid and satisfied; and I do hereby consent that the same be fully discharged of record.

Witness my hand this ——— day of ———.

Release of Mortgage or Trust Deed (West Virginia)

I, A. B., hereby release a mortgage (*or*, deed of trust) made by C. D. to me (*or*, to E. F., my trustee; *or*, to ——— and assigned to me), dated the ——— day of ———, and recorded in the office of the county court of ——— county, West Virginia, in deed book ———, page ———. (*Signed.*)

Acknowledged before the subscriber this ——— day of ———, 19—. ———, Justice (*or* Notary Public, *etc.*).

Satisfaction of Mortgage (Wisconsin)

Know all men by these presents that I, ———, of ———, do hereby certify and acknowledge that a certain mortgage bearing date on the ——— day of ———, made and executed by ——— to me, and recorded in the office of the register of deeds in and for ——— county, in the state of Wisconsin, on the ——— day of ———, at ——— o'clock — m., in volume ——— of mortgages, on page ———, document No. ———, is fully paid, satisfied and discharged. And the register of

said county is hereby authorized to enter this satisfaction of record.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

WYOMING

A cancellation or discharge of mortgage or deed of trust may be in the following form, substantially:

Certificate of Discharge (Statutory)

This certifies that a (mortgage *or* deed of trust, *as the case may be*) from ——— to ———, dated ———, A. D. ——— and recorded in book ——— of ———, on page ———, has been fully satisfied by the payment of the debt secured thereby, and is hereby canceled and discharged.

Signed in the presence of ———, county clerk of ——— county.

Filed and recorded ———, A. D. ———, at ——— — m.

County Clerk.

Such cancellation or discharge shall be entered in a book kept for that purpose and signed by the mortgagee or trustee, his attorney in fact, executor, administrator, or assigns, in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness, and such cancellation or discharge shall have the same effect as a deed of release duly acknowledged and recorded. Comp. St. 1910, § 3669.

VI

Partial Release of Mortgage

MASSACHUSETTS

Partial Release of Mortgage (Statutory)¹²

2, the holder of a mortgage by 2. 2. 1912, to _____, dated _____, recorded with _____ deeds, book _____, page _____, for consideration paid, release to all interest acquired under said mortgage in the following described portion of the mortgaged premises (*description*).

Witness _____ hand and seal this _____ day of _____.

(*Acknowledgment.*)

(*Seal.*)

Same—Another Form

Know all men by these presents that I, _____, of _____, the mortgagee named in a certain mortgage given by _____, of _____, to me, dated the _____ day of _____, and recorded with _____ deeds, book _____, page _____, in consideration of _____ dollars paid by the said _____, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said _____ all the right, title, and interest which I acquired under the aforesaid mortgage in or to that portion of the premises therein conveyed, which is described as follows, namely (*description*).

To have and to hold the same to the said _____, and his heirs and assigns, to their own use and behoof forever.

But this release shall not in any way affect or impair our right to hold under the said mortgage and as security for the sum remaining due thereon, or to sell under the power of

¹² Statute form, Acts 1912, c. 502, § 8.

sale in said mortgage contained, all the remainder of the premises therein conveyed and not hereby released.

In witness whereof I hereunto set my hand and seal this _____ day of _____.

Partial Release of Mortgage (New York)

This indenture made the _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

Whereas _____, of _____, by indenture of mortgage bearing date the _____ day of _____, recorded in the office of the clerk (*or*, register) of the county of _____ in liber _____ of mortgages, page _____, on the _____ day of _____, for the consideration therein mentioned and to secure the payment of the money therein specified, did convey certain lands and tenements of which the lands hereinafter described are part unto _____, of _____; and whereas, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage: Now, this indenture witnesseth that the said party of the first part, in pursuance of the said agreement and in consideration of _____ dollars to him duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth hereby grant, release, quitclaim, and set over unto the said party of the second part all that part of the said mortgaged lands described as follows (*description*).

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title, and interest of the said party of the first part of, in and to the same, to the intent that

the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the lands and premises hereby released and conveyed to the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever, free, clear, and discharged of and from all lien and claim under and by virtue of the paid indenture of mortgage.

In witness whereof the said party of the first part to these presents has hereunto set his hand on the day and year first above written.

Partial Release of Mortgage (Pennsylvania)

To all to whom these presents shall come I, ———, of ———, send greeting:

Whereas, ———, of ———, by indenture of mortgage bearing date the ——— day of ———, and recorded in the office for recording of deeds in and for the county of ———, in mortgage book No. ———, page ———, granted and conveyed unto me, the said ———, and my heirs and assigns, the premises therein particularly described, to secure the payment of a certain debt or principal sum of ——— dollars lawful money, with interest, as therein mentioned; and whereas, the said ——— requested me, the said ———, to release the premises hereinafter described, being part of said mortgaged premises, from the lien and operation of the said mortgage: Now, therefore, know ye that I, the said ———, as well in consideration of the premises as of the sum of ——— dollars lawful money to me in hand paid by the said ——— at the time of the execution hereof, the receipt whereof is hereby acknowledged, have remised, released, quitclaimed, exonerated, and discharged, and by these presents do remise,

release, quitclaim, exonerate, and discharge unto the said ———, his heirs and assigns, all that part of the mortgaged premises described as (*description*).

To hold the same, with the appurtenances, unto the said ———, his heirs and assigns, forever freed, exonerated, and discharged of and from the lien of said mortgage, and every part thereof: Provided, always, nevertheless, that nothing herein contained shall in any wise affect, alter, or diminish the lien or incumbrance of the aforesaid mortgage on the remaining part of said mortgaged premises, or the remedies at law for recovering thereout or against the said ———, his heirs, executors, administrators, or assigns, the (remainder of the) principal sum, with interest, secured by said mortgage.

In witness whereof the said parties to these presents have hereunto set their hands and seals this ——— day of ———.

VII

Extension of Mortgage

Agreement for Extension of Mortgage

This agreement made the ——— day of ——— between ———, of ———, party of the first part, and ———, of ———, party of the second part, witnesseth:

[RECITALS OF NOTE AND MORTGAGE, ETC.] Whereas, the said party of the second part executed his certain promissory note dated the ——— day of ———, whereby he promised to pay to ——— or order the sum of ——— dollars on the ——— day of ———, with interest thereon at the rate of ——— per cent. per annum; and whereas, to secure the said note the said party of the second part executed to the said ——— a certain mortgage, dated the ——— day of ———, and recorded on

the ——— day of ——— in the (registry of deeds) in book ——— of mortgages, at page ———; and whereas, the said party of the first part is now the holder of the said note and mortgage, and the said party of the second part is now the owner of the said mortgaged premises (*or*, of the equity of redemption in the said mortgaged premises).

[AGREEMENT OF EXTENSION.] Now, therefore, the said parties hereto, for themselves, their heirs, executors, administrators, and assigns, hereby mutually agree that the time for the payment of the said principal sum be and the same is hereby extended for the term of ——— years from the ——— day of ———, and the said principal sum shall bear interest from that date at the rate of ——— per cent. per annum, payable on the ——— day of ——— and the ——— day of ——— in each year.

[SUBSISTENCE OF MORTGAGE.] It is expressly understood and agreed that the said mortgage shall remain in full force and effect in all respects as if the said principal sum had originally been payable on the ——— day of ———, and that nothing herein shall affect or impair any rights and powers which the said party of the first part may have thereunder for the recovery of the said mortgage debt, with interest, in case of the nonfulfillment of this agreement.

[MORTGAGOR'S COVENANTS.] And the said party of the second part hereby covenants that he will pay the said principal sum on the ——— day of ——— and the interest thereon at the times hereinbefore specified, and that he will perform and observe all the covenants, agreements, stipulations, and conditions on the part of the mortgagor in the said mortgage contained in all respects as if the said principal sum had by the terms thereof been payable on the last-mentioned day.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Same—Short Form

This agreement made the _____ day of _____ between _____, the holder of a mortgage dated (*etc.*), and recorded (*etc.*), of the first part, and _____, the owner of (the equity of redemption of) the said mortgaged premises, of the second part:

Witnesseth that the said parties do hereby, each for himself, his heirs, executors, administrators, and assigns, mutually agree that the time provided in said mortgage for payment of the principal sum now secured thereby, namely, _____ dollars, is hereby extended to the _____ day of _____, and that the rate of interest thereon shall hereafter be _____ per cent. per annum; and the said party of the second part hereby covenants and agrees that he will perform and observe the covenants and conditions of the said mortgage so extended, and that he will pay the principal and interest secured thereby when due hereunder.

In witness, *etc.*

Same—Another Form

Agreement made this _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITALS OF BOND AND MORTGAGE AND REQUEST FOR EXTENSION.] Whereas, the party of the second part holds the bond of _____, of _____, bearing date the _____ day of _____, conditioned for the payment of the principal sum of _____ dollars, on the _____ day of _____, and the interest thereon, together with a mortgage securing payment thereof, made and executed by the said _____ unto _____, of _____, bearing even date with said bond, and recorded in the (registry of deeds) on the _____ day of _____, in book of _____

No. ———, at page ———; and whereas, the said party of the first part is now the owner of the premises described in the said mortgage, and has requested that the time of payment of the said principal sum of ——— dollars, secured to be paid thereby be extended for ——— years from the ——— day of ———.

[AGREEMENT TO EXTEND.] Now this agreement witnesseth that the said parties of the first and second parts, in consideration of the premises and of the sum of one dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, do hereby covenant and agree as follows: The said party of the second part hereby extends the time of payment of the said principal sum of ——— dollars secured to be paid by the said bond and mortgage to the ——— day of ———: Provided, that the interest thereon, according to the tenor of the said bond or obligation, is punctually paid semiannually on the ——— day of ——— and of ——— in each and every year until said principal sum is fully paid: And provided, further, that nothing herein contained shall in any wise impair the security now held for the said debt. And the said party of the first part hereby agrees to the extension of the time of payment of the principal of said bond hereinbefore stated and fixed, and for his heirs, executors, and administrators hereby covenants and agrees to pay the same on the ——— day of ———, and to pay the interest thereon on the days on which the same becomes due, as hereinbefore mentioned.

[OPTION ON DEFAULT.] And it is further mutually agreed that, should the said interest, or any part thereof, remain due and unpaid for the space of ——— days, or should any tax or assessment remain due and unpaid for the space of ——— days after the same shall have become due and payable, then the whole of the said principal sum shall, at the option of the said party of the second part, or of his legal representatives, be-

come due and payable immediately thereafter, anything hereinbefore stated to the contrary notwithstanding.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Extension of Mortgage—Massachusetts (Statutory)

_____, holder of a mortgage by _____ to _____, dated _____, recorded _____ with _____ deeds, book _____, page _____, and _____, owner of the equity of redemption of the mortgaged premises, agree each for _____ sel—, _____ heirs and representatives and assigns, that the time provided in said mortgage for payment of the principal sum now secured thereby, namely, _____ dollars, is hereby extended to _____, and the rate of interest hereafter shall be _____ per cent. per annum, and said owner agrees to perform and observe the condition and covenants of said mortgage as so extended, and to pay the principal and interest secured thereby when due hereunder.

Witness _____ hand and seal this _____ day of _____.
(Acknowledgment.) _____ (Seal.)

Acts 1912, c. 502, § 7.

CHAPTER XXV

NOVATION

Where a new contract is substituted for an existing contract by a change in one of the parties, as where it is agreed that a new debtor shall be substituted for a former debtor, whom the creditor releases, there is said to be a novation. Such a substitution can be made only by the agreement of all three. The agreement need not be evidenced by writing; the promise of the new debtor is not a promise to answer for the debt of another within the statute of frauds. Only novations of the character above mentioned are here included.

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1. Novation Between an Original Contractor, a Substituted Contractor, and a Contractee

An agreement made this _____ day of _____ between _____, party of the first part, and _____, party of the second part, and _____, party of the third part:

[RECITAL OF ORIGINAL AGREEMENT AND PROPOSED SUBSTITUTION.] Whereas, an agreement dated the _____ day of _____ was made between the party of the first part and the party of the third part, and the party of the first part desires to be released and discharged from the contract contained in the said agreement, and the party of the third part has agreed to release and discharge the party of the first part therefrom upon the terms of the party of the second part undertaking to perform the said contract and to be bound by the terms of the said agreement.

Now, therefore, it is hereby agreed as follows:

1. [UNDERTAKING OF SUBSTITUTED CONTRACTOR.] The party of the second part undertakes to perform the said contract and to be bound by the terms of the said agreement in all respects as if the party of the second part were a party to the said agreement in lieu of the party of the first part.

2. [RELEASE OF ORIGINAL CONTRACTOR AND AGREEMENT FOR SUBSTITUTION OF NEW CONTRACTOR.] The party of the third part releases and discharges the party of the first part from all claims and demands whatsoever in respect to the said agreement, and accepts the liability of the party of the second part upon the said agreement in lieu of the liability of the party of the first part, and agrees to be bound by the terms of the said agreement in all respects as if the party of the second part were named in the said agreement as a party thereto in place of the party of the first part.

In witness, *etc.*

2. Novation Between Executor of Deceased Partner, Continuing and New Partner, and a Creditor

An agreement made this _____ day of _____ between _____, executor of the will of _____, deceased, party of the first part, and _____ and _____ (*continuing and new partners*), carrying on business under the style and firm of _____, parties of the second part, and _____, party of the third part:

[RECITALS OF RELATIONSHIP OF PARTIES.] Whereas, the said _____, deceased, hereinafter called the decedent, formerly carried on business with the said (*continuing partner*) under the style and firm of _____ & Co., hereinafter called the old firm; and whereas, the decedent died on the _____ day of _____, and his will was duly proved and admitted to probate in and by the probate court of _____, and the said _____ is the executor of the said will, duly appointed by the said

court; and whereas, the said (*continuing partner*) is carrying on business in partnership with the said (*new partner*) under the style and firm of ——— & Co., hereinafter called the new firm; and whereas, the party of the third part has had dealings with the old firm, and the old firm is or may be indebted to the party of the third part upon a balance of such dealings.

Now, it is hereby agreed as follows:

1. [UNDERTAKING OF NEW FIRM TO DISCHARGE LIABILITY OF OLD FIRM.] The new firm accepts the liability, if any, of the old firm to the party of the third part in respect to the said dealings, and undertakes duly to discharge the same.

2. [RELEASE OF CREDITOR OF ESTATE OF DECEASED PARTNER.] The party of the third part releases and forever discharges the said executor and the estate and effects of the decedent from all claims and demands whatsoever in respect to the said dealings, and accepts the liability of the new firm in lieu of the liability to him of the said executor and the estate and effects of the decedent.

In witness, *etc.*

3. Novation Between Partners Who Have Transferred Their Business to a Corporation, the Corporation, and a Creditor

An agreement made this ——— day of ——— between ——— and ———, heretofore carrying on business at ——— as partners under the firm name of ———, parties of the first part, the ——— Company, a corporation of the state of ———, party of the second part, and ———, party of the third part:

Witnesseth that the parties hereto do hereby agree that, the parties of the first part having sold and transferred the

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said business heretofore carried on by them to the party of the second part, the party of the second part shall alone be liable to the party of the third part for all debts and liabilities of the parties of the first part to the party of the third part heretofore contracted, and the party of the third part accepts the party of the second part as his sole debtor, and hereby releases and discharges the parties of the first part from all claims and demands for or on account of the said debts and liabilities.

In witness, *etc.*

CHAPTER XXVI

PARTNERSHIP

While a partnership agreement need not be in writing, the relations of partners to each other are usually made the subject of written agreements or articles of partnership. The purpose of such an agreement is primarily to define the rights of the partners, which, in the absence of express agreement, are to a greater or less extent determined by law, but also to furnish a code of directions to which the partners may refer as a guide, and thereby settle among themselves differences which may arise. The contents of the articles will depend largely upon the nature of the business. Usually the articles contain provisions in respect to the following matters: The nature of the business, upon which the extent of the implied authority of the partners largely depends; the duration of the partnership, which if the term is not fixed may be dissolved at the will of any partner; the firm name; the capital and how it is to be contributed, and the separate ownership of any property which is to be used by the firm without becoming partnership property; the shares of the partners in the capital and profits, as well as in the losses, which, unless otherwise agreed, would belong to them and be borne by them equally; the accounts to be kept; and the manner of accounting from year to year and upon the termination of the partnership. Among other matters often provided for are: The banking account of the firm, and who is to sign checks, etc.; the amounts which the partners may draw from time to time; the time and attention to be given by the partners to the business, and other duties of the partners, both positive and negative, including things not to be done without the consent of all; details of management; the retirement and expulsion of partners; the dissolution of the partnership in certain contingencies; the method of winding up on dissolution; the taking over of the share of a deceased or outgoing partner, and the valuation of the good will; and the arbitration of differences.

Every member of an ordinary partnership is liable for the whole amount of the partnership debts. The statutes of the several states, however, very generally authorize a form of

partnership, called a limited partnership, the essential feature of which is that there must be one or more partners, called general partners, liable for all the debts, and one or more partners, called special partners, whose liability is limited to the amounts respectively contributed by them to the capital at the time of entering into the partnership. The statutes usually require the persons forming a limited partnership to execute a certificate, which must state certain facts, and which must be acknowledged, recorded, and published, and an affidavit by one of the general partners, which must state that the sums specified in the certificate as contributed by the special partners have actually been paid in cash, and which must be filed with the certificate. The general partners alone may transact business for and bind the partnership, and the rights of the special partners are strictly limited. There must be exact conformity with the statutory requirements, both as to the formation of a limited partnership and as to the conduct of its affairs, or the special partners will be liable as general partners. The statutes differ, and in drawing an agreement for a limited partnership the particular statute must always be consulted.

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1. Articles of Partnership in Commercial Business (Short Form)

Articles of agreement made the —— day of —— between ——, of ——, of the one part, and ——, of ——, of the other part, witnesseth as follows:

1. [BUSINESS, PLACE, FIRM, AND TERM.] The said parties will become, and by these presents do agree to be, partners together under the name or firm of ——, in the business of retail grocers, in the buying and selling all sorts of goods, wares, and merchandise to the said business belonging. The business to be carried on in the city of ——, in the store heretofore occupied by the said ——, or in such other store as they shall hereafter determine. The partnership to commence on the —— day of ——, and to continue —— years.

2. [CAPITAL.] To that end and purpose the said —— has contributed the sum of —— dollars in cash, and the said —— has contributed the lease of the said store in —— and the stock of goods and good will of the business there heretofore carried on by him, which are together estimated and valued by the parties at the like sum of —— dollars, the capital so formed to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.

3. [ATTENTION TO BUSINESS.] At all times during the continuance of their partnership they will give their attendance, and do their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest and advantage, and will buy, sell, and merchandise with their joint stock and the increase thereof in the business aforesaid.

4. [TO SHARE PROFITS AND LOSSES.] And they will at all times during the partnership bear, pay, and discharge equally

between them all rents and other expenses that may be required for the support and management of the said business. All gains, profit, and increase from or by means of the said business shall be divided between them equally; and all loss to their business shall be borne between them equally.

5. [ACCOUNTS.] There shall be kept at all times during the continuance of their partnership full and correct books of account, wherein the partners shall enter, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise by them or either of them bought or sold by reason or on account of the said business, and all other matters and things whatsoever to the said business and the management thereof in any wise belonging, which said books shall be used in common between the said partners, so that either of them may have access thereto without any interruption or hindrance of the other. It is further agreed that the said partners once in each year, to wit, on the —— day of ——, or oftener, if necessary, shall make a full and correct inventory and account of all profits and increase by them made and of all losses by them sustained, and also all payments, receipts, disbursements and all other things by them made, received, disbursed, acted, done, or suffered in their said business, and, the same account so made, will clear, adjust, pay, and deliver, each to the other at the time, their just share of the profits, and pay and bear their just share of the expenses and losses so made as aforesaid.

6. [NOT TO BECOME SURETY.] Neither partner shall indorse any note or otherwise become surety for any person or persons whomsoever without the consent of the other partner.

7. [FINAL ACCOUNT.] At the end or sooner determination of the partnership the partners, each to the other, shall make a true, just, and final account of all things relating to their

said business, and in all things adjust the same; and all stock, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them equally.

(Add any other stipulations which may be desired.)

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

2. Same—Another Form

This agreement made this _____ day of _____ between _____, party of the first part, and _____, party of the second part:

Witnesseth that it is hereby mutually agreed that the parties hereto shall become partners upon the terms hereinafter set forth, namely:

1. [BUSINESS AND PLACE.] The partnership business shall be that of _____, and shall be carried on at _____ or at such other place or places as the partners may from time to time agree upon.

2. [TERM.] The duration of the partnership shall be _____ years from the date hereof.

3. [FIRM NAME.] The firm name shall be _____.

4. [BANKERS.] The bankers of the partnership shall be _____.

5. [CAPITAL.] The capital of the partnership shall consist of the following items:

(a) The net value of the stock in trade, books debts, and other assets of the business of _____ heretofore carried on by the said party of the first part at _____ aforesaid, less the outstanding liabilities of that business. For purposes of computation the said assets shall be taken to be of the gross value of _____ dollars, and the said outstanding liabilities of the

said business of the value of ——— dollars. The balance, viz., the sum of ——— dollars, shall be credited to the said party of the first part as his share of the capital. (But this shall be subject to readjustment in the event of the said liabilities ultimately proving to be more or less than the said estimated sum of ——— dollars.)

(b) The sum of ——— dollars cash brought into the business by the said party of the second part, which shall be credited to him as his share of the capital.

(c) Any further sums which either partner shall with the consent of the other from time to time contribute for capital purposes, which shall be credited to his capital account.

6. [INTEREST ON CAPITAL.] Interest at the rate of ——— per cent. per annum shall be paid to each partner on the capital for the time being standing to his credit out of the gross profits of the business, and such interest shall be cumulative, so that any deficiency in one year shall be made up out of the gross profits of any succeeding year or years.

7. [SHARES IN PROFITS AND LOSSES.] The net profits of the business shall be divided between the partners equally and they shall in like proportion bear all losses, including loss of capital.

8. [BOOKS OF ACCOUNT.] The usual books of account shall be kept properly posted up, and shall not be removed from the place of business without the consent of both partners. Each partner shall have free access to them at all times, and shall be at liberty to make such extracts therefrom as he may think fit.

9. [ANNUAL ACCOUNT.] On the ——— day of ———, and on the ——— day of ——— in each succeeding year during the continuance of the partnership, an account shall be taken (by ———, of ———, accountants, or by some other accountant or accountants to be agreed upon by the partners) of all the

capital, assets, and liabilities for the time being of the partnership, and a balance sheet and profit and loss account making due allowance for depreciation and for recouping any lost capital shall be prepared (by such accountants), and a copy thereof furnished to each of the partners, who shall be bound thereby unless some manifest error shall be discovered within three calendar months, in which case such error shall be rectified. Immediately after the preparation of the said balance sheet and profit and loss account, the net profits, if any, shown by such account shall be divided.

10. [DRAWINGS.] Each partner may during the continuance of the partnership draw out of the partnership account at the bank the monthly sum of ——— dollars on account of his share of profits; but if, when the said annual account is taken at the end of each year, it shall appear that either partner has drawn any sum in excess of his share of the profits, he shall forthwith repay such excess to the said partnership account.

11. [DUTIES OF PARTNERS.] Each partner shall:

(a) Diligently attend to the business and devote his whole time and attention thereto.

(b) Punctually pay his separate debts and indemnify the other partner and the assets of the firm against the same and all expenses on account thereof.

(c) Forthwith pay all moneys, checks, and negotiable instruments received by him on account of the firm into the said bank to the firm account.

(d) Be just and faithful to the other of them, and at all times give to such other full information and truthful explanations of all matters relating to the affairs of the partnership, and afford every assistance in his power in carrying on the business for their mutual advantage.

12. [ACTS NOT TO BE DONE WITHOUT CONSENT.] Neither partner shall without the consent of the other:

(a) Either directly or indirectly engage in any other business.

(b) Employ or dismiss any agent or servant of the firm.

(c) Lend any of the moneys or deliver upon credit any of the goods of the firm to any person or persons whom the other partner shall have previously in writing forbidden him to trust.

(d) Give any security or promise for the payment of money on account of the firm unless in the ordinary course of business.

(e) Enter into any bond, or become bail, indorser, or surety for any person, or knowingly cause or suffer to be done anything whereby the partnership property may be seized, attached, or taken on execution or endangered.

(f) Assign, mortgage, or charge his share in the assets or profits of the partnership or any part of such share.

(g) Draw, accept, or indorse any bill of exchange or promissory note on account of the firm.

(h) Sign any check on behalf of the firm for a sum exceeding ——— dollars.

(i) Buy, order, or contract for any goods or property exceeding the value of ——— dollars on behalf of the partnership.

(j) Compromise, or compound, or, except upon payment in full, release or discharge any debt due to the partnership.

[INDEMNITY AGAINST BREACH OF STIPULATIONS.] Any partner committing any breach of any of the foregoing stipulations shall indemnify the other of them from all losses and expenses on account thereof.

13. [DETERMINATION BY NOTICE IN CERTAIN EVENTS.] If either partner shall:

(a) Commit any breach of any of the provisions of clauses 11 and 12 of these presents; or

- (b) Commit any act of bankruptcy; or
- (c) Become physically or mentally unfit to attend to the business; or
- (d) Commit any criminal offense; or
- (e) Do or suffer any act which would be a ground for the dissolution of the partnership by the court, then and in any such case the other partner may within —— calendar months after becoming aware thereof by notice in writing determine the partnership, and in that case he shall have the option, to be exercised at the time of giving such notice, of purchasing the share of the other partner in the capital and assets of the business upon the like terms as are set forth in the next clause hereof in relation to the purchase by a surviving partner of the share of a deceased partner.

14. [SURVIVOR TO PURCHASE SHARE OF DECEASED PARTNER.] If either partner shall die during the continuance of the said partnership, the survivor shall purchase the share of the deceased partner in the capital and assets of the business on the following terms:

(a) The purchase price shall be the amount at which such share shall stand in the last balance sheet which shall have been prepared prior to the death of the deceased.

(b) In addition to the purchase money, the surviving partner shall pay a sum equal to interest on the amount mentioned in subclause (a), computed from the date of the then last preceding annual account up to the date of the death of the deceased at the rate of —— per cent. per annum in lieu both of interest on capital, including any arrears of such interest for preceding years, and profits during such period, credit being given for any sums drawn out by the deceased partner during the then current year under the provisions of clause 10 hereof.

(c) The said sum in lieu of interest on capital and profits shall be paid forthwith, but the purchase money shall be paid

by ——— equal installments at intervals of ——— calendar months, the first installment to be paid at the expiration of ——— calendar months after the death of the deceased, together with interest on the amount for the time being remaining owing at the rate of ——— per cent. per annum.

(d) The surviving partner shall also enter into a covenant to indemnify the personal representatives of the deceased from the debts, engagements, and liabilities of the partnership both existing and future.

15. [WINDING UP.] If the surviving partner shall not exercise the option of purchasing the share and interest of the deceased, or if the partnership shall be determined or expire during the joint lives of the partners, the partnership shall be wound up, and the assets distributed.

In witness, *etc.*

3. Partnership Between Three Persons—Longer Form

This indenture made the ——— day of ——— between ———, party of the first part, ———, party of the second part, and ———, party of the third part:

Witnesseth that the said parties hereto hereby mutually agree to become partners in the business of ——— for the period and upon the terms hereinafter expressed, that is to say:

1. [TERM.] The partnership shall commence on the date hereof (*or*, on the ——— day of ———; *or, where a past date is mentioned*, shall be deemed to have commenced on the ——— day of ———), and shall continue for the term of ——— years from that date, unless previously determined as hereinafter provided.

2. [FIRM NAME.] The style or firm name of the partnership shall be ———.

3. [DEATH OR RETIREMENT OF PARTNER.] The death or retirement of any partner shall not dissolve the partnership as to the other partners.

4. [SHARES.] Subject to the provisions hereof, the partners shall be entitled to the capital and property for the time being of the partnership, and the good will of the business, in equal shares (*or*, in the following shares, that is to say, *etc.*).

5. [CAPITAL.] The capital of the partnership shall be the sum of ——— dollars, to be contributed by the partners in equal shares (*or*, in the shares in which they are hereinbefore declared to be entitled to the capital and property of the partnership), and each partner shall forthwith pay into the ——— Bank to the credit of the partnership his aforesaid share of the capital, that is to say, the party of the first part the sum of ——— dollars, the party of the second part the sum of ——— dollars, and the party of the third part the sum of ——— dollars.

6. [FURTHER CAPITAL.] If any further capital shall at any time or times be considered by the partners to be necessary or desirable for efficiently carrying on the business, it shall be contributed by the partners in the shares in which they shall be for the time being entitled to the existing capital of the partnership.

7. [LOANS BY PARTNERS TO FIRM.] If any partner shall with the consent in writing of the other partners or partner advance any sum of money to the firm over and above his due contribution to the capital, the same shall be a debt due from the firm to such partner, and shall carry interest at the rate of ——— per cent. per annum. No sum so lent shall be deemed an increase of the capital of the partner advancing the same or entitle him to any increased share of the profits of the partnership. Every such sum, together with the interest for the time being due thereon, shall be repaid by the

firm, and received by such partner, at the expiration of _____ months from the time when by notice in writing the firm shall have signified to such partner their intention of making, or such partner shall have signified to such partner his intention of demanding, such repayment.

8. [BANK.] The bank of the partnership shall be the _____ Bank or such other bank as the partners shall from time to time agree upon.

9. [PAYMENT INTO BANK—CHECKS.] All partnership moneys not required for current expenses, and all notes, bills, checks, and other negotiable securities for money shall as and when received be paid into or deposited in the bank to the credit of the partnership account. All checks on such account shall be drawn in the firm name, and may be so drawn by any partner.

10. [EXPENSES.] All rents, taxes, costs of repairs, alterations, or improvements, insurance, and all other costs, charges, and expenses which shall be incurred in or about the business or in any wise relating thereto, and all losses which shall happen in respect to the business, shall be paid out of the income or capital of the partnership, and in case of any deficiency thereof by the partners in equal shares (*or*, in proportion to their respective shares for the time being in the capital and property of the partnership).

11. [SHARES IN NET PROFITS.] The net profits of the partnership, after payment of the expenses thereof hereinbefore provided for and the interest on current loans, if any (and subject to the creation and maintenance of the reserve fund hereinafter provided for), shall belong to the partners in equal shares (*or*, in the following shares, that is to say, *etc.*).

12. [RESERVE FUND.] (So much of the net profits in each year as shall be equal to _____ per cent. thereof (*or*, as shall exceed the sum of _____ dollars) shall be carried into a re-

serve fund and invested in such manner as the partners shall determine as a fund to provide against extraordinary or exceptional losses or expenses until the same shall amount to the sum of —— dollars; and whenever such fund shall be reduced below the last-mentioned sum by payments therefrom for any of the purposes aforesaid, the net profits in each year shall to the extent aforesaid be applied in making up such deficiency. The income arising from such reserve fund shall be divisible as net profits.)

13. [DRAWINGS.] Each partner shall be at liberty to draw out for his separate use the sum of —— dollars in every month on account of his accruing share of the net profits for the current year. If in any year the aggregate amount drawn out by any partner shall on the taking of the annual account be found to exceed his share of the net profits for that year, he shall repay the excess to the partnership.

14. [DUTIES OF PARTNERS.] Each partner shall (*following Form No. 2, cl. 11, p. 1017*).

15. [ACTS NOT TO BE DONE WITHOUT CONSENT.] No partner shall without the written consent of the other partners or partner (*following Form No. 2, cl. 12, p. 2117*).

16. [EXECUTION OF SECURITIES.] Every bond, bill of exchange, promissory note, or other security given on account of the partnership, other than checks drawn on the partnership account in the regular and ordinary course of business or for the purpose of a partner's authorized drawings, shall, unless otherwise unavoidable in the interest of the partnership, be signed, indorsed, accepted, or executed by all the partners; and any such instrument or security signed, indorsed, accepted, or executed by any partner in breach of this provision shall be deemed to be given on the separate account of such partner, who shall pay and discharge the same out of his own moneys and indemnify the other part-

ners against the payment thereof and against all actions, proceedings, costs, and claims in respect thereof.

17. [PARTNERS' PRIVATE DEBTS.] Each partner shall at all times duly and punctually pay and discharge his separate and private debts and engagements, whether present or future, and keep indemnified therefrom, and from all actions, proceedings, costs, claims, and demands in respect thereof, the partnership property and the other partners.

18. [ACCOUNTS.] Proper books of account shall be kept wherein shall be entered particulars of all moneys, goods, or effects belonging to or owing to or by the partnership, or paid, received, or sold or purchased in the course of the partnership business, and of all such other transactions, matters, and things relating to the said business as are usually entered in books of account kept by persons engaged in a business of the like character. The said books of account, together with all letters, papers, or documents concerning or belonging to the partnership (except such as may properly be kept elsewhere for safe-keeping) shall be kept at the place of business of the partnership, and each partner shall at all times have free access to and the right to inspect and copy the same.

19. [ANNUAL ACCOUNT AND VALUATION.] As soon as practicable after the —— day of —— in each year during the continuance of the partnership a general account and valuation shall be taken and made up to said day of the stock in trade, credits, property, affects, debts, and liabilities of the partnership, and of all transactions, matters, and things usually comprehended in a general account of the like nature. Such account and valuation shall be balanced, and agreed to and signed by all the partners, and, when so signed, shall be binding on all the partners, except that, if any manifest error be detected and pointed out by any partner to the others within —— months after such signature, such error shall be forth-

with corrected. Immediately after the signing and settling of such account and valuation each partner shall be entitled to draw out and receive his share of the net profits of the business for the then past year on bringing into the account all monthly sums previously drawn out by him under the provisions in that behalf hereinbefore contained.

20. [WINDING UP ON DETERMINATION.] Upon the determination of the partnership by lapse of time or by another event not herein otherwise provided for, a full and general account shall be taken of the assets, credits, debts, and liabilities of the partnership and of the transactions and dealings thereof, and with all convenient speed such assets and credits shall be sold, realized, and collected, and the proceeds applied in paying and discharging such debts and liabilities and the expenses of winding up the partnership affairs, and, subject thereto, in paying to each partner any unpaid profits (*or*, interest on capital) which may be due him and his share of the capital, and the balance, if any, of such proceeds shall be divided between the partners in equal shares (*or*, in the shares in which they are entitled to the net profits of the partnership); and the partners shall execute and concur in all necessary and proper instruments, acts, and things for effecting and facilitating the matters in this clause provided for and for the mutual release or indemnity of the partners.

(21. [VALUATION OF GOOD WILL ON DETERMINATION.] Upon any such determination as aforesaid of the partnership the good will of the partnership business shall not be sold, but each partner shall be at liberty to commence and carry on a similar business in his own or any other name not being identical with the name of the firm: Provided, that if upon such determination of the partnership the business thereof shall be sold as a going concern, the good will of the partnership shall be treated as a partnership asset, and no partner, unless

he shall be the purchaser of such business, shall for ——— years thereafter directly or indirectly carry on or be concerned in the business of ———, as principal or agent, within ——— miles from the then principal place of the business of the partnership.)

22. [PURCHASE OF SHARE OF DECEASED PARTNER.] If any partner shall die during the continuance of the partnership, the surviving partners or partner shall as and from the date of such death, and, if more than one, in the proportions in which they were at such date entitled to share in the net profits of the partnership, succeed to the share of the deceased partner in the partnership business and the property and good will thereof, and shall assume all the debts, liabilities, and obligations of the partnership, and pay to the representatives of the deceased partner the net value of such share at the date of such death, after providing for the then debts and liabilities of the partnership, such value in case of dispute to be determined by arbitration under the provision in that behalf hereinafter contained: Provided, that the surviving partners may elect not to purchase such share on giving notice in writing of such election to the representatives of said deceased partner, or, if there be none, on leaving such notice at the place of business of the partnership within ——— months after his death, and in that case the partnership shall be deemed to have determined at the date of the giving or leaving such notice as aforesaid, and thereupon the partnership shall be wound up as hereinbefore provided in the case of the determination of the partnership, and in the meantime the business shall be deemed to have been carried on by the surviving partners on the joint account of themselves and representatives of the deceased partner.

In the event of the purchase of such shares by the surviving partners or partner, no value shall be placed on the good will of the business as a partnership asset (*or*, the good will of the busi-

ness shall be regarded as a partnership asset, and the partners shall be deemed to be interested therein in the shares in which they were prior to such death entitled to the net profits of the partnership, and the value of such good will shall be deemed ——— times the average annual net profits of the partnership for the then preceding ——— years, or from the commencement of the partnership, whichever is the shorter period, and the value of the share in such good will of the deceased partner shall be added to and form part of the sum payable as provided in the preceding clause to the representatives of the deceased partner in respect to his share in the partnership business and the property and good will thereof).

The total sum payable under this clause to the representatives of a deceased partner shall be paid as soon as conveniently may be after the death, and in any case within ——— months thereafter, and the surviving partners or partner shall by their or his bond indemnify the representatives and estate of the deceased partner from the debts and liabilities of the partnership, and upon such payment being made and indemnity given the representatives of the deceased partner shall do all things necessary and proper for vesting the share of the deceased partner in the surviving partners or partner and enabling them to recover and collect the outstanding assets of the partnership.

24. [RETIREMENT OF PARTNERS.] Any partner may, at the end of the ——— or any subsequent year of the partnership, retire therefrom on giving not less than ——— months' previous notice in writing to the other partners or partner, and at the expiration of such year the partnership shall determine accordingly as to the partner giving such notice, and thereupon the provisions of the last preceding clause hereof shall (*with the substitution of the continuing partners or partner for the surviving partners or partner, and of the retiring partner for*

the representatives of the deceased partner, and other consequential modifications) apply as if the retiring partner had died at the expiration of such year. (The retiring partner, in the event of the purchase of his share under the said provisions, shall not for —— years from the date of his retirement directly or indirectly carry on or be concerned or interested in the business of ——, as principal or agent, within —— miles from the then principal place of business of the partnership.)

25. [EXPULSION.] If any partner shall sell, assign, or otherwise part with or incumber his share in the partnership or any part thereof, or shall suffer the same to be incumbered, seized, attached, or taken on execution, or shall become bankrupt or a lunatic or otherwise permanently incapable of attending to the partnership business, or shall act in any manner inconsistent with the good faith observable between partners, or shall be guilty of any conduct which would be a ground for dissolution of the partnership by the court, or shall absent himself from the partnership business more than —— days in any one year without the consent of the other partners, then and in any such case the other partners may, by notice in writing to the offending or incapacitated partner or his trustee or guardian, terminate the partnership so far as concerns such partner, whereupon the partnership shall determine accordingly, and the provisions of clause 22 hereof shall (*with the substitution of the continuing partners or partner for the surviving partners or partner, and of the offending or incapacitated partner or his guardian for the representatives of the deceased partner, and other consequential modifications*) apply as if the offending or incapacitated partner had died at the date when such notice shall take effect.

26. [NOTICE OF DETERMINATION.] Upon the determination of the partnership or the retirement of any partner by ex-

pulsion or otherwise, due notice of the fact of such determination or retirement shall be given by advertisement and by circulars to the customers of the firm, and such partner shall sign and concur in all proper notices thereof, and on any partner refusing to do so any other partner may sign the name of such refusing partner to any such notice.

27. [NOTICES, HOW GIVEN.] Any notice by these presents authorized to be given shall be deemed to be duly given if delivered personally to the person to whom it is authorized to be given or if sent by mail in a registered letter addressed to him at his usual or last known place of abode.

28. [ARBITRATION.] All disputes and questions whatsoever which shall arise, either during the partnership or afterwards, between the partners or their respective representatives, or between any of the partners and the representatives of any other partner, touching these presents, or the construction or application thereof, or on any account, valuation, or division of assets, debits, or liabilities to be made hereunder, or any act or omission of any partner, or any other matter in any way relating to the partnership business or the affairs of the partnership, or the rights, duties, and liabilities of any person hereunder, shall be referred to a single arbitrator if the parties agree upon one, otherwise to a board of three arbitrators, of whom one shall be selected by each party to the difference, and a third person shall be selected by those two; and the decision and award of such single arbitrator, or of any two of such board, as the case may be, shall be final and binding upon the said parties and their respective representatives.

In witness, *etc.*

4. Partnership Between Manufacturers, One of Whom is a Dormant Partner

This indenture is made the —— day of —— between ——, party of the first part, and ——, party of the second part:

[RECITAL OF ESTABLISHMENT OF BUSINESS.] Whereas, the party of the first part is the owner in fee simple of certain land and premises (*description*), together with the buildings thereon, consisting of a factory for the manufacture of ——; and

[RECITAL OF AGREEMENT FOR PARTNERSHIP.] Whereas, the party of the first part has agreed to admit the party of the second part into partnership with him in the said manufacturing business, and it has been further agreed that the party of the second part should pay to the party of the first part for his own use and benefit the sum of —— dollars, being one-half of the estimated and agreed value of the said premises and factory, and the machinery, fixtures, fittings, and appurtenances thereof, and that each of the said parties should contribute as capital the sum of —— dollars, to be secured or paid as hereinafter provided; and

[RECITAL OF PAYMENT OF CONSIDERATION.] Whereas, in pursuance of the said agreement the party of the second part has paid to the party of the first part the said sum of —— dollars, the receipt whereof by the party of the first part is hereby acknowledged; and

[RECITAL OF CONTRIBUTIONS OF CAPITAL.] Whereas, in further pursuance of the said agreement, the party of the first part has secured his said payment of his said contribution to the capital of the said partnership by executing to the party of the second part three several promissory notes each for the sum of —— dollars and payable respectively, with interest

thereon at the rate of ——— per cent. per annum, ———, ——— and ——— months from the date hereof, the receipt whereof by the party of the second part is hereby acknowledged, and the party of the second part has paid his said contribution of ——— dollars to the capital of the said partnership into the ——— Bank to the credit of an account in the firm name hereinafter mentioned of the said intended partnership, the payment whereof in manner as aforesaid is by the party of the first part hereby acknowledged.

Now, this indenture witnesseth that, in further pursuance of the said agreement and in consideration of the premises, the said parties hereby mutually covenant and agree as follows:

1. [BUSINESS AND TERM.] The said party of the first part and the party of the second part will become and continue partners in the said business of the manufacture of ——— from the date hereof for the term of ——— years.

2. [PLACE OF BUSINESS AND FIRM NAME.] The said business shall be carried on at the said factory and premises under the firm and style of ———.

3. [PREMISES TO BE PARTNERSHIP PROPERTY.] The said premises and factory shall be partnership property, and shall belong to the partners in equal shares, and shall forthwith at the cost of the firm be conveyed to and vested in the partners in joint tenancy as part of their partnership estate, and in the meantime shall be held in trust by the party of the first part.

4. [CAPITAL.] The capital of the partnership shall be the sum of ——— dollars, contributed and secured or paid by the partners respectively as aforesaid.

5. [INCREASE OF CAPITAL.] The capital may be increased from time to time as the partners shall determine, and the amount of any such increase shall be contributed by the partners in such proportions as may be agreed. If the proportion of the capital for the time being contributed by either partner

shall at any time exceed the proportion contributed by the other partner, the amount of such excess for the time being shall be considered a debt due from the partnership and bear interest at the rate of ——— per cent. per annum, payable before any division of the profits, and may be withdrawn by the partner entitled thereto on giving not less than ——— months' previous notice in writing to the other partner, and shall be withdrawn on like notice by the other partner, and in either case, if the same shall not be withdrawn at the expiration of the notice, the same shall cease to bear interest (*or*, the same shall thereafter bear interest only at the rate of ——— per cent. per annum).

6. [CAPITAL OWING FROM ACTIVE PARTNER.] The several sums secured by the promissory notes aforesaid of the party of the first part, or so much thereof as shall for the time being remain unpaid, shall be considered a debt due from the party of the first part to the partnership, and until payment shall be charged upon the share and interest of the party of the first part in the partnership, and the party of the second part shall hold the said notes and the proceeds thereof in trust for the partnership accordingly.

7. [BANKING, CHECKS, ETC.] The bank of the partnership shall be the ——— Bank or such other bank as the partners shall from time to time agree upon. All moneys, bills, notes, checks, and other negotiable instruments, except moneys required for current expense, shall as received be deposited in the bank to the credit of the partnership account. All checks on such account shall be drawn in the firm name and by the party of the first part only (except that the party of the second part may draw checks in the firm name for such sums as he may from time to time be entitled to draw out on account of his share of the net profits of the partnership).

8. [INSURANCE.] The said factory and all the other property of the partnership shall be kept insured against fire to the full value thereof in the name of the partnership in such companies as the partners may approve, and all moneys received in the event of loss or damage of any property so insured shall be applied in making good such loss or damage.

9. [EXPENSES.] The cost of such insurance, taxes, the expense of keeping the said factory, machinery, fixtures, and fittings in good repair, and of all alterations, improvements, or additions thereof or thereto (which may be agreed upon by the partners), and all other expenses in respect to the same, and the salary payable to the party of the first part as hereinafter provided, and the salaries and wages of all clerks, servants, workmen, and other persons employed in the said business, and all other expenses, losses, or damages incurred in relation thereto, and the interest, if any, on capital payable to either partner, shall be paid out of the profits or capital of the partnership, and, in case of deficiency, by the partners in equal shares.

10. [DRAWINGS BY PARTNERS.] The party of the first part, in addition to his annual salary hereinafter provided for, may draw out of the said business for his own use the sum of ——— dollars monthly on account of his share of current profits; and the party of the second part may draw out in like manner on account of his share of current profits in each year by equal monthly installments a sum equal to ——— per cent. on his said contribution of ——— dollars to the capital. If on the taking of any annual account, as hereinafter provided, the aggregate amount so drawn out by either during the period covered by the account shall be found to exceed the share of profits for that period, he shall forthwith refund such excess to the partnership.

11. [DIVISION OF PROFITS.] The net profits of the partnership shall belong to the partners in equal shares. If upon taking the account for any year during the first ——— years of the partnership the share of profits of the party of the second part shall exceed a sum equal to ——— per cent. on his share of ——— dollars contributed to the capital, such excess shall be left in the partnership on the terms mentioned in clause 5 hereof, except that the same shall not be drawn out until the expiration of the first ——— years of the partnership, if it shall so long continue. Save as aforesaid, the profits of each partner shall be carried to his credit immediately after the taking and signing of the annual account whereby the same shall be ascertained and may be drawn out at his pleasure, subject, however, as regards the share of the party of the first part, to the aforesaid charge on his share in the partnership as provided in clause 6 hereof.

12. [ACTIVE PARTNER TO HAVE SOLE MANAGEMENT—SALARY.] The party of the first part shall have the sole and exclusive management of the partnership business, and shall devote his whole time and attention thereto, and carry on and manage the same for the common benefit of the partners to the utmost of his skill and ability, with the assistance of such clerks, servants, workmen, and other employés as he shall deem necessary, and shall not during the continuance of the partnership be concerned or engage directly or indirectly in any manufacture, trade, or business other than the business of the partnership. In consideration of such services the party of the first part shall be allowed an annual salary of ——— dollars, payable by equal monthly installments on the last day of each month.

13. [DORMANT PARTNER NOT TO INTERFERE, ETC.] It shall not be necessary or lawful for the party of the second part to take any part or in any way interfere in the conduct or

management of the said business, and he shall not during the continuance of the partnership be concerned or engage directly or indirectly, except under these presents, in the business of the manufacture of ———, or, except as hereby authorized, use the firm name of the partnership or sign his name as a partner therein unless with the consent of the party of the first part; but he shall at all times have access to and the right to visit and inspect the said factory and business and all the stock in trade and other property of the partnership.

14. [DUTIES OF PARTNERS TO EACH OTHER.] Each partner shall be just to the other in all dealings and transactions relating to or affecting the partnership business, and whenever reasonably required shall render to the other a true account thereof and inform him of all accounts, writings, and other things which have come to his hands or knowledge, and neither shall without the consent of the other employ any of the money, goods, or effects of the partnership or pledge its credit except in the ordinary course of business and upon the account and for the benefit of the partnership: Provided, that nothing in this clause shall be deemed to confer on the party of the second part any power or authority on behalf of the partnership which by any other clause hereof he is precluded from having or exercising.

15. [ACTS NOT TO BE DONE.] Neither partner shall without the previous consent in writing of the other partner enter into any bond, or become bail, indorser, surety, or security with or for any person, or do or knowingly cause or suffer to be done any thing whereby the partnership property or any part thereof may be seized, attached, or taken in execution, or assign, mortgage, or incumber his share of the partnership, or compromise or compound or, except upon full payment, release or discharge any debt due to the partnership.

16. [PAYMENTS BY PARTNERS OF PRIVATE DEBTS.] Each partner shall, *etc.* (following Form No. 3, cl. 17, p. 1024, *with necessary changes*).

17. [ACCOUNTS.] The party of the first part shall keep or cause to be kept under his supervision proper books of account of and of all his transactions on behalf of the partnership, and once in each month shall furnish to the party of the second part a summary in writing of the operations of the partnership from the commencement thereof or from the foot of the last previous summary, as the case may be, so as to show as nearly as may be the result of such operations and the position of the partnership business. Such books of account, and all securities, instruments, vouchers, letters, and other documents relating to the partnership shall be kept in the counting house at the said factory, and each partner shall at all times have access to and the right to inspect and copy the same.

18. [ANNUAL ACCOUNT AND VALUATION.] As soon as practicable, *etc.* (following Form No. 3, cl. 19, p. 1024, *with necessary changes*).

19. [WINDING UP.] Within —— months after the determination of the partnership by lapse of time or otherwise a final account and valuation of the assets, credits, debts, and liabilities of the partnership shall be taken, made, and signed by the partners or their respective representatives in like manner as hereinbefore provided with respect to the annual account and valuation, and thereupon, subject as hereinafter provided, the partners or their respective representatives shall make due provision for paying and discharging such debts and liabilities; and, subject thereto and to the payment of any sum which may be due to either partner or his representatives for capital contributed in excess of the other partner, or for interest on capital or undrawn profits or otherwise, the assets

of the partnership shall be divided between the partners or their respective representatives in equal shares, and they shall respectively execute, do, and concur in all necessary or proper instruments, acts, and things for getting in the outstanding debts and assets of the partnership, and for vesting in the parties entitled thereto the sole right in their respective shares in such assets, credits, and effects, and for mutual release or indemnity, and for notifying the determination of the partnership to the customers or parties having had dealings with the partnership.

20. [OPTION TO PURCHASE OTHER PARTNER'S SHARE ON DETERMINATION.] If the partnership shall be determined by the expiration of the said term, and either partner shall desire to continue, but the other partner shall be unwilling to continue, the said business, or if the partnership shall be determined by the death of either partner during the said term, the continuing or surviving partner shall have the option, to be notified in writing to the outgoing partner or to the representative of the deceased partner within —— months from such determination, of purchasing the share of the outgoing or deceased partner in the partnership business, assets, credits, and effects, at a price equal to the value of such share, as ascertained by the final account and valuation hereinbefore provided for, together with a sum equal to one-half of the value of the good will ascertained as provided in clause 22 hereof. Such purchase money, with interest thereon at the rate of —— per cent. per annum from the date of such determination, shall be paid to the outgoing partner or to the representatives of the deceased partner within —— months from that date, and all necessary and proper instruments shall be executed for vesting in the continuing or surviving partner the said share of the outgoing or deceased partner and for indemnifying the outgoing partner or the representatives and estate of the deceased

partner from the debts and liabilities and obligations of the partnership.

21. [CONTINUANCE OF BUSINESS ON DEATH OF DORMANT PARTNER.] If the party of the second part shall die during the said term, leaving the party of the first part him surviving, and the party of the first part shall be unwilling to exercise the option of purchase given him by the preceding clause hereof, then and in that case, if upon the taking of the final account and valuation hereinbefore provided for it shall appear that the said business is solvent, the share of the deceased partner in the capital and property of the partnership shall be retained in the said business, and the party of the first part shall continue to carry on the said business for the remainder of the said term on behalf of himself and the representatives of the party of the second part, as nearly as may be according to the terms and provisions of these presents, and the said representatives shall succeed to his share in the said business and the property, profits, and good will thereof, but as dormant partners only, and subject as nearly as may be to the terms and provisions of these presents applicable to the party of the second part: Provided, that if in any year the share of profits coming to such representatives shall be less than ——— per cent. on the capital of the party of the second part retained in the business, such representatives shall be entitled to determine the partnership on giving to the party of the first part not less than ——— months' notice in writing of their intention so to do; and on the expiration of such notice the partnership shall determine accordingly, and thereupon the affairs of the partnership shall be wound up in the manner provided in clause 19 hereof as if the party of the second part had died at the date of the expiration of such notice, but with the like option to the party of the first part of purchasing the share of

the party of the second part as is provided in the preceding clause hereof.

22. [VALUATION OF GOOD WILL.] Upon the determination of the partnership and a division of the assets thereof under clause 19 hereof the good will of the said business shall not be regarded or valued as a partnership asset, but each partner or his representatives shall be at liberty to commence or carry on a similar business in his or their own or any other name or names not being identical with the name of the firm. Upon the purchase of the share of an outgoing or deceased party under any of the provisions hereof the value of the good will shall be deemed to be ——— times the average annual net profits of the partnership for the then last preceding ——— years or from the commencement of the partnership, whichever shall be the shorter period.

23. [ARBITRATION.] All disputes and questions, *etc.* (*following Form No. 3, cl. 28, with necessary changes*).

In witness, *etc.*

5. Partnership Between Lawyers

———, ———, and ——— hereby form a partnership as attorneys and counselors at law under the name of ———, to continue for ——— years from this date; but either party may retire on one month's notice in writing.

——— shall receive one-half, ——— one-third, and ——— one-sixth of all the business receipts, including counsel fees from all sources, after deducting expenses.

Each party shall devote all his working time to the business of the partnership.

All receipts shall be deposited in a bank to be selected by the firm, in the name of the firm, and, after current expenses are paid, shall be divided whenever there is a sum on hand exceeding ——— dollars.

All checks shall be drawn by ———.

Neither member of the firm shall become indorser or security in any manner for any other person without the consent of all the other members of the firm. *(Signatures.)*

Dated ———, 19—.

6. Same—Longer Form

This agreement made the ——— day of ——— between ———, party of the first part, ———, party of the second part, and ———, party of the third part:

Witnesseth that the said parties hereby mutually covenant and agree as follows:

1. [AGREEMENT FOR PARTNERSHIP.] The said parties will carry on in partnership at ———, under the style of ———, the business of attorneys and counselors at law, in continuation of the like business heretofore carried on by the parties of the first and of the second part under the style of ———.

2. [TERM.] The partnership shall continue for the term of ——— years from the date hereof, unless previously terminated as hereinafter provided.

3. [PLACE OF BUSINESS.] The partnership business shall be carried on at the offices in ——— in which the said former business of the parties of the first and of the second part has heretofore been carried on or at such other offices as the partners may from time to time agree upon.

4. [EXPENSES.] All rents, insurance, salaries, wages, and other expenses incidental to the partnership business, and all losses or damages incurred therein, and the interest on any capital payable to any partner, shall be paid out of the profits or capital of the partnership, and, in case of deficiency, by the partners in proportion to their respective shares in the net profits.

5. [OFFICE FURNITURE, BOOKS, ETC.] All the furniture, fittings, and law or other books in and about the premises and used by the said parties of the first and of the second part in connection with their former business shall continue to belong to them respectively according to their present ownership therein, but during the continuance of the partnership the firm shall have the use thereof free of expense except for insurance and repairs. All other furniture, fittings, and books hereafter required shall be paid for out of the partnership moneys, and shall belong to the partnership in the shares in which the partners may be entitled respectively to share in the net profits.

6. [CAPITAL.] The capital requisite for carrying on the partnership shall be contributed from time to time by the partners in the shares for which they are for the time being entitled to the net profits of the business, and such capital shall bear interest at the rate of ——— per cent. per annum.

7. [BANKING.] *See Form No. 3, cl. 8, p. 1022.*

8. [BOOKS OF ACCOUNT, ETC.] Proper books of account and diaries shall be kept by the partners at the said offices. Each partner shall punctually make full and proper entries of all business transacted by him on account of the partnership.

9. [ATTENTION TO BUSINESS.] Each partner shall devote his whole time and attention to the partnership business, and no one of the partners shall without the written consent of the others engage in any other business or hold any office or appointment: Provided, that the parties of the first and of the second part shall be at liberty to hold at his own expense and for his own benefit any office in the ——— Company.

10. [BUSINESS PROHIBITED.] No one of the partners shall conduct any business for any person, firm, or corporation after having been required in writing by the others not to do so.

11. [BUSINESS FOR PARTNERS, ETC.] If the firm or any partner shall act or transact any legal business for a partner, or the wife or child of a partner, or his or their trustees, no charge shall be made therefor except for disbursements or costs recovered against other parties therein.

12. [ACTS NOT TO BE DONE.] No partner shall (*following Form No. 2, cl. 12, p. 1017, so far as may be deemed best*).

13. [PARTNERS TO PAY PRIVATE DEBTS.] Each partner shall (*following Form No. 3, cl. 17, p. 1024*).

14. [ANNUAL ACCOUNT.] On the ——— day of ——— in each year a general account and balance sheet shall be taken and made in the manner and on the principle so far as applicable adopted by the said former firm of. ———, and so that actual receipts and payments alone shall be taken into account.

15. [SHARES IN PROFITS AND DRAWINGS.] The net profits appearing on each such yearly account shall be divided as follows: The party of the first part shall be entitled to one-half thereof, the party of the second part to one-third thereof, and the party of the third part to one-sixth thereof; and such profits, less any sum which any partner with the consent of the others may have previously drawn on account thereof, may be drawn by the partners respectively entitled thereto as and when there shall be money at the bank available for that purpose over and above the moneys needed for the current purposes of the partnership business. If in taking any such account any partner shall be found to have drawn out more than his share of the profits as ascertained thereby, he shall forthwith repay the excess to the partnership.

16. [SHARE OF JUNIOR PARTNER GUARANTEED.] If in any such yearly account the share of profits to which the party of the third part shall be entitled shall not amount to ——— dollars for the year comprised in such account, then the difference between that share and ——— dollars shall be paid

to the party of the third part by the other partners in the proportion in which they as between themselves shall be entitled to the net profits.

17. [WINDING UP.] Upon the determination of the partnership for any cause, subject to the provisions of the following clause, a full account shall be taken and settled of all the moneys, debts, and effects belonging to or due the firm and of all debts and liabilities of the firm, and thereupon the partners and the representatives of any deceased partner shall make provision for the payment and satisfaction of their respective proportions of the said debts and liabilities due from the firm, and the balance of the capital, assets, and effects of the partnership and the profits thereof shall be got in, sold, and realized, and the net proceeds or balance thereof after paying debts and liabilities and what may be due the respective partners or their representatives for interest on capital or undrawn profits shall be divided between the partners and their representatives in proportion to the share and interest of the partners therein respectively: Provided, that all office papers belonging to the partnership shall be distributed among the surviving partners as nearly as may be in such manner that the papers relating to the business of any client shall go to such of the partners respectively as the client may designate.

18. [OPTION TO PURCHASE DECEASED PARTNER'S SHARE.] If the partnership shall be determined by the death of any partner during the said term, the surviving partners shall have the option, to be notified in writing to the representatives of the deceased partner within —— days from such death, of purchasing the share of the deceased partner in the partnership assets, credits, and effects at a price which shall be as nearly as may be the value of such share as it would be ascertained if the partnership were wound up in the manner provided in the preceding clause. In case the surviving partners

and the representatives of the deceased partner cannot agree upon such value, the same shall be determined by arbitrators in the manner provided in the following clause. Such purchase money, with interest at the rate of ——— per cent. per annum from the date of the award, shall be paid to the representatives of the deceased partner within ——— days after that date, and all necessary and proper instruments shall be executed for vesting in the surviving partners the said share of the deceased partner in the assets, credits, and effects of the partnership and for indemnifying the representatives of the deceased partner from the debts, liabilities, and obligations of the partnership.

19. [ARBITRATION.] If any dispute, *etc.* (*following Form No. 3, cl. 28, p. 1029*).

In witness, *etc.*

7. Articles on Introduction of a New Partner

This indenture made the ——— day of ——— between ——— and ———, hereinafter called the old partners, of the one part, and ———, hereinafter called the new partner, of the other part:

[RECITAL OF EXISTING PARTNERSHIP.] Whereas, the old partners are now and have been carrying on the business of ——— in partnership, pursuant to articles of partnership made between them and dated the ——— day of ———; and

[RECITAL OF ACCOUNTING TO DATE.] Whereas, an account of all the capital, assets, and liabilities of the former partnership has been taken, and the profits shown by such account have been divided between the old partners as of the date hereof; and

[RECITAL OF AGREEMENT TO TAKE IN NEW PARTNER.] Whereas, the said parties of the first part have agreed to take the said party of the second part into partnership with them

in the said business in the manner and upon the terms hereinafter expressed; and

[RECITAL OF CONTRIBUTION TO BE MADE BY NEW PARTNER.]

Whereas, it was upon the treaty for the admission of the new partner agreed that the new partner should bring into the business of the new partnership the sum of ——— dollars in cash, being ——— of the estimated and agreed value of the entire property, assets, and effects of the said former partnership, and in pursuance of the said agreement the new partner has deposited with the bankers of and to the credit of the new partnership the said sum of ——— dollars, the receipt whereof the old partners hereby acknowledge.

Now, this indenture witnesseth that the said parties hereto hereby mutually covenant and agree as follows:

1. [FORMATION OF PARTNERSHIP.] The old partners and the new partner will in the manner and upon the terms hereinafter expressed become and remain partners in the said business for the term of ——— years from the ——— day of ———.

2. [CONTINUANCE OF FORMER ARTICLES.] The existing articles of partnership between the old partners shall, notwithstanding these presents, have full force and effect and regulate the relations of the partnership hereby formed, in all respects as if the said articles had contemplated an equal partnership between three partners, except so far as the same shall be necessarily modified or affected by these presents.

3. [CAPITAL.] The capital of the new partnership shall consist of the said property, assets, and effects of the former partnership and of the said sum of ——— dollars brought into the business by the new partner as aforesaid.

4. [SHARES OF PARTNERS.] The net profits of the business shall be divided between the partners, new and old, equally, that is to say, each shall be entitled to one-third thereof, and

they shall in like proportion bear all losses, including loss of capital; and their respective shares and interests in all and singular the property, assets, and effects of the partnership shall be in like proportion.

In witness, *etc.*

8. Articles of Partnership in Relation to a Single Adventure (Syndicate Agreement)

This agreement made the _____ day of _____ between the several persons whose names are hereunto subscribed witnesseth that it is hereby mutually agreed between them as follows:

1. [CONSTITUTION OF SYNDICATE.]• The parties hereto shall constitute a syndicate under the style or firm name of the _____ Syndicate.

2. [OBJECT.] The object of the syndicate is to negotiate for and purchase the property known as the _____ Electric Railway (*or whatever other purpose the syndicate is formed for*), and to resell the same at such price or prices and in such manner as the parties shall determine.

3. [APPOINTMENT AND DUTIES OF MANAGER.] The undersigned _____ shall be the manager of the syndicate, and shall in his own name and ostensibly as principal, but in reality as agent for and with the sanction of the syndicate, negotiate and enter into all contracts for the purchase or sale of the said _____, and he shall be entitled to be fully indemnified against all liabilities under such contracts out of the capital of the syndicate, or, if that be insufficient, by the parties hereto in the proportions in which they are respectively interested in such capital, and for that purpose he himself shall, as a member of the syndicate, bear his due proportion of such indemnity.

4. [MEETINGS AND NOTICES.] The said _____ may call meetings of the syndicate whenever he thinks it desirable, and

he shall call such meetings before entering into any such contract as aforesaid, or, if required in writing so to do, by ——— members. Such meeting shall be called by mailing a notice in that behalf in a prepaid letter addressed to each member of the syndicate at the address given below: Provided, that the notice, in the case of a meeting called to sanction any such contract as aforesaid, shall state the nature of the business to be transacted. Except in urgent cases, such notices shall be mailed in time to give each member at least ——— hours' notice of the meeting on the assumption that the notice will be delivered in the ordinary course of mail.

5. [CAPITAL—SHARES IN PROFITS.] Each member of the syndicate shall forthwith pay into the ——— Bank, at ———, to the credit of the ——— Syndicate, the sum set opposite to his signature by way of contribution to the capital of the syndicate, and each member shall share in the profits, if any, and contribute to the losses, if any, whether such losses exceed the said capital or not, in the proportion of his contribution to the said capital. The said capital shall be applied for the purposes of the syndicate, and all checks shall be signed by the said (*manager*) and ———.

6. [VOTING.] Each member shall have one vote for each sum of ——— dollars subscribed by him to the capital. All questions relating to the business of the syndicate shall be decided by the majority of the votes of those present and voting at a meeting duly called, and such decision shall be binding on all members whether present at such meeting or not.

7. [REMOVAL AND APPOINTMENT OF MANAGERS.] The members of the syndicate may by a majority of the votes of those present and voting at any meeting displace the said ——— (or any other manager) as manager. In that case, at the same or a subsequent meeting, or in case of the death or resignation of any manager at a meeting convened for that purpose,

the members may in like manner appoint some other member or an outsider to be manager: Provided, that notice of every such removal or appointment shall be given in the notice convening the meeting. Every new manager shall have powers and duties similar to those of the original manager.

8. [EXPENSES AND COMMISSION OF MANAGER.] In addition to his share of profits, if any, the manager for the time being shall at the dissolution of the syndicate be entitled to all his reasonable expenses; and also to a commission of —— per cent. on all the net profits actually made by the syndicate. And if there shall be a succession of managers, such commission shall be divided between them in such proportions as the syndicate shall determine, having regard to the value of their services respectively, and for this purpose the decision of a majority of the members voting on the question shall be conclusive.

9. [DISSOLUTION.] The syndicate shall be dissolved when the said —— shall have been purchased and resold, or if the said —— shall not have been purchased within —— calendar months of the date of these presents.

10. [ULTIMATE DIVISION OF CAPITAL AND PROFITS.] On such dissolution after payment of all expenses and commissions, if any, the residue of the capital and any profit shall be divided between the members in the proportions aforesaid.

In witness whereof the undersigned have hereto subscribed their signatures the day and year first above written.

(Signatures of sub- scribers.)	(Addresses of sub- scribers.)	(Amount of capital subscribed by each subscriber.)
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9. Agreement to Continue Partnership—By Indorsement on Articles

Whereas, the partnership evidenced by the within articles of agreement has this day expired by the limitations contained herein (*or*, will expire on the ——— day of ——— next), it is hereby agreed that the same shall be continued on the same terms, and subject to all the provisions and conditions therein contained, for the further term of ——— years from this date (*or*, from the ——— day of ——— next.)

In witness, *etc.*

10. Indenture Extending Term of Partnership with Modifications of Original Articles

Indenture made the ——— day of ——— between ———, party of the first part, ———, party of the second part, and ———, party of the third part:

[RECITAL OF ORIGINAL ARTICLES.] Whereas, by an indenture of partnership dated the ——— day of ——— the parties hereto agreed to enter into partnership in the business of ——— for the term of ——— years from the ——— day of ———, which term will expire on the ——— day of ——— next.

Now, this indenture witnesseth that the said parties hereby mutually covenant and agree as follows:

1. [TO EXTEND TERM.] The parties hereto will be and continue partners in the said business for the further term of ——— years from the said ——— day of ——— next upon the terms and conditions, so far as applicable, of the above-recited indenture of partnership in all respects as if the term limited by the said indenture for the duration of the partnership had been the full term of ——— years, instead of the shorter

term of _____ years thereby limited, but subject nevertheless to the modifications of such terms and conditions which are hereinafter contained.

(Insert modifications as may be agreed.)

In witness, *etc.*

11. Dissolution of Partnership—By Indorsement on Articles

The partnership heretofore subsisting between us, the undersigned _____, _____, and _____, under and pursuant to the within articles of partnership, is hereby dissolved, except so far as may be necessary to continue the same for the liquidation and settlement of the business thereof. The said _____ (*or, each of the undersigned*) is authorized to sign in liquidation.

In witness, *etc.*

12. Deed of Dissolution of Partnership; One Partner Retiring and Assigning His Share to the Continuing Partners

This indenture made the _____ day of _____ between _____, hereinafter called the retiring partner, of the one part, and _____ and _____, hereinafter called the continuing partners, of the other part:

[RECITAL OF PARTNERSHIP AND DISSOLUTION AGREEMENT.]
Whereas, under an indenture of partnership dated the _____ day of _____, the parties hereto have in partnership carried on the business of _____ under the firm and style of _____, and it has been agreed that the said partnership shall be determined, and that the retiring partner should receive the amount due to him for his share in the said business and the capital, stock, effects, and good will thereof, and should with-

draw from the said business leaving the same to be carried on by the continuing partners for their own benefit or otherwise as they might think proper ; and

[RECITAL OF AGREEMENT AS TO VALUE OF RETIRING PARTNER'S SHARE.] Whereas, valuations and estimates of the property, assets, credits, and effects of the said business and the good will thereof have been made, and the same, after deducting the outstanding debts and liabilities of the said partnership, have been agreed to be taken as between the parties hereto as of the value of ——— dollars, of which the (one-third) share of the retiring partner has been fixed and agreed at the sum of ——— dollars.

Now, this indenture witnesseth as follows :

1. [DISSOLUTION.] In pursuance of the said agreement and in consideration of the premises, the parties hereto dissolve as and from the ——— day of ——— the partnership heretofore subsisting between them in the business aforesaid. And notice of such dissolution and of the intended continuance of the said business by the continuing partners shall be forthwith advertised and notified to the customers of the said partnership by a circular, the form of which has already been signed by the parties hereto.

2. [MUTUAL RELEASES.] The retiring partner hereby releases the continuing partners and each of them, and the continuing partners hereby respectively release the retiring partner, from all actions, accounts, claims, and demands in relation to the said partnership hereby dissolved, and from all clauses, covenants, agreements, matters, or things in the said recited indenture of partnership contained.

3. [ASSIGNMENT OF SHARE OF RETIRING PARTNER.] In consideration of the sum of ——— dollars to him paid by the continuing partners, the receipt whereof is hereby acknowledged, and of the covenants and agreements on the part of the

continuing partners herein contained, the retiring partner hereby assigns and releases unto the continuing partners all that the (one-third) part or share and all other, if any, his respective share and interest of and in the said business of the said partnership hereby dissolved, and the property, assets, credits, effects, and good will thereof. To hold the same unto the continuing partners absolutely.

[POWER OF ATTORNEY.] The retiring partner hereby irrevocably appoints the continuing partners and each of them his true and lawful attorney in his name, solely or jointly with the continuing partners or otherwise, but at their sole risk and cost, to ask, demand, sue for, recover, receipt for, and discharge all and singular the debts, estates, and effects of or due or owing or belonging to the said partnership hereby dissolved or any part thereof, with full power to settle all accounts, matters, and things whatsoever relating to the said business with every and all person or persons whomsoever, and to compound for or release all or any of the debts or claims belonging thereto and to submit the same to arbitration, and otherwise to act in the premises in all things for the purposes aforesaid as they shall think proper, with full power of substitution, and generally to use and take every method or expedient whatsoever for recovering the said partnership estate, debts, and effects in as full a manner as they, the retiring partner and the continuing partners, might or could jointly have done if the said partnership were still subsisting.

[COVENANTS OF CONTINUING PARTNERS.] The continuing partners jointly and severally covenant with the retiring partner that they or one of them will duly pay and satisfy all debts and liabilities of the said partnership hereby dissolved, except only such debts, if any, as may have been contracted by the retiring partner and have not been entered in the partnership accounts; and, further, that they will at all times effectually

indemnify and keep indemnified the retiring partner, his heirs, executors, and administrators, from the said debts and liabilities, and from all actions, proceedings, costs, claims, and demands in respect thereof.

[COVENANT OF RETIRING PARTNER.] The retiring partner hereby covenants with the continuing partners that he will not for the period of _____ years from the date hereof, either alone or in partnership with any other person or persons, or as agent for or on behalf of any other person or persons or corporation or otherwise, carry on or engage in or be concerned directly or indirectly in the business of _____ at _____.

In witness, *etc.*

13. Notice of Dissolution

Notice is hereby given that the partnership heretofore subsisting between (us, the undersigned) _____, _____, and _____, heretofore carrying on business as _____ at _____ under the style or firm of _____, has been dissolved (by mutual consent; *or*, pursuant to the terms of the articles; *or*, by reason of the death of the said _____) as and from the _____ day of _____ (*or*, from the date hereof) (so far as concerns the said _____, who retires from the said firm). All debts due to and owing by the said late firm will be received and paid respectively by _____ (who will continue to carry on the said business in partnership under the style or firm of _____).

Dated the _____ day of _____.

(Signatures by parties giving notice, including the representatives of any who have died.)

14. Notice of Retirement

To (*name of partner or partners other than retiring partner*):

Under the terms of our articles of partnership, dated the _____ day of _____, I hereby give you notice that it is my intention to retire from the partnership forthwith (*or, as and from and immediately after the _____ day of _____ next, being the end of the current year of the partnership; or, on the _____ day of _____ next*).

Dated the _____ day of _____.

(*Signature.*)

15. Limited Partnership, Where a Person is Admitted by Two General Partners as Special Partner ¹

Indenture made the _____ day of _____ between _____ and _____, of _____, hereinafter called the general partners, of the one part, and _____, of _____, hereinafter called the special partner, of the other part:

[RECITAL OF ORIGINAL ARTICLES.] Whereas, the general partners have heretofore carried on the business of _____ in partnership under the firm name of _____, under articles of partnership dated the _____ day of _____;

[RECITAL OF AGREEMENT.] And whereas, it has been agreed by the parties hereto that the special partner shall be admitted into partnership with the general partners upon the payment of the sum of _____ dollars, and that the rights of the general partners, on the one hand, and of the limited partner, on the other hand, shall be regulated by the provisions hereinafter contained, and that the rights of the general partners as between themselves shall be regulated by the said partnership articles as modified by the provisions hereinafter contained;

¹ The particular statute should be consulted with reference to the propriety or validity of the terms of a limited partnership, ante, p. 1011.

[RECITAL OF PAYMENT.] And whereas, the said sum of _____ dollars has been paid in actual cash by the special partner _____ to the credit of the firm of _____ in the bank, the receipt whereof is hereby acknowledged.

Now, this indenture witnesseth that the parties hereto hereby mutually agree to become partners in the said business of _____ for the period and upon the terms hereinafter expressed, that is to say:

1. [DURATION OF PARTNERSHIP.] The partnership shall commence on the _____ day of _____ (*fixing a date which will allow time for compliance with the statutory requirements for the formation of a limited partnership*), and shall terminate on the _____ day of _____, unless previously determined as hereinafter provided.

2. [PARTNERS GENERAL AND SPECIAL.] Each of them the said _____ and _____ shall be a general partner, and the said _____ shall be a special partner.

3. [SHARE OF SPECIAL PARTNER.] The share of the special partner in the capital of the partnership shall be _____ dollars.

4. [FIRM NAME.] The firm name under which the business of the partnership shall be conducted shall be _____.

5. [NATURE OF BUSINESS.] The general nature of the business to be transacted by the partnership shall be _____.

6. [TO COMPLY WITH REQUIREMENTS FOR FORMATION OF LIMITED PARTNERSHIP.] The parties hereto shall forthwith execute a certificate and an affidavit and cause such certificate to be recorded and published, and proof of such publication to be filed, and do all other things requisite for the formation of such partnership and constituting it a limited partnership, all in conformity with the provisions of chapter _____ of the (General) Statutes of the state of _____ (*or otherwise providing for compliance with the statutory requirements*).

7. [PLACE OF BUSINESS.] The business shall be carried on at _____.

8. [SIGN.] The parties hereto shall cause forthwith to be placed conspicuously on the outside of the front of the building in which the partnership shall have its place of business a sign containing the full names of the partners and describing them respectively as general and special partners.

9. [RESTRICTION OF SPECIAL PARTNER'S POWER.] The special partner shall not take part in the management of the business or transact any business for the partnership, and shall have no power to sign for or to bind the firm.

10. [SPECIAL PARTNER NOT TO WITHDRAW CAPITAL.] The special partner shall not during the continuance of the partnership be entitled to draw out or receive back any part of his share of the capital.

11. [CAPITAL OF GENERAL PARTNERS.] The present capital of the general partners is hereby declared to be _____ dollars, of which the share of the said _____ is _____ dollars, and the share of the said _____ is _____ dollars.

12. [PROFITS AND LOSS OF CAPITAL.] The special partner shall be entitled to a ratable share in the net profits of the business in the proportion which the sum contributed by him as aforesaid bears to the total amount of the capital of the partnership, and shall bear a like ratable proportion of any losses. The loss attributable to the shares of the capital of the general partners shall, if not recouped by them, be deducted from the amount of their capital appearing in the books of account of the partnership. The loss attributable to the share of a special partner shall, unless forthwith recouped by him in actual cash, be borne by reducing the amount of capital contributed by him. Upon any such reduction of capital the parties hereto shall forthwith cause all such steps to be taken as shall be required by law for the renewal or continuance of the partner-

ship as a limited partnership for the residue of the term thereof as hereinbefore limited.

13. [DRAWINGS.] The special partner shall not be entitled to make any drawing on account of his share of profits; but the general partners may draw as follows, namely, the said ——— dollars a month, and the said ——— dollars a month. If the aggregate amount of the drawings of a general partner in any one year shall upon the taking of the annual account exceed the amount of his share of the net profits, he shall forthwith repay the excess to the partnership.

14. [ACCOUNTS.] (*See in Form No. 3, cl. 18, p. 1024.*)

15. [ANNUAL ACCOUNT AND VALUATION.] (*See in Form No. 3, cl. 19, p. 1024.*)

16. [DETERMINATION BY NOTICE.] In case at any time (after the expiration of the first year of the partnership) the general partners shall desire to determine the partnership, they may do so by first giving notice in writing to that effect to the special partner, and upon the expiration of ——— months from the giving of the notice and upon thereafter causing a notice of dissolution of the partnership to be recorded and published in conformity with the statute in that case provided (*or otherwise providing for the giving of any statutory notice of dissolution*) the partnership shall determine accordingly.

17. [DEATH OF SPECIAL PARTNER.] If the special partner shall die during the continuance of the partnership, the same shall continue as a limited partnership, and the business shall be carried on by the surviving general partners until the expiration of the period for its continuance as hereinbefore limited.

18. [WINDING UP.] Upon the determination of the partnership by expiration of the period limited for its continuance or by notice as hereinbefore provided, a full and general account shall be taken, and the affairs of the partnership shall

be wound up and the assets realized by the general partners. Any profits or losses since the preceding annual account shall be divided between or borne by the partners in the proportion of their shares in the capital of the partnership, and subject thereto the net proceeds of realization shall be divided between the partners in the proportion of their respective shares in the capital of the partnership: (Provided, always, that it shall be lawful for the general partners, in lieu of taking an account and winding up the affairs of the partnership, to purchase the share of the special partner on giving notice in writing to him of their desire to do so ——— days before the determination of the partnership. If this option is exercised, the general partners shall pay to the special partner within ——— days after the determination of the partnership the nominal amount of his share of capital as stated in the above-mentioned certificate, together with his share of the profits up to the date of the determination of the partnership as ascertained by such general account as aforesaid.)

19. [NOTICES, HOW GIVEN.] (*Following Form No. 3, cl. 27, p. 1029.*)

20. [DECISIONS OF QUESTIONS BY GENERAL PARTNERS.] Any difference arising between the general partners, on the one hand, and the special partner, on the other hand, other than a question as to the respective shares of the partners in the capital of the business or the division of the profits or the rights of the special partner in winding up the partnership, shall be decided by the general partners.

In witness, *etc.*

16. Limited Partnership Between One General and Two Special Partners ²

This indenture made the _____ day of _____ between _____, of _____, hereinafter called the general partner, of the one part, and _____ and _____, of _____, hereinafter called the limited partners, of the other part:

Witnesseth that the parties hereto hereby mutually covenant and agree to become partners in the business of _____ for the period and upon the terms following, to wit:

1. [DURATION OF PARTNERSHIP.] The partnership shall commence on the _____ day of _____, and shall continue until the _____ day of _____, or until the general partners shall die before that date or the partnership shall be determined as hereinafter provided.

2. [PARTNERS GENERAL AND SPECIAL.] The said _____ shall be a general partner, and each of them, the said _____ and _____, shall be special partners.

3. [FIRM NAME.] (*As in preceding form, clause 4.*)

4. [NATURE OF BUSINESS.] (*As in preceding form, clause 5.*)

5. [TO COMPLY WITH REQUIREMENTS FOR FORMATION OF LIMITED PARTNERSHIP.] (*As in preceding form, clause 6.*)

6. [PLACE OF BUSINESS.] The business shall be carried on at _____.

7. [SIGN.] (*As in preceding form, clause 8.*)

8. [RESTRICTION OF SPECIAL PARTNERS' POWER.] (*As in preceding form, clause 9.*)

9. [CAPITAL.] The capital of the partnership shall be in the sum of _____ dollars, to which the general partner shall contribute the sum of _____ dollars, and each of the special partners shall contribute in actual cash the sum of _____ dollars. Each partner shall before the said _____ day of _____

² See preceding footnote.

pay into the ——— Bank to the credit of the partnership his aforesaid share of the capital.

10. [DEATH OF SPECIAL PARTNER.] On the death of a special partner his rights shall devolve on his personal representatives, and the partnership shall continue as a limited partnership as theretofore until the expiration of the period for its continuance as hereinbefore limited.

11. [SPECIAL PARTNER NOT TO WITHDRAW CAPITAL.] (*As in preceding form, clause 10.*)

12. [PROFITS AND LOSS OF CAPITAL.] (*As in preceding form, clause 12, with necessary changes.*)

13. [DRAWING.] (*As in preceding form, clause 13, with necessary changes.*)

14. [ACCOUNTS.] (*See in preceding form, clause 14.*)

15. [ANNUAL ACCOUNT AND VALUATION.] (*See in preceding form, clause 15.*)

16. [DETERMINATION ON INCAPACITY OF GENERAL PARTNER.] If at any time during the continuance of this partnership the general partner shall be for a period of (two) months incapacitated by bodily or mental infirmity from fully and effectually attending to the said business or performing his duties in respect thereof, it shall be lawful for the special partners by notice in writing given to the general partner, at or after the expiration of such (two) months, and during the continuance of such incapacity, to determine this partnership, and upon their causing due notice of dissolution of the partnership to be recorded and published in conformity with the statute in that behalf (*or otherwise providing for any statutory notice of dissolution*) this partnership shall determine accordingly.

17. [DETERMINATION BY SPECIAL PARTNERS ON INSUFFICIENCY OF PROFITS.] If at any time during the continuance of this partnership the limited partners' share of the profits of the business shall not amount to ——— per cent. on their

shares of the capital, they may at any time within —— days from the signing of the annual general account by notice in writing to the general partner determine this partnership, and upon their causing due notice of dissolution of the partnership to be recorded and published (*following preceding clause*). (In that event the limited partners shall forthwith pay to the general partner the sum of —— dollars by way of compensation in full for his rights hereunder, and the good will and assets of the business shall thereupon become the property of the special partners.)

18. [GENERAL PARTNER TO DEVOTE HIMSELF TO THE BUSINESS.] During the continuance of this partnership the general partner shall diligently and faithfully employ himself in and about and devote his whole time (except during the period of —— weeks in every year) to the said business, and carry on and conduct the same for the greatest advantage of the partnership, and render to the limited partners a just and faithful account of all his dealings and transactions in relation to the business whenever by them reasonably required; and he shall not either alone or with any other person or corporation engage in or be interested directly or indirectly in any trade or business other than the business of this partnership.

19. [WINDING UP.] Upon the expiration of the term of partnership or upon the death or bankruptcy of the general partner or the determination of the partnership under clause 16 or clause 17 hereof, a full and general account shall be taken, and the affairs of the partnership shall be wound up, and the assets realized. Any profits or losses made since the last preceding annual account, or, if such event shall occur during the first year of the partnership, since the —— day of ——, shall be divided between and borne by the partners in the proportion of their shares in the capital of the partner-

ship, and subject thereto the net proceeds of realization shall be applied first in payment to the special partners of the amount of the capital contributed by them respectively, and in case of deficiency ratably in proportion to the said amounts, and the balance shall belong to the general partner or his estate.

20. [NOTICES, HOW GIVEN.] (*See in preceding form, clause 19.*)

21. [ARBITRATION.] (*See in Form No. 3, cl. 28, p. 1029.*)
In witness, *etc.*

CHAPTER XXVII

PARTY WALLS

A "party wall" is a wall which rests longitudinally on the line between and partly on the lands of adjoining owners, who respectively have the right to use the wall for the support of contiguous structures. A wall may become a party wall by grant, as where one owns two buildings separated by a partition wall and conveys one of the buildings, together with a longitudinal section, usually one-half of the width, of the wall; or where the owner of a building conveys such a longitudinal section of an outer wall to an adjoining owner, together with the right to use the part retained as well as the part conveyed for the support of a building to be erected by the grantee. Unless the rights of the parties are expressly defined by the grant, they must be determined by the rules of law applicable in the particular jurisdiction in such cases. In some states there are statutes, and in many cities there are ordinances, concerning party walls. Most frequently walls become party walls by agreements between adjoining landowners, which provide for the erection of a building by one of them, with an outer wall to be placed on the dividing line and partly on the land of each, and for the subsequent user of the wall by the other landowner for the support of such building as he may erect, upon payment by him of one-half of the cost or value of such part of the wall as he may use, and otherwise defining the rights of the parties. Such agreements usually provide that the covenants shall run with the land and bind and inure to the benefit of the respective heirs and assigns of the parties. It is generally held that the benefits, as well as the burdens, of the covenants run with the land to which they relate, although there is some conflict as to whether the benefit and the right of enforcement of the covenant to pay the stipulated part of the cost or value of the wall upon user thereof remains with the covenantee as a mere personal covenant, or whether it passes with a conveyance of the land to a grantee.

If the land of either party is subject to a mortgage, the mortgagee should join in the agreement. The husband or wife of a party should join, if he or she would be required to join in a conveyance of the party's land. Party wall agreements

should be recorded, and they should therefore be executed and acknowledged by the parties with the formalities prescribed for conveyances.

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1. Agreement as to Party Wall to be Built by Either Party

Agreement made this _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF OWNERSHIP OF ADJOINING PARCELS.] Whereas, the party of the first part is the owner in fee simple free from incumbrances of a certain parcel of land described as (*description*), and the party of the second part is the owner in fee simple free from incumbrances of a certain other parcel of land adjoining the above-described premises and described as (*description*); and

[RECITAL OF DESIRE FOR PARTY WALL.] Whereas, the parties desire to provide for a party wall to be built upon the boundary line between the above-described parcels of land.

Now, it is hereby agreed as follows:

1. [PARTY FIRST BUILDING TO ERECT PARTY WALL.] The party who shall first erect a building on his land above described shall build such building so that one of the walls thereof shall be on said boundary line, but so that not more than _____ inches of the width of such wall, with a proportionate part of the footings and foundations, shall be upon the said land of the other party. Such wall may be of such length as the party building the same may see fit, but shall not be less than _____ inches in width, and shall be built of brick in a

good, substantial, and workmanlike manner, and in conformity with the laws and ordinances thereto applicable; and such wall, when built, shall be and remain a party wall.

2. [USE AND PAYMENT BY OTHER PARTY.] The party building such wall shall pay for the same in the first instance; but whenever the other party shall use the same or any portion thereof as a party wall he shall pay to the then owner of the land on which such building was so first erected one-half of the value of the portion of such wall so used at the current price of the time when such user shall begin. In case the parties cannot agree upon the amount so payable, it shall be determined by two referees, one to be selected by each party, and if they cannot agree they shall select a third person as umpire, and the award of the two referees, or of the umpire, as the case may be, shall be final and binding.

3. [EXTENSION OF WALL BY EITHER PARTY.] Either party may at any time extend such wall to such greater length or height as he shall see fit and as may lawfully be done, subject to the same conditions and rights as to construction, use, and payment as hereinbefore provided.

4. [REPAIRS.] If it shall become necessary at any time after such wall shall have been used by both parties to repair or rebuild the same or any part thereof, the cost thereof shall be borne by both parties in proportion to their use thereof; but if such repairing or rebuilding shall be before both parties shall use such wall, then the same shall be paid for as provided in the second paragraph hereof.

5. [AGREEMENT TO RUN WITH LAND.] The agreements herein, including the agreements in respect to the payments to be made by the one party to the other, shall be covenants running with the land, and shall inure to the benefit of and be binding upon the heirs and assigns of the parties hereto respectively.

In witness, *etc.*

2. Agreement as to Party Wall to be Built by One Party

Agreement made the —— day of —— (*parties as in preceding form*):

[RECITAL OF OWNERSHIP OF ADJOINING PARCELS.] Whereas, the party of the first part is the owner in fee simple free from incumbrances of a certain parcel of land situate in the city of ——, described as lot eight (*description*), and the party of the second part is the owner in fee simple of a certain other parcel of land adjoining the said lot eight and described as lot seven (*description*); and

[RECITAL OF BUILDING TO BE ERECTED BY FIRST PARTY.] Whereas, the party of the first part is about to erect a six-story and basement building upon the said lot eight; and

[RECITAL OF DESIRE FOR PARTY WALL.] Whereas, the parties hereto are desirous that the west wall of the said building shall be erected upon the boundary line between the above-described lots, and that such wall shall be a party wall.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the said parties, for themselves and their respective heirs, executors, administrators, and assigns, covenant and agree to and with each other as follows:

1. [RIGHT OF FIRST PARTY TO PLACE WALL ON BOUNDARY.] The party of the first part in the erection of the said building shall be entitled to place the footings of the said west wall (which footings shall not exceed —— inches in width), and to place the columns of the said wall (which columns shall be of reinforced concrete, and shall not exceed —— inches in width), and to place those parts of said wall which shall be between said columns (which parts of the said wall shall be of concrete below the grade line of —— street and of brick above the said grade line, and shall not exceed in width —— inches), to the extent of one-half of the width of the

said footings, and of the said columns, and of the said other parts of the said wall, respectively, upon the said lot seven: (Provided, that the party of the first part may make any of the parts of the said wall of greater width than as above specified, but shall not place more than one-half of the width as above specified of any part thereof on the land of the party of the second part.)

2. [TO BE PARTY WALL.] The said wall, when erected, shall become and be a party wall in all respects.

3. [FIRST PARTY TO MAKE GOOD ALL DAMAGE.] The party of the first part in the erection of the said wall shall do as little damage as possible to the premises of the party of the second part, and shall make good all such damage to his reasonable satisfaction.

4. [WALL TO BE PROPERLY BUILT.] The said wall and any extension or replacement thereof shall be built in a good, substantial, and workmanlike manner and in conformity with law and the ordinances of the said city thereto applicable.

5. [COST OF WALL, HOW BORNE.] The cost of the said wall shall in the first instance be borne and paid by the party of the first part; but whenever the party of the second part shall desire to use the said wall or any portion thereof for party wall purposes, he shall before entering upon and using the same pay to the party of the first part one-half of the cost of the portion of the said wall so used.

6. [SECOND PARTY TO MAKE GOOD ALL DAMAGE.] When such entry and use are made by the party of the second part, it shall be in a workmanlike and lawful manner, and he shall do as little damage as possible to the premises of the party of the first part, and shall make good all such damage to his reasonable satisfaction.

7. [FUTURE EXTENSIONS OF WALL.] Either party at any time may extend the said wall to such greater height as may lawfully be done, and may extend such wall to such greater

width upon his own land as he may see fit. The party building any such extension shall do as little damage as possible to the premises of the other party, and shall make good all such damage to his reasonable satisfaction, and, if such extension be in the height of the said wall, shall carry up any chimneys built therein to a proper height. The conditions of construction and of right of entry and use and of payment for such use hereinbefore contained shall apply with like effect to any such extension of such wall when built by either party.

8. [REPAIRS AND REBUILDING.] If at any time after the party of the second part shall have entered upon and begun to use the said wall it shall become necessary to repair or rebuild the same or any part thereof, the cost thereof shall be borne and paid by both parties in the proportion in which the same may be used by them respectively; but if such repairing or rebuilding shall be done or become necessary before the party of the second part shall have so entered upon and begun to use the said wall, then the party of the first part shall pay for the same, and the party of the second part upon so entering and using the wall shall be bound to pay to the party of the first part only one-half of the first cost of the portion of the wall which may be by him so entered upon and used: Provided, that in the event of the substantial destruction by fire or otherwise of the said wall or of the said building to be erected by the party of the first part, before the party of the second part shall have so entered upon and begun to use the said wall, the party of the first part shall have —— days within which to elect whether or not to rebuild the said wall, and if the party of the first part within that time shall fail so to elect, or shall elect not to repair or rebuild the said wall, then this agreement shall terminate and become of no further effect.

9. [TAXES.] (Until such time as the said wall shall be so entered upon and used by the party of the second part, the

party of the first part shall pay all taxes that may be levied against the same, but thereafter such taxes shall be paid by the parties in the proportion in which they shall use such wall.)

10. [ARBITRATION.] If any question or difference shall arise between the parties hereto as to the construction of these presents, or as to the amount to be paid by either party hereunder, or as to any matter connected with the said party wall or any extension or repairs or rebuilding thereof, the same shall be referred to three arbitrators, one to be appointed by each of the parties in interest, and a third to be chosen by the two thus appointed, and a decision by a majority of them shall be final.

11. [COVENANTS TO RUN WITH LAND.] The covenants and agreements herein contained, including the covenants and agreements in respect to payments to be made by either party to the other for the use of such wall or any extension thereof as hereinbefore provided (saving and excepting the covenants and agreements in respect to payments to be made by either party to the other for the use of such wall or any extension, repairs, or rebuilding thereof, which shall be deemed personal to such other party) shall run with the land, and the liability to perform and the right to enforce performance of the same (except as aforesaid) shall pass to the heirs and assigns of the respective parties hereto: Provided, that no person shall be personally liable for the breach of any of the covenants and agreements herein contained unless such breach was committed during his ownership of the land.

In witness, *etc.*

3. Agreement Settling Differences as to a Wall and Making It a Party Wall

• Agreement made the ——— day of ——— between ———, of ———, hereinafter referred to as the first adjoining owner, which expression, where the context so admits, shall be deemed to include his heirs and assigns, of the one part, and ———, of ———, hereinafter referred to as the second adjoining owner, which expression shall, where the context so admits, be deemed to include his heirs and assigns, of the other part:

[RECITAL OF OWNERSHIP OF ADJOINING PARCELS.] Whereas, the first adjoining owner is the owner in fee simple of a certain parcel of land described as (*description*), and the second adjoining owner is the owner in fee simple of a certain other parcel of land described as (*description*); and

[RECITAL OF BUILDING BY FIRST OWNER AND CLAIM OF TRESPASS BY SECOND OWNER.] Whereas, the first adjoining owner has erected a brick building upon his land, and the second adjoining owner alleges that part of the (north) wall thereof is upon his land, and that such erection is a trespass thereon, and the parties hereto are desirous of settling all questions as to the ownership of the said wall and all differences between them relating to the said alleged trespass.

Now, it is hereby agreed as follows:

1. [WALL TO BE PARTY WALL.] The said wall shall be deemed to be a party wall in all respects.

2. [USE OF WALL BY SECOND OWNER.] The second adjoining owner shall be entitled at any time hereafter to use the said wall either wholly or to such height and extent as he may require for the erection of any building upon his land, and shall pay to the first adjoining owner (one-half) of the value of such part of the said wall as shall be contiguous to

the said erection at the current price of the time at which such building shall be erected.

3. [SECOND OWNER MAY EXTEND WALL.] The second adjoining owner in the erection of any such future building upon his land shall be entitled to extend the said wall and to build such extension partly upon the land of the second adjoining owner, but not to a greater width thereon than the width thereon of the said original wall, and such part of the wall as may be so extended shall become and remain a party wall.

4. [USE OF EXTENDED WALL BY FIRST OWNER.] If the first adjoining owner shall at any time hereafter desire to use as a party wall any part of the wall as so extended, he shall pay to the second adjoining owner one-half the value of such part thereof as shall be contiguous to any future erection made by the first adjoining owner at the then current price.

5. [ARBITRATION.] (*As in preceding form.*)

In witness, etc.

4. Grant of Right to Use Wall of Adjoining Building so Long as it Stands

This indenture is made this —— day of —— between ——, party of the first part, and ——, party of the second part:

[RECITAL OF OWNERSHIP OF ADJOINING PARCELS.] Whereas, the party of the first part is the owner of a lot of land described as (*description*), and the party of the second part is the owner of another lot of land adjoining thereto and described as (*description*); and

[RECITAL OF ERECTION OF WALL.] Whereas, there has been erected on the said land of the party of the first part a building the easterly wall whereof adjoins the said land of the party of the second part, who is about to erect a building thereon.

[GRANT.] Now, this indenture witnesseth that, in consideration of ——— dollars to him in hand paid, the receipt whereof is hereby acknowledged, the party of the first part hereby grants to the party of the second part, his heirs and assigns, the right to use the said wall as and for the westerly wall of his said building, and to that end in the erection thereof to insert in the said wall the necessary beams and joists, and to so maintain the same so long as the party of the first part, his heirs or assigns, shall see fit to leave the said wall standing, such beams and joists to be first approved by the party of the first part, and the party of the second part, his heirs and assigns, repairing any damage which may be occasioned by making such insertions and by thenceforth maintaining them.

In witness, *etc.*

5. Conveyance of a Share in a Wall so as to Make it a Party Wall

This indenture made this day (*parties and recitals as in preceding form*).

Now, this indenture witnesseth as follows:

1. [CONVEYANCE.] In consideration of the sum of ——— dollars to him paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby grant, bargain, sell, and convey unto the party of the second part all that equal half part in width of and in the outer wall on the easterly side of the said building of the party of the first part, which wall measures approximately ——— inches in width and ——— feet from front to back, and ——— feet in height, and of and in the footings and foundations thereof, and of and in the land on which said wall is erected, being approximately a strip ——— feet in length from front to back and ——— inches in width, together with

the right of support for the said half of the said wall by the adjoining half thereof. To have and to hold the same unto the party of the second part, his heirs and assigns forever, but subject to and reserving to the party of the first part, his heirs and assigns, a like right of support by the half of the said wall hereby conveyed for the adjoining half retained by the party of the first part.

2. [WALL TO BE A PARTY WALL.] It is hereby agreed and declared that the said wall shall be a party wall, and that the party of the second part shall be entitled to erect a building contiguous to the said wall on the easterly side thereof, and to use and build to the said wall, doing as little damage as may be to the said wall in the course of building, and at his own expense making good all damage and restoring the said wall to a proper condition as a party wall within ——— months from the date hereof.

3. [REPAIRS.] As and from the time of the completion of the building operations hereinbefore mentioned and the restoration of the said wall to a proper condition as a party wall the said wall shall be maintained and kept in repair at the joint expense of the parties hereto, and their respective heirs and assigns.

In witness, *etc.*

TIFF. FORMS—68

CHAPTER XXVIII

PATENTS AND INVENTIONS

Scope of Chapter

The forms given in this chapter include assignments, licenses, and agreements relating to patents. Forms relating to applications for the issue of patents and to proceedings in the Patent Office are not included.

In General

Subject to the provisions of the federal statutes, a patent will be granted to a person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter or any new and useful improvement thereof. Rev. St. § 4886 (U. S. Comp. St. 1913, § 9430). If before patent granted he has died, his right devolves upon his executor or administrator, and, if he has become insane, on his guardian or other representative. Rev. St. § 4896 (U. S. Comp. St. 1913, § 9440). The patent contains a short title or description of the invention or discovery, indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of 17 years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the territories thereof. A copy of the specifications and drawings is annexed to the patent and forms a part thereof. Rev. St. § 4884 (U. S. Comp. St. 1913, § 9428).

A patent will also be granted for a term of three and one-half, seven, or fourteen years, as the applicant may elect, to a person who has invented any new, original, and ornamental design for an article of manufacture. Rev. St. § 4929, as amend. Act May 9, 1902, c. 783, 32 Stat. 193, §§ 4930-4933 (U. S. Comp. St. 1913, §§ 9475, 9478-9481).

When a patent is inoperative or invalid by reason of defective or insufficient specifications or by reason of the patentee claiming as his invention or discovery more than he had the right to claim as new, a new patent, or reissue, may be granted, in certain cases, to the patentee, or in case of his death, or an assignment of the whole or any undivided part of the original patent, then to his executors, administrators, or as-

signs, for the unexpired term of the original patent. Rev. St. §§ 4895, 4916 (U. S. Comp. St. 1913, §§ 9439, 9461). Rules of Practice in the United States Patent Office (revised July 17, 1907), rules 85-92.

Assignments and Licenses

A patent or any interest therein is assignable by an instrument in writing, and the patentee or his assigns may in like manner grant and convey an exclusive right under his patent to the whole or any specified part of the United States. Rev. St. § 4898 (U. S. Comp. St. 1913, § 9444). Interests in patents may be vested in assignees, in grantees of exclusive sectional rights, in mortgages, and in licenses. An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. A grantee acquires by the grant the exclusive right under the patent to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented within and throughout some specified part of the United States, excluding the patentee therefrom. An assignment, a grant, or a mortgage must be written or printed and duly signed. A licensee takes an interest less than or different from either of the others, a license conferring upon the licensee authority to use a portion of the exclusive rights granted to the patentee. A license may be oral or written or printed, and, if written, must be duly signed. See Rules of Practice, rule 196.

A license may be exclusive throughout the whole or a part of the United States, or it may be a mere authority to exercise the right conferred. A license is personal to the licensee, and not assignable unless an intention to make it so is indicated.

Upon an assignment, other than a mere quitclaim, there is an implied warranty of title, but no warrant of validity of the patent. A licensee, in the absence of express agreement, is estopped in a suit for royalties from disputing the validity of the patent.

A contract by an inventor who has sold an invention to assign to the purchaser any future inventions made by him for improvements thereon, or by an inventor in consideration of his employment to assign to the employer inventions made therein, is valid.

Record and Acknowledgment

An assignment, grant, or conveyance is void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless recorded in the Patent Office within three months from the date thereof. If any such instrument is acknowledged before any notary public of the several states and territories or the District of Columbia, or any United States commissioner, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes, the certificate of such acknowledgment under the hand and seal of such officer is *prima facie* evidence of the execution. Rev. St. § 4898, as amend. Act March 3, 1897, c. 391, § 5, 29 Stat. 692.

No instrument will be recorded which is not in the English language and which does not, in the judgment of the commissioner, amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates. Such instrument should identify the patent or invention by date and number, or, if the invention be unpatented, the name of the inventor, the serial number, and date of the application should be stated. Rules of Practice, rule 198.

Assignments which are made conditional on the performance of certain stipulations, as the payment of money, if recorded in the office, are regarded as absolute assignments until canceled with the written consent of both parties or by decree of a competent court. The office has no means for determining whether such conditions have been fulfilled. *Ibid.* rule 199.

Grant of Patent to Assignee of Inventor or Discoverer

Patents may be granted and issued or reissued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the Patent Office. In case of an application by an assignee for the issue of a patent, the application must be made and the specifications sworn to by the inventor or discoverer; and in case of an application for a re-issue application must be made and the corrected specifications signed by the inventor or discoverer, if living. Rev. St. § 4895 (U. S. Comp. St. 1913, § 9439).

In case of an assignment of the whole interest in the invention, or in the patent to be granted, the patent will upon re-

quest of the applicant embodied in the assignment issue to the assignee, and if the assignee hold an undivided part interest, the patent will upon like request issue jointly to the inventor and the assignee; but the assignment in either case must first have been entered of record not later than the date of the payment of the final fee (see Rules of Practice, rule 200), and if it be dated subsequently to the execution of the application, it must give the date of such execution, or the date of filing, or the serial number, so that there can be no mistake as to the particular invention intended. The application must be signed by the actual inventor, if alive, even if the patent is to issue to an assignee. If the inventor be dead, the application may be made by the executor or administrator. *Ibid.* rule 26.

Rights of Purchaser of Patentable Article from Inventor Before Application for Patent

Every person who purchases of the inventor or discoverer, or with his knowledge or consent constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made and purchased, without liability therefor. Rev. St. § 4899 (U. S. Comp. St. 1913, § 9445).

Joint Patentees and Co-owners

Joint inventors are entitled to a joint patent; neither of them can obtain a patent for an invention jointly invented by them. Independent inventors of distinct and independent improvements in the same machine can obtain a joint patent for their separate inventions. The fact that one person furnishes the capital and another makes the invention does not entitle them to make an application as joint inventors; but in such case they may become joint patentees, upon the conditions prescribed in rule 26, *supra*. Rules of Practice, rule 28.

Where a patent is owned by two or more persons, each part owner has the right to use the invention for his own benefit, to assign his share, and to grant licenses not exclusive of his co-owners, without accountability to the co-owners, in the absence of agreement, for any part of the profits.

Restraint of Trade

Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture and sell the patented article, restricting the terms upon which the article manufactured thereunder may be used, and the price to be demanded therefor, do not constitute such a restraint on commerce as is prohibited by the act of Congress of July 2, 1890 (26 Stat. 209, c. 247 [Sherman Act]). But by the act of Congress of October 15, 1914 (38 Stat. 731, c. 323, § 3), it is made illegal to lease or sell an article, patented or unpatented, upon condition that the lessee or purchaser shall not secure supplies from a competitor of the lessor or vendor, where the effect may be substantially to lessen competition or tend toward monopoly. The exclusive right of the patentee does not include the right to limit by notice the price at which the patented article may be resold at retail by a purchaser from jobbers who have paid to the patentee's agent the full price asked. And a contract between the owners of different patents which restricts competition between them in the exercise of their respective rights under their patents or otherwise may constitute a conspiracy and combination in restraint of trade in violation of the Sherman Act.

Secret Processes

A process or invention may not be patentable, or, if patentable, it may be desired to keep it secret, and thus preserve it beyond the term of a patent. The owner of a secret process or trade secret or private formula is not protected by law, as is the owner of a patent; but he may protect himself by contract against its disclosure by one to whom he communicates it in confidence, or restrict its use by such person, and he will be granted protection by injunction to restrain such disclosure or wrongful use, and may recover damages for breach of the contract; and equity will restrain one who obtains knowledge of the secret in the course of a confidential relation or through fraud from using or disclosing it. But the owner may not establish restrictions in restraint of trade which would be unlawful as to other manufactured articles, as by a system of contracts with all purchasers and subpurchasers restricting prices with respect to future sales.

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1. Assignment of an Entire Interest in an Invention Before the Issue of Letters Patent ¹

Whereas, I, ———, of ———, county of ———, and state of ———, have invented a certain new and useful improvement in ———, for which I am about to make application for

¹ Forms Nos. 1, 2, 4, 5, 7, and 8 are contained in Rules of Practice in the United States Patent Office, Appendix of forms, pp. 85–89, and their use in cases to which they are applicable is recommended by the Commissioner of Patents.

letters patent of the United States; and whereas, ———, of ———, county of ———, and state of ———, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor.

Now, therefore, to all whom it may concern be it known that, for and in consideration of the sum of ——— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ———, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said ———, the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the ——— day of ———, 19—, preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said ——— as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said ——— and his legal representatives.

In testimony whereof I have hereunto set my hand and affixed my seal this ——— day of ———, 19—.

In presence of: _____ (Seal.)

2. Assignment of the Entire Interest in Letters Patent ²

Whereas, I, ———, of ———, county of ———, state of ———, did obtain letters patent of the United States for an improvement in ———, which letters patent are numbered ———, and bear date the ——— day of ———, in the year 19—; and whereas, I am now the sole owner of said patent

² See preceding note.

and of all rights under the same; and whereas, ———, of ———, county of ———, and state of ———, is desirous of acquiring the entire interest in the same.

Now, therefore, to all whom it may concern be it known that, for and in consideration of the sum of ——— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ———, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said ———, the whole right, title, and interest in and to the said improvement in ——— and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said ———, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ———, in the county of ———, and state of ———, this ——— day of ———, 19—.

In presence of: ———. (Seal.)

_____.

3. Assignment of Entire Interest in Letters Patent and of Future Improvements Thereon

(Begin as in Form No. 2, p. 1080, substituting for the second recital the following:)

[RECITAL.] And whereas, I have agreed to sell to ———, of ———, county of ———, and state of ———, for the sum of ——— dollars, the entire interest in the same and in all improvements thereon which may hereafter be made by me.

1. [SALE.] Now, therefore, to all to whom it may concern be it known that, in consideration of the sum of ——— dollars

to me in hand paid, the receipt whereof is hereby acknowledged, I, the said ———, do hereby sell, assign, and transfer unto the said ——— the whole right, title, and interest in and to the said improvement in ——— and in and to the letters patent therefor aforesaid, as also in and to any improvements thereon made by me or which I may hereafter make thereon; the same to be held and enjoyed by the said ———, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term or terms for which the said letters patent are or may or shall be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

2. [COVENANTS.] And I hereby covenant, for myself, my personal representatives and assigns, with the said ———, his personal representatives and assigns, as follows:

(1) [VALIDITY.] That the said letters patent are valid and subsisting.

(2) [IMPROVEMENTS.] That I will forthwith from time to time after making any improvement upon the said invention disclose the same to the said ———, who shall be entitled to the sole and exclusive benefit thereof, and that whenever required by him I will give him full information and particulars as to the nature and mode of performing the same, and will at his cost execute and do all applications, documents, and other acts necessary for obtaining letters patent therefor and for vesting the same and the full and exclusive benefit thereof in the said ———.

In testimony, *etc.*

4. Assignment of an Undivided Interest in Letters Patent ³

Whereas, I, ———, of ———, county of ———, state of ———, did obtain letters patent of the United States for an improvement in ———, which letters patent are numbered ———, and bear date the ——— day of ———, in the year ———; and whereas, ———, of ———, county of ———, state of ———, is desirous of acquiring an interest in the same.

Now, therefore, to all whom it may concern be it known that, for and in consideration of the sum of ——— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ———, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said ———, the undivided one-half part of the whole right, title, and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said ———, for his own use and behoof, *etc.* (*concluding as in preceding form*).

5. Assignment of Territorial Interest after Grant of Patent ⁴

Whereas, I, ———, of ———, county of ———, state of ———, did obtain letters patent of the United States for improvement in ———, which letters patent are numbered ———, and bear date the ——— day of ——— in the year 19—; and whereas, I am now the sole owner of the said patent and of all rights under the same in the below-recited territory; and whereas, ———, of ———, county of ———, state of ———, is desirous of acquiring an interest in the same.

³ See note 1, p. 1079.

⁴ See note 1, p. 1079.

Now, therefore, to all whom it may concern be it known that, for and in consideration of the sum of —— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ——, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said ——, all the right, title, and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the state of ——, and for, to, or in no other place or places; the same to be held and enjoyed by the said —— within and throughout the above-specified territory, but not elsewhere, for his own use and behoof, *etc.* (*concluding as in Form No. 2, p. 1081*).

6. Assignment of Right to Obtain Patents in Foreign Countries

Indenture made this —— day of —— between ——, of ——, party of the first part, and ——, of ——, party of the second part:

[RECITAL OF INVENTION, ETC.] Whereas, the party of the first part has invented a certain new and useful improvement in ——, and did obtain letters patent of the United States for the said improvement, which letters patent are numbered ——, and bear date the —— day of ——, in the —— year 19—; and whereas, the party of the second part is desirous of acquiring the right of obtaining patents or other like privileges for the said invention in the countries hereinafter mentioned.

Now, this indenture witnesseth and it is hereby agreed as follows:

1. [ASSIGNMENT.] In consideration of the sum of —— dollars paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby sell, assign, and transfer

unto the party of the second part the full and exclusive right to apply for and obtain in the name and as the attorney of the party of the first part or in such other manner as the case may require, but at the sole cost of the party of the second part, patents or other like protection or rights for and in respect to the said invention in any or all countries other than the United States of America (*or*, in the following foreign countries and states, to wit, ———, or any of them) and all the right and authority of the party of the first part to make, use, and vend the said invention in the said countries and each of them; the same to be held by the party of the second part for his own use and behoof and for the use and behoof of his legal representatives and assigns as fully as the same would have been held and enjoyed by the party of the first part had this assignment and sale not been made.

2. [COVENANTS OF ASSIGNOR.] The party of the first part hereby covenants with the party of the second part that he will, if and when required by and at the cost of the party of the second part, give to him such assistance and explanations and execute and make all such documents, plans, and drawings as may be requisite or convenient for obtaining patents or other like protection in the said countries as aforesaid; that in the event of any patent or other like protection being granted to the party of the first part for and in respect to the said invention the party of the first part will, if and when requested by and at the cost of the party of the second part, assign such grant and the full benefit thereof to the party of the second part; and that, whenever so requested by and at the cost of the party of the second part, the party of the first part will execute and do all such other and further instruments, acts, and things as may be necessary or convenient for vesting in the party of the second part the full benefit of all the rights and premises hereby assigned.

3. [UNITED STATES PATENTS NOT AFFECTED.] Nothing herein contained shall affect the right of the party of the first part to his said invention and letters patent in the United States of America (or in any country other than those hereinbefore specified).

In witness, *etc.*

7. License—Shop—Right ^a

In consideration of the sum of _____ dollars to be paid by the firm of _____, of _____, in the county of _____, state of _____, I do hereby license and empower the said _____ to manufacture in said _____ (*or other place agreed upon*) the improvements in _____, for which letters patent of the United States No. _____ were granted to me the _____ day of _____ in the year 19—, and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at _____, in the county of _____, and state of _____, this _____ day of _____, 19—.

In presence of: _____,

_____.

_____.

8. License—Not Exclusive—With Royalty ^a

This agreement made this _____ day of _____, 19—, between _____, of _____, in the county of _____, and state of _____, party of the first part, and _____, of _____, in the county of _____, and state of _____, party of the second part, witnesseth that whereas, letters patent of the United States No. _____, for improvement in _____, were granted to the party of the first part on the _____ day of _____, 19—; and whereas, the party of the second part is desirous

^a See note 1, p. 1079.

^a See note 1, p. 1079.

of manufacturing ——— containing said patented improvements.

Now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in ———, and in no other place or places, to the end of the term for which said letters patent were granted, ——— containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of ——— and ——— in each year, of all ——— containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part ——— dollars as a license fee upon every ——— manufactured by said party of the second part containing the patented improvements: Provided, that if the said fee be paid upon the days provided herein for semi-annual returns, or within ——— days thereafter, a discount of ——— per cent. shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided for ——— days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named have hereunto set their hands the day and year first above written at ———, in the county of ———, and state of ———.

In the presence of:

9. Same—Another Form

This agreement (*begin as in preceding form*).

1. [LICENSE.] The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, within the states of —, and no other state or place, to the end of the term for which the said letters patent were granted, — containing the said patented improvement, and to sell the same within the United States (*or*, within the said states).

2. [ROYALTIES.] The party of the second part shall pay to the party of the first part on the — day of — and — day of — in each year a royalty or license fee of — dollars upon every — manufactured by the party of the second part containing the said patented improvement.

3. [ACCOUNTS.] (*As in Form No. 10, cl. 3, p. 1090.*)

4. [ARTICLES TO BE MARKED.⁷] The party of the second part shall cause to be fixed on every — manufactured hereunder (*or*, fixed to every — manufactured hereunder a label containing; *or*, fixed to every package wherein one or more — manufactured hereunder is inclosed a label containing) the words and figures, "Patented 19—. Under license to —," and shall not sell or offer for sale any — not so stamped.

⁷ "It shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word 'patented,' together with the day and year the patent was granted; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed, a label containing the like notice; and in any suit for infringement, by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented." Rev. St. § 4900 (U. S. Comp. St. 1913, § 9446).

5. [TO MANUFACTURE UNDER PATENT ONLY.] The party of the second part shall not manufacture or cause to be manufactured any ——— except under the said letters patent and in accordance with the specifications thereof, subject nevertheless to the provisions of clause 8 hereof.

6. [PATENTEE TO GIVE INFORMATION.] (*As in Form No. 10, cl. 5, p. 1091.*)

7. [NOT TO DISPUTE PATENT.] (*As in Form No. 10, cl. 6, p. 1091.*)

8. [FUTURE IMPROVEMENTS.] (*As in Form No. 10, cl. 7, p. 1091.*)

9. [NO LICENSE AT LESS ROYALTY TO OTHERS.] The party of the first part shall not grant any license to manufacture or sell ——— under the said letters patent within the said states of ——— or any of them at a less royalty or license fee than payable hereunder by the party of the second part without making a corresponding reduction in the royalty or license fee payable by the party of the second part.

10. [INFRINGEMENTS.] (*As in Form No. 10, cl. 8, p. 1091.*)

11. [CEASING OF ROYALTIES IF PATENT INVALID.] (*As in Form No. 10, cl. 10, p. 1092.*)

12. [DETERMINATION FOR NONPAYMENT OF ROYALTIES, ETC.] (*As in Form No. 10, cl. 12, p. 1092, with necessary changes.*)

13. [DETERMINATION WITHOUT PREJUDICE.] (*As in Form No. 10, cl. 13, p. 1093.*)

14. [LICENSE NONEXCLUSIVE AND NONASSIGNABLE.] The license hereby granted is nonexclusive, and is personal to the party of the second part, and he shall not assign or mortgage the same or grant sublicenses thereunder without the previous written consent of the party of the first part.

In witness, *etc.*

10. License—Exclusive—With Royalties

This agreement (*begin as in Form No. 8, p. 1086*).

1. [LICENSE.] In consideration of the (sum of ——— dollars paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, and of the) royalties and the covenants and agreements by the party of the second part hereinafter reserved and contained, the party of the first part hereby grants unto the party of the second part and his (*permitted*) assigns the sole and exclusive right, privilege, and license within the states of ——— to manufacture ——— containing the said patented improvement, and within the said states (*or, within the United States*) to sell the machines so manufactured to the end of the term for which the said letters patent were granted.

2. [ROYALTIES.] The party of the second part shall pay to the party of the first part on the ——— day of ——— and the ——— day of ——— in each year a royalty of ——— dollars for every (——— of ———) ——— manufactured by or on behalf of the party of the second part hereunder (which shall have been sold) during the six months preceding the month in which such royalties shall be so payable, the first of such payments to be made on the ——— day of ——— next.

3. [ACCOUNTS.] The party of the second part shall keep full and particular accounts of all matters connected with the manufacture (and sale) of ——— hereunder, and will on the same day on which each such royalty shall be payable as aforesaid deliver to the party of the first part a statement of account of all ——— manufactured and sold respectively by or on behalf of the party of the second part during the period of six months for which the said royalties shall be then payable. The party of the second part shall permit the party of the first

part or his agent at all reasonable times to inspect and take copies or extracts from any books of account and documents relating to the manufacture or sale of ——— hereunder and to take an account of all the said ——— for the time being in stock or in hand.

4. [ARTICLES TO BE MARKED.] The party of the second part shall cause to be affixed on some conspicuous part of every ——— manufactured by or for him hereunder a (brass plate or label) containing the words and figures "Patented 19—," and the party of the second part shall not sell or offer to sell any ——— without such plate or label being affixed.

5. [PATENTEE TO GIVE INFORMATION, ETC.] The party of the first part shall, whenever required by the party of the second part, give to the party of the second part all such information and assistance in his power as will enable the said ——— to be manufactured and sold to the best advantage.

6. [NOT TO DISPUTE PATENT.] The party of the second part shall not at any time dispute or take any objection to the validity of the said letters patent.

7. [FUTURE IMPROVEMENTS.] The party of the first part shall forthwith communicate to the party of the second part any improvement (*or*, further invention) he may discover or acquire in connection with ———, and shall disclose to the party of the second part the manner of making and using the same, and the party of the second part shall be at liberty to manufacture and sell ——— containing any such improvement or further invention within the limits aforesaid during the subsistence of this license free of all further royalties, charges, or payments whatsoever.

8. [INFRINGEMENTS.] In the event of the said letters patent being infringed (within any of the said states or any of them) the party of the first part shall forthwith after notice thereof commence and prosecute at his own cost all legal proceedings

necessary to protect the said letters patent and prevent such infringement, and if he shall fail to do so the party of the second part may by notice in writing terminate this license.

9. [LICENSE EXCLUSIVE.] The party of the first part during the continuance of this license shall not (without the consent in writing of the party of the second part) manufacture or sell any ——— under the said letters patent (*or otherwise*), or under any improvement or further invention hereinbefore referred to within the states aforesaid, and shall not (without the like consent) grant any license to manufacture (*or, sell*) any ——— under the said letters patent or under any such improvement or further invention to any other person or corporation within the limits aforesaid.

10. [CEASING OF ROYALTIES IF PATENT INVALID.] If the said letters patent shall in any action for infringement or otherwise be declared by any court of competent jurisdiction to be invalid on any ground whatsoever, all royalties payable hereunder shall forthwith cease to be payable; but if the decision of such court shall be reversed on appeal, the said royalties shall forthwith again become payable, together with all royalties which would have been payable but for the adverse decision.

11. [DETERMINATION IF MINIMUM NOT MANUFACTURED.] If the party of the second part in any one year, commencing the ——— day of ———, shall not manufacture (and sell) at least ——— (*patented articles*) under this license, then the party of the first part may by notice in writing terminate this license.

12. [DETERMINATION FOR NONPAYMENT OF ROYALTIES, ETC.] If any royalties payable hereunder shall be unpaid for ——— days after the same become payable, or if the party of the second part shall commit or suffer a breach of any of the covenants hereinbefore contained and on his part to be performed

or observed, and shall not remedy such breach within —— days after notice given to him by the party of the first part requiring such remedy, or if (after the year ——) the royalties payable hereunder for any half year shall not amount to the sum of —— dollars, or if the party of the second part shall become bankrupt or commit an act of bankruptcy or compound or make any arrangement with his creditors, the party of the first part may by written notice terminate this license, and thereupon the same and all rights of the party of the second part hereunder shall forthwith cease.

13. [DETERMINATION WITHOUT PREJUDICE.] The determination of this license in any manner hereby authorized shall be without prejudice to the remedy of the party of the first part to sue for and recover any royalties then due and to the remedy of either party in respect to any previous breach of any of the covenants or agreements herein contained.

14. [SUBLICENSES.] The party of the second part shall be at liberty to grant sublicenses hereunder to manufacture and sell the said —— within the states aforesaid; but every such sublicense shall contain a provision substantially containing the terms of clause 4 hereof, and shall provide that such sublicense shall cease and determine in the event of this license being determined for any cause: (Provided, further, that nothing herein contained shall authorize the party of the second part to assign or mortgage this license without the written consent of the party of the first part.)

15. [REPRESENTATIVES OF PARTIES INCLUDED.] Unless the context otherwise requires the term "the party of the first part" whenever used shall apply to and include his personal representatives and assigns, and the term "the party of the second part" shall apply to and include his personal representatives and (*permitted*) assigns.

In witness, *etc.*

11. License—Exclusive—To Sell Patented Article Manufactured by Licensor

This agreement made this _____ day of _____ (*parties as in Form No. 8, p. 1086*):

[RECITAL OF PATENT.] Whereas, letters patent of the United States, numbered _____ and bearing date the _____ day of _____, in the year _____, for an improvement in _____ were granted to the party of the first part (*or recite otherwise his title to the patent*);

[RECITAL OF MANUFACTURE, ETC.] And whereas, the party of the first part is engaged in the business of manufacturing _____ containing the said patented improvement, and the party of the second part is desirous of selling the same.

Now, therefore, the parties have agreed as follows:

1. [LICENSE.] The party of the first part hereby grants unto the party of the second part full and exclusive license and authority to sell, subject to the conditions hereinafter named, within the states of _____, and in no other state or place, to the end of the term for which the said letters patent were granted, _____ containing the said patented improvement.

2. [GOODS TO BE SUPPLIED.] Within _____ days after the receipt of any order for the said _____ from the party of the second part, the party of the first part shall supply him, or any other person whom he may designate in such order and whose residence and address shall be within any of the said states, with such number (*or, quantity*) of the said _____ as such order may require.

3. [DELIVERY.] All _____ to be supplied by the party of the first part hereunder shall be manufactured from (*specification of materials and manufacture*), and shall be delivered

in good and merchantable condition at ——— to such carrier as the party of the second part may designate, and in default of such designation to such carrier as the party of the first part may see fit, consigned to the party of the second part or to such other person as the order may designate at the address therein mentioned. The cost of carriage shall be borne and paid by the party of the second part.

4. [PAYMENT.] The party of the second part shall pay to the party of the first part within ——— days after such delivery of the ——— as aforesaid the sum of ——— dollars for every (——— of) ——— so delivered.

5. [MINIMUM AND MAXIMUM PRICE.] The party of the second part shall not sell or suffer to be sold any of the said ——— hereunder at a price less than ——— or more than ———.

6. [LICENSE EXCLUSIVE.] The party of the first part shall not during the continuance of this license sell or grant any other license or authority to sell ——— containing the said improvement within the said states or any of them.

7. [DETERMINATION IF MINIMUM NOT ORDERED.] If in any one year after the year ——— orders for at least ——— of the said ——— shall not be given to the party of the first part by the party of the second part, then the party of the first part may by notice in writing terminate this license.

(For other clauses which may be inserted see Form No. 10, cls. 6, 8, 12, p. 1091.)

In witness, etc.

12. License to Use Machine Supplied by Licensor

(Begin as in Form No. 8, p. 1092, with necessary variations.)

1. [DELIVERY.] The party of the first part shall within ——— days from the date hereof deliver to the party of the

second part and affix and install on his premises at — one of the machines the subject of the said letters patent.

2. [LICENSE TO USE.] The party of the second part shall be at liberty and he is hereby authorized to use the said machine for the purpose of — during the continuance of this license.

3. [REPAIRS.] The party of the second part shall take all reasonable precautions to keep the said machine in good repair and working order, and shall give notice to the party of the first part whenever any part thereof becomes worn out or needs repair, and shall not repair or replace any part thereof if the party of the first part is willing within — days after receipt of such notice to make the necessary replacements and repairs, and upon the same being made the party of the second part will pay the reasonable costs thereof.

4. [ROYALTIES.] In consideration of the premises the party of the second part shall pay to the party of the first part as royalties for the use of the said machine on the — day of — and the — day of — in each year during the continuance of this license the sum of — dollars, the first payment to be made on the — day of — next.

5. [MACHINE PROPERTY OF LICENSOR.] The said machine shall remain the property of the party of the first part, and on the termination of this license the machine shall be delivered up to him at the expense of the party of the second part in the same condition as that in which it shall have been delivered reasonable wear and tear excepted.

6. [DETERMINATION FOR NONPAYMENT, ETC.] If the party of the second part shall fail to pay any royalties payable hereunder or shall fail to observe and perform any covenant or condition on his part herein contained, and any such default shall continue for — days, the party of the first part may

terminate this license by giving written notice to the party of the second part.

7. [DETERMINATION BY LICENSEE.] The party of the second part may terminate this license at any time after the _____ day of _____ by giving to the party of the first part six months' written notice to that effect.

In witness, *etc.*

13. Assignment of a License⁸

This indenture made the _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF LICENSE, ETC.] Whereas, by a written license dated the _____ day of _____, and made between _____, of the one part, and the party of the first part hereto, of the other part, the said _____ granted unto the said party of the first part and his assigns a (*or*, an exclusive) license to manufacture and sell _____ under and in accordance with the specifications of letters patent of the United States No. _____, for improvements in _____, granted to the said _____ on the _____ day of _____, for the term of _____ years computed from the _____ day of _____ (*or*, to the end of the term for which the said letters patent were granted); and whereas, the party of the second part is desirous of acquiring the entire interest in the said license.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] In consideration of the sum of _____ dollars paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby sell, assign, and transfer

⁸ A license is personal to the licensee, and not assignable unless an intention to make it so is expressed.

unto the party of the second part all the said license and the full and exclusive benefit thereof; the same to be held and enjoyed by the party of the second part, his legal representatives and assigns, subject to the covenants, agreements, and conditions therein contained and on the licensee's part to be observed and performed.

2. [COVENANTS OF ASSIGNOR.] The party of the first part hereby covenants with the party of the second part that the said license is valid and subsisting, and that all royalties reserved thereunder up to the ——— day of ——— have been paid, and all the covenants, agreements, and conditions therein contained and on the licensee's part to be observed and performed have been duly observed and performed up to and including the date hereof.

3. [COVENANTS OF ASSIGNEE.] The party of the second part covenants with the party of the first part that he will henceforth pay the royalties reserved by, and will observe and perform all the covenants, agreements, and conditions on the licensee's part contained in, the said license, and that he will indemnify the party of the first part from and against all actions, proceedings, claims, and demands in respect to the said royalties, covenants, agreements, and conditions respectively.

In witness, *etc.*

14. Agreement for Sale of Patent and of Future Improvements

An agreement made this ——— day of ——— between ———, of ———, party of the first part, and ———, of ———, party of the second part:

[RECITAL OF PATENT.] Whereas, the party of the first part did obtain letters patent of the United States for an improvement in ———, which letters patent are numbered ——— and bear date the ——— day of ———, in the year ———; and

whereas, the party of the first part is now the sole owner of the said patent and of all rights under the same.

Now, it is hereby agreed as follows:

1. [AGREEMENT FOR SALE.] The party of the first part shall sell and the party of the second part shall purchase for the sum of ——— dollars, whereof the sum of ——— dollars has been paid by the party of the second part to the party of the first part by way of deposit, the whole right, title, and interest in and to the said improvement and the letters patent therefor aforesaid and all rights, benefits, and advantages appertaining thereto (and to any improvement in or relating to the said invention now or hereafter made or discovered by the party of the first part).

2. [DETERMINATION IF PATENT INVALID.] The party of the second part shall be at liberty to obtain an opinion from ——— (or some other counsel whom he may select) as to whether the said invention is proper subject-matter for letters patent, or is from any cause invalid or liable to be declared void, and if such opinion is adverse to the validity of the said letters patent the party of the second part may by notice in writing given to the party of the first part before the ——— day of ——— determine this agreement, whereupon it shall be null and void; but in that case the party of the first part shall be entitled to retain the said sum paid by way of deposit.

3. [COMPLETION OF PURCHASE.] The purchase shall be completed at the office of ——— on the ——— day of ———, when the party of the second part shall pay to the party of the first part the balance of the purchase price, being the sum of ——— dollars, and the party of the first part shall execute all instruments necessary to vest absolutely in the party of the second part the said invention and letters patent.

4. [IMPROVEMENTS UPON INVENTION.] (If the said party of the first part shall at any time hereafter make or discover any

improvement upon the said invention (*or*, any further invention relating to ———),⁹ he shall thereupon forthwith disclose to the party of the second part full details as to the nature of and mode of carrying out the same, and the said improvement (*or*, further invention) shall be the sole and absolute property of the party of the second part, and the party of the first part shall, if required, sign any and all applications and at the cost of the party of the second part do and execute all acts, things, and instruments necessary for obtaining letters patent therefor and for vesting the said letters patent when obtained in the party of the second part as absolute owner.)

5. [FOREIGN PATENTS.] (This agreement shall extend to and include any foreign patents or protection in respect to any invention or improvement subject thereto.)

In witness, *etc.*

15. Agreement for Sale of Patent to Corporation to be Formed

An agreement made the ——— day of ——— between ———, of ———, hereinafter called the vendor, of the one part, and ———, of ———, as trustees for and on behalf of the company hereinafter mentioned, of the other part:

[RECITAL OF PATENT.] Whereas, the vendor did obtain letters patent of the United States for an improvement in ———, which letters patent are numbered ——— and bear date the ——— day of ———;

[RECITALS AS TO CORPORATION.] And whereas, a corporation, hereinafter referred to as the company, is about to be incorporated under the laws of the state of ———, under the name of the ——— Company, with a capital of ——— dollars divided into ——— shares of ——— dollars each, the primary

⁹ Whether an agreement to assign all future inventions relating to an art is valid is doubtful.

object of which company is to be the acquisition of the said invention and letters patent.

Now, it is hereby agreed as follows:

1. [SALE.] The vendor shall sell and the company shall purchase the said invention and letters patent and all rights, benefits, and advantages appertaining thereto and to any improvement in or relating to the said invention now or hereafter made or discovered by the vendor.

2. [CONSIDERATION.] The consideration for the said sale shall be the sum of ——— dollars, which shall be satisfied as to ——— dollars by payment in cash and as to the residue by the issue to the vendor or his nominees of ——— shares in the capital stock of the said company of ——— dollars, each credited as fully paid.

3. [COMPLETION OF SALE.] The purchase shall be completed on incorporation of the company, and not later than the ——— day of ———, when the said sum of ——— dollars cash shall be paid and certificates for the said shares shall be delivered to the vendor or his appointees, and upon such payment and delivery the vendor shall at the expense of the company execute and do all instruments and things necessary to vest the said invention and letters patent in the company.

4. [FUTURE IMPROVEMENTS.] Any and all improvements of the said invention at any time hereafter made or discovered by the vendor shall forthwith be disclosed to the company, and the vendor shall at its expense give to the company or to any person whom it may appoint full information and particulars as to the nature and the mode of performing the same, and will, if and when required by the company, execute and do all documents, instruments, and things necessary to enable the company to obtain in its own name letters patent to the said improvements.

5. [RESCISSION IF CAPITAL NOT PAID IN.] Unless before the _____ day of _____ the company shall have been duly incorporated, and at least _____ dollars of the capital shall have been subscribed for and paid in in cash, either of the parties hereto may by notice in writing to the other rescind this agreement.

6. [DISCHARGE OF TRUSTEE.] Upon adoption of this agreement by the company the said trustee shall be discharged from all liability hereunder.

7. [RESCISSION IF AGREEMENT NOT ADOPTED.] If this agreement shall not be adopted by the company before the _____ day of _____, either of the parties hereto may by notice in writing rescind the same.

In witness, *etc.*

16. Agreement Between Joint Inventors Defining Their Rights in Patent to be Applied for

An agreement made this _____ day of _____ between _____, party of the first part, and _____, party of the second part:

[RECITAL OF INVENTION, ETC.] Whereas, the parties hereto have jointly invented a certain improvement in _____, for which they are about to make application for letters patent, and desire to define their rights and interests in the said invention and in any letters patent which they may obtain for the same.

Now, it is hereby agreed as follows:

1. [APPLICATION AND JOINT OWNERSHIP.] The parties hereto shall forthwith apply through Messrs. _____, patent solicitors, for and endeavor to obtain in their joint names letters patent of the United States for the said invention, and any letters patent obtained therefor shall be held by them in equal shares as tenants in common.

2. [COSTS AND PROFITS TO BE SHARED.] All fees, charges, and expenses connected with obtaining, maintaining, and protecting the said letters patent shall be borne and paid by the parties hereto in equal shares; and all profits or royalties derived by the parties under the said letters patent shall be divided equally between them.

3. [RESTRICTION ON SALE, ETC.] Neither of the parties hereto shall sell, assign, or mortgage his share or interest in the said letters patent or grant any license thereunder without the previous consent in writing of the other.

4. [FUTURE IMPROVEMENTS.] If either of the parties hereto at any time shall make or acquire any improvement or patent for any improvement upon the said invention (*or*, shall make or discover or acquire any further invention or patent for any further invention relating to ———), he shall forthwith disclose the same to the other, and if the other party shall so request, but not otherwise, shall execute and do all applications, documents, instruments, and things necessary for obtaining letters patent for and for assigning the same, as the case may require, to the end that the same shall be vested in the parties hereto in equal undivided shares or interests, and the same shall be held by the parties hereto upon the same terms and conditions as the letters patent to be applied for under clause 1 hereof; and all fees, charges, and expenses that shall have been or may be incurred therein, including the purchase price of any such improvement, invention, or patent acquired by either as aforesaid shall be borne and paid for by the parties hereto equally.

In witness, *etc.*

17. Agreement to Supply Funds for Developing and Obtaining a Patent for an Invention in Consideration of a Joint Grant

An agreement made the _____ day of _____ between _____, party of the first part, and _____, party of the second part:

[RECITAL OF INVENTION, ETC.] Whereas, the party of the first part claims to have invented a new and useful improvement in _____, and desires to develop and obtain letters patent for the said invention, and the party of the second part has agreed to provide the funds necessary therefor upon the terms and conditions following.

Now, it is hereby agreed as follows:

1. [FIRST PAYMENT.] The party of the second part shall upon the execution of these presents pay to the party of the first part the sum of _____ dollars, which sum, or so much thereof as may be necessary for the purpose, shall be applied by the party of the first part in testing, developing, and perfecting said invention.

2. [APPLICATION FOR PATENT.] As soon as the said invention shall be sufficiently developed and perfected, the party of the first part shall apply through Messrs. _____, patent solicitors, for and do all things necessary to obtain letters patent for the said invention for the United States in the joint names of the parties hereto as hereinafter provided.

3. [ASSIGNMENT OF HALF INTEREST.] As soon as the party of the first part shall have made application for letters patent, he shall execute to the party of the second part an assignment of the undivided one-half part of the full and exclusive right to the said invention, and he shall execute and do all instruments, documents, and things necessary to the issue of the said

letters patent jointly to the parties hereto, that is to say, an undivided one-half part to each of them.

4. [IDENTIFICATION OF INVENTION.] For the purpose of identifying the invention, the subject of this agreement, with the invention for which letters patent are intended to be applied for, as aforesaid, a description (*or*, sketch) of the invention in its present stage of development is hereto annexed.

5. [COST OF OBTAINING PATENT.] All fees, costs, expenses, and charges connected with applying for and obtaining the said letters patent, including those incurred in connection with any amendments of the specifications and in any interference proceedings, shall be borne and paid for by the party of the second part (*or*, by the parties hereto in equal shares).

6. [FURTHER PAYMENT.] Within —— days after the issue of the said letters patent as aforesaid the party of the second part shall pay to the party of the first part such sum as shall, together with so much of the said sum of —— dollars paid to the party of the first part as aforesaid as shall not have been actually applied to him in testing, developing, and perfecting the said invention, amount to the sum of —— dollars.

7. [DETERMINATION OF AGREEMENT.] If a grant of the said letters patent shall be finally refused, or if within —— days from their issue Messrs. ——, whose decision in the matter shall be conclusive, shall express an opinion adverse to the validity of the said letters patent, then the party of the second part may by notice in writing addressed to the party of the first part at —— determine this agreement, whereupon all liabilities of the party of the second part shall cease, but the party of the first part shall be under no obligation to repay any sums theretofore paid to him hereunder by the party of the second part, and the said invention shall be and remain the sole property of the party of the first part, and the party

of the second part shall upon the request and at the cost of the party of the first part forthwith reassign to him the share or interest of the party of the second part in the said invention and letters patent.

8. [RIGHT TO IMPROVEMENTS.] (*See Form No. 16, cl. 4, P. 1103.*)

In witness, *etc.*

18. Agreement Between Inventor and Expert Mechanic for Perfecting Invention and Obtaining Right to Improvements Made by Him

An agreement made the —— day of —— between ——, party of the first part, and ——, party of the second part:

[RECITAL OF INVENTION, AND AGREED ASSISTANCE.] Whereas, the party of the first part has invented a certain new and useful improvement in ——, a description (*or*, sketch) of which in its present stage of development is hereto attached, but is unable for want of mechanical skill to carry the same into practical effect; and whereas, the party of the second part has agreed to assist him in the practical development of the said invention.

Now, it is hereby agreed as follows:

1. [MECHANIC TO PERFECT INVENTION.] The party of the second part shall use his best endeavors to develop and perfect the said invention and to carry it into practical effect and to make a satisfactory working model of the same.

2. [PAYMENTS—MATERIALS AND TOOLS.] The party of the first part shall pay to the party of the second part for each day while he shall be employed in the aforesaid work at the rate of —— dollars per working day of —— hours, and upon a satisfactory working model being made by the party of the second part shall pay to him the further sum of ——

dollars. The party of the first part shall also supply the party of the second part with all materials, appliances, and tools necessary for the aforesaid work, other than tools which are now in the workshop of the party of the second part.

3. [IMPROVEMENTS.] In consideration of the sum of ——— dollars now paid by the party of the first part to the party of the second part, the receipt whereof is hereby acknowledged, all discoveries or improvements in connection with the said invention and all further inventions relating to ——— made or which shall at any time hereafter be made by the party of the second part shall be forthwith disclosed by him to the party of the first part, and shall belong to, and be the absolute property of, the party of the first part.

4. [NOT TO DISCLOSE INVENTION.] The party of the second part shall not disclose the said invention or any discovery, improvement, or further invention in connection therewith or relating to ——— made or which shall be made by him to any person other than the party of the first part, nor shall he permit any other person to have access to or to inspect any documents, drawings, or models relating to the same or any of the same.

5. [PATENTS.] The party of the second part, whenever required so to do by the party of the first part, at the expense of the party of the first part, shall execute and do all applications, documents, instruments, and things, jointly with the party of the first part or otherwise, as counsel may advise, necessary for obtaining letters patent for the said invention or any such improvement, discovery, or further invention as aforesaid and for vesting the said letters patent when obtained and all right, title, and interest in and to the same in the party of the first part solely and absolutely.

In witness, *etc.*

19. Mortgage of a Patent

This indenture made this _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF PATENT, ETC.] Whereas, the party of the first part did obtain letters patent of the United States for an improvement in _____, which letters patent are numbered _____, and bear date the _____ day of _____ (*or otherwise set out title of mortgagor*); and whereas, the party of the second part has agreed to advance to the party of the first part the sum of _____ dollars to be secured in manner hereinafter appearing.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENTS.] In consideration of the sum of _____ dollars to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby sell, assign, and transfer unto the party of the second part the whole right, title, and interest in and to the said improvement in _____ and in and to the letters patent therefor aforesaid, and the full and exclusive benefit of the same and of all improvements thereon; the same to be held and enjoyed by the party of the second part for his own use and behoof, and for the use and behoof of his personal representatives and assigns, to the full end of the term for which the said letters patent are or may be granted, as fully and entirely as the same would be held and enjoyed by the party of the first part had these presents not been executed.

2. [COVENANTS OF VALIDITY AND TITLE.] And the party of the first part covenants with the party of the second part that the said letters patent are valid and subsisting; that the party of the first part is now the sole owner of the said patent and

all rights under the same; that he has good right to assign the same; and that the same are free from all incumbrances:

3. [PROVISO FOR PAYMENT, ETC.] Provided, nevertheless, that if the party of the first part shall pay to the party of the second part the sum of ——— dollars according to the terms of a certain promissory note bearing even date herewith, executed by the party of the first part to the order of the party of the second part for the said sum of ——— dollars, and payable (*state terms*), and shall also pay to him all such further sums of money as may become due under the terms of this indenture as hereinafter provided, then this deed and assignment shall be void, and the party of the second part at any time thereafter at the request and cost of the party of the first part shall reassign the mortgaged property and premises to the party of the first part or as he shall direct.

4. [COVENANTS OF MORTGAGOR.] And the party of the first part further covenants with the party of the second part as follows:

(1) [TO PAY DEBT.] That the party of the first part will pay the said sum of money and interest thereon at the times and in the manner above specified, together with all costs and expenses of collection, and will pay as part of the debt hereby secured in case of any sale of the mortgaged premises, as hereinafter provided, all costs and expenses thereof including reasonable attorney's fees.

(2) [TO PREVENT INFRINGEMENTS.] That the party of the first part will during the continuance of this security use his utmost endeavors to detect any infringement of the said letters patent, and will forthwith inform the party of the second part of any infringement known to him, and will, if required by the party of the second part, commence and prosecute, or will permit the party of the second part, if he shall so elect, to commence and prosecute, at the cost of the party of the first part,

all actions or proceedings necessary to prevent such infringement and to protect the said letters patent; and all costs, expenses, and reasonable counsel and attorney's fees paid or incurred by the party of the second part for such purposes, with interest thereon from the time of such payment at the rate of _____ per cent. per annum, shall immediately be due and payable by the party of the first part, and shall be deemed part of the debt secured hereby.

(3) [TO GIVE BENEFIT OF IMPROVEMENTS.] That if the party of the first part during the continuance of this security shall discover or make, or become entitled to the benefit of any letters patent of the United States for, any improvement upon the invention the subject of the said letters patent, he will forthwith give to the party of the second part notice in writing of the same, and the same shall be comprised in and subject to this security, and the party of the first part shall assign the same to the party of the second part.

5. [USER OF PATENT AND LICENSES BEFORE DEFAULT.] Until the party of the second part shall be entitled to exercise the power of sale hereinafter contained the party of the first part shall be entitled to make, use, and vend the said invention; but he shall not without the previous consent in writing of the party of the second part sell or assign his interest therein or grant any license under the said letters patent.

6. [ELECTION TO DECLARE DUE ON DEFAULT.] If default shall be made in the payment of the said principal sum or of any installment of interest thereon or in the performance or observance of any of the covenants of the party of the first part herein contained (and such default shall continue for _____ days), then and in either or any such case the party of the second part may elect without notice that the principal sum hereby secured, with the interest accrued thereon, shall be immediately due and payable, and may enforce payment thereof

and of all sums expended under the terms of this indenture by foreclosure or as hereinafter provided or otherwise.

7. [LICENSES AFTER DEFAULT.] If any such default as specified in the preceding paragraph shall be made, it shall be lawful for the party of the second part, from time to time thereafter, upon —— days' notice in writing served upon the party of the first part or mailed to him at (*post office address*), to grant, upon such terms and conditions as the party of the second part shall see fit, licenses to third parties to make, use, and vend the said invention, or to exercise either or any of such rights, at a royalty or other periodical payment; and it shall be lawful for the party of the second part to receive and retain the moneys arising therefrom and to apply the same in reduction or payment of the sums then payable under the terms of this indenture, paying the overplus, if any, to the party of the first part, subject nevertheless to the provisions of the following paragraph.

8. [POWER OF SALE.] If any such default as specified in paragraph 6 hereof shall be made, it shall be lawful for the party of the second part, and he is hereby authorized and fully empowered, at any time thereafter, either before or after the grant of any license or licenses under the preceding paragraph, upon —— days' notice in writing served upon the party of the first part or mailed to him at (*post office address*), to sell the said mortgaged property and premises, including the said licenses and the benefits to accrue thereunder, if any have been granted, at public or private sale, at which the party of the second part may become the purchaser, and to assign and transfer the said mortgaged property and premises and licenses to the purchaser absolutely, and for that purpose to execute all such deeds and other instruments as may be necessary or proper, and out of the moneys arising from such sale to retain the principal sum hereby secured, with all interest then accrued

thereon and all other sums which may be then due under the terms of this indenture, paying the overplus, if any, to the party of the first part. And the party of the first part covenants with the party of the second part that upon any such sale as aforesaid he will execute and do all such further assignments, instruments, and things as may be necessary or proper for vesting in the purchaser absolutely the said property, premises, and licenses the subject of this mortgage.

9. [REPRESENTATIVES AND ASSIGNS INCLUDED.] The terms "the party of the first part" and "the party of the second part" shall, unless the context otherwise requires, be deemed to include their respective personal representatives and assigns.

In witness, *etc.*

20. Assignment of Secret Process or Right to Compound and Sell a Proprietary Medicine, Purchase Money to be Paid by Installments¹⁰

Indenture made this —— day of —— between ——, of ——, hereinafter called the vendor, of the one part, and ——, of ——, hereinafter called the purchaser, of the other part:

[RECITAL OF SECRET.] Whereas, the vendor is in possession of a secret process for the manufacture of a certain (*article*) known as —— (*or, is the proprietor of a certain medicine known as ——, for the compounding of which the vendor is in the possession of a secret formula*).

Now, this indenture witnesseth as follows:

1. [SALE.] In consideration of the sum of —— dollars to be paid to the vendor by the purchaser as hereinafter mentioned, the vendor hereby sells and assigns unto the purchaser the said secret process (*or, all the vendor's right and*

¹⁰ See preliminary note, ante, p. 1078.

interest in the said medicine) and the exclusive and absolute benefit thereof, to the intent that the purchaser so far as the vendor is able to secure the same shall be the sole person entitled to manufacture or sell the said (*article*) (*or*, to compound and sell the said medicine), or to use the name of ——— in connection therewith.

2. [VENDOR TO IMPART SECRET.] The vendor shall upon the execution of these presents forthwith impart the said secret process to the purchaser and give to the purchaser such instructions and information with regard to the same as may be necessary for the purpose of using the same to the best advantage (*or*, forthwith communicate to the purchaser a full and accurate recipe and formula in writing for compounding the said medicine).

3. [PAYMENTS.] The purchaser shall pay to the vendor the said sum of ——— dollars by equal semiannual installments of ——— dollars each, the first of such installments to be paid on the ——— day of ——— next, and a like installment every subsequent ——— day of ——— and ——— day of ———, until all the said installments shall have been paid.

4. [VENDOR NOT TO DISCLOSE—LIQUIDATED DAMAGES AND DETERMINATION.] The vendor shall not at any time hereafter disclose the said secret to any person other than the purchaser. If the vendor shall so disclose the said secret, he shall pay to the purchaser the sum of ——— dollars as liquidated damages, and the purchaser shall at his option be at liberty at any time within ——— days after the said disclosure shall come to his knowledge to determine this agreement, save so far as clause 9 hereof shall apply. If the purchaser shall so determine this agreement, the vendor shall in addition to the said sum of ——— dollars repay to the purchaser (one-half) of the amount of the said installments of the purchase money theretofore paid to vendor.

5. [PURCHASER NOT TO DISCLOSE SECRET UNTIL PAYMENT.] Until the whole of the said purchase money shall have been paid to the vendor the purchaser shall not in any way or manner make known, divulge, or communicate the said secret to any person, except as hereinafter provided, and shall not do or omit or suffer to be done or omitted any act or thing in relation to the premises whereby the said secret may become known to any unauthorized person.

6. [DISCLOSURE TO EMPLOYÉS UPON BOND.] The purchaser shall be at liberty at any time to disclose the said secret to any of his employés to whom it shall, in his opinion, be absolutely necessary to disclose the same for the purpose of using the said secret to advantage: Provided, that before disclosing the said secret to any such employé the purchaser shall require such employé to enter into a bond with the purchaser in the sum of —— dollars not to disclose the said secret, or any part thereof, which bond shall be approved by the vendor before any such disclosure to any such employé shall be made.

7. [PURCHASER TO ENFORCE BONDS.] If any such employé shall disclose the said secret or any part thereof before the whole of the said purchase money shall be paid, the purchaser will at his own cost enforce the said bond and will pay to the vendor all sums of money recovered thereunder before the payment of the last installment of the said purchase money; but any sums so paid shall be credited as or towards payment of the last installment or of the last two or more installments, as the case may be.

8. [VENDOR'S REMEDIES FOR PURCHASER'S DEFAULT.] If any installment of the said purchase money or any part thereof shall not be paid within —— days after the same shall become due, or if the purchaser shall commit any breach of the agreements and stipulations on his part herein contained, then the whole balance of the said purchase money then unpaid

shall forthwith become payable; or, in lieu thereof, the vendor at his election may declare this agreement at an end save in so far as clause 9 hereof shall apply, and in that case all installments of the said purchase money theretofore paid shall be forfeited to and belong absolutely to the vendor.

9. [PURCHASER NOT TO DISCLOSE UPON DETERMINATION—DAMAGES.] If this agreement shall be determined under the provisions of clause 5 or clause 8 hereof, the purchaser shall not at any time thereafter in any way or manner make known, disclose, or communicate the said secret to any person, and in the event of it being disclosed by any employé to whom it has been communicated as aforesaid, the purchaser shall at the request and cost and for the benefit of the vendor enforce the bond entered into by such employé in manner aforesaid. And if the purchaser shall make any such unauthorized disclosure, or shall neglect or refuse to enforce any such bond as aforesaid, he shall pay to the vendor the sum of ——— dollars as liquidated damages for each such disclosure or default.

10. [REPRESENTATIVES INCLUDED.] In this agreement, where the context so admits, the terms “vendor” and “purchaser” shall include the personal representatives and assigns of the vendor and purchaser respectively.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

21. Same—In Consideration of Cash Payment and Royalties During Given Period

Indenture made this ——— day of ——— (*parties as in preceding form*):

[RECITAL OF SECRET.] (*As in preceding form.*)

Now, this indenture witnesseth as follows:

1. [SALE.] In consideration of the sum of ——— dollars paid to the vendor by the purchaser, the receipt whereof is hereby acknowledged, and of the royalties to be paid to the

vendor by the purchaser as hereinafter provided, the vendor hereby sells and assigns (*continuing as in clause 1 of preceding form*).

2. [VENDOR TO IMPART SECRET.] (*As in clause 2 of preceding form*.)

3. [VENDOR NOT TO DISCLOSE—LIQUIDATED DAMAGES.] The vendor shall not at any time hereafter disclose the said secret to any person other than the purchaser; if he shall do so, he shall pay to the purchaser the sum of ——— dollars as liquidated damages.

4. [PURCHASER TO PAY ROYALTIES.] On the ——— day of ——— next and on the corresponding day of each ——— and during a period of ——— years from the date hereof the purchaser shall pay to the vendor the royalty or sum of ——— dollars for every (*amount, number, or quantity*) of the said ——— manufactured (*or, compounded*) and sold by the purchaser during the preceding six calendar months next preceding the first day of the month in which such royalty shall be payable.

5. [ACCOUNTS.] So long as the said royalties shall be payable the purchaser shall keep at his usual place of business all proper books of account, and shall make accurate and regular entries therein of all particulars relating to the manufacture (*or, compounding*) and sale of the said ———, which may be necessary or material to show the amount payable by the purchaser for royalties as aforesaid, and on the same day when each royalty shall be payable shall furnish to the vendor full and accurate accounts for the period of six months for which the same shall be then payable showing the amount of the royalties payable to the vendor as aforesaid.

6. [LIQUIDATED DAMAGES ON DEFAULT OF ROYALTY.] If the purchaser shall fail for the space of ——— days after which the said accounts are to be rendered and the said royalties are to be paid as aforesaid to render such accounts and

to pay all moneys then due by way of royalties, the purchaser will pay to the vendor in lieu of the said royalties, which shall thereupon cease to be payable, the sum of ——— dollars for each such period of six months of the said term of ——— years for which any such royalties shall not have been paid, whether due or not, and such sums shall be immediately recoverable by the vendor as liquidated damages.

7. [TO PRODUCE BOOKS FOR INSPECTION.] At all reasonable times when so requested by the vendor the purchaser shall produce the said books and all documents relating to the premises for the inspection of the vendor or his agents, and permit him or them to make extracts or copies therefrom.

8. [PURCHASER NOT TO DISCLOSE SECRET UNTIL PAYMENT.] So long as any royalties remain payable hereunder, the purchaser shall not in any way or manner make known (*concluding as in clause 5 of preceding form*).

9. [DISCLOSURE TO EMPLOYÉ UPON BOND.] (*As in clause 6 of preceding form*.)

10. [LIQUIDATED DAMAGES FOR BREACH.] In case the purchaser shall disclose the said secret to any person in violation of the foregoing provisions or in case the said secret shall become known to the public through any act or default of the purchaser, he shall pay to the vendor the sum of ——— dollars as liquidated damages for every such breach, act or default.

11. [TO ENFORCE BONDS.] The purchaser shall at his own cost enforce the bond so entered into by any employé as aforesaid in the event that any such employé shall disclose the said secret or any part thereof, so long as any royalties remain payable hereunder, and shall pay (one-half of) all moneys recovered under any such bond to the vendor.

12. [REPRESENTATIVES INCLUDED.] (*As in clause 10 of preceding form*.)

In witness, etc.

CHAPTER XXIX

PLEDGES AND COLLATERAL SECURITIES

A "pledge" is a bailment of personal property as security for the payment of a debt or the performance of some other engagement, accompanied by a power of sale in case of default. It carries with it a right of redemption before sale. A pledge is a common-law security, and requires no writing to evidence it, although a writing is desirable. The term "collateral security" is often used to designate a pledge of incorporeal personalty, but the term is also applied to other transactions, such as chattel mortgages, which are distinct, a chattel mortgage passing the ownership in the thing to the creditor, although the debtor retains possession of it, while a pledge depends entirely upon the delivery of the thing to the creditor, and the pledgee has only a special property therein.

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1. Receipt for Money Advanced on Pledge of Chattel

Received this day from — the sum of — dollars
by way of loan, bearing interest at — per cent. per annum,
and payable on or before the — day of —, as security

for which I have deposited with him by way of pledge a diamond necklace.

(Date.)

(Signature.)

2. Acknowledgment by Pledgee of Delivery of Pledged Chattel

I, the undersigned ———, hereby acknowledge that I have this day received from ——— a diamond necklace containing fifty stones by way of pledge for securing the repayment on or before the ——— day of ——— of the sum of ——— dollars, and interest at ——— per cent. per annum from this date. And I hereby undertake to return the same on payment of the said loan and interest, damage by fire or other inevitable accident excepted.

(Date.)

(Signature.)

3. Receipt for Repayment by Pledgee of Loan

Received this day from ——— the sum of ——— dollars, being in full discharge of the principal sum of ——— dollars, and interest, due me and secured by pledge of a diamond necklace now redelivered by me to him.

(Date.)

(Signature.)

4. Agreement on Pledge of Chattels

Memorandum of agreement made the ——— day of ——— between ———, hereinafter called the borrower, of the one part, and ———, hereinafter called the lender, of the other part:

Whereby it is hereby agreed as follows:

1. [LOAN AND PLEDGE.] The lender has lent the sum of ——— dollars to the borrower, the receipt whereof is hereby

acknowledged, and the borrower has delivered to the lender the chattels belonging to the borrower specified in the schedule hereto by way of pledge for securing the payment on or before the _____ day of _____ of: (1) The said loan of _____ dollars; (2) interest thereon from the date hereof at the rate of _____ per cent. per annum; (3) the expenses which may be incurred by the lender in insuring the said chattels against loss or damage by fire; (4) the expense of warehousing the said chattels (*or*, the sum of _____ dollars per week for storing the said chattels on the lender's premises or elsewhere); (5) all expenses which may be incurred by the lender in keeping or putting the said chattels or any of them in repair; (6) all expenses which may be incurred by the lender in selling the said chattels or any of them; (7) all other costs, charges and expenses, if any, which the lender may be entitled by law to add to his security.

2. [PROMISE OF PLEDGOR TO REPAY.] In consideration of the said loan the borrower hereby personally promises to repay the said loan and interest and the other several items specified in the preceding paragraph.

3. [POWER OF SALE.] In case of the nonpayment of the said loan or of the interest thereon within the time aforesaid, the lender may, on _____ days' notice to the borrower, served upon him or mailed to him at (*post office address*), sell the said chattels or so much thereof as may be sufficient to pay the said loan, and interest, and the several items hereinbefore specified, at public or private sale, and may sell the same in one lot or separately or in such lots as the lender may deem best, with the right on the part of the lender to become the purchaser at such sale or sales, returning the overplus, if any, to the borrower.

4. [PLEDGE NOT LIABLE FOR INVOLUNTARY LOSSES.] The lender shall not be liable to the borrower for any involuntary

losses which may occur during his custody of the said chattels or by reason of the sale thereof.

(Signatures of both parties.)

SCHEDULE

_____	_____
_____	_____
_____	_____

5. Agreement on Pledge of Goods with Bill of Lading or Warehouse Receipt

Memorandum of agreement made the _____ day of _____
(*parties as in preceding form*):

Whereby it is agreed as follows:

1. [LOAN AND PLEDGE.] The lender has lent the sum of _____ dollars to the borrower, who has promised to pay the same, as evidenced by his promissory note of even date herewith for that sum, payable to the order of the lender in _____ days from date, with interest at the rate of _____ per cent. per annum; and the borrower has indorsed and delivered to the lender two bills of lading for a cargo of sugar now at sea in the ship _____, being parts of a set of three bills, the third of which is in the custody of the master of the said ship (*or*, the warehouse receipt for _____ bushels of wheat now stored in the warehouse of the _____ Company at _____) by way of pledge for securing the payment of the said note and interest, and the expenses which may be incurred by the lender in insuring the said sugar (*or*, wheat) against loss or damage by fire, all sums now due and henceforth to become due to the shippers (*or*, warehousemen) for freight (*or*, warehouse charges) and other services and charges in relation to the said sugar (*or*, wheat), all expenses which may be incurred by the lender

in selling or attempting to sell the same, and all costs, charges, and expenses, if any, which the lender may be entitled by law to add to his security.

2. [PROMISE OF PLEDGOR TO REPAY.] (*Substantially as in preceding form.*)

3. [POWER OF SALE.] In the event of the nonpayment of the said note at maturity the holder thereof may sell the said sugar (*or*, wheat) or any part thereof, either at public or private sale, or otherwise, at the option of such holder, with the right on the part of the holder to become the purchaser, and out of the proceeds of such sale may retain the principal and interest due upon the said note and the other several items payable by the lender as hereinbefore specified, paying the residue, if any, to the lender.

4. [PLEDGE NOT LIABLE FOR LOSSES.] (*As in preceding form.*)
(*Signatures of both parties.*)

6. Agreement on Transfer of Note as Collateral Security for Transferror's Note

Memorandum of an agreement made this _____ day of _____ between A. B., and C. D.:

Whereas, the said C. D. has lent the sum of _____ dollars to the said A. B., who has promised to pay the same, as evidenced by his promissory note for that amount of even date herewith, payable to the order of the said C. D. on the _____ day of _____; and whereas, the said A. B. has indorsed and delivered to the said C. D., as collateral security for the payment of the said note, a certain other promissory note, dated the _____ day of _____, and made by E. F., whereby he promised to pay to the order of the said A. B. the sum of _____ dollars on the _____ day of _____.

Now, it is hereby agreed that, in the event of the nonpayment of the said note of the said A. B. at maturity, the holder

thereof may sell the said note of the said E. F. or may collect and compel payment thereof, and out of the proceeds of such sale or collection may retain the principal and any interest due upon the said note of the said A. B., together with all costs and expenses, including reasonable attorney's fees, which the said C. D. may incur in making such collection, paying the residue, if any, to the said A. B.

(Signatures of both parties.)

7. Assignment of Chose in Action as Collateral Security for Indebtedness

[RECITAL OF INDEBTEDNESS.] Know all men by these presents that whereas, I, ———, am indebted to ——— in the sum of ——— dollars for money by him to me lent due and payable on the ——— day of ———, with interest thereon at the rate of six per cent. per annum from the ——— day of ———.

[ASSIGNMENT.] Now, therefore, in consideration of the premises, and to secure the payment thereof, I do hereby sell, assign, transfer, and set over to the said ——— all my right, title, and interest in and to a certain bond (*or, policy of insurance, describing the subject-matter assigned*), with full power, in my name or otherwise, to collect and enforce payment thereof.

[CONDITION FOR PAYMENT.] This assignment is made upon the express condition that if I shall pay or cause to be paid to the said ———, his executors, administrators, or assigns, the above-recited indebtedness as the same shall become due, then this assignment shall be void and of no effect.

[APPLICATION OF PROCEEDS.] In case the said ———, his executors, administrators, or assigns, shall collect the moneys due on the said bond (*or, policy, etc.*) hereby assigned, he or they shall, after retaining the full amount of the above-recited

indebtedness, and the reasonable costs and expenses of collection, pay over the surplus, if any, to me, or my executors, administrators, or assigns.

In witness, *etc.*

8. Collateral Note Pledging Stock or Bonds

\$———. ———, 19——.

——— after date, for value received, I promise to pay to ———, or order, ——— dollars, and interest at the rate of ——— per centum per annum for such further time as said principal sum or any part shall remain unpaid, I having deposited with this obligation as collateral security ——— shares of the capital stock of the ——— Company, Certificate No. ——— (*or, \$5,000 ——— Railway Company first mortgage four per cent. bonds, Nos. ———*), with authority to sell the same without notice, either at public or private sale, or otherwise, at the option of the holder or holders hereof, on the non-performance of this promise, he or they giving me credit for any balance of the net proceeds of such sale remaining, after paying all sums due from me to the said holder or holders, or to his or their order. And it is further agreed that the holder or holders hereof may purchase at said sale.

(*Signature.*)

9. Same—Short Form

\$———. ———, 19——.

I promise to pay to ———, or order, ——— dollars, for value received, with interest at the rate of ——— per cent. per annum, having deposited with ——— as collateral security, with authority to sell the same at public or private sale, on the nonperformance of this promise, and without notice, ——— shares of the capital stock of the ——— Company (*or otherwise describing security*).

(*Signature.*)

10. Collateral Note Pledging Securities for Payment Thereof and of Other Liabilities

\$———. ———, 19——.

Three months after date, for value received, I promise to pay to ———, or order, ——— dollars, and interest at the rate of ——— per centum per annum, having deposited with this obligation as general collateral security for the payment of this and any other liability, direct or indirect, joint or several, of the undersigned, already existing or which may hereafter arise, in favor of said holder or holders, the following property, viz.: (*description*), with power, on the nonpayment of this or any other such liability, to sell and transfer said property or any property added to or substituted for the same or any part thereof, at brokers' board or at public auction or private sale, without notice, and the said holder or holders hereof may become purchasers at any such sale, if at public auction or at brokers' board, and any property substituted for the above, or added thereto, shall be equally covered by this agreement. Should the market value of the security hereby or hereafter pledged depreciate, in the judgment of the holder or holders of this note, I hereby agree to deposit a further amount of security on demand, so that the market value shall always be at least ——— per cent. more than the amount of this note; and upon failure to comply with any such demand, this obligation shall become due and payable forthwith, and the whole or any part or parts of said securities or substitutes therefor and additions thereto may be sold as herein provided at the option of the said holder or holders.

After deducting costs and expenses of collection and sale, the residue of the proceeds of any sale or sales may be applied to the payment of any then existing liability of the undersigned to said holder or holders, whether then payable or not, returning the overplus to the undersigned; and in case of de-

ficiency I agree to pay to the said holder or holders the amount thereof forthwith after such sale, with legal interest.

(Signature.)

11. Same—Another Form

\$_____.

No. _____.

_____, 19—.

Sixty days after date I promise to pay to the order of _____ dollars, for value received, negotiable and payable without defalcation or discount, at the _____ Bank, with interest from maturity at the rate of _____ per cent. per annum, having deposited or pledged with _____ collateral security for the payment of this note _____ shares of the capital stock of the _____ Company.

In the event of the nonpayment of this note at maturity, the holders hereof are hereby invested with full authority to use, transfer, hypothecate, or sell the said property, or any part thereof, or to cause the same to be done, at public or private sale, with or without notice or demand of any sort, at such place and on such terms as the said holders hereof may deem best, and the holders of this note are authorized to purchase said collaterals when sold for their own protection; and the proceeds of such sale, transfer, or hypothecation shall be applied to the payment of this note, together with all protests, damages, interest, costs, and charges due upon the note, or incurred by reason of its nonpayment when due, or in the execution of this power, and also, a commission of _____ per cent. on the gross amount of said collaterals sold. The surplus, if any, after payment of this note, together with all charges above stated, shall be paid to the maker of this note, or, at the election of the holders hereof, be paid on any other obligation of the maker hereof, whether as principal debtor or otherwise, held by the holders hereof, and if the proceeds of the above sale shall not be sufficient to pay this note, the

maker hereof agrees to make good any deficit. And it is understood and agreed that, should there be any depreciation in the value of said security prior to the maturity of this note, such an amount of additional security shall be furnished as will be satisfactory to said ———, and should such additional security not be furnished within twenty-four hours after demand so to do, then and in that event said ——— may proceed at once to sell, as above specified, the security herein named.

(Signature.)

Due ———.

Address: ———.

12. Same—Another Form

\$———, ———, 19——.

Four months after date I promise to pay to the order of ——— ——— dollars, for value received, without defalcation. Along with the foregoing obligation I have delivered (*describe security*) as collateral security for the prompt payment, at maturity, of this and of any other liability or liabilities of the undersigned, due or to become due, or of any that may be hereafter contracted with the holder of this note, which collaterals, either the whole or any part thereof, I hereby authorize and empower the holder of this note, provided the same or any other liability of the undersigned, as before described, be not paid at maturity, to sell at public or private sale at any time or times thereafter, without further reference or notice to me, and with the right on the part of the holder of this obligation to become the purchaser, at such sale or sales, of the whole or any part of said collaterals, freed and discharged of any equity of redemption, and to transfer, assign, and deliver up the same, and after deducting all legal and other costs, attorney fees, and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so made, to

pay any, either, or all of said liabilities, as said holder shall deem proper, returning the overplus, if any, to me; and should any deficiency occur, I further promise and agree to pay the same to the holder hereof, on demand.

Payable at ———.

(Signature.)

13. Collateral Note of Corporation Pledging Stock

\$10,000.

———, 19——.

Six months after date the A. B. Company promises to pay to the order of C. D., at the ——— Bank of ———, the sum of ten thousand dollars, with interest from date until paid at the rate of six per cent. per annum.

And the said A. B. Company has herewith deposited with the said C. D. as collateral security for the due payment of this promissory note ——— shares of its stock, represented by ——— certificates for ——— shares respectively, numbered respectively ———, standing in the name of E. F., treasurer of the A. B. Company, and by him indorsed in blank.

If this note, or any interest thereon, shall not be paid when due, the said A. B. Company hereby constitutes and appoints the said C. D. its attorney irrevocable, with full power of substitution, at any time thereafter, at public or private sale, without notice, to sell the whole or any part of the said stock, the proceeds thereof to be applied to the payment of the principal and interest of this note, and any commissions or other expenses of such sale, and the overplus if any, either of the proceeds or of the said stock, to be returned to said A. B. Company.

In testimony whereof the said A. B. Company has caused its corporate name to be signed by its president and treasurer, duly authorized in this behalf by a resolution of the board of directors of the said company, adopted at a regular meeting

of the said board held the _____ day of _____, a duly certified copy whereof is hereto attached.

The A. B. Company,

By _____, President.

_____, Treasurer.

14. Collateral Note to Bank

_____ 19—.

Sixty days after date, for value received, I promise to pay to the order of the First National Bank of _____ dollars, with interest at the rate of _____ per cent. per annum from date until paid, the interest to maturity at that rate having been paid in advance. Payable at the First National Bank, _____.

As collateral security for the payment of said sum, and every other debt and liability owing to said bank, or the legal holder hereof, and whether now or hereafter contracted, I have deposited with said bank the following described property, valued at \$_____, to wit (*describe security*).

Should the market value of any security pledged under this agreement, in the judgment of the holder hereof, decline in value, I hereby agree to deposit on demand additional collateral, so that the market value thereof shall always be at least _____ per cent. more than the amount of this note, and upon failure to deposit such additional security this note, as well as all other indebtedness from me to the holder hereof, shall immediately become due and payable, and said securities shall be subject to sale, as herein provided. Upon default in the payment of this note, or any of said indebtedness, I do hereby authorize the holder hereof immediately to sell the property deposited hereunder, or any part thereof, at private sale, without notice, or at public sale upon ten days' notice to

the undersigned, and from the gross proceeds of said sale to pay the necessary costs and expenses thereof, including a reasonable attorney's fee, and to account to the undersigned for the balance, first applying to the payment of this note, and all other indebtedness owing as aforesaid to the holder hereof, the amount necessary to satisfy the same. Any balance now or at any time hereafter on deposit with said the First National Bank of ——— to the credit of my account, and all notes, drafts, bills receivable, and moneys held by the said the First National Bank of ——— in my name, or for my account, or hereafter remitted by or in transit to the said the First National Bank of ——— for such account, are hereby made and declared as additional collateral security to this note when held by said the First National Bank of ———. Any notice or demand required under this agreement may be given by mail addressed to the undersigned as my address is given below, and at any sale of any of said property said bank or the legal holder hereof may become the purchaser.

Address: ———.

(Signature.)

CHAPTER XXX

POWERS OF ATTORNEY

In General

A "power of attorney" is an instrument whereby one person authorizes another, as his agent or attorney, to do some act on his behalf. At common law no particular form, or even writing, is ordinarily required; but authority to execute a deed or sealed instrument must be conferred by deed. Written authority is sometimes required by statute in certain cases. Provision is made by statute in most states for the recording of powers of attorney which confer authority to convey land, and it is usually provided that to entitle such a power to record it must be executed and acknowledged in the same manner as a conveyance. Forms for certificates of acknowledgment by attorneys in fact are provided in many states. Ante, p. 1.

Capacity to Appoint

Capacity to appoint an agent is generally co-extensive with the capacity of the principal to contract, but the appointment of an agent by an infant is void. Within the limits of the powers conferred by its charter a corporation can appoint an agent. Where, as is almost universal, the common-law disabilities of married women have been removed, they may generally act and contract by agents. Special provisions in regard to powers of attorney for the conveyance of real estate by married women exist in many states, but they have often been construed with extreme strictness, and the law of the particular state must always be carefully examined.

Revocation

The authority of an agent may, in general, be revoked by a principal, although he has declared it to be irrevocable; and the authority is revoked by the death of the principal, as well as upon the happening of certain other events, by operation of law. Where a power of attorney is given as security, it is irrevocable by the act of the principal; and if it is coupled with an interest, that is, if the authority be to one in whom is also vested such an estate or interest in the subject-matter of the

agency that he can exercise the authority in his own name, the authority is not terminated by the principal's death. In ordinary cases a revocation by act of the principal takes effect, as to the agent, when the revocation is communicated to the agent, and, as to third persons who may deal with the agent in reliance upon his authority, when they receive notice of the revocation. Where a statute provides for the record of powers of attorney to convey land, and also provides for the record of instruments of revocation, third persons who are without notice of an unrecorded revocation may rely upon the presumption of the continuance of authority.

Substitution

An agent has no power to delegate his authority to a sub-agent, or to appoint a deputy or substitute, to do any act on behalf of his principal, unless authority to do so has been expressly or impliedly conferred. For this reason it is necessary to include in a power of attorney an express authority to appoint a substitute if it is desired to confer this power.

Construction

A power of attorney is strictly construed, and should therefore mention in express terms any power which it is desired to confer. The grant of authority is controlled by the recitals. Thus a recital that the constituent is going abroad has been construed as limiting the authority to the principal's sojourn abroad. Where authority to do particular acts is followed by general words, they are construed as enlarging the authority so far as necessary to accomplish the particular acts. Thus under a power to demand and receive all moneys due and "to transact all business," the latter words are confined to business necessary to the recovery of the moneys.

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For proxies, see Stock and Stockholders, post, p. 1257.

1. Power of Attorney—Short Form

Know all men by these presents that I, ———, of ———, do hereby appoint ———, of ———, my attorney, for me and in my name to (*set forth acts authorized*),¹ and generally to do and perform all things necessary in or about the premises as fully and effectually in all respects as I could do if personally present.

In witness whereof I have hereunto set my hand and seal the ——— day of ———.

2. Same—With Substitution and Ratification

Know all men by these presents that I, ———, of ———, hereby make, constitute, and appoint ———, of ———, my true and lawful attorney for me and in my name to (*set forth acts authorized*), giving my said attorney full power and au-

¹ For various acts see the forms and precedents which follow.

thority to do everything whatsoever necessary to be done in the premises as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

In witness, *etc.*

3. Power to Collect Debts

For me and in my name to ask, demand, sue for, collect, receive, and give acquittance for all sums of money, debts and demands whatsoever which are or shall be due, owing, or belonging to me, or detained from me by any person or persons whatsoever.

4. Power to Collect Rents, Etc.

For me and in my name to demand, sue for, and receive all rents and arrears of rents now due or which at any time hereafter shall become due to me from the tenants or occupants or any of them of the whole or any part of that certain building and premises described as (*description*), and on payment thereof to give receipts and discharges for the same, and on non-payment of the same to institute and prosecute all actions and proceedings for the recovery of such rents and arrears, and for the ejectment of tenants and occupants who may be in default, and for the recovery of possession of the demised premises.

5. Power to Mortgage Land

For me and in my name to borrow upon the security of my farm in —— described as (*description*) such sum not exceeding \$——, at such rate of interest and upon such terms as he shall deem best, and to execute a bond or bonds (*or*, a promissory note or notes) for the payment thereof, and as col-

lateral security therefor to execute, acknowledge, and deliver a mortgage or mortgages upon the above-described premises, with the usual power of sale and interest and insurance clauses and other usual provisions and covenants.

6. Power to Satisfy Mortgage

For me and in my name to receive the principal and interest due me by virtue of a certain promissory note for the sum of \$——, with interest as therein expressed, secured by a mortgage dated the —— day of ——, executed by —— to me, and recorded in the office of the register of deeds in and for the county of ——, and state of ——, in book —— of mortgages on pages ——, and on receipt thereof to execute and acknowledge a good and sufficient release, discharge, or satisfaction of the said mortgage, or otherwise to release, satisfy, and discharge the same of record.

7. Power to Make Partition of and Recover an Estate

For me and in my name to make partition and division with the other heirs (and next of kin) of my late father, deceased, of his real estate (*or*, of his estate both real and personal), and to accept and receive my share of his personal estate, and, upon any partition or division, to enter upon and take possession of any lands, tenements, or hereditaments which may be set off to me as my share of the real estate aforesaid, and to enter into any covenant or agreement respecting my share (and the shares of the other heirs) of his estate (real or personal), which my said attorney shall think reasonable and for my interest, and in my name and for my use, to demand, sue for, and take possession of all and singular the said lands, tenements, and hereditaments, sums of money, goods, and chattels withheld from me to which I am entitled, and which I may lawfully claim

from the heirs, executors, or administrators of my said father, or any other person or persons whatsoever.

8. Power to Manage Affairs

For me and in my name to take charge of and manage my business as manufacturer of ———; to purchase and sell, either for cash or on credit, all such articles and property as he may deem useful and proper as connected with said business; to draw, accept, make, and indorse bills of exchange, checks, and promissory notes; to state accounts; to sue and prosecute, collect, compromise, or settle all claims or demands due or to become due, now existing, or hereafter to arise in my favor, and to adjust, settle, and pay all claims and demands which now exist against me or may hereafter arise, either as connected with the foregoing business or otherwise; to take the general management and control of my affairs, property, and business, and therein to buy, sell, pledge, or mortgage, and to execute and enter into bonds, contracts, mortgages, and deeds connected therewith; and in general do all acts and things which he may consider useful or necessary connected with my business, property, and interests.

9. Power to Deal with Negotiable Instruments

For all or any of the purposes aforesaid for me and in my name to draw, accept, make, indorse, discount, or otherwise deal with bills of exchange, checks, promissory notes, or other securities for the payment of money.

10. To Draw Checks

For me and in my name to draw checks against my account in the ——— Bank.

11. To Accept Bills of Exchange

To accept all bills of exchange which may be drawn upon me in the usual course of my said business.

12. Power to Deposit in Bank and Draw Checks

For me and in my name and for my account to deposit in the —— Bank all moneys which shall come to his hands as such attorney and all bills of exchange, drafts, checks, promissory notes, and other securities for money payable or belonging to me, and for that purpose to sign my name and indorse the same for deposit or collection, and from time to time to withdraw any and all moneys deposited with the said bank, and for that purpose to draw checks in my name.

13. Power of Attorney to Act in All Affairs for Principal Going Abroad—Full Form

Know all men by these presents that I, ——, of ——, being about to depart from the United States and to reside for a time abroad, hereby appoint ——, of ——, my true and lawful attorney to act in, manage, and conduct all my affairs, and for that purpose in my name and on my behalf to do and execute all or any of the following acts, deeds and things, that is to say:

1. [TO RECEIVE DEBTS, ETC.] To ask, demand, sue for, recover, and receive all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, and things of whatsoever nature or description which now are or hereafter shall be or become due, owing, payable, or belonging to me in or by any right, title, ways, or means howsoever, and upon receipt thereof or of any part thereof to make, sign, execute, and deliver such

receipts, releases, or other discharges for the same respectively as he shall think fit or be advised.

2. [TO SETTLE ACCOUNTS.] To settle any account or reckoning whatsoever wherein I now am or at any time hereafter shall be in any wise interested or concerned with any person whomsoever, and to pay or receive the balance thereof as the case may require.

3. [TO SATISFY MORTGAGES.] To receive every sum of money which now is or hereafter shall be due or belonging to me upon the security or by virtue of any mortgage and on receipt of the full amount secured thereby, to execute a good and sufficient release or other discharge of such mortgage by deed or otherwise.

4. [TO COMPOUND, SUBMIT TO ARBITRATION, ETC.] To compound with or make allowances to any person for or in respect to any debt or demand whatsoever which now is or shall at any time hereafter become due and payable to me, and to take and receive any composition or dividend thereof or thereupon, and to give releases or other discharges for the whole of such debts or demands, or to settle, compromise, or submit to arbitration every such debt or demand and every other right, matter, and thing due to or concerning me as my attorney shall think best, and for that purpose to enter into and execute and deliver such bonds of arbitration or other instruments as my attorney may deem advisable in the premises.

5. [TO PROSECUTE AND DEFEND.] To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my estate or any part thereof, or touching any matter in which I or my estate may be in any wise concerned.

6. [TO MANAGE REAL ESTATE.] To enter into and upon all and singular my real estate, and to let, manage, and improve the same or any part thereof, and to repair or otherwise improve or alter, and to insure any buildings thereon.

7. [TO GRANT LEASES, RECEIVE RENTS, ETC.] To contract with any person for leasing for such periods, at such rents and subject to such conditions as my attorney shall see fit, all or any of my said real estate, and any such person to let into possession thereof, and to execute all such leases and contracts as shall be necessary or proper in that behalf, and to give notice to quit to any tenant or occupier thereof, and to receive and recover from all tenants and occupiers thereof or of any part thereof all rents, arrears of rent, and sums of money which now are or shall hereafter become due and payable in respect thereof, and also on nonpayment thereof or of any part thereof to take all necessary or proper means and proceedings for determining the tenancy or occupation of such tenants or occupiers, and for ejecting the tenants or occupiers and recovering the possession thereof.

8. [TO SELL OR EXCHANGE REAL OR PERSONAL ESTATE.] To sell, either at public or private sale, or exchange any part or parts of my real estate or personal property for such consideration and upon such terms as my attorney shall think fit, and to execute and deliver good and sufficient deeds or other instruments for the conveyance or transfer of the same, with such covenants of warranty or otherwise as my attorney shall see fit, and to give good and effectual receipts for all or any part of the purchase price or other consideration.

9. [TO DEPOSIT MONEYS, WITHDRAW, INVEST, ETC.] To deposit any moneys which may come to his hands as such attorney with any bank or banker (*or other person*) (either) in my (*or, his own*) name, and any of such money or any other money to which I am entitled which now is or shall be so deposited to withdraw, and either employ as he shall think fit in the payment of any debts, or interest, payable by me, or taxes, assessments, insurance, and expenses due and payable or to become due and payable on account of my real and personal

estate, or in or about any of the purposes herein mentioned, or otherwise for my use and benefit, or to invest in my (*or*, his own) name in any stocks, shares, bonds, securities or other property, real or personal, as he may think proper (*or in specified investments*), and to receive and give receipts for any income or dividend arising from such investments, and all and any such investments or other investments to vary or dispose of for my use and benefit as he may think fit.

10. [TO BORROW MONEY, MORTGAGE, ETC.] To borrow any sum or sums of money on such terms and with such security, whether real or personal property, as my attorney may think fit, and for that purpose to execute all promissory notes, bonds, mortgages, and other instruments which may be necessary or proper.

11. [TO CARRY ON OR WIND UP BUSINESS.] To carry on or to wind up my business of ——— at ———, and in connection therewith to use the premises in which the same is or shall be carried on, with the same powers of dealing with stock, capital, and effects, and of entering into business engagements, of increasing or diminishing capital, and generally of transacting the affairs of the said business as I myself have or should have.

12. [TO ENGAGE AND DISMISS AGENTS, ETC.] To engage, employ, and dismiss any agents, clerks, servants, or other persons in and about the performance of these presents as my attorney shall think fit.

13. [TO VOTE AT STOCKHOLDERS' MEETINGS, ETC.] To vote at the meetings of stockholders or other meetings of any corporation or company, or otherwise to act as my attorney or proxy in respect of any stocks, shares, or other instruments now or hereafter held by me therein, and for that purpose to execute any proxies or other instruments.

14. [TO EXERCISE FIDUCIARY POWERS SO FAR AS MAY BE DELEGATED.] To exercise any powers and any duties vested in me, whether solely or jointly, with any other or others as executor, administrator, or trustee or in any other fiduciary capacity, so far as such power or duty is capable of being validly delegated.

15. [TO EXECUTE DEEDS, BILLS, NOTES, ETC.] For all or any of the purposes of these presents to enter into and sign, seal, execute, acknowledge, and deliver any contracts, deeds, or other instruments whatsoever, and to draw, accept, make, indorse, discount, or otherwise deal with any bills of exchange, checks, promissory notes, or other commercial or mercantile instruments.

16. [TO PAY HOUSEHOLD EXPENSES AND CHARITABLE SUBSCRIPTIONS.] To pay every month the sum of \$—— to —— to meet my ordinary household expenses, and also in the discretion of my attorney to pay such charitable subscriptions as I have been in the habit of paying (and to make such other payments by way of charity as in the circumstances he shall think that I would make if I were present).

17. [TO DO ALL OTHER THINGS, ETC.] In general to do all other acts, deeds, matters, and things whatsoever in or about my estate, property, and affairs, or to concur with persons jointly interested with myself therein in doing all acts, deeds, matters, and things herein, either particularly or generally described, as fully and effectually to all intents and purposes as I could do in my own proper person if personally present.

18. [TO APPOINT SUBSTITUTES.] To substitute and appoint in his place and stead (on such terms and at such salary or compensation as he shall think fit) one or more attorney or attorneys to exercise for me as my attorney or attorneys any or all of the powers and authorities hereby conferred, and to revoke any such appointment from time to time, and to sub-

stitute or appoint any other or others in the place of such attorney or attorneys as he, the said ———, shall from time to time think fit.

19. [APPOINTING SECOND ATTORNEY ON THE DEATH, DISABILITY, OR REFUSAL OF THE FIRST.] And whereas, I, the said ———, am desirous of providing for the event of the said ——— dying, or becoming incapable of acting, or refusing to act, or becoming bankrupt during my absence, and have requested ———, of ———, to act for me in my absence in any of the events aforesaid, and he has consented so to do.

Now, therefore, I hereby appoint the said ——— my true and lawful attorney from and immediately after the happening of either or any of the said events during my absence to act in and manage all my affairs in the same manner in all respects as the said ——— could have done; and I accordingly grant to and vest in the said ——— as and from the date of such event all and every the same powers and authorities in or concerning the premises in all things as are hereinbefore granted to or vested in the said ——— and as if the name of the said ——— had throughout these presents been inserted instead of the name of the said ———.

20. [RATIFICATION AND DECLARATION IN FAVOR OF PERSONS WITHOUT NOTICE OF REVOCATION.] And I, the said ———, hereby ratify and confirm and promise at all times to ratify and confirm all and whatsoever my attorney, whether the said ——— or the said ———, or any attorney by either hereunder substituted, shall lawfully do or cause to be done in and about the premises by virtue of these presents, including anything which shall be done between the revocation of these presents by my death or in any other manner and notice of such revocation reaching my attorney; and I hereby declare that as against me and all persons claiming under me everything which my attorney shall do or cause to be done in pur-

suance hereof after such revocation as aforesaid shall be valid and effectual in favor of any person claiming the benefit thereof who before the doing thereof shall not have had notice of such revocation.

In witness, *etc.*

14. Power of Attorney to Manage Investments for Principal Going Abroad

Know all men by these presents that I, ———, of ———, being about to go abroad, hereby appoint ———, of ———, my attorney for me and in my name to do and execute all or any of the following acts, deeds and things, namely:

1. [TO COLLECT AND RECEIVE.] To demand, sue for, collect, receive, and give discharges for all moneys, debts, interest, dividends, securities, shares of stock, and other personal property which now belongs or shall hereafter belong to me.

2. [TO PROSECUTE AND DEFEND ACTIONS.] To commence, prosecute, and defend all actions and other proceedings touching my estate or any part thereof, or touching anything in which I or my estate may be in any way concerned.

3. [TO COMPROMISE AND SUBMIT TO ARBITRATION.] To settle, compromise, or submit to arbitration all claims, demands, accounts, disputes, and differences between me and any other person.

4. [TO SELL SECURITIES.] To sell all or any bonds, shares of stock, or other securities belonging to me, and to execute all deeds and other instruments necessary or proper for transferring the same to the purchaser or purchasers thereof, and to give good receipts and discharges for all purchase moneys payable in respect thereof.

5. [TO INVEST.] To invest the proceeds of any sale or sales aforesaid and any other of my moneys in such bonds, shares of stock, and other securities as my attorney in his absolute

discretion shall think fit, and from time to time to vary the said investments or any of them, and in the meantime and pending any such investment as aforesaid to deposit the said moneys in any bank or banks to which my attorney shall think fit to entrust them.

6. [TO PAY EXPENSES.] Out of the moneys coming into his hands to pay any expenses in respect to any part of my estate as my attorney shall think fit.

7. [TO VOTE AT STOCKHOLDERS' MEETINGS, ETC.] To vote at all meetings of stockholders of any company or corporation, and otherwise to act as my attorney or proxy in respect of my shares of stock or other securities or investments which now or hereafter shall belong to me.

8. [TO PERFORM CONTRACTS.] To perform and carry out all contracts entered into by me with any other person.

9. [TO EXECUTE INSTRUMENTS.] For the purposes aforesaid or any of them to indorse all checks or other instruments payable to me, and to sign in my name and execute on my behalf all deeds, assignments, transfers, proxies, and instruments whatsoever.

10. [TO APPOINT SUBSTITUTES.] To appoint and remove at pleasure any substitute for or agent under him in respect of all or any of the matters aforesaid upon such terms as my attorney shall think fit.

11. [GENERAL AUTHORITY.] Generally to act in relation to the premises as fully and effectually in all respects as I myself could do if personally present.

[RATIFICATION.] And I hereby undertake to ratify every thing which my attorney or any substitute or substitutes or agent or agents appointed by him hereunder shall lawfully do or cause to be done in the premises.

In witness, *etc.*

15. Power of Attorney to Sell Lands in Another State ²

Know all men by these presents that I, ———, of ———, hereby appoint ———, of ———, my true and lawful attorney for me and in my name to sell and convey all the lands and real estate situate in the state of ——— which I now own (*or, shall at any time hereafter own*) or in or to which I am (*or, shall be*) in any way interested or entitled or any part or parts thereof, for such price or prices (*or other consideration or considerations*) and on such terms as my said attorney shall think best (including the power to take a purchase-money mortgage for part of the purchase money), and to execute, acknowledge, and deliver good and sufficient deeds and conveyances for the same either with or without covenants and warranty, and generally to act in the premises as effectually as I could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do by virtue hereof.

In witness, *etc.*

15a. Same—By Corporation

Know all men by these presents that the A. B. Company, a corporation organized and existing under the laws of the state of ———, and having its principal place of business at ———, doth hereby constitute and appoint ———, of ———, its true and lawful attorney for it and in its name and stead to sell and convey, for such price or prices and on such terms, including the taking of a purchase-money mortgage or mortgages, as he shall deem best, the whole or any part of that certain tract or parcel of land owned by the said A. B. Company situate in the county of ———, and state of ———, and described as follows, to-wit (*description*), and also any and all

² The formalities of execution and acknowledgment should follow the law of the state where the land is situated.

other land in the said state of ——— now owned by it, and for the said A. B. Company and in its name and stead to execute, acknowledge, and deliver good and sufficient deeds for the whole or any part of the said lands, either with or without covenants and warranty, granting unto its said attorney full power and authority to do and perform every act and thing requisite and necessary or proper to be done in the premises, the said company hereby ratifying and confirming all that the said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof the said A. B. Company has hereunto caused its corporate name to be signed by its president and its corporate seal to be affixed and attested by its secretary, all being done in the city of ———, and state of ———, on this ——— day of ———.

(Corporate seal.)

Attest Seal:

———, Secretary.

The A. B. Company,
By ———, President.

16. Power of Attorney to Recover Debts in Another State or Abroad ³

Know all men by these presents, that I, ———, of ———, hereby appoint ———, of ———, my true and lawful attorney for the following purposes:

1. [To COLLECT AND RELEASE, ETC.] To demand and receive all debts, sums of money, goods, chattels, and effects due and owing me from ———, of ——— (or, from any and all persons, firms, and corporations in the state or kingdom of ———), and upon receipt thereof or of any part thereof for me and in my name to give and execute good and sufficient releases and discharges for the same.

³ If for use abroad, all formalities of execution should be complied with, and the instrument should be authenticated in accordance with the law of the foreign country.

2. [TO PROSECUTE ACTIONS, ETC.] Upon nonpayment thereof or of any part thereof, or upon refusal to release and give up any such goods, chattels, and effects, to commence and prosecute in (his *or*) my name any actions or proceedings in any court of justice or to resort to any other proceedings allowed by the law of the state (*or*, kingdom) of ———, whether by (constraint of person *or*) attachment of money, goods, or otherwise for recovering and obtaining payment, possession, and satisfaction of the same (and to make such petitions to the public officials of said ——— as may be necessary or desirable herein).

3. [TO COMPOUND OR SUBMIT TO ARBITRATION.] To compound or submit to arbitration any matter or thing relating thereto.

4. [TO DO ALL NECESSARY ACTS.] And generally to do and execute all such other matters, acts, and things as may be necessary or proper for the purposes aforesaid as fully and effectually as I could do if personally present.

In witness, *etc.*

17. Power of Attorney to Receive Share of an Intestate's Estate

Know all men by these presents that:

[RECITAL.] Whereas, my father, ———, late of ———, in the county of ———, and state of ———, died on or about the ——— day of ———, intestate, and letters of administration of his estate have been granted to ——— by the probate court of the said county and state.

[APPOINTMENT.] Now, these presents witness that I, ———, of ———, hereby appoint ———, of ———, my true and lawful attorney for me and in my name to do and execute all the following acts and things, that is to say:

1. [TO RECEIVE PROPERTY.] To demand, sue for, recover, and receive from the said ——— or other the administrator or administrators or representatives of my said father, or from any other person or persons to whom it may belong to pay and deliver the same, or who may withhold possession of the same, all my distributive or other share or shares of my said father's estate, real or personal, to which I am or may be by law entitled, and for such, when received, to give good and effectual receipts or discharges.

2. [TO TAKE LEGAL PROCEEDINGS, ETC.] To commence and prosecute all actions and proceedings and to use all other expedients for the payment and recovery of my share in the said estate, real and personal, and the enforcement of my rights therein, as fully and effectually as I myself could do if personally present.

3. [TO SETTLE ACCOUNTS AND COMPROMISE.] To settle all accounts relating to the said estate, and to compromise any disputes concerning the same.

4. [TO APPOINT SUBSTITUTES.] From time to time to appoint any attorney or attorneys under him for any of the purposes aforesaid.

[RATIFICATION.] Hereby ratifying and confirming whatsoever my said attorney or his said attorney or attorneys shall lawfully do or cause to be done in the premises by virtue of these presents.

In witness, *etc.*

18. Power of Attorney from Seller to Stop Goods in Transit

To all to whom these presents shall come, greeting:

[RECITALS.] Whereas, I ———, of ———, on or about the ——— day of ———, at ———, consigned the goods specified in the schedule hereto annexed to be carried by the steamship ———, of the ——— Steamship Company, to Messrs. ——— & Co., of ———, at ———; and whereas, in the

events which have happened I am entitled to stop the said goods in transit and am desirous to do so.

[APPOINTMENT—TO RECOVER GOODS.] Now, know ye that I hereby appoint ———, of ———, my attorney for me and in my name to ask, demand, sue for, recover, and take possession of, from any person who shall have possession or custody of the same, such of the said goods and also any other goods consigned by me to the said ———, whether they be specified in the said schedule or not, as have not at the time of such demand or taking possession come into the possession of the said (*consignees*).

[TO GIVE NOTICE OF INTENTION TO STOP.] And also for me and in my name to give notice to any person so having the possession or custody of such goods of my intention to stop them in transit so as to prevent their coming into the possession of the said (*consignees*) and any such person to prohibit from doing any act whereby such goods shall come into the possession of the said (*consignees*).

[TO TAKE LEGAL PROCEEDINGS.] And on nondelivery upon such demand as aforesaid to bring and prosecute any action or other lawful proceeding for compelling the delivery thereof.

[TO SELL.] And to sell any of such goods as may lawfully be sold, accounting to me for the proceeds of such sale, and to give all proper notices relating to any such sale.

[RATIFICATION.] And I hereby ratify and confirm all that the said ——— shall do or cause to be done in the execution of these presents.

In witness, *etc.*

SCHEDULE

_____	_____
_____	_____
_____	_____

19. Appointment of Substitute under Power of Attorney

Know all men by these presents that I, ———, of ———, in the exercise of a power vested in me by ———, of ———, by a certain power (*or*, letter) of attorney dated the ——— day of ——— (and recorded in the registry of deeds for the county of ———, and state of ———, in book ———, at page ———), and of all other powers me hereunto enabling (*or*, by virtue of the power and authority to be given in and by the power of attorney of ———, of ———, which is hereunto annexed), do hereby substitute and appoint ———, of ———, to perform all and singular the acts and things which I as attorney of the said ——— am in the said power of attorney authorized to perform; I, the said attorney, hereby giving and granting unto the said ——— my whole derived power and authority in the premises in as full and effectual a manner to all intents and purposes as I received the same from the said ——— by the said power of attorney, and generally to do and perform all such acts and things as the said ——— shall deem necessary or expedient to be done for the purposes aforesaid.

And, I, the said ———, as well for myself as for the said ———, hereby agree to ratify and confirm whatsoever the said ——— shall lawfully do or cause to be done in or about the premises by virtue of these presents.

In witness, *etc.*

20. Same—Another Form

To all to whom these presents shall come, greeting:

[RECITAL OF POWER.] Whereas, ———, of ———, by a power of attorney under his hand and seal dated the ——— day of ———, appointed me ———, of ———, his attorney for him and in his name to demand and receive all debts, sums of money, goods, chattels, and effects due and owing him from

any person or persons whomsoever, and upon receipt thereof or of any part thereof for him and in his name to give and execute good and sufficient releases and discharges for the same, and upon nonpayment thereof or of any part thereof or upon refusal to release and give up any such goods, chattels, and effects to commence and prosecute in his name any actions or proceedings in any court of justice, or to resort to any other procedure allowed by law for recovering and obtaining payment, possession, and satisfaction of the same, and to do and perform other acts and things in said power of attorney set forth, including the power to appoint and at my discretion remove any substitute under me as attorney in respect to all or any of the matters and things therein set forth upon such terms as I should think fit.

[APPOINTMENT OF SUBSTITUTED ATTORNEY.] Now, know ye that by virtue of such power and of all other powers me hereunto enabling I hereby appoint ———, of ———, to be the attorney of the said ———, for him and in his name (*or*, in my name) to do and perform all or any of the acts and things that I was authorized to do by the said power of attorney in the same manner and as effectually as the said (*principal*) or as I might now do them or any of them or as he the said (*substitute*) could have done them or any of them if he had in my stead received authority thereto in the said power of attorney.

[RATIFICATION.] And I hereby ratify and confirm all that the said ——— shall do or cause to be done by virtue hereof.

In witness, *etc.*

21. Grant of Further Power by Indorsement on Original Power of Attorney

Know all men by these presents that I, the within-named ———, desiring to confer specifically the following power upon ———, my attorney appointed by the within-written instrument, hereby authorize my said attorney for me and in my name to (*set out additional power*) in all respects as if the authority hereby conferred were specifically conferred by the said instrument. And I declare that I hereby in no way diminish or curtail any of the powers conferred by the said instrument, but that these presents are for all purposes to be read into and with the said instrument so as to enlarge the powers thereby conferred.

In witness, *etc.*

22. Revocation of a Power of Attorney

Know all men by these presents that:

[RECITAL OF POWER.] Whereas, by power of attorney under my hand and seal dated the ——— day of ——— (and recorded, *etc.*), I, ———, of ———, appointed ———, of ———, my attorney for me and in my name to do certain acts and things connected with the sale and conveyance of my lands and premises therein described.

Now, therefore, I hereby revoke the said power of attorney and every power and authority therein contained: Provided, that nothing herein contained shall affect the validity of any act or thing done by the said ——— by virtue of the powers conferred upon him by the said power of attorney before he shall receive notice of the revocation thereof.

In witness, *etc.*

23. Confirmation of Attorney's Act

Know all men by these presents that whereas, ———, of ———, did as my attorney for me and in my name execute a certain deed, dated the ——— day of ———, and conveying unto ——— that certain tract of land described as (*description*), which deed has been recorded in the registry of deeds for ———, in book ———, at page ———.

Now, these presents witness that I, ———, of ———, having examined the said deed, do declare that the said ——— did execute the same as my lawful attorney, and I do hereby ratify and confirm the same in all respects.

In witness, *etc.*

24. Commencement of Power of Attorney Where There Are Several Appointors and Several Attorneys

Know all men by these presents that we, ———, ———, and ———, of ———, do and each of us does hereby appoint ———, ———, and ———, of ——— (and any one or more of them) ⁴ our attorneys (and attorney) for us, the said ———, ———, and ———, and any one or more of us, and in the names or name of us or any one or more of us to, *etc.*

⁴ All the coattorneys must act under a power of attorney unless it provides otherwise.

CHAPTER XXXI

RECEIPTS AND ACKNOWLEDGMENTS

A "receipt" is a written acknowledgment of payment of money or delivery of chattels. It is, in effect, a mere admission, and while as such it is *prima facie* evidence of the payment or delivery, it is generally open to explanation. A receipt in full of all demands given for a smaller sum than the debt, where there is no consideration for the promise to forego the residue, is not ordinarily a good discharge, and in such case a release under seal should be given. Post, p. 1160.

A debt barred by the statute of limitations may be revived by a new promise to pay it, and a new promise may be implied from a mere acknowledgment of the debt, which must be in writing and signed. In most jurisdictions a debt so barred may also be revived by a payment on account made in such manner as to amount to an acknowledgment of it.

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Warehouse receipts, post p. 1287.

1. General Receipt for Money

Received from C. D. the sum of —— dollars.

(Date.)

A. B.

2. Receipt in Full

Received this day from C. D. the sum of —— dollars in full discharge of all claims which I have against him to date (or, in full of all demands against him).

(Date.)

A. B.

3. Receipt for Money by an Agent

Received of C. D. —— dollars.

(Date.)

A. B., by E. F., Agent.

4. Receipt in Full by an Agent

Received this day from C. D. the sum of —— dollars in full discharge of all claims which E. F. has against him up to date.

(Date.)

A. B., Agent for E. F.

5. Receipt for Money Paid by a Third Person

Received from C. D. by the hand of E. F. the sum of —— dollars.

(Date.)

A. B.

6. Receipt in Full by an Agent to an Agent

Received this day from G. H., agent for C. D., the sum of —— dollars in full discharge of all claims which E. F. has against him up to date.

(Date.)

A. B., Agent for E. F.

7. Receipt for Money on Account

Received this day from C. D. the sum of —— dollars on account of what he owes me.

(Date.)

A. B.

8. Receipt for Balance of Account

Received this day from C. D. the sum of —— dollars, being the balance of account due from him to me at this date.

(Date.)

A. B.

9. Receipt by Indorsement on Contract

Received from C. D. the sum of —— dollars, being (a part of) the amount due upon the within-written contract.

(Date.)

A. B.

10. Receipt on Account of Price of Article to be Delivered

Received this day from C. D. the sum of —— dollars on account of the price of a —— to be built by me as per memorandum dated the —— day of ——, and to be delivered to him on or before the —— day of ——.

(Date.)

A. B.

11. Receipt for Salary

Received this day from —— the sum of —— dollars in payment of one month's salary as clerk due May 1, 19—.

(Date.)

A. B.

12. Receipt for Rent

Received this day from C. D. the sum of —— dollars, being one month's rent due this day for premises No. —— street.

(Date.)

A. B.

13. Receipt for Interest Under a Mortgage

Received this day from C. D. ——— dollars, being six months' interest due to me on the ——— day of ——— last upon the principal sum of ——— dollars secured by mortgage dated (*etc.*).

(*Date.*)

A. B.

14. Receipt for Interest by Indorsement on Note

Received \$——, being interest on within note to January 1, 19—.

(*Date.*)

A. B.

15. Receipt by Lawyer to Client on Account

Received this day from C. D. ——— dollars on account of costs and services to be incurred and rendered in the action of C. D. v. E. F.

(*Date.*)

A. B.

16. Receipt by Legatee

Received this day from C. D., executor of the late E. F., deceased, the sum of ——— dollars, being the legacy of that amount bequeathed to me by the said E. F.

(*Date.*)

A. B.

17. Receipt for Price of Horse with Warranty

Received this day from C. D. ——— dollars, the price of a bay horse Jack, warranted by me sound, free from vice, and fit for driving in single harness.

(*Date.*)

A. B.

18. Receipt for Price of Watch with Warranty

Received from C. D. ——— dollars, the price of a gold watch warranted by me to keep correct time within ——— minutes per week for one year from this date.

(Date.)

A. B.

19. Receipt for Chattels

Received from C. D. in good order and condition the following articles of household furniture (*description*) heretofore stored for me by the said C. D.

(Date.)

A. B.

20. Receipt for Documents

I hereby acknowledge that I have received from C. D. the several documents and papers which are enumerated and described in the schedule annexed.

(Date.)

A. B.

SCHEDULE

_____	_____
_____	_____
_____	_____

21. Receipt for Money as a Loan

I hereby acknowledge that I have this day received from C. D. the sum of ——— dollars, which I promise to repay to him on demand (*or*, on the ——— day of ———).

(Date.)

A. B.

22. Acknowledgment of a Debt Barred by Limitation

I, the undersigned ———, of ———, hereby acknowledge that the sum of ——— dollars (being part of the sum of ——— dollars) lent to me by (*or*, due from me to) ———, of ———, is still owing and unpaid.

(*Date.*)

(*Signature of debtor.*)

23. Acknowledgment of Title of Land

I, ———, of ———, hereby acknowledge that the land described as (*description*), whereof I am now in possession (*or*, whereof I am now in receipt of the rents and profits) rightfully belongs to ———, of ———, and that I am in possession thereof (*or*, in receipt of the rents and profits thereof) by his permission.

(*Date.*)

(*Signature.*)

24. Acknowledgment of the Correctness of an Account Stated

We, the above-named ——— and ———, having carefully examined and compared the within and foregoing account with the several vouchers, hereby approve and allow the same, and admit that the balance of \$—— is a just and correct balance.

Witness our hands this ——— day of ———.

(*Signatures.*)

CHAPTER XXXII

RELEASES

Releases are of two kinds: (1) The discharge or renunciation of a right of action or claim; and (2) the conveyance of an interest or estate in property to one who has already a vested interest therein. Only releases of the first kind are here included.

The discharge of a right of action may be effected by an accord and satisfaction; but where there is no consideration for the renunciation or waiver of a right of action, as when a creditor on receipt of part payment of a debt releases the residue, the release must ordinarily be under seal, and such is always the safer course. In a release under seal it is not necessary to state any consideration. In some states, however, the use of seals has been abolished by statute, and the effect of this upon releases not based on consideration must be determined by the law of the particular state. It is an old rule of construction that general words of a release are restricted and controlled in their operation by the recitals, and consequently, if there be recitals, they should show precisely and comprehensively the circumstances on which the release is based. At common law a release of one joint debtor or partner discharges the other joint debtors or partners. This is changed by statute in some states. In some jurisdictions, but not in all, if the instrument reserves the right to pursue the others jointly liable, they are not released.

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For release of mortgage, see Chattel Mortgages, p. 324; Mortgages (Real Estate), p. 834.

1. General Release

Know all men by these presents that I, ———, of ———, do hereby remise, release, and forever discharge ———, of ———, his heirs, executors, and administrators, of and from all and all manner of actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which against the said ——— I ever had, now have, or which my heirs, executors, or administrators hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.

In witness whereof I have hereunto set my hand and seal the ——— day of ———.

2. Same—Another Form

Know all men by these presents that I, ———, of ———, for and in consideration of the sum of ——— dollars to me paid by ———, of ———, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever discharge, the said ———, his heirs, executors, and administrators, of and from all debts, claims, demands, actions, causes of action, suits, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, doings, omissions, variances, trespasses, damages, judgments, extents, executions, and liabilities whatsoever, both in law and equity, or which may result from the existing state of things, which against the said ——— I ever had (*as in preceding form*).

3. General Mutual Releases by Two Persons—Short Form

This indenture made this _____ day of _____ between _____, of _____, of the one part, and _____, of _____, of the other part, witnesseth that each of them the said _____ and the said _____ hereby releases the other of them from all sums of money, accounts, actions, suits, proceedings, claims, and demands whatsoever which either of them at any time had or has up to the date of these presents against the other for or by reason of or in respect of any act, cause, matter, or thing.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

4. Release to Principal by Agent Who Has Received Payment in Satisfaction of Disputed Balance

Indenture made the _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF AGENCY CONTRACT.] Whereas, a contract in writing dated the _____ day of _____ was made and entered into between the said parties hereto, whereby the party of the second part appointed the party of the first part his agent for the sale of automobiles, and agreed to pay to the party of the first part commissions upon sales effected by the party of the first part as therein provided;

[RECITAL OF DISPUTED BALANCE.] And whereas, the party of the first part has made claim that there is due him from the party of the second part as and for such commissions a large sum of money, and the amount of the balance due from the party of the second part to the party of the first part is in dispute between them;

[RECITAL OF AGREEMENT.] And whereas, it has been agreed between the parties hereto that the party of the second part should pay to the party of the first part the sum of \$—— in full satisfaction and discharge of all claims and demands whatsoever, and that the party of the first part should execute the release hereinafter contained.

[RELEASE.] Now, this indenture witnesseth that, in pursuance of the said agreement and in consideration of the sum of \$—— paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part hereby releases and forever discharges the party of the second part, his heirs, executors, and administrators, from all sums of money, commissions, accounts, actions, proceedings, claims, and demands which the party of the first part had or has up to the date of these presents against the party of the second part for or by reason or in respect of any act, cause, matter, or thing.

In witness, *etc.*

5. Release of Lost Bond

Know all men by these presents that:

[RECITAL OF BOND, DISCHARGE, AND LOSS.] Whereas, ——, as principal, and —— and ——, as sureties, by their bond or obligation dated the —— day of ——, bound themselves to me, the undersigned, for payment to me of the sum of \$——; and whereas, the sum of \$—— mentioned in the said bond, with all interest for the same due thereon, has been paid to me in full discharge of the said bond; and whereas, the said bond or obligation has been lost or mislaid, and cannot be delivered up to the said obligors.

[RELEASE.] Now, therefore, I, ——, for the consideration aforesaid, hereby release and discharge the said ——, ——, and ——, and each of them, and their respective

heirs, executors, and administrators, from the obligation of the said bond and from all such sums of money as are therein mentioned to be due and payable unto me, the said ———, my executors, administrators, or assigns, and also from all actions, proceedings, claims, and demands whatsoever for or on account of or in respect of the said bond or obligation or the moneys therein mentioned or any part thereof.

In witness, *etc.*

6. Release of Guardian by Ward on Attaining Majority

Indenture made the ——— day of ——— between ———, of ———, party of the first part, and ———, of ———, party of the second part:

[RECITALS OF GUARDIANSHIP AND ACCOUNTING.] Whereas, by order of the probate court of the county of ———, and state of ———, duly made and entered the ——— day of ———, the party of the second part was appointed guardian of the property and estate of the party of the first part, during his minority; and whereas, the party of the second part has duly accounted as such guardian with the party of the first part, and has paid over and transferred to him all the property and estate remaining in the hands of the party of the second part as such guardian.

[RELEASE.] Now, this indenture witnesseth that the party of the first part hereby releases and forever discharges the party of the second part from all actions, proceedings, claims, demands, or accounts whatsoever for or on account of the property and estate of the party of the first part or the guardianship thereof, or the sale, disposition, investment, and application thereof, or for or on account of the rents, profits, or income thereof, or for or on account of any act or thing at any time done or omitted or neglected by the party of the second part in relation to the premises.

In witness, *etc.*

7. Release to Trustees under Will upon Distribution of the Trust Estate

Indenture made the _____ day of _____ between _____, _____, and _____, of _____, parties of the first part, and _____ and _____, of _____, parties of the second part:

[RECITAL OF TRUST.] Whereas, by his last will, dated the _____ day of _____, which was duly proved and admitted to probate in and by the probate court of the county of _____, and state of _____, _____, the father of the parties of the first part, devised and bequeathed certain property therein described unto the parties of the second part in trust to pay the income thereof to _____, the wife of the said testator, during her life, and from and after her death in trust for the children of the said testator who should be living at his death, in equal shares, and for the issue of any deceased child of the said testator who should leave issue living at the death of the said testator;

[RECITAL OF RELEASOR'S INTEREST.] And whereas, the said testator left him surviving the parties of the first part, who were his only surviving children, and left him surviving no issue of any deceased child, and the said _____, the wife of the said testator has died;

[RECITAL OF DISTRIBUTION.] And whereas, the parties of the first part have requested the parties of the second part to distribute the trust estate and premises in specie, and the parties of the second part have paid and transferred to the parties of the first part respectively the several stocks, securities, moneys, and other property constituting the trust estate in equal shares, as they hereby acknowledge;

[RECITAL OF APPROVAL OF TRUSTEES' ACCOUNTS.] And whereas, the parties of the second part have submitted to the parties of the first part accounts of the said trust estate and

premises showing all their dealings therewith from the commencement of the trust to the present time, which accounts have been examined by the parties of the first part and signed by them as approved.

Now, this indenture witnesseth as follows:

1. [RELEASE.] In consideration of the several payments and transfers so made as aforesaid and of the premises, the parties of the first part do, and each of them doth, hereby release and discharge the parties of the second part and each of them, and their and each of their heirs, executors, and administrators, from all actions, suits, claims, accounts, and demands for or in respect of all the stocks, securities, moneys, and other property which now are or at any time were subject to said trusts created by the said will, or the income thereof, or any part thereof, or for or on account of any matter or thing made, done, permitted, omitted, or neglected by the parties of the second part or either of them in or about the execution of the said trusts, or for or on account of any other thing in any wise relating to the premises.

2. [COVENANTS AGAINST INCUMBRANCES.] Each of the parties of the first part, as to his or her own acts only, hereby covenants with the parties of the second part and their respective executors and administrators that the parties of the first part respectively have not executed or done or knowingly suffered or been party or privy to any deed or thing whereby their respective shares and interests in the said trust estate and premises are or may be in any manner incumbered or affected, or whereby they are respectively disentitled to share in the distribution of the said trust estate and premises in manner hereinbefore appearing.

In witness, etc.

(Signatures and seals of parties of first part.)

CHAPTER XXXIII

SALE AND PURCHASE OF LAND—AGREEMENTS
FOR

(For Conveyances, see Chapter XIV.)

By the statute of frauds no action can be brought upon a contract or sale of lands or any interest therein unless the agreement or some note or memorandum thereof be in writing and signed by the party to be charged or some person by him authorized. The statute has been enacted, with some variations of form or of substance, in the different states. In some a contract consisting of mutual promises must be signed by both parties, and in some an agent to sign must be authorized in writing. A written agreement for sale, like a memorandum, must, therefore, show who are the parties to the contract, the subject-matter, the intention to sell and purchase, the price or the means of ascertaining it, and all other terms of the contract. In order that the contract may be mutually binding, it must be signed by or on behalf of both parties. No other formality is required; but if it be desired to have the agreement recorded, it must be executed and acknowledged with all the formalities prescribed for conveyances.

It is usual to provide for a deposit in part payment and as a guaranty for the fulfillment of the contract by the purchaser. The residue of the purchase money is usually payable upon delivery of the deed; but it may be secured in whole or in part by a mortgage of the same premises back to the vendor, or may be payable on whatever other terms are agreed. If the land is already subject to a mortgage, the conveyance may be made subject to the mortgage, the purchaser assuming payment of the mortgage or not, as may be agreed. The time of completion of the contract by delivery of the deed and payment of the purchase price should ordinarily be fixed far enough ahead to allow time for an examination of the title. The practice as to the delivery of an abstract of title differs in different states, but where it is customary to deliver an abstract it should be provided for. Other matters which it may be desirable to provide for are the nature of the title and the incumbrances, if any, to which it shall be subject, the character of the deed, and the apportionment of rents, taxes, and insurance. Sometimes

the contract provides that the purchaser is to be let into possession upon payment of a part of the purchase money, and that the delivery of the deed is to be postponed until payment of the residue.

How far and under what circumstances growing crops and produce are an interest in land is not here considered; in drawing a contract of sale it is safe to assume that they are such.

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1. Agreement for Sale and Purchase of Land

Agreement made this —— day of —— between ——, party of the first part, and ——, party of the second part, as follows:

1. [AGREEMENT TO SELL.] The said party of the first part, in consideration of the sum of \$——, to be paid as hereinafter provided, hereby agrees to sell unto the said party of the second part all that certain tract of land (*description*).

2. [AGREEMENT TO PURCHASE.] The said party of the second part hereby agrees to purchase said premises at the said consideration of \$——, and to pay the same as follows (*set out terms of payment*).

3. [DEED OF CONVEYANCE.] The said party of the first part, on receiving such payments at the times and in the manner above mentioned, shall execute and deliver, or cause to be executed and delivered, to the said party of the second part, or to his assigns, a duly acknowledged (warranty) deed (in the usual form), conveying to him or them the fee simple of the said premises free from all incumbrance.

4. [DAMAGES ON DEFAULT.] It is hereby agreed that, if either party hereto shall fail or refuse to perform this agreement on his part, and the other party shall then be ready to perform this agreement on his part, then the party so failing shall pay to the other party the sum of \$——, which sum is hereby agreed upon as liquidated damages to be paid by the party so failing.

5. [ON WHOM BINDING.] It is understood that this agreement shall apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof the said parties have hereunto (and to another instrument of like tenor and effect) set their hands and seals the day and year first above written.

2. Same—Another Form

This agreement made the —— day of —— between ——, of ——, of the first part, and ——, of ——, of the second part, witnesseth:

1. [UNDERTAKING OF VENDOR.] That the said party of the first part, for and in consideration of the sum of \$——, to be paid as hereinafter provided, has agreed to sell to the said party of the second part all that (*description*). And the said party of the first part agrees to execute and deliver to the said party of the second part a warranty deed for the said land: Provided, and upon condition, nevertheless, that the said party of the second part, his heirs or assigns, pay to the said

party of the first part, his heirs or assigns, for the said land the sum of \$——, payable as follows: The sum of \$—— to be deposited in the hands of —— on signing this agreement and to be paid over to the said party of the first part on the delivery of the deed, which is to be at the office of ——, at ——, between the hours of —— and —— on the —— day of —— (and the sum of \$—— to be secured by a purchase-money mortgage by the said party of the second part, payable (*insert terms*), together with the personal bond of the said party of the second part for the said sum of \$——, in the penalty of \$——).

[UNDERTAKING OF PURCHASER.] And the said party of the second part, for himself, his heirs, executors, and administrators, doth covenant and agree with the said party of the first part, his heirs and assigns, that the said party of the second part will pay the said several sums as they become severally due, with the interest thereon, without deduction of any taxes or assessments whatever.

[FORFEITURE ON PURCHASER'S DEFAULT.] And it is further agreed between the parties hereto that, if default be made in fulfilling this agreement or any part thereof on the part of the said party of the second part, then and in such case the said party of the first part, his heirs and assigns, shall be at liberty to consider this contract as forfeited and annulled, and to dispose of the said land to any other person in the same manner as if this contract had never been made.

In witness, *etc.*

3. Same—With Provisions for Examination of Title

Agreement made the —— day of —— between of ——, hereinafter called the vendor, of the one part, and ——, of ——, hereinafter called the purchaser, of the other part:

Whereby it is agreed as follows:

1. [AGREEMENT FOR SALE AND PURCHASE.] The vendor will sell and the purchaser will purchase the following described premises, with the buildings thereon (*description*).

2. [PRICE AND DEPOSIT.] The price shall be \$——, of which the sum of \$—— by way of deposit is now paid, the receipt whereof the vendor acknowledges, and the balance shall be paid on the date fixed for completion of the purchase.

3. [DELIVERY OF ABSTRACT, COMMENCEMENT OF TITLE, AND OBJECTIONS.] The vendor shall within —— days from the date hereof deliver to the purchaser an abstract of the title (which shall commence with a deed dated, *etc.*, and recorded, *etc.*), and any objections to the abstract or the title or otherwise arising out of this contract shall be delivered in writing to the vendor within —— days from the delivery of the abstract, and every objection not so delivered shall be deemed to be waived, and subject to objections so delivered the title shall be considered accepted, time being of the essence of the contract.

4. [VENDOR'S POWER TO RESCIND.] Should any objection be insisted on which the vendor shall be unable or unwilling to satisfy or comply with, he may, notwithstanding any attempt to remove or satisfy the same or any negotiation or litigation in respect thereof, by notice in writing to the purchaser rescind the contract upon repaying the deposit, without interest, costs, or compensation, to the purchaser, who shall accept the same in full satisfaction of all claims under the contract or otherwise, and the purchaser shall thereupon return to the vendor the abstract and all papers in his possession in connection with this sale. If the purchaser within —— days after receiving notice to rescind withdraws the objection, the notice to rescind shall be withdrawn also.

5. [COMPLETION OF PURCHASE.] The completion of the purchase and the payment of the balance of the purchase money shall take place on the —— day of —— at the office of ——, the vendor's solicitor. If for any cause whatever (other than noncompletion caused by the willful default of the vendor) the balance of the purchase money shall not be paid on that day, the purchaser shall pay to the vendor interest thereon at the rate of —— per cent. per annum computed from that day until payment.

6. [DEED OF CONVEYANCE.] On payment of the balance of the purchase money hereinbefore provided the vendor will execute and deliver a proper (warranty) deed conveying to the purchaser the fee simple of the said premises free from all incumbrances.

7. [POSSESSION AND APPORTIONMENT OF RENTS, ETC.] Upon completion of the purchase the purchaser shall be entitled to possession and receipt of the rents and profits of the property as and from the day fixed for completion (and shall be liable for all taxes as and from such date), such rents and profits (and taxes) to be apportioned.

8. [FORFEITURE OF DEPOSIT AND RESALE ON PURCHASER'S DEFAULT.] Should the purchaser fail to observe or comply with any of the foregoing stipulations on his part, his deposit shall be forfeited to the vendor, who may rescind the sale and resell the property either by public or private sale, and any deficiency in price which may result on and all expenses attending a resale shall be made good by the purchaser, and shall be recoverable by the vendor as liquidated damages (the purchaser receiving credit for the deposit). Any increase of price on a resale shall belong to the vendor.

In witness, *etc.*

4. Same—Another Form

1. [AGREEMENT TO SELL.] I, A. B., seller, have sold and agree to convey to C. D., purchaser, upon the terms hereinafter set forth, the following described real estate (*description*).

2. [AGREEMENT TO PURCHASE AND TERMS.] I, the said C. D., have purchased said real estate and agree to pay therefor the total purchase price of ——— dollars, of which \$——— earnest money has been paid at the date hereof, and the further sum of \$——— is to be paid by the purchaser to the seller as follows (*terms of payment*). Deferred payments to be secured by note and purchase-money mortgage upon said real estate, and to bear interest at the rate of ——— per cent. per annum, payable semiannually, until paid.

3. [ABSTRACT OF TITLE AND TIME FOR PERFORMANCE.] The seller shall within (five) days from the date hereof deliver to the purchaser a properly certified abstract of title to said real estate, and the purchaser shall be allowed (ten) days after delivery of said abstract within which to perform this contract: (Provided, that if the purchaser shall find the title to said real estate or to any part thereof to be unmarketable, he shall within said (ten) days give to the seller written notice of the defects which render the title unmarketable, and the seller shall be allowed (sixty) days thereafter within which to cure such defects, and in such case the purchaser shall be allowed (ten) days after he shall have been notified in writing by the seller that such defects have been cured within which to perform this contract on his part.)

4. [IF TITLE UNMARKETABLE.] If such title shall be unmarketable in the seller, then said earnest money shall be refunded, and all the other obligations of the parties hereunder shall cease.

5. [DELIVERY OF DEED.] Upon the performance of this contract by the purchaser, the seller shall deliver to the purchaser a duly acknowledged (warranty) deed, in which the wife of the seller shall join, conveying a good and marketable title to the premises, in fee simple, free and clear of all incumbrances. All papers shall bear even date herewith, and all tenders and deliveries shall be made at the office of ———, in ———.

6. [TAXES, INSURANCE, AND RENTS.] Liability as between the parties hereto to pay taxes and assessments on said property shall be determined as of the date hereof. Fire insurance and rents are to be adjusted as follows (*state terms*).

7. [IN CASE OF FAILURE TO PERFORM.] Time is of the essence hereof, and if the purchaser shall fail to perform this contract within the time herein limited, the seller shall be discharged from all obligations hereunder and may retain said earnest money as a part of his just compensation for such failure, and may proceed for damages or specific performance against the purchaser.

Dated at ——— 19—. (Signatures and seals.)

5. Same—With Provision for Purchase-Money Mortgage

Agreement made this ——— day of ——— between ———, of the first part, and ———, of the second part:

1. [AGREEMENT TO SELL AND PURCHASE.] The party of the first part agrees to sell, and the party of the second part agrees to purchase, the following described premises (*description*).

2. [DEED AND TERMS OF PAYMENT.] Said premises are to be conveyed by the party of the first part, on or before the ——— day of ———, by a good and sufficient warranty deed conveying a good and marketable title to the premises, free from all incumbrances, and for such deed and conveyance the party of the second part is to pay the sum of \$———, of which the

sum of \$—— has been paid at the date hereof, the sum of \$—— is to be paid upon the delivery of such deed, and the remainder is to be paid by the promissory note of the party of the second part dated the —— day of ——, payable on the —— day of ——, with interest at the rate of —— per cent. per annum, and secured by a purchase-money mortgage on the said premises.

3. [DELIVERY OF POSSESSION.] Possession of the said premises is to be delivered to the party of the second part upon the delivery of such deed.

4. [INSURANCE FOR MORTGAGEE.] The buildings now or hereafter erected on said premises shall thereafter and until the full payment of the sums so to be secured be kept insured against fire (and windstorms) in at least the sum of \$——, in companies satisfactory to the party of the first part, with loss, if any, payable to the party of the first part as his interest may appear, and the policy or policies of insurance shall be deposited with the party of the first part.

5. [RENTS AND TAXES.] Rents shall be apportioned as of the date of the delivery of such deed, and the taxes assessed for the year —— shall be paid by the party of the first (*or*, second) part, and all taxes thereafter assessed shall be paid by the party of the second part, who shall while any part of the sums so to be secured remains unpaid promptly exhibit the tax receipts to the party of the first part.

6. [DELIVERY OF PAPERS.] All tenders and deliveries of papers hereunder shall be made at the office of ——, in ——.

7. [IN CASE OF FAILURE TO PERFORM.] If the party of the first part shall be unable to give title or to convey said premises as above provided, any payments made hereunder shall be refunded, and all other obligations of the parties hereunder shall terminate; but the acceptance of a deed by the party of the second part shall be deemed conclusive evidence of a full

performance on the part of the party of the first part. If the party of the second part shall upon due tender of such deed fail to perform this agreement on his part, the party of the first part may retain said sum of \$—— which has been paid and which is hereby agreed upon as liquidated damages for such failure to perform.

8. [JOINDER OF VENDOR'S WIFE.] (In consideration of the above, ——, wife of the party of the first part, hereby agrees to join in the deed to be executed as above provided, and therein to release to the party of the second part all right of dower and of homestead in the said premises.)

In witness, *etc.*

6. Same—Another Form

Agreement made the —— day of —— (*parties as in Form No. 3, p. 1170*):

Whereby it is agreed as follows:

1. [AGREEMENT FOR SALE AND PURCHASE.] (*As in Form No. 3, p. 1170.*)

2. [PRICE AND TERMS OF PAYMENT.] The price shall be \$——, of which the sum of \$—— by way of deposit is now paid to and the receipt thereof hereby acknowledged by the vendor, and the further sum of \$—— shall be paid upon the delivery of the deed hereinafter mentioned, and the balance, being the sum of \$——, shall be secured by a mortgage of the property in the manner hereinafter mentioned.

3, 4. [DELIVERY OF ABSTRACT AND OBJECTIONS; VENDOR'S POWER TO RESCIND.] (*See Form No. 3, cls. 3, 4, p. 1171.*)

5. [COMPLETION OF PURCHASE.] The completion of the purchase, the payment of the said sum of \$——, part of the balance of the purchase money, and the delivery of the deed and mortgage and note hereinafter mentioned shall take place on the —— day of —— at the office of ——, at ——.

If for any cause other than noncompletion by the willful default of the vendor the said sum of \$—— shall not be paid on that day, the purchaser shall pay to the vendor interest on the whole unpaid purchase money at the rate of —— per cent. per annum from that day until actual completion.

6. [DELIVERY OF DEED.] Upon the completion of the purchase and payment of the said sum of \$——, with interest thereon, if any, and the delivery of the mortgage and note hereinafter mentioned, the vendor shall concurrently therewith deliver a proper (warranty) deed conveying to the purchaser the fee simple of the said premises free from all incumbrances.

7. [MORTGAGE TO SECURE BALANCE.] Upon the delivery of the said deed the purchaser shall concurrently therewith deliver to the vendor a mortgage of the said premises securing the payment to the vendor of the balance of the purchase money, being the sum of \$——, which shall be payable —— years from the date of the completion of the purchase, with interest thereon at the rate of —— per cent. per annum, payable semiannually, and computed from the last-mentioned date, together with the purchaser's promissory note to the order of the vendor for the said principal sum and interest payable as aforesaid. Such mortgage shall contain a power of sale in the usual form, shall provide that the purchaser shall pay all taxes and assessments which shall be assessed against the said premises, and shall at his own expense keep the same insured against fire, in companies satisfactory to and with loss if any payable to the mortgagee as his interest may appear, in at least the sum of \$——, and that the policies and premium receipts thereof be deposited with the mortgagee, and shall contain such other provisions as the vendor may reasonably require. In case of disagreement as to the form or contents of the mortgage, the same shall be settled by the vendor's

counsel, whose approval shall be accepted by and be binding upon the parties.

8. [FORFEITURE OF DEPOSIT AND RESALE ON PURCHASER'S DEFAULT.] (*See Form No. 3, cl. 8, p. 1172.*)

In witness, *etc.*

7. Same—With Provision for Assumption of Mortgage

(*Begin as in Form No. 5, p. 1174.*)

1. [AGREEMENT TO SELL AND PURCHASE.] The party of the first part agrees to sell, and the party of the second part agrees to purchase, all that certain tract of land (*description*).

2. [DEED AND TERMS OF PAYMENT.] Said premises are to be conveyed by the party of the first part to the party of the second part, on or before the —— day of ——, by a good and sufficient (warranty) deed conveying a good and clear title to the same in fee simple, free from all incumbrances, except a certain mortgage made by the party of the first part to ——, dated the —— day of ——, and recorded on the —— day of ——, in the —— registry of deeds, in book ——, at page ——, and securing the sum of \$——, with interest thereon at the rate of —— per cent. per annum, which mortgage the party of the second part is to assume and agree to pay as part of the purchase price for such conveyance; and for such deed and conveyance the party of the second part is to pay the sum of \$——, of which the sum of \$—— has been paid at the date hereof, and the sum of \$—— is to be paid upon the delivery of such deed, and the remainder is to be paid by the assumption and payment of said mortgage as hereinbefore provided, it being understood that a clause whereby the party of the second part shall assume and agree to pay said mortgage shall be contained in such deed.

(*Insert paragraphs 3, 5, 6, 7, and 8 of Form No. 5, if desired.*)

In witness, *etc.*

8. Same—Price to be Determined by Valuation

Agreement made the ——— day of ——— (*parties as in Form No. 3, p. 1170*):

Whereby it is agreed as follows:

1. [AGREEMENT FOR SALE AND PURCHASE.] (*See Form No. 3, cl. 1, p. 1171.*)

2. [PRICE TO BE FIXED BY VALUATION.] The price to be paid for the purchase of the premises shall be determined by ———, as the valuer acting for both parties (*or, by ———, appointed by the vendor, and ———, appointed by the purchaser, or, in the event of their disagreement, by an umpire to be nominated by them before entering upon the valuation.*) Such valuation shall be made within ——— days from the date hereof; and otherwise, unless the parties extend the time, the authority of the valuer(s and umpire) shall determine, and this agreement shall become null and void.

3. [SEPARATE VALUATIONS.] In making such valuation the valuer(s or umpire) shall value separately the land and building and the fixtures and machinery in the said building (*add other items of valuation*).

4. [DELIVERY OF ABSTRACT, ETC.] The vendor shall within ——— days after the determination of the price as hereinbefore provided deliver to the purchaser an abstract (*as in Form No. 3, cl. 3, p. 1171, adding other appropriate clauses*).

In witness, *etc.*

9. Same—With Provision for Registration of Title

Agreement made this ——— day of ——— (*parties as in Form No. 2, p. 1169*).

1. [AGREEMENT FOR SALE AND PURCHASE.] The party of the first part agrees to sell and the party of the second part

agrees to purchase the following described parcel of land (*description*).

2. [PRICE AND DEPOSIT.] The price shall be \$——, of which the sum of \$—— by way of deposit has been paid, the receipt whereof is hereby acknowledged, and the balance shall be paid upon the due registration of the title to the said land and the delivery of a deed as hereinafter provided.

3. [REGISTRATION AND DEED.] The party of the first part shall first cause the title to the said land to be registered according to the statute in such case made and provided, and upon such registration being duly made and within —— months from the date hereof shall execute and deliver to the party of the second part a good and sufficient (warranty) deed conveying to the party of the second part the fee simple of the said premises free from all incumbrances (excepting only such incumbrances and rights as are excepted in all certificates of title pursuant to a decree of registration).

4. [DISPOSITION OF DEPOSIT ON DEFAULT BY EITHER.] If the party of the first part shall fail to cause the said title to be registered and to tender a deed to the party of the second part in the manner and within the time hereinbefore provided, time being of the essence of this agreement, the said deposit shall be refunded to the party of the second part; but if the party of the second part shall fail or refuse to perform this agreement on his part, and the party of the first part shall be ready and willing to perform on his part, the party of the first part shall be entitled to retain the said deposit as liquidated damages therefor.

In witness, *etc.*

10. Same—With Delivery of Possession

(*Begin as in Form No. 2, p. 1169.*)

1. [UNDERTAKING OF VENDOR.] That the said party of the first part, in consideration of the covenants and agreements of the said party of the second part hereinafter contained, hereby sells and agrees to convey unto the said party of the second part, or his assigns, by deed of warranty upon the prompt and full performance of the said party of the second part of his part of this agreement, the following described premises (*description*).

2. [UNDERTAKING OF PURCHASER.] And the said party of the second part, in consideration of the premises, hereby agrees to pay to the said party of the first part, as and for the purchase price of the said premises, the sum of ——— dollars, in manner and at the times following, to wit (*terms of payment*), and to pay all taxes or assessments that may hereafter be levied or assessed upon the said premises.

3. [SURRENDER OF POSSESSION ON PURCHASER'S DEFAULT.] But should default be made in the payment of said several sums of money or any or either of them or any part thereof, or in the payment of said interest, taxes, or assessments or any part thereof, or in any of the covenants herein to be by the said party of the second part kept or performed, then the said party of the first part shall at his election be discharged from all further obligation hereunder, time being of the essence of this agreement; and in case of any such default, the said party of the second part hereby agrees, upon demand of the said party of the first part, quietly and peaceably to surrender to the said party of the first part the possession of the said premises and every part thereof, it being understood that until such default the said party of the second part is to have possession of the said premises.

In witness, *etc.*

11. Same—With Delivery of Possession and Payment by Monthly Installments

This agreement made the _____ day of _____ between _____, of _____, hereinafter called the vendor, of the one part, and _____, of _____, hereinafter called the purchaser, of the other part, witnesseth as follows:

1. [SALE AND AGREEMENT TO CONVEY.] The vendor, in consideration of the covenants hereinafter contained on the part of the purchaser, hereby sells and agrees to convey unto the purchaser by warranty deed in the usual form, upon the prompt and full performance by the purchaser of the terms of this agreement, a good and clear title, free from all incumbrances, to the following described premises (*description*).

2. [PURCHASER'S COVENANTS.] The purchaser, in consideration of the premises, covenants with the vendor as follows:

(1) [TO PAY PRICE IN INSTALLMENTS.] To pay to the vendor as and for the purchase price of the said premises the sum of \$_____, of which the sum of \$_____ has been paid, the receipt whereof the vendor acknowledges, and the remainder in monthly installments of not less than \$_____ each on the first day of each month, until the whole of the said principal sum shall have been paid, the first of such payments to be made on the _____ day of _____, with interest on all deferred payments, computed upon the balance remaining due from time to time from the date hereof until paid at the rate of _____ per cent. per annum, payable on the first day of each month.

(2) [TO PAY TAXES, ETC.] To pay all taxes and assessments that may be levied, assessed, or become due upon the said premises at least _____ days before any penalty would accrue thereon if unpaid, and to exhibit the receipt therefor to the vendor.

(3) [TO INSURE.] To insure and keep insured in at least the sum of \$—— against loss or damage by fire during the life of this agreement the buildings now or hereafter erected upon the said premises in companies satisfactory to the vendor, with loss, if any, payable to the vendor as his interest may appear, and to deposit the policy or policies with the vendor:

3. [TERMINATION AND RE-ENTRY ON DEFAULT.] Provided, however, and this agreement is upon the express condition that, if default shall be made in the payment of the said several sums or any of them, or any part thereof, or in the performance or observance of any of the covenants herein contained on the part of the purchaser, then the whole of the said principal sum, with accrued interest thereon, shall at the election of the vendor become immediately due and payable, and the vendor shall have the right to terminate this agreement by giving to the purchaser —— days' written notice of such termination, time being of the essence of this agreement; and in the event of such termination all payments made by the purchaser hereunder shall be retained by the vendor as liquidated damages for the breach of this agreement by the purchaser, and the vendor shall have the right to re-enter and take possession of the said premises with all the buildings and improvements then thereon, it being agreed that until such default the purchaser shall have possession of the said premises.

4. [ON WHOM BINDING.] All the covenants and agreements herein contained shall inure to the benefit of and bind the respective heirs, personal representatives, and assigns of the parties hereto.

In witness, *etc.*

12. Agreement for Exchange of Land

(Begin as in Form No. 2, p. 1169.)

1. [AGREEMENT OF FIRST PARTY.] The party of the first part, in consideration of the agreement of the party of the second part hereinafter contained, hereby agrees, upon conveyance and payment by the party of the second part as hereinafter provided, to convey to the party of the second part the following described premises (*description*).

2. [AGREEMENT OF SECOND PARTY.] The party of the second part, in consideration of the agreement of the party of the first part hereinbefore contained, hereby agrees, upon conveyance by the party of the first part as hereinbefore provided, to pay to the party of the first part the sum of ——— dollars, in cash, and to convey to the party of the first part, the following described premises (*description*).

3. [DEEDS.] The premises in each case are to be conveyed by a good and sufficient (warranty) deed of the one party to the other or to his assigns, conveying a good and marketable title to the same, free from incumbrances. This agreement shall be performed by the parties concurrently on the ——— day of ———, at ——— o'clock —. m. at the office of ———, in ———.

4. [RENTS AND TAXES.] Rents and the taxes assessed for the year ——— shall be apportioned as of the day of the delivery of the deeds.

5. [FAILURE OF TITLE.] If either party shall be unable to give good title or to convey as above provided, this agreement shall be discharged.

In witness, *etc.*

13. Same—Another Form

(Begin as in Form No. 2, p. 1169.)

1. [AGREEMENT TO SELL AND CONVEY.] That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part hereinafter mentioned, does hereby agree to sell and convey by (warranty) deed, free from any incumbrance, unto the said party of the second part, his heirs or assigns, all the following described real estate (*description*). In consideration of which the said party of the second part agrees to sell and convey by (warranty) deed, free from any incumbrance, unto the said party of the first part, his heirs or assigns, the following described real estate (*description*).

2. [PERFORMANCE OF CONTRACT.] It is agreed that an abstract of title, brought down to date, to each of the above properties, shall be furnished by the respective parties hereto within ——— days from date hereof, and, should there be any defects in the title of either, such defects shall be made good and the title perfected by the party whose title is defective, within ——— days from date hereof at his own cost and expense; otherwise this contract to be null and void at the option of the other party. The respective deeds shall be delivered on or before the ——— day of ———, 19—, at the office of ———, in ———. Time shall be deemed to be of the essence of this contract.

In witness, *etc.*

14. Option to Purchase Land

Know all men by these presents that I, ———, of ———, in consideration of \$——— paid by ———, of ———, the receipt whereof is hereby acknowledged, hereby, for myself, my heirs, executors, and administrators, agree to sell and convey

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to said ——— or his assigns for the consideration hereinafter mentioned the following described property (*description*).

The consideration to be paid by the said ——— or his assigns shall be the sum of \$———. This option may be accepted by the said ——— or his assigns within ——— days from the date hereof by written notice to that effect. Conveyance shall be made within ——— days after such acceptance by a (warranty) deed conveying a clear title free from all incumbrances: Provided, that the said ——— or his assigns shall give to ——— ——— days' written notice of the time when such deed shall be delivered. All notices, tenders, and deliveries hereunder shall be served and made at the office of ———, in ———.

It is agreed that if the said ——— or his assigns shall fail to accept this option within the time above mentioned, or shall after such acceptance fail to pay the said sum of \$———, the consideration above mentioned, at the time and place and in accordance with the terms and conditions hereinbefore mentioned, the said ——— or his assigns shall forfeit the said sum of \$——— paid to me as hereinbefore acknowledged.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

15. Same—Another Form

(*Begin as in Form No. 2, p. 1169.*)

1. [GRANT OF OPTION.] The said party of the first part, in consideration of the sum of \$——— by the said party of the second part paid to the said party of the first part, the receipt whereof is hereby acknowledged, hereby grants to the said party of the second part the exclusive right, at his option, for and during the period of ——— days from the date hereof, to purchase that parcel of land (*description*) for the price of

\$——, which shall be paid upon the delivery of a deed as hereinafter provided.

2. [OPTION, HOW EXERCISED—EXAMINATION OF TITLE.] In case the said party of the second part shall elect to purchase the said property, he shall signify such election by written notice thereof, served upon the said party of the first part within the time above limited; and thereafter the said party of the first part shall deliver to the said party of the second part an abstract of title to the said property, within —— days from the service of such notice, and the said party of the second part shall have —— days after the delivery of such abstract in which to examine the title and to complete such purchase.

3. [CONVEYANCE.] If the said party of the second part shall complete such purchase, the said party of the first part shall give a good and marketable title in fee simple to the said property, free and clear of all taxes and incumbrances, and shall convey the same by (warranty) deed (in which the wife of the said party of the first part shall join).

4. [PLACE OF PERFORMANCE.] All notices, tenders, and deliveries hereunder shall be served and made at the office of ——, in ——.

5. If the said party of the second part shall not elect to purchase the said property, or shall fail to complete the said purchase within the time and in the manner hereinbefore provided, his option hereunder shall terminate without further action, time being of the essence of this agreement, and he shall forfeit the said sum of \$—— paid to the said party of the first part.

In witness, *etc.*

16. For Sale of Standing Timber

(Begin as in Form No. 3, p. 1170.)

1. [AGREEMENT TO SELL AND PURCHASE.] The vendor will sell and the purchaser will buy all the timber and trees growing on that tract of land (*description*).

2. [PRICE AND PAYMENT.] The purchase price shall be \$——, of which \$—— has been paid, and the balance shall be paid on the —— day of ——.

3. [CUTTING AND REMOVING.] The purchaser shall cut the said timber and trees and remove the same, with all the tops, boughs, and bark thereof, not later than the —— day of —— (except the cordwood, which may remain till the —— day of —— following). Everything remaining after the time(s) mentioned shall belong to the vendor.

4. [LICENSE TO ENTER.] For the purpose of cutting down and removing the said timber the purchaser shall have full license and liberty to enter upon the said land and upon the usual roads of ingress and of egress over the other lands of the vendor, with servants, workmen, horses, wagons, and other necessary implements, until the said timber, with the tops, boughs, and bark thereof, has been removed, but the purchaser shall not enter later than the —— day of ——.

5. [NO UNNECESSARY DAMAGE.] The purchaser shall fell the trees close to the ground, and shall cut and remove the same in a proper, customary, and workmanlike manner, doing as little damage as possible to the property of the vendor, and shall make compensation for any such damage.

In witness, *etc.*

17. For Sale of Growing Crop of Grass

(Begin as in Form No. 3, p. 1170.)

1. [AGREEMENT TO SELL AND BUY.] The vendor will sell and the purchaser will buy all that standing crop of mowing grass now growing on the meadow south of the —— road on the vendor's farm situate at —— . The meadow is believed, and shall be conclusively assumed, to contain —— acres.

2. [PRICE AND PAYMENT.] The purchase price shall be \$—— per acre, of which \$—— has been paid, and the balance shall be paid as soon as any part of the grass shall be mown.

3. [DATE OF REMOVAL.] The grass shall be mown and made into hay and removed from the said meadow not later than the —— day of —— .

4. [LICENSE TO ENTER.] For the purpose of mowing, making, and removing the said hay, but for no other purpose, the purchaser shall have full liberty and authority to enter upon the said meadow with servants, workmen, horses, machines, wagons, and other necessary implements until the said crop shall be removed, but he shall not enter later than the —— day of —— .

5. [NO UNNECESSARY DAMAGE.] The grass shall be mown and got in in a proper and husbandlike manner, and the purchaser shall not permit any damage to be done to the hedges, fences, or gates, and shall make compensation for any such damage.

6. [FORFEITURE AND RESALE.] If the purchaser shall neglect to pay the said balance of the purchase money at the time herein provided or to mow or remove the grass before the —— day of —— , the vendor shall be at liberty to forfeit the sum now paid and to resell the said crop either before or

after being made. And if the amount realized on such resale shall be less than the said balance and of the expenses incurred by the vendor in converting the said grass into hay, the deficiency, after giving credit for the amount now paid, shall be made good by the purchaser as liquidated damages, but any excess realized on such sale shall belong to the vendor.

In witness, *etc.*

18. For Sale of Growing Crop of Fruit

(*Begin as in Form No. 3, p. 1170.*)

1. [AGREEMENT TO SELL AND BUY.] The vendor will sell and the purchaser will buy all that crop of (apples) now growing on the trees in the orchard of the vendor situate at ———.

2. [PRICE AND PAYMENT.] The purchase price shall be ——— per bushel, of which the sum of \$——— shall be paid before the purchaser begins to gather the fruit. After he has gathered such a quantity at the rate aforesaid as will be paid for by the said sum of \$———, the purchaser shall not be at liberty without the consent of the vendor to remove any other fruit until the purchase price thereof shall be paid.

3. [TIME OF GATHERING AND LICENSE.] The fruit shall be gathered in due course and when sufficiently mature, and for the purpose of gathering and getting the same the purchaser shall have full liberty to enter upon the orchard and trees with workmen, ladders, and other necessary implements.

4. [NO UNNECESSARY DAMAGE.] The fruit shall be gathered in a proper, careful, and customary manner, the purchaser doing as little damage as possible to the trees and other things growing in the said orchard.

In witness, *etc.*

CHAPTER XXXIV

SALE OF GOODS

A "sale of goods" is an agreement whereby the seller transfers the ownership of goods to the buyer for a price in money, which the buyer pays or agrees to pay. A contract to sell goods is a contract whereby the seller agrees so to transfer the ownership of goods to the buyer. Goods include substantially all corporeal movable property except money. By the statute of frauds, in the form in which it is generally enacted, no sale or contract to sell goods for a price in excess of a prescribed sum is enforceable, unless the buyer shall: (1) Accept part of the goods, and actually receive the same; or (2) give something in earnest to bind the bargain, or in part payment; or (3) unless some note or memorandum in writing of the bargain be signed by the party to be charged or his agent in that behalf. No other formalities are required, and consequently a sale or a contract to sell may be made without writing of any sort, if either of the other formalities of the statute is satisfied. And while it is desirable that the terms of the agreement or contract should be in writing in all cases where the sale is not executed forthwith by the delivery of the goods and the payment of the price, the terms are usually stated in a brief note or memorandum or in separate papers, such as letters, and formal contracts are comparatively rare. A bill of sale, or formal instrument of transfer, is useful mainly as furnishing evidence of title. It should be borne in mind that delivery of possession is necessary to protect the buyer against the seller's creditors and in some jurisdictions against purchasers.

The transfer of ownership is effected by the mutual assent of the parties; and in accordance with the agreement it will take effect, provided the goods are ascertained, either immediately, or not until delivery, or payment, or the happening of some other condition. Thus, in so-called "conditional sales," by the terms of the contract, the possession of the goods is to be delivered to the buyer, but the ownership is to remain in the seller until payment of the price. Under a conditional sale, notwithstanding delivery, the ownership does not pass to the buyer until payment, and where the question is unaffected

by statute, it is held generally, although not universally, that he cannot pass title to others, either to his attaching creditors or bona fide purchasers. In many states there are statutes regulating conditional sales and providing that the contract shall be void as to creditors of the buyer and subsequent purchasers from him in good faith, unless filed or recorded like chattel mortgages; while in some states conditional sales are held to be within the provisions of a statute requiring chattel mortgages to be filed or recorded. See Chattel Mortgages, ante, p. 324. Instruments in the form of leases providing that the lessee shall become the owner of the thing leased upon payment of stipulated installments of rent, usually equivalent to the value of the thing, which the lessee agrees to pay, and reserving to the lessor the right to resume possession upon default in payment, are very generally, although not always, held to be conditional sales. Such a contract is to be distinguished from a lease or contract for hire with a mere option to buy. See Hire of Goods, ante, p. 695.

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1. Contract to Sell Goods

Agreement made the _____ day of _____ between _____ and _____:

The said _____ agrees to sell and the said _____ agrees to buy _____ tons of _____ at \$_____ per ton, which are to be

delivered forthwith by the said _____ to the said _____ at _____ on or before the _____ day of _____.

(Signatures.)

2. Same—By Separate Papers

_____, 19—.

To (*buyer*):

We have this day sold to you _____ tons of _____ (*specification of the goods*) at \$_____ per ton.

The said goods to be delivered at _____, as and when required, between the _____ day of _____ and the _____ day of _____, in quantities of not less than (*or*, not more than) _____ tons, _____ days' notice in writing of each delivery to be given to the seller. Payment in cash for the amount of each delivery to be made on the _____ day from the date thereof, less _____ per cent. discount.

(Signature of seller.)

To (*seller*):

We hereby confirm your contract dated the _____ day of _____ for (*subject-matter of contract*).

(Signature of buyer.)

3. Contract to Manufacture and Sell Articles by Installments

Agreement made the _____ day of _____ between _____, of _____, hereinafter called the manufacturer, and _____, of _____, hereinafter called the buyer:

1. [AGREEMENT FOR MANUFACTURE AND SALE.] The manufacturer agrees to make and sell to the buyer and the buyer agrees to buy from the manufacturer (*number*) frames for chairs per month for the term of one year from the date hereof, the said frames to be made in conformity with the specifi-

cations hereto attached and to be of the best materials and workmanship throughout.

2. [DELIVERY AND ACCEPTANCE.] On or before the _____ day in each month the manufacturer shall deliver the installment of frames deliverable in that month at the buyer's warehouse at _____. The buyer shall have the right within _____ days from the date of each delivery to reject such of the frames as are not in conformity with the said specifications or are otherwise defective in workmanship or materials; and after the expiration of such _____ days the buyer shall be deemed to have accepted all the said frames except such, if any, as shall have been rejected. The manufacturer shall replace such of the frames as may be so rejected with others made in conformity with the said specifications within _____ days from the date of rejection.

3. [PAYMENT.] The buyer shall pay for each monthly installment of the said frames in cash on the _____ day of each month (*or*, by his promissory note payable in _____ days from that date).

4. [FAILURE AS TO INSTALLMENT NOT GROUND FOR REPUDIATION.]¹ The failure of the manufacturer to deliver or of the buyer to pay for one or more of the said installments of the said frames at the times hereinbefore provided for payment or delivery respectively shall not entitle the manufacturer or the buyer respectively to treat the contract as repudiated, but the

¹ If it be desired to make such failure a ground for repudiation, the following may be substituted:

"The respective times hereinbefore stipulated for the delivery of and payment for the said frames shall be deemed to be of the essence of the contract, and the failure of the manufacturer to deliver or of the buyer to pay for any one or more of the said installments in accordance with the said stipulations shall entitle the manufacturer or buyer, as the case may be, to treat such failure as a repudiation of this contract by the other party and himself to repudiate further performance thereof and to recover damages for the breach of contract."

party in default shall be liable to compensate the other for any loss or damage consequent upon such failure.

In witness, *etc.*

4. Contract to Sell Goods at a Valuation

An agreement made the —— day of —— between ——, of ——, hereinafter called the seller, and ——, of ——, hereinafter called the buyer:

1. [AGREEMENT TO SELL.] The seller agrees to sell and the buyer agrees to buy all the household goods and furniture (specified in the schedule hereto annexed and) now being in the dwelling house of the seller at —— at a price to be ascertained by a valuation, as hereinafter provided.

2. [VALUATION, HOW MADE.] The aforesaid valuation shall be made on or before the —— day of —— by —— and ——, and, if they cannot agree, they shall appoint some third person as an additional appraiser, and a valuation agreed to by a majority of them shall be binding upon the parties hereto.

3. [DATE OF PAYMENT.] The buyer shall within —— days from the receipt of notice of such valuation pay such amount to the seller.

4. [RISK OF LOSS.] From the date of the receipt of such notice the said goods and furniture shall be at the risk of the buyer; and up to that date the risk shall be with the seller.

5. [DELIVERY.] On payment to the seller of the amount of such valuation, the buyer shall be at liberty to remove the said goods and furniture from the said dwelling house (and the seller will thereupon make and deliver to the buyer a bill of sale of the said goods and furniture).

6. [REPUDIATION BY SELLER.] Failure of the buyer to pay the amount of the said valuation within the time hereinbefore mentioned, time being of the essence of the contract, shall en-

title the seller to treat the contract as repudiated by the buyer and to claim compensation from him for the breach thereof.

7. [COSTS OF VALUATION.] The costs and expenses of the valuation shall be paid by the seller.

In witness, *etc.*

5. Agreement for Exclusive State Agency for Sale of Goods ²

Agreement made this _____ day of _____ between _____, of _____, party of the first part, and _____, of _____, party of the second part:

[RECITAL OF SUBJECT-MATTER.] Whereas, the party of the first part is engaged at _____ in the manufacture of a certain article known as _____, and has agreed to appoint the party of the second part as his sole agent in the state of _____ upon the terms hereinafter set forth.

Now, it is hereby agreed as follows:

1. [APPOINTMENT OF AGENT.] The party of the first part hereby appoints the party of the second part for the term of _____ years from the date hereof, but determinable as hereinafter provided, the sole agent of the party of the first part in the state of _____ for the selling and distributing of the said _____.

2. [PRINCIPAL TO SUPPLY GOODS AT CERTAIN PRICES.] The party of the first part shall sell to the party of the second part and supply him with the said _____ during the continuance of the said term in such quantities as he shall from time to time require, and shall ship and consign the same to the party of the second part at _____, at the price (*or*, prices) following, to wit, _____ (*or*, at a price or prices), which shall not

² Although the language of agency is used, this is a contract of sale, since under it the property in the goods will pass to the so-called agent, who will resell on his own account, and not as agent.

be greater than that (*or*, those) at the time fixed by the party of the first part as the wholesale price (*or*, prices) of the said ———, and which shall not be greater than the lowest price (*or*, prices) allowed by the party of the first part to his selling agents in other states: Provided, that whenever the party of the first part shall lower such wholesale price, if the party of the second part shall then have on hand and unsold any of the said ——— bought by him from the party of the first part at a higher price, the party of the first part shall refund to him a proportionate part of such higher price if paid or reduce it proportionally if then unpaid.

3. [PRINCIPAL NOT TO SELL TO OTHERS.] The party of the first part shall not at any time during the said term, without the previous consent in writing of the party of the second part, sell or supply to any other person in the said state of ——— any of the said ———, or appoint any other agent to sell the same in the said state.

4. [MODE OF PAYMENT.] On delivery of each consignment of the said ——— in pursuance of an order for the same the party of the second part shall pay the party of the first part for the quantity so delivered at the price hereinbefore mentioned by his promissory note payable ——— days from such delivery, or shall at the option of the party of the second part pay for the same in cash or New York exchange, deducting from such price a discount of ——— per cent.

5. [AGENT TO SELL—PRICES.] The party of the second part shall during the continuance of the said term sell and supply the said ——— to all such persons in the said state of ———, and in no other place, with whom he now deals or may thereafter deal, and who shall apply for the same, at such prices as he shall see fit: Provided, that the party of the first part may at any time by notice in writing fix the price (*or*, prices) at which the said ——— shall be sold by the party

of the second part, which shall always be uniform with the prices fixed by the party of the first part for sales to be made by his agents in other states, and which shall always be so fixed as to allow the party of the second part a full profit of at least ——— per cent., as defined by the following article, on all sales made by him thereunder. And the party of the second part shall use his best endeavors to introduce the said ——— to public notice and patronage and to bring the same into general use within the said state. And he shall not sell or supply any ——— except such as he shall have bought of the party of the first part.

6. [AGENT'S PROFIT.] The difference between the prices at which the said ——— shall be sold and invoiced as aforesaid to the party of the first part and the prices received by him from his customers shall be his full profit, and he shall receive no commission or other compensation from the party of the first part.

7. [EXPENSES, LOSSES, AND DAMAGES, HOW BORNE.] The party of the second part shall bear and pay all expenses, losses, and damages of and attending the carriage of the said ——— after they shall have been delivered by the party of the first part at ——— to the carrier appointed to receive the same, and all losses, damages, debts, and liabilities incurred by the party of the second part in and by the sale of the said ———, and all costs and expenses of selling the same, and every other expense relating or incidental thereto, save and excepting advertising, as hereinafter provided, and save and excepting costs, damages, or expenses arising from any action or proceeding brought against the party of the second part on account of or in respect to the title of the party of the first part to the said ——— and the right to sell and advertise the same on his behalf, from all which costs, damages, and expenses the party of the first part shall at all times save harmless and indemnify the party of the second part.

8. [ADVERTISING.] All such expenses as shall be incurred by the party of the second part for advertising the said ——— according to the direction of the party of the first part shall from time to time be deducted and allowed in the settlement of accounts between the parties (*or*, all orders for advertising the said ——— shall be mutually agreed upon in writing between the parties hereto, and the expenses thereof shall be borne between them equally and allowed for on that basis in the settlement of accounts between the parties).

9. [LIQUIDATED DAMAGES.] In case of a breach or non-performance of this agreement by either of the parties hereto, such party shall forfeit and pay to the other party ——— dollars as liquidated damages, and not in the nature of a penalty.

10. [DETERMINATION BY NOTICE.] The said term of ——— years may be determined by either party by notice in writing given to the other party ——— months before the expiration of one year from the date hereof or of any subsequent year of the said term.

In witness, *etc.*

6. Conditional Sale Note *

———, 19——.

On or before the ——— day of ———, for value received in one portable engine, No. ———, bought of (*seller*), I promise to pay to the order of (*seller*) ——— dollars, payable at ———, with interest at the rate of ——— per cent. per annum from date until paid, and a reasonable attorney's fee and costs of collection in case payment shall not be made at maturity hereof.

The express condition of this transaction is such that the title and ownership and right of possession of the said engine

* The authorities are divided as to whether such a note is negotiable.

shall remain in and shall not pass from the said (*seller*) until this note and interest shall have been paid in full, and the delivery of the said engine at this time is subject to that condition. And it is further agreed that the said (*seller*) has full power to declare this note due and to take possession of the said engine wherever it may be found at any time when he may deem himself insecure, even before the maturity of this note (*or, in lieu of the last sentence, "And it is further agreed that, should the maker hereof at any time before this note is fully paid attempt to sell or otherwise dispose of the said engine or to remove it from his premises at ——— without the written consent of the holder of this note (if the note is payable by installments," or in case of default in any of the payments as above mentioned), then and in either case the holder of this note shall have the right to declare this note due and to take possession of the said engine wherever it may be found).*

In case the said (*seller*) shall take back possession of the said engine, the said (*seller*) may sell the same at public or private sale without notice, and apply the proceeds of such sale to the payment of the balance then due on this note, together with all costs of the taking and selling of the said engine, holding the residue, if any, subject to the disposal of the maker hereof.

(*Signature.*)

7. Contract for Conditional Sale in the Form of a Lease ⁴

This agreement made this ——— day of ——— between ———, of ———, hereinafter called the lessor, and ———, of ———, hereinafter called the lessee, witnesseth as follows:

1. [LEASE.] The lessor hereby leases unto the lessee the following described machine (*description*). To hold for the term of one year commencing the ——— day of ———, pay-

⁴ Such contracts are usually held to be conditional sales. *Ante*, p. 1192.

ing therefor a rental of \$1,200 in installments of \$100 each, payable on the —— day of each month until the said sum of \$1,200 shall have been paid, the first of such payments to be made on the —— day of ——.

2. [LESSEE'S COVENANTS.] The lessee covenants that he will pay the rent in the manner and at the times aforesaid; that he will keep the said machine in good operative condition; that he will keep the same insured against loss or damage by fire in at least the sum of —— dollars in such company and in such form as shall be approved by the lessor, and will pay the premiums for such insurance and deliver the policy of insurance to the lessor; that he will not sell, mortgage, or otherwise dispose of the said machine to any person, or suffer it to be attached or taken upon execution; that he will not remove it from his premises at —— without the written consent of the lessor; and that the lessor and his agents may at all times enter upon any premises in which the said machine may be to examine the said machine.

3. [RISK OF LOSS.] The said machine shall be at the lessee's risk from the time when it shall have been delivered to him, and his obligation to pay rent as aforeprovided shall continue notwithstanding that the said machine may have been injured or destroyed without his fault: Provided, that all insurance money recovered and paid to the lessor shall be applied in reduction of the rent.

4. [DETERMINATION OF LEASE ON LESSEE'S DEFAULT.] It is hereby agreed that, in case the lessee shall violate any of the aforesaid covenants on his part, the lessor may at his option without notice terminate this lease and take possession of the said machine wherever found, and that he may retain all rent theretofore paid by the lessee for the use theretofore had by him of the said machine, and that the lessee shall pay to the

lessor all arrears of rent and damages for the breach of his covenants up to the date of such termination.

5. [PROPERTY TO PASS ON PAYMENT.] It is further agreed that, if the lessee shall duly pay the rent in the manner and at the times aforesaid, or shall at any time during the said term pay such sum as with the amount of the rents theretofore paid shall equal the sum of \$1,200, the said machine shall become the property of the lessee; but until such payments shall have been so made in full the said machine shall remain the property of the lessor.

In witness, *etc.*

8. Agreement for Hire and Conditional Sale of Furniture

Know all men by these presents that I, ———, of ———, have received and hired of ———, of ———, the following described articles of furniture, to wit (*description*).

For the use of the above-mentioned articles and as a rent for the same, I have this day paid to the said ——— the sum of ——— dollars, and promise further to pay to him or his legal representatives the sum of ——— dollars per month, the first payment to be made on the ——— day of ———, until such time as the sums so paid and to be paid by me shall amount to the sum of ——— dollars, at which time the said rent shall cease and the above-mentioned articles become my absolute property.

But, in case of failure by me to pay the said rent as aforesaid, the said ——— and his legal representatives shall have the right, without being deemed guilty of any manner of trespass or tort, and without thereby rendering himself or themselves liable to refund any sums theretofore received as rent, to enter any house or place in which the said articles may be, and to remove the same therefrom.

And I further promise and agree that I will not injure, sell,

mortgage, or relet the said articles or remove them from ———, and that in case of any failure to pay the said rent I will on demand return the said articles to said ———, or his legal representatives.

Witness my hand and seal this ——— day of ———.

9. Bill of Sale—Short Form

Know all men by these presents that I, ———, of ———, in consideration of ——— dollars to me by ———, of ———, paid, the receipt whereof is hereby acknowledged,* do hereby sell and assign to the said ——— the following goods and chattels, to wit (*description*).

In witness whereof I have hereunto set my hand (and seal) this ——— day of ———.

10. Same—Another Form, with Warranty of Title

(*Follow preceding form to **) have bargained and sold, and by these presents do grant, assign, and transfer, unto the said ———, the following described goods, chattels, and personal property, to wit (*description*), delivery whereof is at the date of these presents made to said ———.

To have and to hold the same unto the said ———, his executors, administrators, and assigns, forever.**

And I do for myself, my heirs, executors, and administrators, covenant and agree to and with the said ——— to warrant and defend the sale of the said goods, chattels, and personal property unto the said ———, his executors, administrators, and assigns, against all lawful claims.

In witness, *etc.*

11. Same—Another Form of Warranty

(Follow preceding Form to **.)

And I do for myself, my heirs, executors, and administrators, covenant with the said ——— that I am the lawful owner of the said goods, and have good right to sell the same as aforesaid; that the same are free from all incumbrances; and that I will warrant and defend the same against all persons lawfully claiming or to claim the whole or any part thereof.

12. Bill of Sale of Horse with Warranty

(Follow Form No. 9, p. 1203, to *) do hereby sell and transfer to the said ——— a certain bay horse named ———. And I do hereby warrant the said horse to be sound in wind and limb, quiet to ride and drive, and free from vice.

In witness, *etc.*

13. Bill of Sale of Goods Described in Schedule

(Follow Form No. 9, p. 1203, to *) do hereby sell, assign, and deliver unto the said ——— all and singular the furniture, goods, chattels, and effects enumerated and described in the schedule hereto annexed. To hold the same unto the said ——— for his own absolute use and benefit.

In witness, *etc.*

14. Bill of Sale of Furniture, Etc., in Dwelling House, Seller Retaining Possession until Completion of Purchase of House

Indenture made the ——— day of ——— between ———, hereinafter called the vendor, of the one part, and ———, hereinafter called the purchaser, of the other part:

[RECITALS.] Whereas, the vendor has agreed with the purchaser for the sale to him of a dwelling house situate at ———; and whereas, the said purchase is not to be completed until the ——— day of ———; and whereas, the vendor has agreed with the purchaser to sell him the furniture, chattels, and effects specified in the schedule hereto annexed for the sum of \$——, all of which furniture, chattels, and effects are at present in the possession of the vendor in the said dwelling house.

Now, this indenture witnesseth as follows:

1. [ASSIGNMENT.] In consideration of the sum of \$—— now paid by the purchaser to the vendor, the receipt whereof is hereby acknowledged, the vendor hereby sells and assigns unto the purchaser the furniture, chattels, and effects specified in the said schedule. To hold the same unto the purchaser absolutely.

2. [POSSESSION.] The purchaser shall not be entitled to the possession of the said furniture, chattels, and effects or to remove any of the same from the said dwelling house until the completion of the purchase thereof.

3. [BREAKAGE.] In the event that any of the said furniture, chattels, or effects shall be broken or destroyed before the purchaser becomes entitled to the possession thereof, the vendor will forthwith replace any article so broken or destroyed with another of the same nature and equal value.

In witness, *etc.*

15. Bill of Sale—Maryland (Statutory)

I, ———, of ———, in consideration of ——— dollars paid me by ———, of ———, do hereby bargain and sell to the said ———, the following property (*here describe property*).

Witness my hand and seal this ——— day of ———, in the year ———. (Seal.)

Md. Ann. Civ. Code 1910, art. 21, § 63.

CHAPTER XXXV

SERVICE AND AGENCY CONTRACTS

A contract of employment need not be in writing, unless it falls within the statute of frauds, which provides that no action shall be brought whereby to charge any person upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement on which such action shall be brought or some note or memorandum thereof shall be in writing and signed by the person to be charged therewith or some other person thereunto by him lawfully authorized. The statute applies to contracts which are not to be performed within one year, and not to those which may or may not be performed within that time. A contract which may be terminated at any time on notice, or a contract to perform services so long as the other party may need such performance, is not within the statute. For the appointment of an agent generally no particular formality is required. See Powers of Attorney, ante, p. 1131. Every service contract contemplates the formation of the relation of principal and agent between the employer and the employé within the limits defined or implied by the employment. The remedy for the breach of a contract for the performance of personal services is an action for damages. The contract is not enforceable by a decree for specific performance, except in a limited class of cases by an injunction restraining the breach of a negative covenant, as a promise by an actor or singer not to perform during a certain period for another, or a promise by the employé not to compete or to make an improper use of trade secrets.

The matters which it may be desirable to provide for in contracts of service and agency include the term of the employment, and its determination otherwise than by the lapse of time upon notice or upon the happening of certain contingencies; the nature of the services to be performed and the duties and responsibilities of employé; the arrangements for holidays; the remuneration; and any restrictive covenants, such as covenants not to compete with the employer during or after the service, and not to divulge or make improper use of trade secrets or information concerning the employer's business.

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For contracts with reference to employment of shipmaster or manager, see Ships and Vessels, post, pp. 1234, 1237.

1. Between Master and Domestic Servant

I, the undersigned (*master*), hereby agree to take —— into my service as butler (*or, coachman, etc.*) at the monthly wages of —— dollars; and I, the undersigned (*servant*), hereby agree to serve the said (*master*) honestly, soberly, and faithfully at all times as such butler, and to conform to the rules of his establishment, and to conduct myself with decorum, and not to absent myself from such service without leave. This agreement may be determined at any time by either party giving the other party a month's notice, or on the payment by the said (*master*) of a month's wages in advance, except in the case of misconduct on the part of the said (*servant*), in which case notice to leave such service forthwith may be given by the said (*master*) without payment in lieu of notice or other compensation.

Dated ——.

(Signatures.)

2. Between Firm and General Employé

This agreement made this —— day of —— between the firm of ——, of the first part, and ——, of the second part:

Witnesseth as follows:

1. [NATURE AND PERIOD OF SERVICE.] The said party of the second part agrees to give his undivided time and service in the employ of the said firm in such capacity as the said firm may direct, for the period of one year from and after the _____ day of _____, for the sum of \$_____, payable in equal monthly installments at the end of each month during the said term.

2. [REMUNERATION.] In consideration of the service so to be performed, the said firm agrees to pay to the said _____ the sum of \$_____, payable, as aforesaid, until the termination of this agreement.

3. [DETERMINATION.] It is further agreed by the parties hereto that this agreement shall terminate in the event of the dissolution of the said firm by death or otherwise, or the destruction by fire of said firm's warehouse at _____, notwithstanding the full term of one year may not, at the happening of either of the said events, have fully expired.

In witness, *etc.*

3. Between Merchant and Bookkeeper (Long Form)

This agreement made this _____ day of _____ between _____, hereinafter called the employer, of the one part, and _____, hereinafter called the bookkeeper, of the other part:

Witnesseth that the parties hereto hereby agree as follows:

1. [NATURE AND PERIOD OF SERVICE.] The employer shall employ the bookkeeper and the bookkeeper shall serve the employer in his business of _____, carried on by him at _____, during the period of _____ years from the _____ day of _____, if the employer shall so long carry on the said business (whether alone or in partnership with any other person or persons) upon the terms and subject to the stipulations and conditions hereinafter contained.

2. [HOURS.] The hours shall be from ——— to ——— on week days and from ——— to ——— on Saturdays.

3. [BOOKKEEPER'S OBLIGATIONS.] During the continuance of his employment the bookkeeper shall:

(1) [TO DEVOTE WHOLE TIME, AND NOT TO COMPETE.] Devote the whole of his time and attention during business hours to the business of the employer, and not be employed or engaged in any capacity in undertaking or carrying on any other business, and not be interested or concerned directly or indirectly in any business, or firm or corporation undertaking or carrying on any business, of a similar nature to or which may compete with that of the employer.

(2) [NOT TO BE ABSENT.] Not at any time, except in case of sickness or unavoidable accident, be absent from the employer's place of business during business hours without the consent of the employer: Provided, that the bookkeeper shall be entitled to ——— (consecutive) weeks' holiday in each year at such time (*or*, times) as the employer may think fit.

(3) [TO KEEP ACCOUNTS.] Carefully and accurately to keep such books of accounts and prepare such balance sheets and to perform other duties of a similar nature as the employer may from time to time direct.

(4) [TO OBEY INSTRUCTIONS, ETC.] Observe and comply with all lawful directions and instructions by and on the part of the employer, and use his best endeavors to promote the interests of the employer, and not at any time do anything which may cause or tend or be likely to cause any loss or damage to the employer in business, reputation, or otherwise.

4. [BOOKKEEPER NOT TO DISCLOSE INFORMATION.] The bookkeeper shall not, either during the term of his employment or at any time thereafter, use or disclose to any person, firm, or corporation any information concerning the business or affairs of the employer which he may have acquired in the

course of or as incident to his employment hereunder, for his own benefit, or to the detriment or intended or probable detriment of the employer.

5. [SALARY.] The employer shall pay to the bookkeeper a salary at the rate of —— dollars per annum by equal monthly installments on the —— day of every month during the continuance of his employment, so long as the bookkeeper shall perform and observe the agreements on his part herein contained.

6. [DETERMINATION BY PARTIES.] The employment of the bookkeeper hereunder may be determined by either party giving to the other one month's notice in writing: Provided, that if the bookkeeper shall in any respect fail to observe and comply with the provisions and stipulations on his part herein contained, the employer may without notice or payment in lieu of notice forthwith determine the employment of the bookkeeper hereunder.

7. [DETERMINATION ON DEATH, ETC.] This agreement shall immediately be determined upon the death or total incapacity for business of either party hereto, or upon the employer ceasing to carry on the said business or becoming bankrupt.

In witness, *etc.*

4. Between Employer and Traveling Salesman

This agreement made this —— day of —— between ——, of ——, hereinafter called the employer, of the one part, and ——, of ——, hereinafter called the salesman, of the other part, witnesseth as follows:

1. [NATURE AND TERM OF SERVICE.] The employer will employ the salesman and the salesman will serve the employer as a traveling salesman in the employer's business of selling dry goods, for a period of —— years from the date hereof, subject to determination as hereinafter provided.

2. [DUTIES OF SALESMAN.] The salesman shall diligently and faithfully serve the employer in such capacity as aforesaid, shall devote all his time and energies to such service, and will at all times obey the directions of the employer in regard to such service, and shall keep accurate accounts of all orders received by him and of all other transactions undertaken by him in connection with the said business, and will forward to the employer daily a statement of all business done by him each day specifying the customers and other persons on whom he has called and the orders received by him.

3. [SALARY, COMMISSIONS, AND EXPENSES.] The employer shall pay to the salesman a salary of _____ dollars per annum, payable by equal monthly installments on the _____ day of each month (and shall also pay to him a commission on the moneys actually received by the employer in respect to all orders obtained by the salesman from new customers of _____ per cent., and on all other orders obtained by him of _____ per cent. The employer shall have full discretion as to executing any orders obtained by the salesman). The employer shall also pay to the salesman his reasonable expenses of traveling, board and lodging, postage, and other expenses reasonably incurred by him as such salesman in or about the business of the employer.

4. [DETERMINATION.] Either party may at any time determine this agreement by giving to the other _____ months' notice in writing, and the employer may in the event of any breach by the salesman of this agreement determine the same without notice.

In witness, *etc.*

5. Between Merchant and Manager

This agreement made this _____ day of _____ between _____, of _____, hereinafter called the employer, of the one part, and _____, of _____, hereinafter called the manager, of the other part, witnesseth:

1. [AGREEMENT TO EMPLOY.] The employer shall employ the manager for the term of _____ years from the date hereof as manager of the employer's business as a dealer in hardware now carried on at _____, in the city of _____, subject to termination as hereinafter provided.

2. [AGREEMENT TO SERVE.] The manager shall well and faithfully serve the employer in such capacity as aforesaid, and shall at all times devote his whole time, attention, and energies to the management, superintendence, and improvement of the said business to the utmost of his ability, and shall do and perform all such services, acts, and things connected therewith as the employer shall from time to time direct and are of a kind properly belonging to the duties of a manager.

3. [MANAGER NOT TO DIVULGE SECRETS.] The manager shall not divulge any matters relating to said business or to the employer or to any customer which may become known to the manager by reason of his employment or otherwise, save in so far as may be necessary in the interests of the said business.

4. [ACCOUNTS.] The manager shall keep or cause to be kept all such books of account or other books as the employer shall provide for that purpose, and shall enter and cause to be entered therein the usual accounts or particulars of all goods and things bought and received and sold or delivered upon credit or otherwise in the course of the said business, and shall at all times render to the employer accurate accounts and full statements of and concerning said business. The said books

shall at all times be open to the inspection of the employer and his agents in that behalf.

5. [MONEYS AND SECURITIES.] All moneys received by the employer, except such sum as shall be required to be retained as petty cash, shall be deposited to the account of the employer in the ——— Bank, if possible, on the day of receipt, and every payment in excess of ——— dollars shall be made by check drawn on such account. The manager shall not draw, accept, or make any bill of exchange or promissory note on behalf of the employer, or otherwise pledge his credit except so far as he may have been thereto authorized by the employer.

6. [SALARY AND COMMISSION.] The employer shall pay to the manager a salary of ——— dollars per annum, payable by monthly installments of ——— dollars on the ——— day of each month (and shall also pay to the manager a commission of ——— per cent. per annum on the net profits of the said business, such commission to be paid within ——— days after the year accounts have been certified by the accountants employed by the employer, whose certificate as to the amount of such net profits shall be conclusive).

7. [DETERMINATION.] Either party may determine this agreement by giving to the other ——— months' notice in writing, but without prejudice to any right or claim which may have then accrued to either of the parties hereunder. In the event of the illness of the manager or other cause incapacitating him from attending to his duties as manager for ——— consecutive weeks, the employer may determine this agreement without notice upon payment to the manager of ——— dollars in lieu of notice in addition to all arrears of salary and commission when ascertained up to the date of such determination. In the event of a breach of this agreement or of an act of bankruptcy on the part of the manager, the employer may

determine this agreement without notice or payment of salary or commission as hereinbefore provided.

In witness, *etc.*

6. Between Corporation and Manager of Branch Establishment, He Lending a Sum in Consideration of a Share of Profits

An agreement made the —— day of —— between the —— Company, a corporation of the state of ——, hereinafter called the company, of the one part, and ——, of ——, hereinafter called the manager, of the other part:

In consideration of the several provisions hereinafter contained it is hereby agreed between the parties hereto as follows:

1. [AGREEMENT TO EMPLOY.] The company hereby hires and engages the manager as manager to take charge of and conduct and manage the business of its house at Chicago, with full power to sell or exchange such goods or other wares and merchandise of the general nature dealt in by the company as the manager may deem or consider profitable and to the benefit of the company, subject, nevertheless, to the provisions hereinafter contained, for a term commencing the —— day of —— and ending the —— day of ——, if the manager shall so long live.

2. [CAPITAL AND ADVANCES.] The company shall from time to time provide the capital necessary for conducting the business of the Chicago house up to the sum of \$——, and shall receive in respect to capital so provided and used in the said business interest at the rate of —— per cent. per annum. The manager shall advance and lend to the company the sum of \$——, which sum shall bear interest against the company at the rate of —— per cent. per annum.

3. [COMPENSATION OF MANAGER.] The company will pay and allow to the manager by way of salary for his services one-third of the net profits arising from the said Chicago business.

4. [METHOD OF ASCERTAINING PROFITS.] In arriving at what shall be deemed the net profits arising from the said Chicago business, the following items shall be paid and borne out of the gross profits, viz.: The rents of the premises wherein the said business shall be conducted and all repairs and alterations of the same, all taxes and payments for insurance, all salaries and wages of clerks and servants other than the manager employed in or about the said Chicago business, and all charges and expenses incurred in or about the same, and all debts or other moneys which shall be payable on account of the said Chicago business, and the interest on the capital for the time being advanced by the company, and upon said sum of \$—— advanced by the manager to the company as aforesaid, and all losses and damages incurred in or about the said Chicago business.

5. [MANAGER MAY DRAW MONTHLY SUM.] The manager shall be at liberty to draw out for his own use the sum of \$—— per month on account of his said salary, and the balance of his one-third share in the net profits shall not be withdrawn by him until after the annual general account herein-after mentioned shall have been made and signed.

6. [ACCOUNTS, ETC.] The manager shall keep books of account concerning the said business in which there shall be kept just and true accounts and particulars of all goods, wares, and merchandise which shall be by him sold and disposed of, and of all moneys or securities which shall have been received by him for or on account of the same, and of the rates, sums, or prices at which the same were respectively sold or disposed of, and also of all credits given on account thereof, together with

all other matters, transactions, and things necessary or proper in any wise concerning the premises. The said books of account, and all securities, documents, and things relative to the matters aforesaid shall be open to the inspection of the company, and upon the final determination of his engagement the manager shall deliver up the said books and documents to the company.

7. [ANNUAL STATEMENT OF ACCOUNT.] During the continuance of such engagement on the —— day of —— in each year the company and the manager shall account together respecting the receipts, payments, and other matters relative to the sale and disposition of the articles and things aforesaid, for which purpose there shall be prepared by the manager and clearly written in a proper book a particular and correct statement or account of all receipts, payments, and other transactions which shall have been entered into concerning the same in such manner and to the intent that the real state and condition thereof shall in all things clearly appear. And every such account and statement, when approved and signed by the said parties respectively, shall thereafter be binding and conclusive upon them, and shall not afterwards be opened unless some manifest error or mistake shall have been discovered therein within —— months thereafter.

8. [COMPANY TO MAKE UP PROFITS TO FIXED SUM.] If on taking the accounts as hereinbefore provided in any year it shall be found that the one-third share of the net profits of the said Chicago business shall not have amounted to the aggregate sum of \$—— during the preceding year, then in such case the company shall pay to the manager such sum as will with the sum actually received by the manager in respect to his salary amount to the sum of \$—— for such year.

9. [MANAGER TO DEVOTE WHOLE TIME AND FOLLOW DIRECTIONS OF COMPANY.] The manager shall during the continu-

ance of such engagement devote his whole time to and diligently and faithfully employ himself in and about the said Chicago business and conduct the same to the greatest advantage of the company, and shall not directly or indirectly engage in any other business, and will at all times follow and perform the advice, directions, and orders of the company concerning the conduct and management of the said business, and will in all cases of difficulty refer to the company for advice, and will keep the company informed as to all matters concerning the said Chicago business.

10. [NOT TO DEAL WITH PERSONS FORBIDDEN.] The manager shall not sell on credit any goods belonging to the company to any person whom the company shall have forbidden him by notice in writing to trust, and shall not give to any one customer credit to an extent exceeding \$——.

11. [NOT TO SPECULATE, INDORSE, ETC.] The manager shall not enter into any speculation, or become bail or surety or indorser for any other person.

12. [PENALTY FOR BREACH BY MANAGER.] If the manager shall do anything contrary to any of the stipulations or provisions of this agreement, it shall be lawful for the company to give him notice in writing to determine the engagement hereby constituted, and immediately upon such notice being given the said engagement shall cease, but without prejudice to any remedies which the company may have against him for the breach or nonperformance of any of the stipulations or provisions hereof.

In witness, *etc.*

TIFF. FORMS—77

7. Between Principal and Factor to Take and Dispose of Goods Abroad

Agreement made this —— day of —— between ——, of ——, hereinafter called the principal, of the one part, and ——, of ——, hereinafter called the agent, of the other part:

[RECITAL OF CONSIGNMENT.] Whereas, the principal has shipped and consigned to the agent at —— divers goods, wares, and merchandise to the amount and value of —— dollars or thereabouts, and has intrusted the same to the agent as his agent to sell and dispose of the same at —— aforesaid upon the terms and conditions hereinafter mentioned.

Now, it is hereby agreed between the parties hereto as follows:

1. [AGENT TO SELL.] The agent will at —— aforesaid sell and dispose of or use his best endeavors to sell and dispose of the said goods, wares, and merchandise, as also of any subsequent consignments made to him by the principal, to the best advantage.

2. [AGENT TO ACCOUNT FOR PROCEEDS.] The agent will from time to time (*or*, every month) remit to the principal as he shall direct in good bills of exchange or otherwise all sums of money which shall arise from such sales and disposition with a true and particular account of the sales and prices obtained and of all expenses connected with such goods, wares, and merchandise.

3. [PRINCIPAL TO MAKE FURTHER CONSIGNMENTS.] The principal will from time to time during the term of —— years from the date hereof, if the principal and agent shall so long live, but determinable nevertheless as hereinafter mentioned, on receiving from the agent the remittances or proceeds arising from the sale of the said goods, wares, and mer-

chandise, ship and consign to the agent such further or other goods, wares, and merchandise as will keep up a stock in the hands and custody of the agent to the value of ——— dollars.

4. [AGENT TO ACT ONLY FOR PRINCIPAL AND TO BE SOLE AGENT.] The agent will not during the said term purchase or receive for sale any goods, wares, or merchandise whatsoever in his own name or on his own account or in the name or on the account of any other person or persons than the principal, nor will the principal during the said term appoint any person other than the agent to sell any of the same kind of goods, wares, and merchandise at ———.

5. [REMUNERATION OF AGENT.] The agent shall be entitled to and shall have and retain the sum of ——— dollars for every \$100, and so in proportion for any less sum, which shall arise or be made by or from the sale or disposition of the goods, wares, and merchandise or any portion thereof so now or hereafter to be intrusted to the care of or shipped and consigned to him, and also all necessary, customary, and reasonable expenses attending the same.

6. [ACCOUNTS.] The agent will keep proper books of account concerning all goods, wares, and merchandise which he shall receive from the principal and of all moneys and securities which he shall receive therefor, and will permit the principal at all reasonable times to examine unsold stock and the said books of account and all securities and documents relating to the agency, and (to remove or carry away the same or) to take extracts from or copies of the said books and documents.

7. [DETERMINATION OF AGENCY.] Either of the parties may dissolve this contract during the said term by giving ——— months' notice in writing to the other to that effect, and in that event on the expiration of such ——— months this contract shall cease and determine, and the said accounts shall be settled and adjusted by and between the said parties to the day

on which such notice shall expire in the same manner as if the term thereof had expired by lapse of time.

8. [INTERPRETATION.] This agreement shall in all respects be interpreted in accordance with the law of the state of _____.

In witness, *etc.*

8. Between a Merchant or Manufacturer and an Agent Abroad

This agreement made this _____ day of _____ between _____, of _____, hereinafter called the principal, of the one part, and _____, of _____, hereinafter called the agent, of the other part:

Witnesseth as follows:

1. [APPOINTMENT.] The principal appoints the agent to be his sole agent in the republic of _____ for the sale of (automobiles) and such other goods and merchandise as may hereafter be mutually agreed between them.

2. [AGENT TO SERVE.] The agent will during the term of _____ years, determinable as hereinafter provided, diligently and faithfully serve the principal as his agent, and will endeavor to extend the sale of the principal's said goods within the said republic, and will not do anything that may prevent such sale or interfere with the development of the principal's trade in the said republic.

3. [AGENT TO NOTIFY HIS POSITION AS AGENT.] The agent shall place upon the premises where he carries on the said agency an inscription notifying to the public as conspicuously as possible the fact that he is acting as agent of the principal, and shall also place a similar inscription upon all invoices, bills, letter paper, and labels used in connection with the said agency.

4. [PRINCIPAL TO FIX MINIMUM PRICES.] The principal will from time to time furnish the agent with a statement of the minimum prices at which the said goods are respectively

to be sold, and the agent shall not sell below such minimum prices, but shall endeavor in each case to obtain the best price obtainable.

5. [AGENT NOT TO SELL BEYOND LIMITED TERRITORY.] The agent shall not sell any of the said goods to persons residing outside the territory of the said republic, nor shall he knowingly sell any of the said goods to persons residing within the said territory with a view to their exportation to any other country.

6. [AGENT NOT TO COMPETE.] The agent shall not during the continuance of this agency sell goods of a similar class, or such as would or might compete or interfere with the sale of the principal's goods, either on his own account or on behalf of any other person whatsoever.

7. [PRINCIPAL TO SELL THROUGH AGENT ONLY.] The principal will not during the continuance of this agency sell any of the said goods to any person resident in the said republic or to any person with a view to such goods being exported to the said republic, but will carry on his trade with the said republic through the agent only, and will appoint no other person as his agent within the said republic for the sale of any of the said goods.

8. [AGENT TO TRANSMIT ORDERS.] Upon receipt of an order for any such goods as aforesaid the agent will immediately transmit such order to the principal, who will thereupon execute the same by supplying the required goods direct to the purchaser.

9. [PRINCIPAL TO INFORM AGENT OF INVOICES AND PAYMENTS.] Upon the execution of any such order the principal shall forward to the agent a duplicate copy of the invoice sent with the goods to the purchaser thereof, and in like manner shall from time to time inform the agent when payment is made by any purchaser to the principal.

10. [AGENT TO KEEP ACCOUNTS.] The agent shall keep an account of all such dealings, and shall every —— months send in a copy of such accounts to the principal, who shall thereupon, if the same appears to be correct, pay the agent the commission hereinafter mentioned.

11. [REMUNERATION OF AGENT.] The principal shall allow the agent by way of commission —— per cent. upon the invoiced price of all goods ordered through him and duly paid for by the respective purchasers thereof: (Provided, that if in any year the amount of commissions so payable falls below the sum of \$——, the principal will make it up to that sum.)

12. [PRINCIPAL TO PAY CERTAIN EXPENSES.] The principal will pay all costs and charges relating to the agency, and will every —— months refund to the agent said sums of money as he shall have reasonably expended in the preceding —— months on account of books, paper, and stationery used solely in connection with the said agency, and in telegrams, the use of telephones, postage, railway, or other traveling, or other matters in connection solely with the said agency.

13. [DETERMINATION BY NOTICE.] Either party may by notice in writing to the other terminate this agreement, and —— months after the receipt of such notice this agreement and the agency hereby created shall cease, except so far as concerns the rights of either party in connection with acts, matters, and things done, committed, omitted, or suffered by either party before such determination.

14. [DETERMINATION BY AGENT'S INCAPACITY, ETC.] This agency shall be determined by the death of the agent or by his becoming incapable for any cause of doing business for a period of —— months, or by his bankruptcy, or by his effecting a composition with his creditors.

15. [ARBITRATION CLAUSE.] (*As may be agreed.*)

16. [INTERPRETATION.] This agreement shall in all respects be interpreted in accordance with the law of the state of _____.

In witness, *etc.*

9. Between Manager and Singer or Actor

An agreement made this _____ day of _____ between _____, of the one part, hereinafter called the manager, and _____, hereinafter called the performer, of the other part:

[RECITAL OF INTENDED PRODUCTION.] Whereas, the manager intends to produce a series of operas (*or*, the play entitled _____) to be performed at the _____ Theater between the _____ day of _____ and the _____ day of _____.

Now, it is hereby agreed as follows:

1. [PERFORMER TO PERFORM.] The performer will during the said period on every evening when he shall be so required so to do * sing and act in such part in any of the said operas as may be assigned to him by the manager from the parts contained in the schedule hereto annexed (*or, after the **, perform the part of _____ in the said play, or any other parts or characters therein intrusted to him, and will also study or understudy such other parts as the manager may allot for this purpose and perform the same), unless he shall be prevented from such performance by illness, evidenced by medical certificate, or other unavoidable cause, and will not absent himself from any performance in which he is required to take part without the previous permission of the manager.

2. [REHEARSALS.] The performer will punctually attend all practices and rehearsals which the manager shall require him to attend, upon reasonable notice being given to him, and will have a competent and sufficient knowledge of the part assigned to him, and will be prepared in all respects to take part in such practices or rehearsals, unless prevented by illness, evidenced as aforesaid, or other unavoidable cause.

3. [NOT TO PERFORM ELSEWHERE.] During the said period the performer will not at any time sing or perform at any concert or take part in any theatrical or musical performance at any other theater or opera house or at any private house or elsewhere (*or*, will not act or perform elsewhere either for his remuneration or advantage, or for that of any other person) without the previous written consent of the manager.

4. [COSTUMES, ETC.] The manager will supply all costumes and theatrical properties necessary for the purpose of the performance of the parts from time to time assigned to the performer.

5. [SALARY.] The manager will pay the performer for his services the sum of ——— dollars per week, payable on ——— in each week, the first payment to be on the ——— day of ———. (The usual number of performances will be six night performances and on Saturday matinee per week:) Provided, that if by reason of calamity, fire, or any other unavoidable cause it shall be found impossible or impracticable to give a performance on any day or days during the said period, the performer shall not be entitled to any salary for any performance or performances so prevented, and a proportionate part of the said weekly salary shall be deducted.

6. [DAMAGES FOR CERTAIN BREACHES.] For every breach by the performer of any of the stipulations contained in clauses 1 and 3 hereof the performer will pay to the manager the sum of ——— as liquidated damages.

7. [DETERMINATION FOR CERTAIN BREACHES.] In the event of the breach by the performer of any of the stipulations contained in clauses 1 and 2 hereof, the manager may immediately determine this contract without notice or payment in lieu of notice, and the performer shall in such case be entitled to such proportionate part only of his said salary as he shall actually have earned.

In witness, *etc.*

CHAPTER XXXVI

SHIPS AND VESSELS

Federal statutes provide for and regulate the registering, enrolling, licensing, employment, and privileges of vessels of commerce owned in the United States. Vessels engaged in domestic commerce are enrolled, and those engaged in foreign commerce are registered. Bills of sale, mortgages, hypothecations, and conveyances of any vessel or part of a vessel of the United States should be recorded in the office of the comptroller of the customs where the vessel is registered or enrolled. Acknowledgment of any such instrument or of a discharge of any incumbrance is a prerequisite to record. A bill of sale should set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing. In addition to bills of sale and mortgages a few precedents relating to the management of ships and the carriage of goods thereon are given.

The federal statutes provide that the master of every vessel bound from a port in the United States to any foreign port, other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or Mexico, or of any vessel of the burden of 75 tons or upwards bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or print with every seaman whom he carries to sea as one of the crew in a form given (post, p. 1246), as near as may be, which shall be dated at the time of the first signature thereof, and signed by the master before any seaman signs. Rev. St. § 4511, as amend. Act March 3, 1897, c. 389, § 19, 29 Stat. 691 (U. S. Comp. St. 1913, § 8300). Cf. Rev. St. § 4501; Act June 7, 1872, c. 322, 17 Stat. 264; Act Feb. 27, 1887, c. 69, 19 Stat. 252. Such agreement is to be signed by each seaman in the presence of a shipping commissioner. When the crew is first engaged the agreement is to be signed in duplicate, one part being retained by the commissioner, and the other, containing a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship, being delivered to the master. Every agreement entered into before a shipping

commissioner must be acknowledged and certified under his hand and official seal, and the certificate (post, p. 1251) indorsed on or annexed to the agreement. Rev. St. § 4512 (U. S. Comp. St. 1913, § 8302).

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1. Bill of Sale of Enrolled Vessel

To all to whom these presents shall come, greeting:

Know ye that I, ———, of ———, sole owner of (*or*, we, ——— and ———, of ———, each of us being an owner of one-half part) of the steamship or vessel called the ———, of the burden of ——— tons, or thereabout, for and in consideration of the sum of ——— dollars, lawful money of the United States of America, to me (*or*, us) in hand paid, before the sealing and delivery of these presents, by ———, of ———, the receipt whereof I (*or*, we) do hereby acknowledge and am (*or*, are) therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said ———, his executors, administrators, and assigns, all (*or*, one-half part) of the said steamship or vessel, together with all (*or*, one-half part of) the masts, bowsprit,

sails, boats, anchors, cables, tackle, furniture, and all other necessities thereunto appertaining and belonging, the certificate of the enrollment and license of which said steamship or vessel is as follows, viz. *(insert copy of certificate)*.

To have and to hold the said steamship or vessel and appurtenances thereunto belonging unto — the said —, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said —, his executors, administrators, and assigns forever. And I *(or, we)*, the said —, have, and by these presents do promise, covenant, and agree, for myself *(or, ourselves)* and my *(or, our)* heirs, executors, and administrators, to and with the said —, his heirs, executors, administrators, and assigns, to warrant and defend the said steamship or vessel and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In testimony whereof I *(or, we)*, the said —, have hereunto set my *(or, our)* hand(s) and seal(s) this — day of —.

Signed, sealed, and delivered in presence of: *(Acknowledgment.)*

2. Bill of Sale of Registered Vessel

(Follow the preceding form, inserting a copy of the registry of the vessel in lieu of a copy of the enrollment and license.)

3. Mortgage of Registered or Enrolled Vessel

To all to whom these presents shall come, greeting:

[BOND.] Know ye that I, —, of —, county of —, in the state of —, am held and firmly bound unto —, of —, in the county of —, and state of —, in the just and full sum of — dollars, for the payment of which sum, well and truly to be made, I hereby

bind myself, and my heirs, executors, and administrators, by these presents.

Sealed with my seal at ——— this ——— day of ———.

Whereas, the said ——— has this day lent and advanced unto the said ——— the sum of ——— dollars, on the body, tackle, and appurtenances of the good schooner or vessel called the ———, of the burden of ——— tons, or thereabouts, the said ——— being the sole owner of the said schooner.

Now, the condition of this obligation is that, if the said ——— shall pay or cause to be paid, to the said ——— the sum of ——— dollars and interest thereon at the rate of ——— per cent. per annum, payable semiannually, on the ——— day of ——— and ——— in each year, then this obligation to be void; otherwise to be and remain in full force and virtue.

[ASSIGNMENT.] And in consideration of, and as security for, said loan as aforesaid, the said schooner is by these presents assigned, pledged, mortgaged, set over, and conveyed to the said ———, his executors, administrators, and assigns; the certificate of registry (*or*, of the enrollment) of which vessel is as follows, viz. (*insert copy*).

[POWER OF SALE.] It being mutually understood and agreed that, in case the amount of said loan and interest or any part thereof according to the terms of these presents shall remain due and unpaid to said ———, his executors, administrators, or assigns, after the expiration of ——— from the date hereof, the said ———, his executors, administrators, or assigns, may take possession of said schooner or vessel and appurtenances and sell the same at public auction, in order to satisfy what may then remain due, without any proceedings in court or otherwise for the purpose of authorizing such sale, and thereupon may execute and deliver a sufficient bill of sale to trans-

fer completely to any purchaser or purchasers all title and property in and to the said schooner or vessel and appurtenances to the said ———, as owner thereof, now belonging; the said ———, his executors, administrators, or assigns, thereupon to account to the said ———, his executors, administrators, or assigns, for any surplus of such sale, after paying all charges and expenses. And in case of such sale as aforesaid the said ———, his executors, administrators, or assigns, shall, whenever thereto requested, make, execute, and deliver to such purchaser or purchasers another bill of sale of said schooner or vessel and appurtenances, in which the registry (*or*, enrollment) shall be recited as above, for the transferring completely to such purchaser or purchasers all the right, interest, and claim of said ———, his executors, administrators, or assigns, as owners of the said schooner or vessel. And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers by the said ———, his executors, administrators, or assigns when thereto requested, the said ———, and his executors, administrators, and assigns, are hereby constituted and appointed the legal attorney or attorneys of the said ———, his executors, administrators, and assigns, for the purpose of making, executing, and delivering such bill of sale; and the said ——— hereby ratifies and confirms the acts of the said ——— as his attorney or attorneys for said purpose.

[INSURANCE.] And it is hereby further agreed and understood that insurance shall be made in some office in ——— on the said schooner or vessel for the security of the said ——— as mortgagee to an amount not less than the sum loaned as aforesaid; and the said ——— is hereby authorized to procure such insurance at the expense of the said ——— if not seasonably obtained by him, the said ———.

Signed, sealed, and delivered in the presence of: (*Acknowledgment.*)

4. Same—Another Form

To all to whom these presents shall come, greeting:

[ASSIGNMENT.] Know ye that we, ——— and ———, of the ——— of ———, in the state of ———, each owner of one-half of the schooner or vessel called the ———, of the burden of ——— tons, or thereabouts, of the first part, being justly indebted to ———, of ———, in the state of ———, of the second part, in the sum of ——— dollars, for money this day lent to us by the said party of the second part, for the purpose of securing the payment of the said debt and the interest thereon, do hereby grant, bargain, sell, assign, and mortgage unto the said party of the second part, his executors, administrators, and assigns, all of said schooner or vessel, together with all the masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel, furniture, and all other necessities thereunto appertaining and belonging. The certificate of the last registry (*or, if an enrolled vessel, enrollment*) of the said schooner or vessel is in the words and figures following, to wit (*insert copy*).

To have and to hold the said schooner or vessel and all the other before-mentioned appurtenances unto him, the said ———, and to his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said ———, and to his executors, administrators, and assigns, forever:

[PROVISO FOR PAYMENT.] Provided, always, and the condition of these presents is such, that if the said parties of the first part, their executors or administrators, shall pay or cause to be paid to the said party of the second part, his executors, administrators, or assigns, the debt aforesaid, with the interest thereon, at the time or times and in the manner following, to wit (*state terms*), then these presents shall be void and of no effect; otherwise to remain in full force.

[COVENANTS OF MORTGAGOR.] And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant with the said party of the second part, his executors, administrators, and assigns, as follows: To pay the aforesaid debt, with the interest thereon, at the times hereinbefore mentioned; not to sell or attempt to sell the said vessel or appurtenances or any part thereof; not to suffer the same to be levied upon or taken by virtue of any attachment or execution; (not to remove or attempt to remove the same beyond the limits of the United States); not to suffer the said vessel to be run in debt to an amount exceeding in the aggregate the sum of ——— dollars; not to make or suffer any waste, damage, or destruction thereof, or any act whereby the insurance hereinafter mentioned would be liable to be vitiated or forfeited; to keep the said vessel insured against loss or damage by fire, and against all marine risks and disasters, in a company or companies approved by the said party of the second part, for an amount equal at least to the amount which shall from time to time remain unpaid upon the said indebtedness, and to assign or deliver promptly to the said party of the second part as collateral security for the payment thereof all policies of insurance thereon and all renewal certificates thereof, having first obtained the consent of the company or companies to any such assignments; that in the event of any failure to effect and pay for such insurance the said party of the second part, his executors, administrators, or assigns, may effect and pay for the same, and the sum or sums so paid shall be deemed a part of the principal debt hereby secured, and shall bear interest at the same rate, and the same shall be immediately due and payable and collectible with and in the same manner as the said principal debt.

[POWER OF SALE.] But if default shall be made in the payment of the said debt or sums of money, or the interest there-

on, or any part thereof, or in the prompt and faithful observance or performance of any of the covenants on the part of the said parties of the first part herein contained, or if the said party of the second part shall at any time deem himself in danger of losing the said debt or any part thereof by delaying the collection thereof until the expiration of the time above limited for the payment thereof, then and in either or any such event the said party of the second part, his executors, administrators, or assigns, are hereby authorized to take possession of the said vessel and appurtenances, wherever found, at any time, either before or after the expiration of the time aforesaid, and to sell and convey the same, or so much as may be necessary to satisfy the said debt, interest, and reasonable expenses, after giving —— days' notice of such sale by publication in some newspaper published in ——, and to execute and deliver a sufficient bill of sale in order to transfer the same to the purchaser or purchasers, retaining the amount of the said debt, interest, and expenses, and returning the surplus, if any, to the said parties of the first part, their executors or administrators; it being hereby agreed that at any such sale the said party of the second part, his executors, administrators, or assigns, may become the purchaser or purchasers:

[POSSESSION OF MORTGAGOR.] Provided, always, that it shall be lawful for the said parties of the first part, their executors and administrators, to retain possession of the said vessel and at their own expense to use and enjoy the same until the said indebtedness shall become due, unless the said party of the second part, or his executors, administrators, or assigns, shall declare this mortgage forfeited for nonperformance of any of the covenants herein contained or by virtue of any authority hereby conferred.

In testimony, *etc.*

(Acknowledgment.)

5. Bottomry Bond

Know all men by these presents that I, ———, master of the ship ———, of the port of ———, ——— for myself am held and firmly bound unto ———, herein called the lender, in the penal sum of ——— dollars, for the payment of which well and truly to be made unto the said lender, his heirs, executors, administrators, and assigns, I hereby bind myself, my heirs, executors, and administrators firmly by these presents.

[PLEDGE.] And for further security of the said lender I, the said ———, do by these presents pledge the said ship and her freight, together with her tackle and apparel (and also the cargo now on board the said ship); and it is hereby declared that the said ship and her freight (and cargo) are thus pledged for the security of the money advanced to me, and shall be pledged or mortgaged to no other person until payment of this bond is first made, with the interest that may become due thereon.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

[RECITAL OF LOAN.] Whereas, the above-named ship, having been compelled to put into the port of ——— for repairs and necessities, and the owners of the said ship and her freight and the shippers and consignees of the cargo on board of her having refused to provide the money wherewith to pay for the said repairs and necessities, the above-named ——— hath been compelled to borrow at bottomry, and hath received of the lender the sum of ——— dollars, which sum is to run at bottomry on the hull and freight of the said ship from the port of ——— on a voyage to the port of ——— (having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage) at the rate of ——— per cent. for the voyage.

[CONDITION.] Now, the condition of this obligation is such that, if the above-bound ———, his heirs, executors, or administrators, shall pay unto the lender, or his heirs, executors, administrators, or assigns, the sum of ——— dollars, being the principal of this bond, together with the interest which shall become due thereon within ——— days after the safe arrival of the ship at her place of discharge in the port of ———, or if the said ship is lost on the said voyage, then this obligation and pledge shall be void and of no effect; otherwise to remain in full force and effect. Three bonds of the same tenor and date have been signed, the one of which being accomplished, the others to be void and of no effect.

Signed, sealed, and delivered in the presence of ———.

(Signature and seal of master.)

6. Agreement Between Co-owners of Ship for Management by One

This agreement made this ——— day of ——— between ———, of ———, hereinafter called the part owner, of the one part, and ———, of ———, hereinafter called the manager, of the other part:

[RECITAL OF CO-OWNERSHIP, ETC.] Whereas, the part owner is the owner of ——— shares of the sailing ship called the ———, of the port of ———, and the manager is the owner of the remaining ——— shares of the said ship, and the parties hereto have agreed that the manager shall be the manager thereof, and desire to specify the terms of his management.

Now, it is hereby mutually agreed between the said parties as follows:

1. [POWERS OF MANAGER.] The manager shall have the sole management of the said ship in all matters relating to her employment, and in particular shall have the following powers: To make or cancel any arrangement for the engagement

of freight for the said ship, whether by charter party or otherwise, and for the carriage of passengers; to engage from time to time such persons as he may think fit as master, officers, and crew of the ship, and to dismiss any or all of them; to insure the ship, her appurtenances, freight, and earnings, against the usual risks; to employ any ship or insurance brokers on the usual terms; to make, adjust, apportion, or settle at his discretion any salvage, damage, average, or other claims in favor of or against the ship, or to refer the same to arbitration; to obtain possession of the ship and her certificate of registry (*or*, enrollment) from the master when he is dismissed, or from any other person withholding the same; to receive payment and obtain delivery of all moneys and securities receivable on account of the ship; and to prosecute and defend such proceedings as may be necessary in respect to the ship.

2. [ACCOUNTS.] The manager as soon as reasonably practicable after the termination of every voyage shall render to the part owner and other owners who may become such the usual accounts for such voyage, with checks for amounts thereby shown to be due to him or them, and on request shall produce all vouchers, books, and other documents relating thereto. If any loss is shown by such accounts, such owner or owners shall forthwith pay to the manager his or their proportion thereof. He shall credit the ship's account with interest at the rate of ——— per cent. per annum on all moneys belonging to the ship in his hands.

3. [OTHER DUTIES.] The manager shall pay all sums payable on account of the ship, and shall perform all other duties usually performed by managers of ships.

4. [REMUNERATION.] The manager shall be entitled by way of remuneration to charge a commission of ——— per

cent. on the gross disbursements, and also a commission of ——— per cent. on the gross earnings arising from freight, salvage, or otherwise. (He shall be entitled to act as ship and insurance broker on behalf of the ship and to receive and retain the usual commissions therefor in addition to the commissions above mentioned.) He shall be entitled to charge a commission of ——— per cent. on any sale of the ship during his management. And he shall be entitled to charge interest at the rate of ——— per cent. per annum on all advances made by him from his own funds on account of the ship.

5. [DETERMINATION OF MANAGEMENT.] The manager shall be entitled to remain such so long as he shall carry on the management to the satisfaction of the owner or owners for the time being of more than ——— shares therein. The owner or owners of ——— shares or upwards may determine his management by serving on him or leaving at his last-known place of business in ——— a notice in writing to that effect, but so only as to take effect after termination of a voyage or before the arrangements for a new voyage are completed. Immediately upon the serving or leaving of such notice as aforesaid, and the execution of a proper release and indemnity to him against all liabilities properly contracted by the manager on behalf of the ship or her owners, he shall cease to be manager.

6. [PURCHASE OF MANAGER'S SHARES ON DETERMINATION.] If the management of the manager is determined in the manner aforesaid, and if he disapproves of the new management, the other owner or owners shall purchase the shares of the manager at a fair price. If there be disagreement as to such price, then the entirety of the ship shall be publicly advertised for sale, notice of the time and place thereof being given to each of the owners of shares in the ship, and she shall be sold by public auction subject to such conditions as are usual

in the sale of ships. Any of the owners shall be at liberty to bid for and purchase the ship. All the owners on receiving their shares of the purchase money shall execute all necessary bills of sale of their respective shares in the ship to the purchaser or purchasers and deliver up possession of the ship accordingly. The cost of such sale shall be borne by all the owners according to their respective shares in the ship.

7. [ARBITRATION CLAUSE.] (*As may be agreed.*)

In witness, *etc.*

(*Signatures of both parties.*)

7. Agreement to Employ Master

This agreement made this ——— day of ——— between ———, of ———, owner of the ship ———, of the port of ———, hereinafter called the owner, of the one part, and ———, of ———, hereinafter called the master, of the other part, witnesseth as follows:

1. [EMPLOYMENT, REMUNERATION, ETC.] The owner shall employ the master and the master shall serve the owner as master of the said ship at the wages of ——— dollars per month during the said employment, commencing on the ——— day of ———, next; and during the continuance thereof the master will obey all the orders and directions given to him by the owner or his duly authorized agents in that behalf.

2. [TERMINATION OF AGREEMENT.] This agreement may be terminated by the master giving to the owner (three) or more calendar months' notice in writing to that effect expiring when the ship shall be at the said port of ———, or by the loss or constructive total loss of the ship, or by the receipt by the master of notice in writing from the owner, either by letter or telegram, terminating this agreement, which notice need not assign any reason for such termination. On receipt of such notice from the owner the master shall forthwith deliver the ship and her papers and all documents relating to the ship or

to the owner's business to the person named in such notice, and shall comply with all other instructions therein contained.

3. [MASTER'S COMPENSATION ON TERMINATION.] In the event that this agreement shall be terminated by the loss or constructive total loss of the ship, or by the owner while the ship is not at the said port of ———, the owner shall, except when the agreement is terminated because of the misconduct of the master, either provide the master with a passage or transportation to the said port of ——— and pay his wages until his arrival there or remit to him the sum of ——— dollars in lieu thereof at his option, and the master shall not be entitled to any compensation for loss of employment.

In witness, *etc.*

8. Charter Party for a Voyage

It is this day mutually agreed between ———, of ———, owner of the good steamship or vessel called the ———, of ———, of the burden of ——— tons, or thereabouts, registered measurement, whereof ——— is master, now at ———, of the one part, and ———, of ———, charterer, of the other part, as follows:

1. [SHIP, CARGO, VOYAGE, AND FREIGHT.] That the said steamship, being tight, staunch, and strong, and in every way fitted for the voyage, shall at once sail and proceed to ——— alongside such wharf on arrival as directed by ———, and there take on board as tendered a full and complete cargo of ——— of say ——— tons, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture, and, being so loaded, shall with all practicable dispatch proceed to ——— and deliver the same to the charterer or assigns alongside any wharf as ordered where she can safely deliver, on being paid freight as follows: At the rate of ——— dollars per ton of ——— 2,240 pounds

delivered, being in full of all port charges and pilotages. Cash at the port of loading not exceeding ——— dollars to be advanced if required on signing bills of lading.

2. [BILLS OF LADING.] The master shall before the ship proceeds to sea call at the office of the charterer's agents in ———, and there sign, as presented, the bills of lading for the cargo (to be prepared on the form hereto attached), (and in default thereof there shall be payable to the charterer the sum of ——— dollars).

3. [LOADING AND DISCHARGING.] The cargo to be loaded and discharged with customary steamship dispatch as fast as the steamer can receive and deliver during the ordinary working hours of the respective ports, Sundays and holidays, unless used, in both loading and discharging excepted, and any time lost through riots, strikes, lockouts, or by reason of accidents to machinery, obstruction in the railway and the docks, or by reason of floods, frosts, storms, or any cause beyond the control of owner or charterer, not to be computed as part of the loading and discharging time. Should the steamer be detained beyond the time stipulated as above for loading or discharging, demurrage shall be paid at ——— dollars per day and pro rata for any part thereof. Cargo to be brought to and taken from alongside the steamer at the charterer's risk and expense.

4. [EXCEPTED PERILS.] The owner shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause, or wheresoever occurring, by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers, or people, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negli-

gence, default, or error of judgment in the pilot, master mariners, or other servants of the shipowner, not resulting, however, in any case, from want of due diligence by the owners of the ship, or any of them, or by the ship's husband or manager.

5. [LIEN.] The master or owner shall have a lien on the cargo for freight, dead freight, and demurrage (the charterer's liability ceasing when the cargo is shipped).

6. [PENALTY.] Penalty for nonperformance of this agreement shall be the proved damages, not exceeding the estimated amount of freight.
(Signatures.)

9. Time—Charter Party

It is this day mutually agreed between ———, of ———, owners of the good iron screw steamship called the ———, of ——— tons gross register, having engines of ——— horse power, and of the cargo capacity of ——— tons, or thereabouts, now lying at ———, and Messrs. ———, of ———, charterers, as follows:

1. [HIRE FOR TERM.] The owners will let and the charterers will hire the said steamship for the term of ——— from the ——— day of ———, she being then placed at the disposal of the charterers at ———, to be employed in carrying lawful merchandise (except, *etc.*) between such ports (within the following limits, viz., ———) as the charterers shall direct, subject to the following conditions:

(1) [CONDITION OF SHIP.] That at the date of the commencement of the hire the said steamship shall be tight, staunch, strong, and in every way fitted for the service, and shall be manned with a full complement of officers, seamen, engineers, and firemen for a vessel of her tonnage, and ready to receive cargo.

(2) [WAGES, INSURANCE, AND MAINTENANCE.] That the owners will provide and pay the wages of the master, officers,

engineers, firemen, and crew, will pay for the insurance of the ship and for all engine room stores, and will maintain the ship in a thoroughly efficient state in hull and machinery for and during the service.

(3) [WHOLE SHIP AT CHARTERERS' DISPOSAL.] That the whole reach of the ship's holds and usual places for loading and accommodation of the ship, not being more than she can reasonably stow and carry, shall be at the charterers' disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores, and fuel.

(4) [DUTIES OF MASTER.] That the master shall be under the orders and direction of the charterers as regards employment, agency, or other arrangements; shall prosecute the voyages with the utmost dispatch, and shall render all customary assistance with the ship's crew and boats; and shall keep a full and correct log of the voyage or voyages, which shall be open to the charterers or their agents.

(5) [COMPLAINTS AS TO OFFICERS, ETC.] That if the charterers shall have reason to be dissatisfied with the conduct of the master, officers, or engineers, the owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointment.

(6) [LOSS OF TIME.] That in the event of any loss of time from deficiency of men or stores, breakdown of machinery, or damage preventing the working of the ship when in port, for more than twenty-four working hours, the hire shall cease until she be again in an efficient state to resume her service.

(7) [RATE OF PAYMENT.] That the charterers will pay for the use and hire of the ship at the rate of ——— dollars per gross register ton per calendar month, commencing on and from the day of her delivery as aforesaid, and at the same rate for any part of a month until her delivery to the owners, unless lost. Should the ship be lost, the charterers shall pay for

the hire only up to and including date of the loss; and if she be lost without being heard from, the hire shall cease to be due (fifteen) days after the date on which she left her last port.

(8) [PAYMENTS IN ADVANCE.] That the charterers will pay the hire of the ship monthly in advance at ———, and if default be made in any monthly payment, the owners shall have the right to withdraw the ship from the service of the charterers without prejudice to any other remedy the owners may have against the charterers hereunder.

(9) [LIEN OF CHARTERERS, ETC.] That the charterers shall have a lien on the ship for all moneys paid in advance and not earned, and, if the ship be lost, hire paid in advance and not earned shall be refunded to the charterers.

(10) [COAL.] That the charterers shall provide and pay for coal, and will accept all coal in the ship's bunkers and pay therefor at the current market price at ——— when she is delivered to them, and that the owners will pay for all coal left in the bunkers at the current market price at the port where she is delivered up.

(11) [OTHER CHARGES.] That the charterers shall pay all port charges, pilotages, agencies, commissions, and all other charges whatsoever, except as before stated.

(12) [SAFE PORTS.] That the cargo shall always be loaded or discharged in a safe port and where the ship can always safely lie afloat.

(13) [SAILING DIRECTIONS.] That the charterers will furnish the master from time to time with all requisite instructions, sailing directions, and charts.

(14) [INDEMNITY FOR BILLS OF LADING.] That the charterers will indemnify the owners from all consequences or liabilities that may arise from the master signing bills of lading or in complying with the same.

(15) [SALVAGE, ETC.] All derelicts, salvages, and towages shall be for the owners' and charterers' equal benefit, and all delays occasioned by attempting or rendering salvage or towage services or in repairing damages occasioned thereby shall be borne by the charterers.

(16) [REDELIVERY OF SHIP.] That the charterers will deliver up the ship to the owners at ———.

(17) [OWNERS' LIEN.] That the owners shall have a lien upon all cargoes and subfreights for all moneys due under this charter.

2. [OPTION TO CONTINUE CHARTER.] The charterers shall have the option of continuing this charter for a further period of ——— on giving notice to the owners ——— weeks before the expiration of the said term.

3. [PENALTY.] The penalty for the nonperformance of this charter shall be ——— dollars.

4. [ARBITRATION.] Should any dispute arise between the owners and the charterers, the matters in dispute shall be referred to three persons at ———, one to be appointed by each of the parties hereto, and the third by the two so chosen, and their decision, or that of any two of them, shall be final.

5. [EXCEPTED PERILS.] The parties hereto mutually exempt each other from all liability arising from the act of God, the public enemy, restraint of princes, rulers and people, perils of the sea, fire, barratry of the master or crew, pirates, collisions, stranding, and other accidents of navigation or to boilers and machinery, even when occasioned by the negligence, default, or error in judgment of the pilot, master mariners, or other servants of the owners, but not resulting from any want of due diligence by the owners or by the ship's husband or manager.

(Signatures.)

10. Bill of Lading ¹

Shipped in good order and condition, by ———, in and upon the good vessel called the ———, whereof ——— is master, now lying in the port of ———, and bound for ———, ——— being marked and numbered as per margin, and to be delivered in like good order and condition at the port of ———, the act of God, perils of the sea (*insert any other exceptions*) always excepted, unto ———, or ——— assigns, he or they paying freight on the said goods on delivery at the rate of ——— and charges as per margin and average, if any.

In witness whereof the master or agent of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

Dated in ——— this ——— day of ———.

(Signature of master or agent.)

11. Assignment of Freight of a Specified Voyage

Know all men by these presents that I, ———, of ———, owner of the steamship ———, of the port of ———, in consideration of the sum of ——— dollars to me paid by ———, of ———, do hereby assign, transfer, and set over unto the said ———, his executors, administrators, and assigns, all and singular the freight, hire, passage money, and earnings of the said steamship in and for a voyage from and commencing at the port of ——— about the ——— day of ——— next to the port of ———, and all moneys to be recovered and received by me for or on account of the said voyage, and also

¹ This short form conforms to the customary requirements. Bills of lading usually contain numerous clauses exempting the shipowner on various contingencies.

the several bills of lading of the goods, wares, and merchandise shipped or to be shipped on board of the said steamship for or on account of which the said freight, hire, and earnings are or shall be payable, and all benefit and advantage thereof, and all my right and title, by way of lien or otherwise, in, to, or out of the said goods, wares, and merchandise, and all powers and authorities in respect thereto, and all my right, title, interest, claim, and demand whatsoever at law or in equity in, to, or out of the said freight, hire, passage money, earnings, moneys, and premises hereby assigned.

And I hereby constitute and appoint the said ———, his executors, administrators, and assigns, my true and lawful attorney or attorneys irrevocable, with full powers of substitution and revocation, for me and in my name, or otherwise, but for his and their sole use and benefit and at his and their own cost, to ask, demand, sue for, collect, receive, compound, and give acquittances for the said freight, hire, passage money, earnings, moneys, and premises.

In witness, *etc.*

12. Assignment of Marine Insurance Policy by Indorsement

For value received I do hereby assign unto ———, his executors, administrators, and assigns, the within policy of insurance on the ship, freight, and the goods therein carried (*or on the ship, or freight, or goods, as the case may be*).

Dated ———.

(*Signature of insured.*)

13. Notice to Underwriters of Abandonment of Ship or Cargo

To the _____ Insurance Company:

I hereby give you notice that I abandon to you all my interest in the cargo on the steamship _____ in so far as that interest is covered by your policy No. _____, dated the _____ day of _____.

The circumstances giving rise to this notice of abandonment are as follows (*state the facts*).

Please acknowledge the receipt of this notice and inform me as soon as possible whether you decide to accept this abandonment. (Signature.)

Owner of the Cargo on the Steamship _____.

14. Shipping Articles ²

(Articles of Agreement Between Master and Seamen in the Merchant Service of the United States.)

UNITED STATES OF AMERICA

(Date and place of first signature of agreement, including name of shipping office.)

It is agreed between the master and seamen or mariners of the _____, of which _____ is at present master, or whoever shall go for master, now bound from the port of _____, _____, to _____, _____ (*here the voyage is to be described, and the places named at which the vessel is to touch, or, if that cannot be done, the general nature and probable length of the voyage is to be stated*).

² See preliminary note, ante, p. 1225.

SCALE OF PROVISIONS TO BE ALLOWED AND SERVED OUT TO THE CREW
DURING THE VOYAGE.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Water	4	4	4	4	4	4	4
Biscuit	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$
Beef, salt.....	.....	.....	$1\frac{1}{4}$	.....	$1\frac{1}{4}$	.....	$1\frac{1}{4}$
Pork, salt.....	.....	1	.....	1	.....	1	.....
Flour	$\frac{1}{2}$	.....	$\frac{1}{2}$	.....	$\frac{1}{2}$	.....	.....
Canned meat.....	1	.....	.....	1	.....	.....	.....
Fresh bread.....	$1\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$
Fish, dry, preserved, or fresh pound.....	.....	.....	.....	.....	.....	1	.....
Potatoes or yams.....	1	1	1	1	1	1	1
Canned tomatoes.....	$\frac{1}{2}$	.....	.....	.....	.....	$\frac{1}{2}$	.....
Peas .....	.....	.....	$\frac{1}{2}$	.....	.....	$\frac{1}{2}$	.....
Beans .....	.....	$\frac{1}{2}$	.....	$\frac{1}{2}$	.....	.....	.....
Rice .....	.....	$\frac{1}{2}$	.....	.....	.....	.....	$\frac{1}{2}$
Coffee (green berry).....	$\frac{3}{4}$	$\frac{3}{4}$	$\frac{3}{4}$	$\frac{3}{4}$	$\frac{3}{4}$	$\frac{3}{4}$	$\frac{3}{4}$
Tea	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{1}{8}$
Sugar	3	3	3	3	3	3	3
Molasses	$\frac{1}{2}$	.....	$\frac{1}{2}$	.....	$\frac{1}{2}$	.....	.....
Dried fruit.....	3	.....	3	.....	3	.....	.....
Pickles .....	.....	$\frac{1}{4}$	.....	$\frac{1}{4}$	.....	$\frac{1}{4}$	.....
Vinegar .....	.....	.....	$\frac{1}{2}$	.....	.....	.....	$\frac{1}{2}$
Corn meal.....	4	.....	.....	.....	4	.....	.....
Onions	4	.....	.....	.....	4	.....	4
Lard	1	1	1	1	1	1	1
Butter	1	1	1	1	1	1	1
Mustard, pepper, and salt sufficient for seasoning. .	.....	.....	.....	.....	.....	.....	.....

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the master may provide, but the right at any time to demand the foregoing scale of provisions.

(The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecabin of each vessel.)

And the said crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful

commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service, to be duly performed, the said master hereby agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. And it is hereby agreed that any embezzlement, or willful or negligent destruction of any part of the vessel's cargo or stores, shall be made good to the owner out of the wages of the person guilty of the same; and if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the vessel, in a quiet and orderly manner, who shall thereupon take such steps as the case may require. And it is also agreed that (*here any other stipulations may be inserted to which the parties agree, and which are not contrary to law*).

In witness whereof the said parties have subscribed their names hereto (on the other side or sides hereof) on the days against their respective signatures mentioned.

Signed by ———, master, on the ——— day of ———, 19—.

	Signature of crew	
	Birthplace	
	Age	
	Feet	Height
	Inches	
	Complexion	Description.
	Hair	
	Wages per month	
	Wages per run	
	Advance wages	
	Amount of monthly allotment	
	Months	Time of service
	Days	
	Hospital money	
	Whole wages	
	Wages due	
	Place and time of entry	
	Time at which he is to be on board	
	In what capacity	
	Shipping-commissioner's signature or initials	
	Allotment payable to—	
	Conduct qualifications	

NOTE.—In the place for signatures and descriptions of men engaged after the first departure of the ship, the entries are to be made as above, except that the signatures of the consul or vice consul, officer of customs, or witness before whom the man is engaged is to be substituted for that of the shipping master.

ACCOUNT OF APPRENTICES ON BOARD *

Christian and surname of apprentice in full	Date of registry of indenture	Port at which indenture was registered	Date of register of assignment	Port at which assignment was registered

STATE OF ———, }
 County of ———. }

On this ——— day of ——— personally appeared before me, a shipping commissioner in and for the said county, A. B., C. D., and E. F., severally known to me to be the same persons who executed the foregoing instrument, who each for himself acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned.

15. Notation of Marine Protest

UNITED STATES OF AMERICA

Be it known that on the day of the date hereof, before me, ———, a notary public in and for the state of ———, duly commissioned and sworn, residing in the ——— of ———, personally appeared ———, the master of the ship called ———, of the port of ———, of the burden of ———, and declared that he sailed in his capacity aforesaid, in and with the said vessel, from the port of ———, on or about the ———

* See Rev. St. § 4510 (U. S. Comp. St. 1913, § 8299).

day of ———, with a cargo of ———, bound for the port of ———, and arrived here ——— the ——— day of ———; that during the voyage (*state briefly the facts concerning the injury, damage, or loss sustained by the vessel or her cargo*). And the appearer, apprehending damage and loss, notes this protest accordingly, the ——— day of ———.

(*Signature of master.*) (*Signature and seal of notary.*)

16. Marine Protest

THE UNITED STATES OF AMERICA,	}	ss.
STATE OF ———,		
City of ———,		
County of ———.		

To all People to whom these presents shall come or may concern I, ———, a notary public in and for the state of ———, county of ———, duly commissioned and sworn, dwelling in the city of ———, send greeting:

Know ye that on the ——— day of ———, in the year ———, before me appeared ———, master of the ship or vessel called the ———, belonging to the port of ———, of the burden of ——— tons, or thereabouts, and noted in due form of law with me his protest, for the uses and purposes hereafter mentioned, and now on this day, to wit, the day of the date hereof, before me, at the city of ———, aforesaid, again comes the said ———, and requires me to extend his protest, and together with the said ——— also come ——— and ———, seamen belonging to the aforesaid vessel, all of whom, being by me duly sworn, voluntarily, freely, and solemnly do declare and depose as follows, that is to say: That they sailed in their several capacities aforesaid on the ——— day of ——— from the port of ——— in and with the said vessel, having on board a cargo of ———, and bound for the port of ———; that the said ves-

sel was then stout, staunch and strong, had her cargo well and sufficiently stowed and secured, was well masted, manned, tackled, victualled, appareled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake; that in the prosecution of said voyage nothing material occurred until the —— day of (*state in detail the facts concerning the injury, damage, or loss sustained by the vessel or her cargo*).

And the said —— further says that, as all the injury, damage, and losses which already have, or may hereafter appear to have, happened or accrued to the said vessel or her said cargo, have been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said vessel or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain.

And thereupon the said —— doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest, against winds, weather, and seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby, or by means whereof, the said vessel or her cargo already has, or hereafter shall appear to have, suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury which the said captain, the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put unto, by or on account of the premises, or for which the insurer or insurers of the said vessel or her cargo is or are respectively liable to pay or make contribution or average according to cus-

tom, or their respective contracts or obligations, and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said ———, his officers and crew.

Thus done and protested in the city of ———, this ——— day of ——— in the year ———.

In testimony whereof, as well the said appearers, as I, the notary, have subscribed these presents, and I have also caused my seal of office to be hereunto affixed, the day and year last above written.

(Signatures of appearers.) (Signature and seal of notary.)

STATE OF ———, }
County of ———. } ss.

I, ———, a notary public in and for said state duly commissioned and sworn, dwelling in the city of ———, do hereby certify the foregoing to be a true and exact copy of an original protest on record in my office.

In testimony whereof I have hereunto set my hand and notarial seal this ——— day of ———, A. D. ———.

(Signature and seal of notary.)

17. Same—Another Form

UNITED STATES OF AMERICA, }
COMMONWEALTH OF ———. }

By this public instrument of protest be it known and made manifest to all whom it doth or may concern: That on this ——— day of ———, in the year ———, before me, ———, a notary public duly commissioned and sworn, and doing business in ———, personally came and appeared ———, master of the ———, belonging to the port of ———, of the burden

of ——— tons, or thereabouts; and with him also came ———, ———, and ———, of and belonging to the said vessel, who, being severally sworn, did declare and depose that, the said vessel being laden with a cargo of ———, they, the said appearers, made sail and departed in and with the said vessel from the port of ———, bound to ———, on the ——— day of ———, in the year ———.

That in the prosecution of said voyage nothing material occurred until (*set forth the facts in detail*).

That on the ——— day of ——— the said first-named deponent, having arrived at ———, did, within twenty-four hours thereafter, note for protest, before ——— to be extended, if occasion should require.

And the said appearers did further severally declare that the said vessel at the time of her departure from ——— as aforesaid was tight, staunch, and strong; had her hatches well and sufficiently caulked and covered; was well and sufficiently manned, provided, and furnished with all things needful and necessary for said voyage; and that during the said voyage the said appearers and the residue of the crew used their utmost endeavors to preserve the said vessel and her cargo from damage.

And therefore the said ——— did declare to protest, and by these presents he doth solemnly protest, against all and every person or persons whomsoever it doth or may concern, and doth declare that all damages, losses, and detriments that have happened to the said vessel, and her cargo are, and of right ought to be, borne by the merchants and freighters interested, or their respective underwriters, or whomsoever else it doth or may concern, by way of average or otherwise, the same having occurred as before set forth, and not by or through the insufficiency of the vessel, the neglect of him the

said appearer, or either of the mariners belonging to said vessel.

In witness whereof the said appearers have hereunto subscribed their names in presence of me, the said notary.

(Signatures.)

All which matters and things were declared, alleged, and affirmed before me, the said notary, and the foregoing instrument is a true copy of the original protest in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

COMMONWEALTH OF ———, } ss.
City of ——— }

(Signature) Notary Public.

CHAPTER XXXVII

STOCK AND STOCKHOLDERS

Scope of Chapter

The forms given include subscription agreements, certificates of stock and assignments thereof, proxies, and some other kindred forms.

Subscription Agreements

A preliminary agreement by a number of persons to take stock in a corporation to be formed, if not a step authorized by statute in the process of forming a corporation, is in the nature of a mere continuing offer to the corporation by each subscriber, which, if not sooner revoked, becomes a binding contract upon the formation of the corporation and its acceptance of the subscription. Such an agreement, if made as a step authorized by statute in forming the corporation, may be binding by virtue of the statute from the time of signing. An agreement to pay money to a trustee, who is to pay it to a corporation to be formed and to return to the subscribers stock therein, is a contract between the subscribers and the trustee. A subscription to the stock of an existing corporation is a contract between the subscriber and the corporation when accepted. No statutory forms are here included.

Certificates of Stock

A certificate of stock is a written acknowledgment by the corporation of the interest of the holder in its property and franchises, certifying that the person named is the owner of so many shares of the capital stock of the corporation, and usually stating that the stock is transferable only on the books of the company by owner in person or by attorney on surrender of the certificate properly indorsed. Stock is principally distinguished as common or preferred. Common stock is the ordinary stock of a corporation without special privileges or restrictions. Preferred stock is stock which is entitled to a preference, usually in dividends, which may be cumulative or

noncumulative, and it may or may not have a preference in the distribution of the assets on dissolution. It is often made redeemable at a fixed price after a certain number of years. Preferred stock takes many forms, and its privileges and restrictions should appear upon the face of the certificate.

Transfer of Stock

Usually the certificate contains on its back a form of assignment with power of attorney authorizing its transfer on the books. Ordinarily an assignment is made in blank, in which case the certificate may pass from hand to hand and be sold to successive holders. The transferee who wishes to become a stockholder of record writes in his own name in the assignment as assignee, and his own name or that of some other person, usually the secretary of the corporation, as attorney to execute the transfer on the books; and upon the execution of the transfer on the books and the surrender of the certificate, a new certificate is issued to the transferee. If the owner assigns only a portion of the number of shares represented by the certificate, he may fill out the assignment accordingly and present or send the certificate and assignment to the secretary and instruct him to issue two new certificates, one for the number of shares assigned to the new owner, and the other for the remaining shares to himself; but it is often better in such a case for the owner to take out both certificates to himself, and to assign the certificate representing the desired number of shares to the new owner.

Proxies and Voting

As a rule, the holder of the legal title on the books of the corporation is entitled to vote. Preferred stock, unless restricted, has the same right to vote as common stock. The right to vote by proxy, that is, by another under power of attorney, is generally given by statute, or by the charter or by-laws. In some states by statute the period within which a proxy is valid is limited, and the matter is sometimes regulated by by-laws. Formalities regarding proxies prescribed by statute, charter, or by-laws should be observed.

How far it is lawful for stockholders to tie up their stock by surrender of the voting power, so that control may be secured for the support of a continuous policy of management,

as by an agreement by which the stock is transferred to trustees with power to vote, is a question on which there is some conflict, and on this point the decisions of the particular jurisdiction should be consulted.

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1. Subscription Agreement Before Incorporation

We, the undersigned, do hereby severally subscribe at par for and agree to take the number of shares set opposite our respective names of the capital stock of a corporation to be organized under the laws of the state of ——— under the name of the ——— Manufacturing Company, for the purpose of ———, with an authorized capital stock of \$100,000, divided into shares of the par value of \$100 each, and agree to pay for the said shares in cash on demand of the treasurer as soon as such corporation is organized.

Dated ———.

Names	Addresses	Shares	Amount
_____	_____	_____	_____

2. Same—Another Form

The ——— Manufacturing Company to be incorporated under the laws of the state of ——— for the manufacture of ———.

Capital stock \$100,000

Shares \$100 each.

We, the undersigned, hereby severally subscribe for and agree to take at their par value the number of shares of the capital stock of the ——— Manufacturing Company set opposite our respective names, and to pay for the same in cash on demand of the treasurer of said company as soon as said company is organized (*or*, at such times and in such amounts as may be prescribed by the board of directors of said company).

Dated ———.

Names	Addresses	Shares	Amounts
_____	_____	_____	_____

3. Same—First Payment to Trustee

(Heading as in preceding form.)

We, the undersigned, hereby severally subscribe for and agree to take at their par value the number of shares of the ——— Manufacturing Company set opposite our respective names, and promise and agree to pay therefor as follows: ——— per cent. of subscription on demand of A. B., as trustee for the said company, such payment, or so much thereof as may be necessary, to be used for the preliminary and incorporating expenses of the said company; ——— per cent. of subscription to the treasurer of the said company ——— days after its incorporation; and the balance of subscription

at such times and in such installments as may be prescribed by the board of directors of said company.

Dated _____.

Names	Addresses	Shares	Amount
_____	_____	_____	_____

4. Subscription—Individual

(*Heading as in Form No. 2, p. 1260.*)

I hereby subscribe for _____ shares of the capital stock of the _____ Manufacturing Company at the par value thereof, and agree to pay _____ per cent. of such subscription on demand of the treasurer as soon as said company is incorporated, and to pay the remainder at such times and in such amounts, not exceeding _____ per cent. of such subscription in any one month, as may be required by the board of directors of said company.

Unless _____ per cent. of the capital stock of said company is reliably subscribed on or before the _____ day of _____, and the company incorporated within _____ days thereafter, this subscription shall be null and of no effect.

Dated _____.

(*Signature.*)

5. Subscription after Incorporation

(*Heading as in Form No. 2, p. 1260, omitting the words "to be" before "incorporated."*)

I hereby subscribe for _____ shares of the capital stock of the _____ Company at the par value thereof, and agree to pay therefor in installments in such proportions and at such times as may be called for by the board of directors, provided that not more than _____ per cent. shall be payable within one year from the _____ day of _____.

Dated _____.

(*Signature.*)

6. Trustee's Receipt for Subscription

This is to certify that _____ has paid to the undersigned, as trustee for the _____ Manufacturing Company, the sum of _____ dollars on account of his subscription for _____ shares of the capital stock of said corporation at their par value of \$100 per share, said amount being _____ per cent. of the total amount of his said subscription. This receipt, upon incorporation of said company, will be received and accredited by the treasurer thereof as a payment upon said subscription.

Dated _____.

_____, Trustee.

7. Treasurer's Certificate for Subscriptions

The _____ Manufacturing Company.

This is to certify that _____, a subscriber for _____ shares of the capital stock of the _____ Manufacturing Company, has paid into the treasury of the company the sum of _____ dollars, in full payment therefor (*or*, has paid into the treasury of the company on account of his said subscription _____ dollars per share in cash, and _____ dollars per share by trustee's receipt). Upon surrender hereof (*or*, upon payment of the remaining installments of said subscription, and surrender hereof, with proper vouchers showing such payments) certificates for said _____ shares of stock will be issued to the order of the said _____ (as soon as the same are ready for delivery).

Dated _____.

_____, Treasurer.

8. Assignment of Subscription to Corporate Stock

For value received I hereby sell, assign, and transfer to _____ my subscription to _____ shares of the capital stock of the _____ Company, together with the payments made

thereon, as evidenced by the within installment certificate, and I hereby authorize and instruct the proper officers of said company, upon fulfillment of the conditions of my said subscription, to issue said stock to the order of the said _____.

Dated _____.

(Signature.)

In presence of

9. Stock Certificate

No. _____, _____ shares.

Incorporated under the Laws of the State of _____.

SMITH MANUFACTURING COMPANY.

Capital Stock, \$100,000. Shares, \$100.

Full-paid and Nonassessable.¹

This is to certify that _____ is the owner of _____ shares of the capital stock of the Smith Manufacturing Company, transferrable only on the books of the company by the said owner thereof in person or by duly authorized attorney, upon surrender of this certificate properly indorsed.

Witness the seal of the company and the signature of its duly authorized officers this _____ day of _____.

_____, Treasurer.

_____, President.

(Corporate seal.)

10. Preferred Stock Certificate (Noncumulative)

No. _____, _____ shares.

Incorporated under the Laws of the State of _____.

SMITH MANUFACTURING COMPANY.

Capital Stock, \$100,000. Shares, \$100.

Common Stock, \$55,000. Preferred Stock, \$45,000.

This is to certify that _____ is the owner of _____ fully paid and nonassessable shares of the preferred stock of the

¹ Unless the stock represented by the certificate has been paid in full, these words shall be omitted.

Smith Manufacturing Company, transferable only in person or by attorney on the books of the company upon surrender of this certificate properly indorsed.

The preferred stock is entitled to a preference of seven per cent. noncumulative, in dividends declared in any fiscal year before any dividends are paid upon the common stock of this company.²

The preferred stock is subject to redemption at the option of the company at any time after _____ years from the _____ day of _____, upon payment of one hundred and five dollars per share and accumulated dividends.

The preferred stock is not entitled to vote at stockholders' meetings of the company, nor to participate in profits beyond its fixed, preferential annual dividend of seven per cent.

In witness whereof the company has caused this certificate to be signed by its president and secretary and countersigned by its treasurer, and sealed with its corporate seal this _____ day of _____.

(Corporate seal.)

_____, Treasurer.

_____, President.

_____, Secretary.

11. Preferred Stock Certificate (Cumulative)

(Following preceding form, substituting for the second paragraph the following, and inserting in the last paragraph "cumulative" after "preferential":)

The preferred stock is entitled to an annual dividend of seven per cent., payable out of the net profits before any dividend is declared upon the common stock of this company.

² The conditions may be embodied by reference to the charter, the by-laws, or a resolution under which the stock is issued; or the particular provisions may be printed on the back of the certificate, the certificate stating on its face that the preferred stock is subject to the conditions printed on the back thereof.

Should the net profits in any year be insufficient to pay such preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the company, and shall be paid in full out of such net profits before any dividends are paid upon the common stock.

12. Same—Another Form *

Seven Per Cent. Cumulative Preferred Stock.

Certificate for		Certificate for	
Less than 100 Shares.	Number, ———	Shares, Less than 100 50	Shares.

Incorporated under the Laws of the State of New Jersey.

UNITED STATES STEEL CORPORATION.

This is to certify that ——— is the owner of (50) fully paid and nonassessable shares of the par value of one hundred dollars each in the preferred capital stock of United States Steel Corporation, transferrable only in person or by attorney, upon the books of said corporation, upon surrender of this certificate.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per cent. per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart, so that, if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the

* This is the form of United States Steel Corporation.

preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of this preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

The preferred and common stock may be increased as provided in the certificate of incorporation.

This certificate is not valid without the signatures of the transfer agent and registrar of transfers.

Witness the signatures of the president, or of a vice president, and of the treasurer, or of an assistant treasurer, of said corporation.

_____, Asst. Treasurer.

_____, Vice President.

On the left-hand margin of above form:

"Registered December _____, 19—. The New York Trust Company,
Registrar, by _____, Asst. Secretary."

On the right-hand margin of above form:

"Countersigned December _____, 19—. _____, Transfer Agent."

13. Assignment in Blank of Corporate Stock Certificate by Indorsement

For value received I hereby sell, assign, and transfer to _____ shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint _____ my attorney to transfer the said stock on the books of the within-named company, with full power of substitution in the premises. (Signature.)

Dated _____.

In presence of _____.

14. Assignment of a Portion of Stock Represented by Certificate by Indorsement ⁴

For value received I hereby sell, assign, and transfer to C. D. fifty shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint E. F. my attorney to transfer the said stock on the books of the within-named company with full power of substitution in the premises. (Signature.)

Dated _____.

In presence of _____.

15. Bond of Indemnity for Lost Certificate of Stock ⁵

Know all men by these presents that we, _____, of _____, as principal, and _____, of _____, as surety, are held and firmly bound unto the _____ company, a corporation organized under the laws of the state of _____, in the sum of _____ dollars, to be paid to the said _____ Company, its

⁴ See preliminary note, ante, p. 1258.

⁵ For another form of indemnity in such case, see Indemnities, ante, p. 720.

successors and assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this —— day of ——.

The condition of this obligation in such that:

Whereas, the said (*principal*) is the owner of record of twenty shares of the capital stock of the said company, of the par value of \$100 each, and has made application to the said company for the issue of a new certificate for the said twenty shares of stock, alleging that the original certificate issued to him for said shares, numbered —— and dated the —— day of ——, is lost (*or, destroyed*); and whereas, the said company has this day issued to the said —— a new certificate for the said twenty shares of stock:

Now, if the said obligors shall at all times defend, save harmless, and indemnify the said —— Company, its successors and assigns, from and against all claims, demands, and actions arising from or on account of the said original certificate, and against all damages, costs, and expenses by reason thereof, and shall deliver or cause to be delivered up to the said company for cancellation the said original certificate if the same shall be found, then this obligation shall be void; otherwise to remain in full force. (*Signatures and seals.*)

16. Proxy—Unlimited—Short Form

Know all men by these presents that I hereby appoint —— my proxy for me and in my name to vote at any and all stockholders' meetings of the —— Company.

Witness my hand and seal this —— day of ——.

Witness:

_____.

17. Same—Annual Meeting

Know all men by these presents that I, the undersigned stockholder of record of the ——— Railway Company, hereby make, constitute, and appoint ———, ———, ———, and ———, all of ———, or such of them as shall be present at the meeting hereinafter mentioned, the lawful attorneys and proxies of the undersigned, for and on behalf of the undersigned to attend the annual meeting of the stockholders of the said company, to be held at ———, in ———, at ——— o'clock —. m. on the ——— day of ———, and all adjournments of the said annual meeting, and at the said meeting and at every adjournment thereof, for and in behalf and in the name of the undersigned, to cast all votes which the undersigned, if present in person, might cast, on account or by authority of any and all shares of the capital stock of the said company held or owned by the undersigned, hereby ratifying and confirming all that the said attorneys and proxies may do by virtue hereof, and hereby revoking all prior powers of attorney or proxies, if any, in relation to the premises.

Witness, *etc.*

18. Revocation of Proxy

Know all men by these presents that I, the undersigned, ———, do hereby revoke and annul a certain proxy given by me to ——— authorizing him (*or*, any and all proxies heretofore given by me to any person or persons authorizing him or them) to represent me or to vote or act for me at any meeting or meetings of the stockholders of the ——— Company.

Witness, *etc.*

19. Agreement Creating Voting Trust^{*}

An agreement made this _____ day of _____ between the several stockholders of the _____ company, a corporation organized and existing under the laws of the state of _____, whose names are hereunto subscribed and all other stockholders of the said company who shall join in and become parties to this agreement as hereinafter provided, all of which stockholders are hereinafter called the subscribers, parties of the first part, and _____, _____, and _____, of _____, who and the other person or persons for the time being trustees hereunder are hereinafter called the trustees, parties of the second part:

[RECITAL OF SHARES.] Whereas, the subscribers are respectively owners of shares of the capital stock of the said company in the amounts set opposite their respective signatures hereto:

[RECITAL OF PURPOSE OF TRUST.] And whereas, with a view to the safe and competent management of the said company in the interests of all the stockholders thereof, the subscribers are desirous of creating a trust in the manner following.

Now, it is hereby agreed and declared as follows:

1. [TRANSFER TO TRUSTEES.] The subscribers shall forthwith indorse in blank and assign and deliver to the trustees the certificate of the shares of stock owned by them respectively, and shall do all things necessary for the transfer of their respective shares to the trustees on the books of the said company.

2. [OTHER STOCKHOLDERS MAY JOIN.] Every stockholder in the said company may become a party to this agreement by

^{*} See preliminary note, ante, p. 1258.

executing the same and assigning and delivering the certificate or certificates of his shares of stock to the trustees in the manner provided in the preceding paragraph.

3. [TRUSTEES TO HOLD SUBJECT TO AGREEMENT.] The trustees shall hold the said shares of stock so transferred to them for the common benefit of the subscribers, under the terms and conditions hereinafter set forth.

4. [NEW CERTIFICATES TO TRUSTEES.] The trustees shall surrender to the proper officers of the said company for cancellation all certificates of stock which shall be assigned and delivered to them as hereinbefore provided, and in their stead shall procure new certificates to be issued to them as trustees under this agreement.

5. [TRUSTEES' CERTIFICATES.] The trustees shall issue to each of the subscribers a trust certificate for the number of shares represented by the certificates of stock by him transferred to the trustees. Each such trust certificate shall state that it is issued under this agreement, and shall set forth the nature and proportional amount of the beneficial interest thereunder of the person to whom it is issued, and shall be assignable, subject to the provisions of article 9 hereof, after the manner of certificates of stock on books to be kept by the trustees. The trustees shall keep a list of the shares of stock transferred to them, and shall also keep a record of all trust certificates issued or transferred on their books, which record shall contain the names and addresses of the trust certificate holders and the number of shares represented by each such certificate. Such list and record shall be open at all reasonable times to the inspection of the trust certificate holders. Upon the transfer upon the books of the trustees of any trust certificate the transferee shall succeed, subject to the provisions of article 9 hereof, to all the rights hereunder of the transferor.

6. [TRUSTEES TO VOTE STOCK.] It shall be the duty of the trustees, and they, or a majority of them, shall have full power and authority, and they are hereby fully empowered and authorized, to represent the holders of such trust certificates and the stock transferred to the trustees as aforesaid, and to vote upon the said stock, as in the judgment of the trustees or of a majority of them may be for the best interest of the said company, at all meetings of the stockholders of the said company, in the election of directors and upon any and all matters and questions which may be brought before such meetings, as fully as any stockholder might do if personally present.

7. [DIVIDENDS.] The trustees shall collect and receive all dividends that may accrue upon the shares of stock subject to this trust, and, subject to deduction as provided in the following paragraph, shall divide the same among the trust certificate holders in proportion to the number of shares respectively represented by their trust certificates.

8. [TRUSTEES' INDEMNITY.] The trustees shall be entitled to be fully indemnified out of the dividends coming to their hands against all costs, charges, expenses, and other liabilities properly incurred by them in the exercise of any power conferred upon them by these presents; and the subscribers, and each of them, hereby covenant with the trustees that in the event of the moneys and securities in their hands being insufficient for that purpose the subscribers and each of them will in proportion to the amounts of their respective shares and interests save harmless and keep indemnified the trustees of and from all loss or damage which they may sustain or be put to by reason of anything they may lawfully do in the execution of this trust.

9. [SALE OF TRUST CERTIFICATES—TRUSTEES' OPTION.] In the event that the holder of any trust certificate shall desire to

sell or pledge his beneficial interest in the shares of stock represented thereby, he shall first give to the trustees notice in writing of such desire, and the trustees shall have the right at their option at any time within —— days after the receipt of such notice to purchase the same at the book value of the stock represented by such trust certificate at the time of such purchase. If the trustees shall exercise such option to purchase, they shall hold the beneficial interest thereof for the benefit of all the remaining trust certificate holders, including the trustees, who shall, upon —— days' notice given by the trustees before exercising such option, contribute their respective proportionate part of the purchase money to be paid therefor by the trustees. In the event that the trustees shall not exercise such option to purchase as aforesaid, and only in that event, the holder of such trust certificate shall have the right to sell the same to such person and for such price as he shall see fit.

10. [NEW TRUSTEES.] In the event of any trustee dying or resigning or refusing or becoming unable to act, the surviving or other trustees or trustee shall appoint a trustee or trustees to fill the vacancy or vacancies, and any person so appointed shall thereupon be vested with all the duties, powers, and authority of a trustee hereunder as if originally named herein.

[CONTINUANCE AND TERMINATION OF TRUST.] The trust hereby created shall continue —— years from the date hereof, and shall then terminate: Provided, that the beneficial owners of (two-thirds) in amount of the shares of stock subject of this trust may at any time terminate this trust by resolution adopted at a meeting of the trust certificate holders called by any one of them for that purpose by —— days' notice in writing mailed to the trust certificate holders at their respective addresses as the same shall appear in the records of the trust-

tees. Upon the termination of the trust the trustees shall, upon the surrender of the trust certificates by the respective holders thereof, assign and transfer to them the number of shares of stock thereby represented.

In witness whereof the said parties of the first part have hereunto set their hands and seals, and set opposite their respective signatures the number of shares held by them respectively, and the parties of the second part, in token of their acceptance of the trust hereby created, have hereunto set their hands and seals.

CHAPTER XXXVIII

TRUSTS

A "trust" is an obligation under which a person in whom the legal title to property is vested is bound in equity to deal with the beneficial interest therein in a particular manner in favor of others or partly in favor of others conjointly with himself. Trusts are divided into: (1) Express trusts, which may be either private trusts or public or charitable trusts; and (2) implied trusts, that is, trusts created by operation of law, which include resulting trusts and constructive trusts. Only express private trusts are here considered.

An express trust in real property must by the statute of frauds be either created by will, or evidenced by some writing signed by the declarant of the trust. An express trust in personal property can be created *inter vivos* by word of mouth, but, if not intended to take effect until after the death of the creator, must be created by will. No particular or technical words are required to create a trust; it is enough if an intention to create a trust, and the property, the beneficiaries, and the manner in which the trust is to be performed are clearly indicated. If a trust is perfectly created, a valuable consideration is not necessary to render it enforceable. If, however, it is not completed, as where there is only a voluntary covenant to convey property, it will not be enforced. A trust may be created by the transfer of property to a third person to hold it as trustee for the purposes of the trust declared, or by a declaration of trust on the part of the creator, who retains the title to the trust property, and who declares himself a trustee for the purposes of the trust.

In some states the law relating to trusts has been modified by statute.

Many forms relating to the creation of express trusts are given in other chapters where they appropriately belong. See *Assignments for Benefit of Creditors*, p. 176, *Marriage Settlements*, p. 703, and *Wills*, p. 1292. A few forms which do not fall under more particular heads are given below.

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1. Declaration of Trust of Land of Person in Whose Name It Was Purchased

To all to whom these presents shall come I, ———, of ———, send greeting:

[RECITAL OF CONVEYANCE TO TRUSTEE.] Whereas, by a deed dated the ——— day of ——— and recorded in the office of the register of deeds in and for the county of ———, and state of ———, in book ———, at page ———, ——— conveyed to me a certain parcel of land (*description*) in consideration of the sum of \$——— paid by me to the said ———;

[RECITAL OF PROVISION OF PURCHASE MONEY.] And whereas, the said sum of \$——— was provided by ——— of ———, and the said land was conveyed to me as trustee for the said ———, as I do hereby acknowledge,

[DECLARATION OF TRUST.] Now, these presents witness that I hereby declare that I do stand seised of the said land and premises above described in trust for the said ———, his heirs and assigns, and hereby agree to convey the same at the request and cost of the said ——— to such person or persons and at such time or times as the said ——— shall direct or appoint.

In witness whereof I have hereunto set my hand and seal this ——— day of ———.

2. Declaration of Trust of Land of Person Who Has Purchased on Behalf of Himself and Others

Indenture made the —— day of —— between A. B., hereinafter called the trustee, of the first part, C. D., of the second part, and E. F., of the third part:

[RECITAL OF CONVEYANCE TO TRUSTEE.] Whereas, by a deed dated, *etc.*, and recorded, *etc.*, G. H. conveyed to the trustee a certain parcel of land (*description*) in consideration of the sum of \$—— paid by the trustee to the said G. H.;

[RECITAL OF PROVISION OF PURCHASE MONEY.] And whereas, the said land was, in fact, purchased as aforesaid by the trustee in behalf of himself and the said C. D. and E. F., and the said sum of \$—— was provided by the parties hereto in the following shares and proportions, namely, one-half thereof by the trustee out of his own moneys, and one-fourth thereof by the said C. D., and one-fourth thereof by the said E. F.

Now, this indenture witnesseth as follows:

1. [DECLARATION OF TRUST.] In consideration of the premises the trustee hereby declares that as and from the date of the said deed he has held and now holds the said land as to one undivided fourth part thereof upon trust for the said C. D., and as to one other undivided fourth part thereof upon trust for the said E. F., and as to the remaining two undivided fourth parts thereof for his own absolute use and benefit.

2. [COVENANTS TO PAY PROPORTION OF EXPENSES.] Each of the parties hereto hereby covenants with the others and other of them to pay or contribute his due proportion of all expenses already incurred and which may be hereafter incurred by the trustee in relation to the premises and of all taxes which may be payable in respect to the said land.

3. [POWER TO TRUSTEE.] The said C. D. and E. F. hereby respectively declare that the trustee shall have power to sell or mortgage the said land or any part thereof at such time or times and for such price or prices and upon such terms as the trustee shall think fit and to execute and do such instruments and acts as he shall think proper.

In witness, *etc.*

(Signatures and seals of all parties.)

3. Declaration of Trust of Land for Equitable Owner

To all to whom these presents shall come, greeting:

[RECITAL OF OWNERSHIP.] Whereas, I, ———, of ———, am the present legal owner in fee of certain real estate hereinafter particularly described; and whereas, the equitable owner of the said real estate is now ———, of ———, and for the purpose of declaring such equitable ownership this present writing is executed.

[DECLARATION OF TRUST.] Now, therefore, know ye that I, the said ———, as well in consideration of the sum of one dollar unto me in hand paid by the said ———, the receipt whereof is hereby acknowledged, as of other good causes and considerations me hereunto moving, do by these presents make known, admit, and declare that I now stand seised of the following real estate, to wit (*description*), to and for the only proper use and behoof of the said ———, his heirs and assigns,

[COVENANT TO CONVEY.] And, further, I do for myself, my heirs, executors, and administrators, hereby covenant and agree with the said ———, his heirs and assigns, that I shall and will at the request of the said ———, his heirs or assigns, execute and deliver a good deed or deeds unto such person or persons, corporation or corporations, as the said ——— may

direct, granting and conveying unto such person or persons, corporation or corporations, the above-described real estate, either in whole or in parts, in fee simple.

In witness, *etc.*

4. Declaration of Trust of Shares of Stock—By Person in Whose Name They Were Purchased

I, ———, hereby acknowledge and declare that the ——— shares of the preferred stock of the ——— Company now standing in my name in the books of the said company, and being represented by a certain certificate therefor issued by the said company to me, dated the ——— day of ———, and numbered ———, were purchased by me out of moneys belonging to ——— and ———, and are now held by me upon trust for the said ——— and ——— as tenants in common in equal shares (*or as the case may be*).

Witness my hand this ——— day of ———.

(*Signature.*)

5. Same—Another Form

This indenture is made the ——— day of ——— between ———, hereinafter called the trustee, of the one part, and ———, hereinafter called the beneficiary, of the other part:

[RECITALS OF TRANSFER TO TRUSTEE AND AGREEMENT.]
Whereas, the beneficiary has lately transferred or caused to be transferred into the name of the trustee the shares of stock specified in the first and second schedules hereto; and whereas, the shares specified in the second schedule are not fully paid; and whereas, all such transfers were made to the trustee as a nominee of the beneficiary, and it was agreed prior to the date of such transfers that the trustee should execute such declaration of trust as is hereinafter contained.

Now, these presents witness as follows:

1. [DECLARATION OF TRUST.] The trustee hereby declares that he holds the shares of stock specified in the schedules hereto and all dividends and interest accrued or to accrue thereon upon trust for the beneficiary, his executors, administrators, and assigns, and agrees to transfer, pay, and deal with the said shares, dividends, and interest in such manner as he or they shall from time to time direct.

2. [STOCKHOLDERS' MEETINGS.] The trustee will (at the request of the beneficiary, his executors, administrators, or assigns) attend all meetings of stockholders or otherwise which he shall be entitled to attend by virtue of being the holder of the said shares, and will vote at such meetings in such manner as the beneficiary, his executors, administrators, or assigns, shall have previously directed in writing, and in default of such direction as the trustee shall deem best; and, further, will, if so required by the beneficiary, his executors, administrators, or assigns, execute all proxies or other documents necessary or proper to enable him or them to vote at any such meeting in place of the trustee.

3. [TRUSTEE'S INDEMNITY.] The beneficiary will at all times keep indemnified the trustee, his executors or administrators, against all liabilities which he or they may incur by reason of such shares having been so transferred into the name of the trustee, and will punctually pay all calls and other demands which the trustee may be or become liable to pay in respect of any of such shares and all costs and expenses incurred by the trustee in the execution of the trusts of these presents.

4. [TRUSTEE'S REMUNERATION.] During the continuance of the trust hereby declared the beneficiary will pay to the trustee the sum of \$—— per annum (or, \$—— for each

meeting which he shall attend as aforesaid) as remuneration for his services as such trustee.

In witness, *etc.*

(Seals and signatures of both parties.)

6. Declaration of Trust by Trustee Who Has Taken Mortgage in His Own Name

To all to whom these presents shall come I, ———, of ———, send greeting:

[RECITAL OF TRUST AND TAKING OF MORTGAGE.] Whereas, ———, late of ———, deceased, by his last will gave and bequeathed a certain portion of his estate to me in trust to hold, manage, and invest the same, and to use and enjoy the income thereof during my life, and that upon my death the capital of the said trust fund should belong to and be divided equally among my children; and whereas, the said ——— departed this life on the ——— day of ———, and his said will was duly admitted to probate on the ——— day of ——— in the probate court of ———; and whereas, of the moneys thereby bequeathed to me as aforesaid and belonging to the said trust estate the sum of ——— dollars was by me and in my name invested in a certain promissory note for that sum, dated the ——— day of ———, and made by ——— to my order and secured by a mortgage of even date therewith executed by the said ——— to me and recorded (*etc.*).

[DECLARATION OF TRUST.] Now, these presents witness that I hereby declare that I hold the said note and mortgage and all moneys to accrue thereon as trustee under the said will for the uses and purposes therein declared.

Witness my hand this ——— day of ———.

TIFF.FORMS—81

**7. Voluntary Settlement of Real and Personal Property by
Single Woman, Reserving Power to
Revoke and Vary**

Know all men by these presents that I, ——, single woman, in consideration of one dollar to me paid by —— and ——, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quitclaim, assign, transfer, and set over unto the said —— and ——, and their heirs and assigns, a certain parcel of land (*description*).

Also all the following described personal property, namely (*description*).

[HABENDUM IN TRUST.] To have and to hold the same to the said —— and ——, and their successors and assigns, but in trust nevertheless to and for the following uses, intents, and purposes:

1. [TO MANAGE AND INVEST.] To hold and manage the said property, with power from time to time at their discretion to sell and convert the same or any part thereof into money, and to invest the proceeds thereof in such investments as they may deem best, and to vary and transpose any such investments for others as they may deem best, all which property, proceeds, and investments are hereinafter called the trust fund.

2. [INCOME TO SETTLOR FOR LIFE.] To pay to me during my life the net income of the trust fund.

3. [TO ANOTHER FOR LIFE.] From and after my decease to pay the net income of the trust fund to my sister —— during her life.

4. [ULTIMATE DISPOSITION.] Upon the termination of the aforesaid trusts to pay over and transfer the trust fund to —— College absolutely.

5. [NEW TRUSTEES.] The number of my trustees shall be kept up to two, and whenever any vacancy shall occur, then I

direct that the surviving or acting trustee for the time being, with my written consent, during my lifetime, shall by an instrument appoint a suitable person to be cotrustee with him in the place of the trustee dying, resigning, or ceasing for any cause to act, and in default of such nomination and appointment the vacancy shall be filled in the manner provided by law.

6. [POWER TO RETAIN INVESTMENTS.] I authorize and empower the trustees at any time acting hereunder to retain any securities hereinbefore assigned to them, and neither they nor their successors in trust shall be liable for their depreciation or loss, although they are not proper trust investments.

7. [POWER TO SELL, MORTGAGE, AND LEASE.] I hereby authorize and empower the trustees at any time acting hereunder to sell, mortgage, or lease any portion or the whole of the estate, real or personal, which they may hold under the trusts hereby created, and to execute good and sufficient deeds and other instruments to convey and transfer the same. And in all such cases the purchasers shall not be bound to see to the application of the purchase money or proceeds.

8. [TRUSTEES' INDEMNITY.] Each trustee shall be liable for his own receipts, payments, and willful defaults, and for nothing else, nor shall one be liable for the other.

9. [RESERVATION OF POWER TO REVOKE.] I hereby reserve to myself power by a written instrument or instruments from time to time to revoke the trusts hereby created or any part thereof and to revest the said property in myself as if this deed had not been executed, but such revocation shall not affect any lawful act which shall have been done hereunder before notice of such revocation shall have been filed in the registry of deeds for the county of ———, in said state.

10. [POWER TO VARY.] And I further reserve to myself power by a written instrument or instruments from time to

time to vary or modify the terms of the trusts hereby or hereafter created, but such variations or modifications shall not affect any lawful act which shall have been done before notice of such variations or modifications shall have been filed in the said registry of deeds.

11. [ACCEPTANCE BY TRUSTEES.] And we, the said —— and ——, join herein in token of our acceptance of the trust hereby conferred upon us.

In witness, *etc.*

8. Voluntary Settlement of Personal Property upon Trust Contingently and at Trustees' Discretion for a Son

This indenture is made the —— day of —— between ——, hereinafter called the settlor, of the one part, and —— and ——, hereinafter called the trustees, of the other part:

[RECITAL OF TRANSFER TO TRUSTEES.] Whereas, the settlor is entitled for his own benefit to the personal property specified in the schedule hereto annexed, and is desirous of irrevocably settling the same for the benefit of his son, hereinafter called the son, and has transferred the same to the trustees who have consented to act as trustees of these presents.

Now, this indenture witnesseth as follows:

1. [DECLARATION OF TRUST.] The settlor hereby declares that the trustees shall, and the trustees hereby declare that they will, henceforth be entitled to the said personal property and to the money and investments into which in the exercise of the powers hereinafter contained the same may be converted (all of which personal property, money, and investments are hereinafter called the trust fund, that term being intended to mean from time to time the constituents for the time being of that fund), and the income therefrom upon the trusts and with and

subject to the provisions hereinafter expressed concerning the same.

2. [INCOME FOR SON DURING HIS LIFE.] The trustees shall from time to time receive so much of the income from the trust fund as shall accrue during the life of the son, and if and while he shall in their opinion conduct himself with propriety shall according to their judgment from time to time either pay the whole or any parts or part of the said income then received to the son, or apply the whole or any part or parts thereof for the board, lodging, or maintenance or in any manner which the trustees shall think to be for his benefit. And they may so pay some part and so apply other parts of the said income, and shall not be bound to dispose of the whole of the said income by either or both of such means.

3. [UNAPPLIED INCOME.] The trustees shall hold all such income as shall accrue in the lifetime of the son and as shall not be so paid or applied as aforesaid upon the trusts following:

(1) [ACCUMULATIONS UPON LIKE TRUSTS.] The trustees shall invest the same from time to time, and shall hold such investments and resulting income during the lifetime of the son upon trust if and while the son shall in their opinion conduct himself with propriety, and so often as they shall think fit to do so to raise and pay to or apply for the board, lodging, maintenance, or benefit of the son so much money as they think fit to pay or apply in the same manner as they may in that year pay or apply the income of the trust fund accruing in that year.

(2) [SUBJECT TO FOREGOING IN TRUST FOR SETTLOR.] Subject to the trusts aforesaid the trustees shall hold the trust fund and all the income therefrom and the accumulations thereof in trust for the settlor.

4. [AUTHORITY OF TRUSTEES TO DETERMINE.] The settlor hereby declares that the trustees shall have absolute authority in the exercise of their discretion to determine from time to time the question whether the contingency upon which the settlor intends the right of the son to the benefit of this settlement to depend shall or shall not have occurred, and their determination of that question on one or more occasions shall not affect their liberty to determine it at any subsequent time or times according to their judgment at such time or times. And the trustees may at any time or times apply income for the benefit of the son by making any payment or payments to any person or persons other than the son which in the judgment of the trustees will operate for the benefit of the son:

5. [POWER OF REVOCATION.] Provided, always, that the settlor may at any time with the consent of the trustees (which consent they shall give or withhold according to their judgment of what is fair and reasonable) by deed, to which the trustees, if they think fit, shall become executing parties for the purpose of expressing their consent, revoke the trusts hereby declared, and declare any other trusts by the trust fund.

[TRUSTEES' POWER OF SALE AND INVESTMENT WITH CONSENT OF SETTLOR DURING HIS LIFE.] (*Form 1, cl. 2, p. 705, supra, with necessary changes.*)

[TRUSTEES' INDEMNITY.] (*Form 1, cl. 9, p. 707.*)

[APPOINTMENT OF NEW TRUSTEES WITH CONSENT OF SETTLOR DURING LIFE.] (*Form 1, cl. 10, p. 707, with necessary changes.*)

[MEANING OF "TRUSTEES."] (*Form 2, cl. 9, p. 711.*)

In witness, etc.

CHAPTER XXXIX**WAREHOUSE RECEIPTS**

Warehouse receipts, the obligations and rights of warehousemen thereon, and the negotiation and transfer of such receipts are generally regulated by statute. Recently many states have enacted the Uniform Warehouse Receipts Act. This act provides that warehouse receipts need not be in any particular form, but that every such receipt must embody within its written or printed terms: (1) The location of the warehouse where the goods are stored; (2) the date of issue of the receipt; (3) its consecutive number; (4) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order; (5) the rate of storage charges; (6) a description of the goods or of the packages containing them; (7) the signature of the warehouseman which may be made by his authorized agent; (8) if the receipt is issued for goods of which the warehouseman is owner, either jointly or in common with others, the fact of such ownership; and (9) in the case of a negotiable receipt, a statement of the amount of advances made and of liabilities incurred from which the warehouseman claims a lien, or, if the precise amount of such advances or liabilities is at the time of the issue of the receipt unknown to the warehouseman, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof. The act further provides that the warehouseman may insert other terms and conditions, provided they shall not be contrary to the provisions of the act, or in any wise impair his obligation to exercise that degree of care in safe keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt, and it shall have plainly placed upon its face "Nonnegotiable" or "Not negotiable"; and a receipt in which it is stated that the goods will be delivered to the bearer, or to the order of any person named, is a negotiable receipt, and no provision shall be inserted in it that it is nonnegotiable, and, if more than one is issued, "Dupli-

cate" shall be plainly placed upon the face of every such receipt except the first.

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1. Warehouse Receipt (Common Form)

A. B. STORAGE & WAREHOUSE CO.

_____, 19—.

Received from _____ the merchandise described below, to be held by _____ on monthly storage from the _____ day of _____ (subject to conditions as per back hereof) and to be delivered on the order of _____ only on return of this receipt and payment of the charges.

MARKS, ETC.	DESCRIPTION OF MERCHANDISE
CHARGES:	
STORAGE PER MONTH.	

(Signed) A. B. Storage & Warehouse Co.

Per _____.

([CONDITIONS INDORSED.] *They frequently set out the statutory provisions concerning the obligations of warehousemen.*)

2. Nonnegotiable Warehouse Receipt (Uniform Act)

A. B. WAREHOUSE COMPANY

Warehouse Receipt No. _____.

_____, 19—.

The A. B. Warehouse Company has received from _____ in its warehouse (*location*) the following goods (*description of*

the goods or of the packages containing them) for storage at the rate of _____, deliverable to the said _____ or upon his written order on return of this receipt and the payment of all lawful charges.

A. B. Warehouse Company,

Per _____.

Across the face of the above warehouse receipt should appear the following: "Nonnegotiable."

3. Negotiable Warehouse Receipt (Uniform Act)

A. B. ELEVATOR COMPANY.

Warehouse Receipt No. _____.

_____, 19____.

The A. B. Elevator Company has received in store in its elevator known as _____ and situated at _____ from _____ for storage at the rate of _____ _____ bushels of wheat of the grade known as _____. Said wheat or an equal amount of wheat of the same kind and grade is deliverable to the bearer hereof (*or, to _____ or his order*) upon the return of this receipt (*if to order, add, "Properly indorsed"*), and the payment of all lawful charges. (*Add statement of the amount of advances made and of liabilities incurred, if any, for which the warehouseman claims a lien, or, if such amounts be unknown to the warehouseman, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof.*)

A. B. Elevator Company,

Per _____.

4. Terminal Warehouse Receipt for Grain (Minnesota) ¹

STUB RECORD

——— Elevator Co.

Warehouse Receipt No. ———.

———, Minn., ——— 19——.

The ——— Elevator Company has received in store in its elevator known as ———, situated at ———, Minnesota, for storage from ———, owner, ——— bushels of ———, which has been duly inspected by a duly authorized inspector of grain appointed by the state railroad and warehouse commission of Minnesota, and has been graded by said inspector as No. ———, and is that grade. Said grain, or an equal amount of grain of the same kind and grade is deliverable upon the return of this receipt properly indorsed by the owner above named and the payment of all lawful charges; in case of grain stored separately in a special bin, at the request of the owner or consignee, the identity of such grain will be preserved while in store, and said grain will be delivered as such separate lot or parcel, in accordance with law, upon surrender of the receipt. Loss by fire, heating, or the elements is at owner's risk.

The ——— Elevator Company conducts said elevator as a public terminal warehouse and receives and stores therein grain of others for hire.

——— bushels.

——— grade.

By ———.

Countersigned by ———, Secretary.

¹ Gen. St. 1913, § 4437. The receipts shall be consecutively numbered and delivered to the owner immediately upon receipt of each lot or parcel of grain, giving the true and correct grade and weight thereof. The manner of receipt of such grain shall be stated in the receipt, with the number and distinctive marks of each car, and the name of each barge or other vessel.

Receipt No. _____				Initial...	Car No..	Bushels..
_____ 19—						
Received in store from _____						
Bush. _____ lbs. _____ grade _____				Initial...	Car No..	Bushels..
Car No..	Bushels..	Car No..	Bushels..			

CHAPTER XL

WILLS

In General

The law differs in the different states to a greater or less extent in respect to the formalities which must be observed in the execution of wills. For example, in some states the statute requires two witnesses, and in others three. In some states the statute provides that the instrument must be signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed at his request, in his presence, and in the presence of each other by the witnesses. In some states the statute provides that the will must be subscribed by the testator at the end thereof in the presence of each of the attesting witnesses, or acknowledged to have been so made to each of such witnesses, and declared by him at the time of subscribing or acknowledging to be his last will and testament, and that the witnesses must sign their names at the end of the will at the request of the testator. In other states the statutes prescribe the formalities of execution in words which depart in form or in substance from the foregoing. Provision is usually made also for nuncupative wills, that is, wills by word of mouth. In many states nuncupative wills are confined to soldiers in actual service and mariners at sea, who are permitted thus to dispose of their personal estate; while in other states nuncupative wills may be made by other persons during their last sickness under prescribed conditions.

There are also differences in the laws of the different states with respect to the competency of testators as to age, and coverture, the competency of witnesses and the effect of a devise or legacy to a witness, the rights of afterborn children of the testator or of his children unprovided for by the will, the substitution of the children or other issue of devisees and legatees who are children or relatives of the testator and who die before him, the effect of the testator's subsequent marriage, with or without the birth of children, or of the testator's divorce, in revoking provisions of the will, and other matters.

Again, in many states the common law relating to the creation and validity of trusts and powers and the rule against perpetuities has been changed, and trusts and powers are reg-

ulated by statute. Provisions of wills declaring trusts must be carefully scrutinized in the light of the rule against perpetuities and of any statutory rule as to alienability and remoteness.

On all these and other points affecting the execution of wills and the validity and effect of testamentary dispositions, the draftsman must examine the law of the particular jurisdiction.

A codicil, which is an addition to a will, must be executed with the same formalities. A codicil revokes the will only so far as it is inconsistent with it.

Wills are to-day frequently typewritten, and it is usual to admit such wills to probate, but the question of their validity does not appear to have been passed upon by the courts.

A synopsis of the laws of the different states, so far as they provide for the competency of testators and the formalities of execution of written wills, follows:

ALABAMA

Every person of sound mind, if 21 years old, may devise all his interest in lands, and if over 18 years may bequeath all his personal property, to any person or corporation capable of holding real estate. Code 1907, §§ 6152, 6153, 6157. A will (except nuncupative) must be in writing, signed by the testator, or some person in his presence and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator. Ibid. & 6172.

ALASKA

Every person of 21 years and of sound mind may by will dispose of his property, saving dower and curtesy. Civ. Code 1900, § 137. A will must be in writing, signed by the testator, or by some other person under his direction, in his presence, and attested by two or more competent witnesses, subscribing their names in the presence of the testator. Ibid. § 138. Any person not an inhabitant of, but owning property in, the district may devise or bequeath it by will executed according to the laws in force in the district, state, or territory in which the will is executed. Ibid. § 150.

ARIZONA

Every person aged 21 years or who may be or may have been lawfully married and of sound mind can make a will. Civ. Code 1913, par. 1204. A will, except where otherwise provided by law, must be in writing and signed by the testator or by some other person by his direction and in his presence, and, if not wholly written by himself, must be attested by two or more credible witnesses above the age of 14 subscribing their names in the presence of the testator. Ibid. par. 1206. Where the will is wholly written by the testator, the attestation of the subscribing witnesses may be dispensed with. Ibid. par. 1207.

ARKANSAS

Every person 21 years of age and of sound mind may by will devise all his estate, real and personal. Kirby's Dig. 1904, § 8010. Every person over the age of 18 and of sound mind may by will dispose of goods and chattels. Ibid. § 8011. Every will of real or personal property, or both, must be executed and attested in the following manner: (1) It must be subscribed by the testator at the end of the will, or by some person for him, at his request; (2) such subscription must be made by the testator in the presence of each of the attesting witnesses, or be acknowledged by him to have been so made to each of the attesting witnesses; (3) the testator, at the time of making such subscription, or at the time of acknowledging the same, must declare the instrument so subscribed to be his will and testament; (4) there must be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator; (5) where the entire body of the will and the signature thereto are written in the proper handwriting of the testator or testatrix, such will may be established by the unimpeachable evidence of at least three disinterested witnesses to the handwriting and signature of each testator or testatrix, notwithstanding there be no attesting witnesses to such will; but no will without such subscribing witnesses shall be pleaded in bar of a will subscribed in due form, as prescribed in this act. Ibid. § 8012. Every person who signs the testator's name to a will by his direction must write his own name as a witness, and state that he signed the testator's name at his request.

Ibid. § 8013. Citizens of any of the United States or territories thereof owning real or personal property in this state may devise and bequeath the same by will executed and proved according to the laws of this state, or any state or territory in which the will may be made. Ibid. § 8049.

CALIFORNIA

Every person over 18 years and of sound mind may by will dispose of all his estate, real and personal. Civ. Code 1909, § 1270. A married woman may dispose of all her separate estate by will without consent of her husband. Ibid. § 1273.

Every will, other than nuncupative, must be in writing; and every will, other than olographic (holographic) and nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end by the testator himself, or some person in his presence and by his direction must subscribe his name; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must, at the time of subscribing or acknowledging, declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign the same as a witness, at the end of the will, at the testator's request and in his presence. Ibid. § 1276. An (h)olographic will is one that is entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not be witnessed. Ibid. § 1277. A witness to a written will must write, with his name, his place of residence, and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will; but a violation of this section does not affect the validity of the will. Ibid. § 1278.

No will made out of the state is valid unless executed according to the provisions of this chapter, except that a will made in a state or country in which the testator is domiciled at the time of his death, and valid under the laws of such state or country, is valid in this state so far as relates to personal property, subject, however, to the provisions of section 1313. Ibid. § 1285.

No estate shall be bequeathed or devised to any charitable or benevolent society or corporation or to any person or persons in trust for charitable uses, except by will executed at

least 30 days before the decease of the testator. If so made, such devises or legacies are valid: Provided, that no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate. Ibid. § 1313

COLORADO

Every person of sound mind and memory, aged 21 years, if male, or 18, if female, may dispose of all his property by will, and all persons of 17 may dispose of their personal estate by will; but no married man or woman may devise or bequeath away, one from the other, more than one-half of his or her property without the consent in writing of such other, executed after death of the testator, and it is optional with such wife or husband, after the death of the other, to accept the condition of any such will or one-half of the whole estate. Rev. St. 1908, § 7070. A will must be reduced to writing and signed by the testator, or by some one in his presence and by his direction, and attested in the presence of the testator, by two or more credible witnesses. Ibid. § 7071. Where a will of real estate in this state has been admitted to probate in a state or territory of the United States, or a country beyond the limits of the United States, the record of the court, accompanied with a certificate of the proper officers that the will was proved agreeably to the laws and usages of such state, territory, or country, shall entitle such will to probate and record without further proof of execution. Ibid. § 7094.

CONNECTICUT

All persons of the age of 18 years and of sound mind may dispose of their estate by will. Gen. St. 1902, § 292. No will or codicil is valid unless in writing, subscribed by the testator, and attested by three witnesses, each of them subscribing in his presence, and all wills executed according to the laws of the state or country where they are executed may be admitted to probate in this state, and are effectual to pass any estate of the testator situated in this state. Ibid. § 293.

DELAWARE

Any person of the age of 21 (including married women) of sound and disposing mind and memory may make a will as well of real as of personal estate. Rev. Code 1852, as amend. to 1893, c. 84, § 2; 14 Laws Del. c. 550. A will must be in writing and signed by the testator, or by some person subscribing the testator's name in his presence and by his express direction, and attested and subscribed in his presence by two or more credible witnesses. Rev. Code 1852, as amend. to 1893, c. 84, § 3.

DISTRICT OF COLUMBIA

No will is good and effectual unless the person making it be, if male, of the age of 21 years, and, if female, of 18 years, and be at the time of executing or acknowledging it of sound and disposing mind and capable of executing a valid deed or contract. Code of Laws 1901, § 1625, as amend. 1911. A will must be in writing and signed by the testator, or by some other person in his presence and by his express directions, and attested and subscribed in the presence of the testator by at least two credible witnesses. Ibid. § 1626, as amend. 1911. No devise or bequest to or for any minister, public teacher, or preacher of the gospel, or any religious sect, order, or denomination, is valid unless made at least one calendar month before the death of the testator. Ibid. § 1635, as amend. 1911.

FLORIDA

Every person of the age of 21 years and of sound mind can by will in writing dispose of his lands and personal property. Gen. St. 1906, § 2269. A married woman may dispose of her property by will as if not married, though a minor. Ibid. § 2270. A will disposing of real estate must be signed by the testator, or by some other person in his presence and by his expressed directions, and be attested and subscribed in the presence of the testator by two or more witnesses. Ibid. § 2272. A will of personal property must be in writing, and signed by the testator or some other person in his presence, and by his express direction. Ibid. § 2274.

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GEORGIA

Every person can make a will, unless under disability arising from a want of capacity or of perfect liberty of action. Civ. Code 1910, § 3838. Infants under 14 years are considered wanting in that discretion necessary to make a will. Ibid. § 3839. All wills (except nuncupative) must be in writing signed by the party making the same, or by some other person in his presence and by his express direction, and attested and subscribed in the presence of the testator by three or more competent witnesses. Ibid. § 3846. A witness may attest by his mark, provided he can swear to the same; but one witness cannot subscribe the name of another, even in his presence and by his direction. Ibid. § 3847. No person leaving a wife or child or descendants of child shall by will devise more than one-third of his estate to any charitable, religious, educational, or civil institution to the exclusion of such wife or child; and in all cases the will containing such devise shall be executed at least 90 days before the death of the testator, or such devise shall be void. Ibid. § 3851.

HAWAII

Every person of the age of 18 years (including married women) and of sound mind may dispose of his estate, real and personal, by will. Rev. Laws 1905, §§ 2521, 2522. The will must be in writing and signed by the testator, or by some person in his presence and by his express direction, and attested by two or more competent witnesses subscribing their names to the will in his presence. Ibid. § 2523.

IDAHO

Every person over the age of 18 years and of sound mind may dispose of his estate, real and personal, by will. Rev. Codes, § 5725. A married woman may dispose of her separate estate without the consent of her husband. Ibid. § 5726.

Every will, other than nuncupative, must be in writing, and every will, other than olographic and nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end by the testator, or some person in his presence and by

his direction must subscribe his name; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must at the time of subscribing or acknowledging declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence. Ibid. § 5727. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of the state, and need not be witnessed. Ibid. § 5728. A witness to a written will must write, with his name, his place of residence, and a person who subscribes the testator's name by his direction must write his own name as a witness to the will; but a violation of this section does not affect the validity of the will. Ibid. § 5729. No estate shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except by will executed at least 30 days before the decease of the testator. If so made, such devises or legacies are valid: Provided, that no such devises or bequests shall collectively exceed one-third of the estate of the testator leaving lineal descendants, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate. Ibid. § 5750.

ILLINOIS

Every male of the age of 21 years and every female of 18, being of sound mind, may make a will. Hurd's Rev. St. 1913, c. 148, § 1. A will must be reduced to writing, and signed by the testator or some person in his presence and by his direction and attested in his presence by two or more credible witnesses. Ibid. § 2. Wills or authenticated copies proved according to the laws of any of the United States or the territories thereof, or of any country out of the United States, concerning estates within the state, accompanied with a certificate of the proper officer that the will or copy was duly executed and proved agreeably to the laws and usages of the state or country in which the same was executed, may be recorded. Ibid. § 9.

INDIANA

Married women, as well as all other persons, except those under 21 years of age or of unsound mind, may by will dispose of their estate, real and personal, in favor of any person or corporation capable of holding the same. Burns' Ann. St. 1908, §§ 3112, 3113. A will (except nuncupative) must be in writing, signed by the testator, or by some one in his presence with his consent, and attested and subscribed in his presence by two or more competent witnesses. Ibid. § 3132. A written will proved or allowed in any other of the United States or in any foreign country according to its laws may be received and recorded in this state, with the same effect as if originally admitted to probate and recorded in this state. Ibid. §§ 3149-3151. No will executed in this state and proved or allowed in any other state or country shall be admitted to probate within this state, unless executed according to the laws of this state. Ibid. § 3152.

IOWA

Any person of full age and sound mind may dispose by will of all his property, subject to the rights of homestead and exemption created by law, and the distributive share in his estate given by law to the surviving spouse, except sufficient to pay his debts and expenses of administration; but where the survivor is named as a devisee therein, it shall be presumed, unless the intention is clear and explicit to the contrary, that such devise is in lieu of such distributive share, homestead, and exemptions. No devise or bequest, however, to a corporation organized under the chapter relating to corporations not for pecuniary profit, or to a foreign corporation of a similar character, shall be valid in excess of one-fourth of the testator's estate after payment of debts, if a spouse, child, or parent survive the testator. Code 1897, § 3270. All wills (except nuncupative) must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and witnessed by two competent persons; but if a codicil is duly executed to a will defectively executed and clearly identified in such codicil, the will and codicil shall be considered one instrument and the execution of both sufficient. Ibid. § 3274. A will executed without the state in the

mode prescribed by the law of the place where executed or of the testator's domicile, if in writing and subscribed by the testator, is valid. *Ibid.* § 3309.

KANSAS

Any person of full age and sound mind and memory may make a will of real or personal property. Gen. St. 1909, § 9776. A will must be in writing, signed at the end by the testator, or by some other person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses who saw the testator subscribe or heard him acknowledge it. *Ibid.* § 9777. A will executed; proved, and allowed in another state according to its laws may be admitted to record in this state, by producing an authenticated copy, and has then the same validity as if made in this state. *Ibid.* § 9800. A testator may not bequeath away from wife or husband more than one-half of his or her property; but either may consent in writing, executed in the presence of two witnesses, that the other may so do. *Ibid.* § 9811. A married person having no children may devise one-half of his or her property to others than husband or wife. *Ibid.* § 9812.

KENTUCKY

Every person of sound mind, not being under 21 years, may dispose of his estate by will. St. 1909, § 4825. A married woman, if of sound mind and 21 years of age, may dispose of her estate by will. *Ibid.* § 2147. No will shall be valid unless in writing, with the name of the testator subscribed thereto by himself, or by some other person in his presence and by his direction; and, moreover, if not wholly written by the testator, the subscription shall be made or the will acknowledged by him in the presence of at least two credible witnesses, who shall subscribe the will with their names in the presence of the testator. *Ibid.* § 4828. The will of a person domiciled out of this state at the time of his death is valid as to his personal property in this state if executed according to the law of the place where he was domiciled. *Ibid.* § 4831.

LOUISIANA

All persons over 16 years of age and of sound mind, subject to certain limitations, can dispose of their property by will. Testaments are: (1) Nuncupative or open; (2) mystic or sealed; and (3) olographic. Nuncupative and mystic testaments are subject to many formalities which need not be enumerated. An olographic testament must be entirely written, dated, and signed by the hand of the testator, and is subject to no other form, and may be made in or out of the state. See Rev. Civ. Code 1898, arts. 1574-1604. The peculiarity of the law is such that the drawing of a will in accordance with its requirements should not be attempted by a lawyer of another state. A will executed without the state in the mode prescribed by the law of the place where executed or of the testator's domicile, if in writing and subscribed by the testator, has the same force and effect as if executed in the mode prescribed by the laws of the state. Acts 1912, No. 176.

MAINE

A person of sound mind and of the age of 21 years may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request and in his presence, and subscribed in his presence by three credible attesting witnesses not beneficially interested under said will. Rev. St. 1903, c. 76, § 1.

MARYLAND

No will is valid unless the person making it be of sound and disposing mind and capable of executing a valid deed or contract. No will of real estate is effectual unless the person making it, if a male, be of the age of 21 years, and, if a female, of the age of 18. Ann. Code Pub. Civ. Laws 1910, art. 93, § 322. All devises and bequests of lands or tenements, or interest therein, and all bequests of goods, chattels, or personal property, shall be in writing and signed by the party so devising or bequeathing the same, or by some other person for him, in his presence and by his express direction, and shall be attested and subscribed in the presence of the said devisor by two

or more credible witnesses, or else they shall be utterly void and of none effect. Ibid. § 323. Every will or other testamentary instrument made out of the state is valid in Maryland, if made according to the law of the place where it was made, or of the place where the testator was domiciled, or of this state; and if the testator was originally domiciled in Maryland, although at the time of making the will or at the time of his death he may be domiciled elsewhere, the will shall be admitted to probate in this state, and shall then be governed by and construed according to the law of Maryland, without regard to the *lex domicilii*, unless the testator shall expressly declare a contrary intention in the will. Ibid. § 334. Bequests and devises to any minister, public teacher, or preacher, or to any religious sect, order, or denomination, must receive the assent of the Legislature. Const. Declaration of Rights, art. 38.

MASSACHUSETTS

Every person of full age and sound mind may by will in writing, signed by him or by a person in his presence and by his express direction, and attested and subscribed in his presence by three or more competent witnesses, dispose of his property, real and personal. A married woman, in the same manner and with the same effect, may make a will. Rev. Laws 1902, c. 135, § 1. A will which is made out of the commonwealth and is valid according to the laws of the state or country in which it was made may be proved and allowed in this commonwealth, with the same effect as if executed according to its laws. Ibid. § 5.

MICHIGAN

Every person of full age and sound mind may dispose of his property by will. Comp. Laws 1897, §§ 9262, 9265. A will made within this state, except nuncupative, must be in writing, signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. Ibid. § 9266. A will duly proved and allowed in any other of the United States, or in any foreign country, according to its laws, may be admitted to probate in this state. Ibid. § 9282.

MINNESOTA

Every person (including married women) of full age and sound mind may dispose of real or personal estate by will, signed by him, or by some person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses. Gen. St. 1913, § 7250. A will valid according to the laws of the state or country where made, or of the testator's domicile, if in writing and signed by the testator, has the same effect as if executed according to the laws of the state. Ibid. § 7253.

MISSISSIPPI

Every person aged 21 years, male or female, married or unmarried, being of sound and disposing mind, can make a will. The will must be signed by the testator, or by some other person in his or her presence, and by his express direction; and, moreover, if not wholly written and subscribed by himself, must be attested by two or more credible witnesses in the presence of the testator. Code 1906, § 5078. A devise or bequest of lands or of money to be raised by the sale of lands in favor of or in trust for any religious or ecclesiastical corporation or society, or any religious denomination or association, or for charitable uses or purposes, is void. Ibid. § 5090. A bequest of money or personal property in favor of any religious or ecclesiastical corporation, or any religious or ecclesiastical society, or to any religious denomination or association, either for its own use or benefit or for charitable uses, is void. Ibid. § 5091.

MISSOURI

A will may be made by a male person of sound mind as to real estate if he be 21 years of age, and as to personal estate if he be over 18 years, saving the widow her dower. Rev. St. 1909, § 535. A married or unmarried woman of 18 years may devise her land or bequeath her personal property by will, subject to the husband's curtesy. Ibid. § 536. A will must be in writing, signed by the testator, or by some person by his direction in his presence, and attested by two or more competent witnesses subscribing their names to the will in his pres-

ence. Ibid. § 537. A person owning real or personal estate in this state may devise or bequeath it by will, executed and proved, if real estate, according to the laws of this state, or, if personal estate, according to the laws of this state or of the country, state, or territory in which the will is made. Ibid. § 567.

MONTANA

Every person over the age of 18 years of sound mind may by will, dispose of all of his estate, real and personal. Rev. Codes 1907, § 4723.

Every will, other than nuncupative, must be in writing; and every will, other than olographic and nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must at the time of subscribing or acknowledging declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence. Ibid. § 4726. An olographic will is one entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not be witnessed. Ibid. § 4727. A witness to a written will must write, with his name, his place of residence, and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will; but a violation of this section does not affect the validity of the will. Ibid. § 4728. A will of real or personal property, or both, made out of this state by a person not having his domicile in this state, is valid when executed according to the law of the place in which it was made, or in which the testator was at the time domiciled. Ibid. § 4734.

A testamentary disposition may be made to any person capable of taking the property, except that corporations, other than those for scientific, literary, or solely educational purposes cannot take unless expressly authorized by statute. Ibid. § 4725.

NEBRASKA

Every person of full age and sound mind, may dispose of his property, real or personal, by will. A married woman may dispose of her property by will in the same manner as other persons. Cobbey's Ann. St. 1911, §§ 4988, 4991. A will made within this state must be in writing, signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. Ibid. § 4992. A will duly proved and allowed in any of the United States, or in any foreign country or state, according to its laws, may be allowed, filed, and recorded in this state. Ibid. § 5009.

NEVADA

Every person over 18 years and of sound mind may dispose of his or her property by will. Rev. Laws 1912, § 6202. A married woman may dispose of her separate estate absolutely, without the consent of her husband, by will attested, witnessed, and proved as other wills. Ibid. § 6203. A will must be in writing, signed by the testator, and sealed with his seal, or by some person in his presence and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator. Ibid. § 6204. A will duly proved and allowed in another state or a foreign country may be admitted to probate, if executed in conformity with the laws of the place where made. Property may be disposed of under olographic wills. Ibid. § 6223. An olographic will is one entirely written by the hand of the testator, is subject to no other form, may be made in or out of this state, and need not be witnessed. Ibid. § 6224. It may be proved in the same manner as other private writings. Ibid. § 6225.

NEW HAMPSHIRE

Every person, including married women, of the age of 21 years and of sane mind, may devise and dispose of his property by will. Pub. St. 1901, c. 186, § 1. A will must be in writing, signed by the testator or by some person in his presence and by his express direction, and attested and subscribed

in his presence by three or more credible witnesses. A seal is not required. *Ibid.* § 2. A will made out of this state and valid according to the laws of the state or country where executed may be proved and allowed in this state, and is then as effective as if executed according to the laws of this state. *Ibid.* § 5.

NEW JERSEY

Wills made by any person within the age of 21 years, or any idiot, lunatic, or person of nonsane mind and memory, shall not be held or taken to be good or effectual in law. *Comp. St.* 1910, p. 5862, § 3, p. 5871, § 28. A will must be in writing, and shall be signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in presence of two witnesses present at the same time, who shall subscribe their names thereto as witnesses in the presence of the testator. *Ibid.* p. 5867, § 24. If it appears from the record of a foreign will that it was executed according to the laws of this state, and an exemplified copy with the letters be filed in the office of the surrogate, the will and letters have the same effect as if issued in this state. *P. L.* 1912, p. 320. A copy of a foreign will may be recorded to make title to lands in this state, on recording an exemplified copy of the record of the will with the certificate of probate and letters. *P. L.* 1913, p. 355; *P. L.* 1914, c. 241.

NEW MEXICO

Any person of the age of 21 years and in sound mind may dispose by will of all his property, except what is sufficient to pay his debts and what is given by law as privileged property to his wife or family. *Comp. Laws* 1897, § 1947. Any person capable of making a will would do better by making it in writing than verbally, but a verbal will may be valid on condition that in either case they give it all the validity possible, as well as the freeness of the will, the proof of soundness of mind, and entire judgment. *Ibid.* § 1948. The will shall have all the validity required in the previous section; when made in writing it shall be signed by the testator, who, if unable or not knowing how to sign, shall request some reliable person to sign for him, and shall be attested by two or

more able and qualified witnesses. Ibid. § 1949. A verbal will shall be attested by the same number of witnesses required for the written ones, and, besides, two witnesses, there being no more, possessing the same qualifications as required for the written will, to testify that the testator, male or female, was in possession of a sound mind and entire judgment. Ibid. § 1950. The witnesses to a written will must be present, see the testator sign the will, or some one sign it for him at his request as and for his last will and testament, and must sign as witnesses at his request in his presence and in the presence of each other. Ibid. § 1952. Where a will has been probated according to the laws of any other state, or of any foreign country, a copy of such will and the record of probate, duly attested, etc., may be filed and recorded in the probate court of this state, and shall have the same force as the original will, if probated in such court; but the validity of such will may be contested as in the case of original wills probated in such court. Ibid. § 2017.

NEW YORK

All persons, except idiots, persons of unsound mind, and infants, may devise their real estate by will. Consol. Laws, c. 13, § 101. Such a devise may be made to every person capable by law of holding real estate; but no devise to a corporation is valid unless it be expressly authorized by its charter, or by statute, to take by devise. Ibid. § 12. Males of 18 years and females of 16 may bequeath personal estate. Ibid. § 15. A will must be executed and attested in the following manner: (1) It must be subscribed by the testator at the end of the will; (2) such subscription must be made by the testator in the presence of each of the attesting witnesses, or acknowledged by him to have been so made to each of the attesting witnesses; (3) the testator at the time of making such subscription or of acknowledging the same must declare the instrument so subscribed to be his last will and testament; (4) there must be at least two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the request of the testator. Ibid. § 21. The witnesses must write opposite to their names their respective places of residence; and every person who signs the testator's name to a will by his direction must write his own name as a witness to the will. Such omission does not affect the validity of any

will, but subjects the witness to a penalty of \$50. Ibid. § 22. A will of real or personal property executed as prescribed by the laws of the state, or of personal property executed without the state and within the United States, the Dominion of Canada, or the Kingdom of Great Britain and Ireland, as prescribed by the laws of the state or country where executed, or a will of personal property executed by a person not a resident of the state, according to the laws of the testator's residence, may be admitted to probate in this state. Ibid. § 23.

NORTH CAROLINA

No person can make a will until he has attained the age of 21 years. Rev. 1908, § 3111. A married woman owning real or personal property may dispose of the same by will. Ibid. § 3112. No will is good or sufficient unless written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two disinterested witnesses at least, or unless the will be found among the valuable papers and effects of the deceased, or shall have been lodged in the hands of some person for safekeeping, and be in the handwriting of the deceased, with his name subscribed or inserted in some part of the will, and if the handwriting be proved by three credible witnesses who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be. Ibid. § 3113. When a will made by a citizen or subject of another state or country is there duly proved and allowed according to its laws, an authenticated copy may be allowed, filed, and recorded; but a will disposing of real estate in this state must be executed according to the law of this state. Ibid. § 3133.

NORTH DAKOTA

Every person over 18 years and of sound mind may by will dispose of all his estate, real and personal. Comp. Laws 1913, § 5640. A married woman may dispose of all her separate estate by will without consent of her husband as if single. Her will must be executed and proved as other wills. Ibid. § 5641. An olographic will is one entirely written, dated and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not

be witnessed. Ibid. § 5648. Every will, other than nuncupative, must be in writing; and every will, other than olographic and nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end by the testator himself, or some person in his presence and by his direction must subscribe his name thereto; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence. Ibid. § 5649. A witness must write with his name his place of residence; and a person who subscribes a testator's name by his direction must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. Ibid. § 5651. A will made out of this state by a person not having his domicile in this state is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if made in this state and according to the provisions of this chapter. Ibid. § 5653.

OHIO

A person of full age and of sound mind and memory, and not under restraint, may dispose of his property by will. Gen. Code 1910, § 10503. A will must be in writing, but may be handwritten or typewritten. It must be signed at the end by the party making it, or by some other person in his presence and by his express direction, and attested and subscribed in the presence of such party, by two or more competent witnesses, who saw the testator subscribe, or heard him acknowledge it. Ibid. § 10505. A will executed, proved, and allowed in another state, or a foreign country, according to its laws, may be allowed and admitted to record in this state, and then has the same validity as a will made in this state according to its laws. Ibid. §§ 10535, 10537. Gifts to a benevolent, religious, educational, or charitable purpose, or to a municipal or other corporation or association, or to a person in trust for such purposes, corporations, or associations, whether such trust appears on the face of the instrument or not, are invalid, un-

less the will be executed at least one year prior to the death of the testator. Ibid. § 10504.

OKLAHOMA

Every person over 18 years and of sound mind may make a will. Rev. Laws 1910, § 8338. A married woman may dispose of her separate estate without the consent of her husband, by will executed and proved as other wills. Ibid. § 8339.

Neither spouse may bequeath more than two-thirds of his or her property away from the other. Ibid. § 8341.

An olographic will is one entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not be witnessed. Ibid. § 8347. Every will, other than nuncupative, must be in writing; and every will, other than olographic and nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end by the testator himself, or some person in his presence and by his direction must subscribe his name thereto; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence. Ibid. § 8348. A witness to a will must write, with his name, his place of residence, and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will; but a violation of this section does not affect the validity of the will. Ibid. § 8349. A will made out of this state by a person not having his domicile therein is as valid when executed according to the law of the place in which it was made, or in which the testator was at the time domiciled, as if made in this state and according to the provisions of this article. Ibid. § 8351.

OREGON

Every person of 21 years and sound mind may by will devise all his estate, real and personal, saving to the widow her dower. Lord's Ore. Laws 1910, § 7316. Every person over 18 years and of sound mind may by will dispose of his goods and chat-

tels. Ibid. § 7317. A married woman may by will dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by the curtesy. Ibid. § 7318. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will, in the presence of the testator. Ibid. § 7319. Every person who shall sign the testator's name to a will by his direction shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request. Ibid. § 7320. Any person not an inhabitant of, but owning property, real or personal, in, this state may devise or bequeath it by will executed (if real estate be devised) according to the laws of this state, or (if personal property be bequeathed) according to the laws of this state or of the country, state, or territory in which the will may be executed. Ibid. § 7332.

PENNSYLVANIA

Every person of sound mind and of the age of 21 years may make a will. *Purd. Pa. Dig.* (13th Ed.) p. 5109, § 1, p. 5119, §§ 2, 3, p. 5120, § 4. A will must be in writing, and, unless the person making the same be prevented by the extremity of his last sickness, must be signed by him at the end thereof or by some person in his presence, and by his express direction, and in all cases must be proved by the oaths or affirmations of two or more competent witnesses. Ibid. p. 5120, § 6. No estate may be bequeathed or devised to any body politic, or to any person in trust, for religious or charitable uses, except by will attested by two credible, and at the time disinterested, witnesses, at least one calendar month before the decease of the testator; a disinterested witness being one not interested in such religious or charitable use, this act not being intended to apply to a witness interested in some other devise, or bequest. *Purd. Pa. Dig. Supp.* 1912, p. 697, § 1.

RHODE ISLAND

A person of 18 years may dispose of personal estate, and a person of 21 years may dispose of real estate by will. *Gen. Laws* 1909, c. 254, § 5. A will must be in writing and signed by the testator, or by some other person for him in his presence

and by his express direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, who attest and subscribe the will in the presence of the testator. Ibid. § 13. A will of real or personal property, or both, executed without the state and within the United States in the mode prescribed by the laws of the place where executed or in which the testator was then domiciled, and a will of personal property, executed in any other country according to its laws is legally executed. Ibid. § 36.

SOUTH CAROLINA

Any person having right or title to lands (persons of unsound mind and infants excepted) may dispose thereof by will, except as hereinafter provided; but all wills of lands by any person within the age of 21 years, idiot, or by any person *de non sane* memory, shall not be taken to be good and effectual in law. Code of Laws 1912, § 3563. All wills of real and personal property must be in writing, signed by the party so devising, the same, or by some other person in his presence and by his express directions, and attested and subscribed in the presence of the said devisor, and of each other, by three or more credible witnesses. Ibid. § 3564. If a will be regularly proved in any foreign court, an exemplification of such will may be admitted to probate in this state, and shall also be evidence of the devise of lands in this state: *Provided*, that if the will be not proved in solemn form, the parties interested against the will shall not be concluded by such probate, but may examine witnesses as to the sanity of the testator, or as to any fraud or imposition practiced upon him in obtaining the will; and the other side may apply for an order to perpetuate testimony in support of the will. Ibid. § 3583.

SOUTH DAKOTA

Every person over the age of 18 years and of sound mind may dispose of his estate, real and personal, by will. Civ. Code 1913, § 998. A married woman may, without the consent of her husband, dispose of her separate estate by will, executed and proved as other wills. Ibid. § 999. An olographic will is one entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not be witnessed. Every will,

other than nuncupative, must be in writing, and every will, other than olographic and a nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto; (2) the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; (3) the testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, and in his presence. Ibid. § 1006. A will of real or personal property, or both, made out of this state by a person not having his domicile in this state, is as valid, when executed according to the law of the place in which the same was made or in which the testator was at the time domiciled, as if it were made in this state and according to the provisions of this chapter. Ibid. § 1010.

TENNESSEE

No will shall be good or sufficient to convey or give an estate in lands unless written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, neither of whom is interested in the devise of said lands. Code 1896, § 3895. But a paper writing appearing to be the will of a deceased person, written by him, having his name subscribed to it or inserted in some part of it, and found after his death among his valuable papers, or lodged in the hands of another for safekeeping, shall be good and sufficient to give and convey lands, if the handwriting is generally known by his acquaintances, and it is proved by at least three credible witnesses that they verily believe the writing and every part of it to be in his hand. Ibid. § 3896. A married woman may dispose of any estate in the execution of a special power to that effect by will in writing, subscribed by herself, or by some other person in her presence and by her direction; and the subscription shall be made or the will acknowledged by her in the presence of at least two witnesses subscribing the will with their names in the presence of the testatrix. Ibid. § 3901. Wills

executed in other states, or in any of the territories, or in the District of Columbia, shall be proved according to the laws of this state, and certified in the manner prescribed by the act of congress. Ibid. § 3914.

TEXAS

Every person aged 21 years and of sound mind may make a will. Rev. St. 1911, art. 7855. A will must be in writing and signed by the testator or by some other person by his direction and in his presence, and must, if not wholly written by himself, be attested by two or more credible witnesses above the age of 14 years, subscribing their names thereto in the presence of the testator. Ibid. art. 7857. Where the will is wholly written by the testator, the attestation of the subscribing witnesses may be dispensed with. Ibid. art. 7858. When a will disposing of land in this state has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested and certified in the manner prescribed, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication: Provided, that, at any time within four years from the date of such record, the validity of such will may be contested in a proceeding instituted for that purpose, as the original might have been. Such will and probate, delivered to the clerk of the proper court to be recorded, shall take effect and be valid and effectual as a deed of conveyance of said property; and the record thereof has the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. Ibid. arts. 7875-7878.

UTAH

Every person over the age of 18 years and of sound mind may by will dispose of all his estate, real and personal: *Provided*, that a man may not devise away from his wife more than two-thirds in value of his real property without her consent in writing. Comp. Laws 1907, § 2731. A married woman may, without the consent of her husband, dispose of her separate estate by will, executed and proved as other wills. Ibid. § 2733.

Every will, other than nuncupative, must be in writing, and every will, other than olographic or nuncupative, must be executed and attested as follows: (1) It must be subscribed at the end thereof by the testator himself; (2) the subscription must be made in the presence of the attesting witnesses; (3) the testator must at the time of subscribing the same declare to the attesting witnesses that the instrument is his will; and (4) there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, in his presence, and in the presence of the other. Ibid. § 2735. An olographic will is one entirely written, dated, and signed by the hand of the testator himself, is subject to no other form, may be made in or out of this state, and need not be witnessed. Such wills may be proved in the same manner as other private writings. Ibid. § 2736. A witness to a written will must write, with his name, his place of residence; but a violation of this section does not affect the validity of the will. Ibid. § 2737. A will of real or personal property, or both, made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which it was made, or in which the testator was at the time domiciled, as if made in this state and according to the provisions of this chapter. Ibid. § 2744.

A testamentary disposition may be made to any person capable by law of taking the property disposed of; but corporations other than those formed for scientific, literary, religious, charitable, benevolent, or solely educational purposes cannot take under a will, unless expressly authorized by statute. Ibid. § 2734.

VERMONT

Every person (including married women) of age and sound mind may dispose of his estate, real and personal, by will. Pub. St. 1906, § 2731. A will must be in writing and signed by the testator, or by the testator's name written by some other person in his presence and by his express direction, and attested and subscribed by three or more credible witnesses, in the presence of the testator and of each other. Ibid. § 2734. A will made out of the state which might be proved and allowed by the laws of the state or country in which it was made may be proved, allowed, and recorded in this state, and then has the same effect as if executed according to the laws of this state. Ibid. § 2750. Wills proved and allowed in any other

of the United States, or in a foreign state or country, according to its laws, may be allowed, filed and recorded in the probate court of a district in which the testator has real or personal estate on which such will may operate. *Ibid.* § 2751.

VIRGINIA

Every one not of unsound mind or under 21 years may make a will, and a minor of 18 may make a will of personalty. Code 1904, § 2513. The will must be in writing and signed by the testator or some one in his presence and by his direction in such manner as to make it manifest that it was intended as a signature, and unless wholly written by the testator, the signature must be made or the will acknowledged by him in the presence of at least two competent witnesses present at the same time, who subscribe the will in the presence of the testator; but no form of attestation is necessary. *Ibid.* § 2514. The will of a person domiciled out of the state at his death is valid as to personal property therein if executed according to the laws of the state or country in which he was so domiciled. *Ibid.* § 2516.

WASHINGTON

Every male over 21 years, and every female over 18, of sound mind, may by will devise his or her real or personal estate. Rem. & Bal. Codes 1910, § 1319. The will must be in writing signed by the testator or by some person under his direction, and be attested by two or more competent witnesses, subscribing their names in the presence of the testator. *Ibid.* § 1320. A will executed out of the state is valid, if executed in the mode prescribed by the law of the place of execution or of the testator's domicile. Laws 1911, p. 9.

WEST VIRGINIA

No person of unsound mind or under the age of 21 years may make a will, except that minors of 18 may by will dispose of personal estate. Code 1913, § 3867. A will must be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and, un-

less it be wholly written by the testator, the signature must be made or the will acknowledged by him in the presence of at least two competent witnesses present at the same time, who must subscribe the will in the presence of the testator and of each other. *Ibid.* § 3868.

WISCONSIN

Persons of full age and married women of 18 may make wills. *St.* 1911, § 2277. The will must be in writing and signed by the testator or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses in the presence of each other. *Ibid.* § 2282. When a will devising real estate has been duly proved and allowed in a proper court in any of the states or territories, a copy of such will and probate duly authenticated may be recorded in the office of the proper register of deeds, and is then effectual to pass the title to the real estate. *Ibid.* § 2295.

WYOMING

Any person of full age and sound mind may dispose by will of his property. *Comp. St.* 1910, § 5394. A married woman may make a will as though she were sole. *Ibid.* § 3911. A will must be in writing or typewritten, witnessed by two competent witnesses, and signed by the testator or by some person in his presence and by his express direction. *Ibid.* § 5397.

An olographic will may be proved in the same manner that other private writings are proved. *Ibid.* § 5419. Wills duly proved and allowed in any other of the United States or in any foreign country or state may be allowed and recorded in the district court of any county in which the testator left any estate. *Ibid.* §§ 5420, 5422.

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I

Wills

1. Will Giving Entire Estate to Wife and Appointing Her Executrix and Guardian

I, ———, of ———, declare this to be my last will, hereby revoking all former wills made by me:

I devise and bequeath all my real and personal estate whatsoever and wheresoever to my wife, ———, absolutely. And I appoint her sole executrix of this my will and guardian of my minor children.

In witness, *etc.*

2. Will Giving Dwelling House and Contents to Wife, Legacies to Wife and Children, and Residue to Wife and Children

I, ———, of ———, declare this to be my last will and testament:

1. [DWELLING HOUSE AND CONTENTS TO WIFE.] I devise and bequeath unto my wife, ———, my dwelling house and premises at ———, together with all the contents thereof, except moneys, securities for money, and other legal instruments.

2. [LEGACY TO WIFE.] I bequeath to my said wife the sum of ——— dollars, to be paid to her as soon as may be after my death, with interest at the rate of ——— per cent. per annum from my death.

3. [PECUNIARY LEGACIES TO CHILDREN.] I bequeath to my son, ———, the sum of ——— dollars; and to my daughter, ———, the sum of ——— dollars.

4. [RESIDUE TO WIFE AND CHILDREN.] All the rest and residue of my estate real and personal I devise and bequeath as follows: One-half thereof to my said wife; one-fourth thereof to my said son; and one-fourth thereof to my said daughter.

5. [APPOINTMENT OF EXECUTOR.] I appoint my said son to be executor of this my will.

In witness, *etc.*

3. Will Giving Legacies and Devise of Dwelling House, and Residue in Trust with Income to Wife and Remainder to Children, Etc.

I, ———, of ———, hereby revoke all former wills and codicils made by me, and declare this to be my last will:

1. [BEQUEST OF HOUSEHOLD AND PERSONAL ARTICLES TO WIFE.] I bequeath to my wife, ———, all my household fur-

niture and stores, plate, china, linen, books, pictures, and articles of domestic or personal use or adornment.

2. [PECUNIARY LEGACIES.] I bequeath the following pecuniary legacies:

(a) To my said wife the sum of \$——, to be paid to her within —— months (*or*, so soon as conveniently may be) after my death and in priority to all other legacies hereby bequeathed (such legacy to bear interest at the rate of —— per cent. per annum from and after my decease).

(b) To my sister —— the sum of \$——.

(c) To my niece —— the sum of \$——.

3. [DEVISE OF DWELLING HOUSE TO WIFE.] I devise to my said wife absolutely my dwelling house situate on —— street, in ——, but if my said wife shall die in my lifetime the same shall go to my trustees hereinafter named as part of my residuary estate.

4. [INHERITANCE TAX.] I direct that all the legacies and bequests and the devise hereinbefore made shall be free of all legacy duties and inheritance or other taxes.

5. [RESIDUE IN TRUST.] I devise and bequeath all the rest and residue of my estate real and personal whatsoever and wheresoever unto my trustees, hereinafter named and designated, to have and to hold the same upon the trusts hereinafter set forth.

6. [TRUSTEES TO CONVERT AND INVEST.] I direct my trustees, within such period as in their discretion they may deem best to sell, collect, and convert into money all such parts of the said rest and residue of my estate as shall not consist of investments of the nature hereinafter authorized, and to invest the proceeds of such collection and conversion in manner hereinafter authorized, and to stand possessed of such investments and of such parts of the said rest and residue of my estate as shall at my death consist of such investments, all of

which estate and investments are hereinafter called the trust fund, upon the trusts hereinafter set forth.

7. [INCOME TO WIFE.] I direct my trustees to pay the income of the trust fund to my said wife during her life (*or*, widowhood).

8. [CAPITAL FOR SONS AT TWENTY-ONE AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE.] After the death (*or* remarriage) of my said wife (whichever shall first happen) I direct my trustees to hold the trust fund as to both capital and income for all and every of my children or my child, if only one, who, being sons or a son, have attained or shall attain the age of twenty-one years, *or*, being daughters or a daughter, shall have attained or shall attain that age or previously marry, and, if more than one, in equal shares:

[SUBSTITUTION OF ISSUE OF DECEASED CHILD.] Provided, nevertheless, that in case any child of mine shall have died in my lifetime (*or*, before the period of distribution) leaving issue living at my death (*or*, at the period of distribution), such issue shall stand in the place of and take per stirpes, and not per capita, the share of the trust fund which such deceased child would have taken if he or she had survived me (*or*, been living at the period of distribution):

[MAINTENANCE CLAUSE.] Provided, further, that I empower my trustees during the minority or minority and spinsterhood, as the case may be, of any such child or issue of any such deceased child of mine to apply the whole or any such part as my trustees shall think fit of the income of the expectant share of such child or issue for or towards his or her maintenance or education, or to pay the same to his or her guardian or guardians for the purposes aforesaid without seeing to the application thereof; and in such case I direct that the surplus income shall be accumulated, and such accumulation shall be added to the original share and devolve therewith,

but shall always be liable to be applied for the purposes aforesaid as if the same were income accruing in the then current year.

9. [IN DEFAULT OF ISSUE, GIFT TO BROTHERS AND SISTERS.] In the event of no child of mine or issue of a deceased child of mine attaining a vested interest under the trusts hereinbefore contained, I direct that from and after the death of my wife the trust fund shall be divided and paid over and transferred to and among my brothers and sisters living at my death in equal shares: Provided, that in case any such brother or sister shall have died in my lifetime leaving issue living at my death, such issue shall stand in the place of such deceased brother or sister and take per stirpes, and not per capita, the share of the trust fund which such deceased brother or sister would have taken if he or she had survived me.

10. [INVESTMENT CLAUSE.] I direct that any moneys liable to be invested by my trustees may be invested in their names, in any investment sanctioned by law for the investment of trust funds, and, in addition thereto, in any of the following forms of investment, with liberty to vary and transpose the same from time to time, namely: Mortgages of improved real estate situate in the state of ———; the bonds of any city of ——— inhabitants regularly paying its interest in any of the following states ———; the first mortgage bonds of any such railroad corporation in the United States as shall have been built twenty years and shall have paid dividends on all its stock at the rate of not less than five per cent. per annum for a period of five consecutive years immediately preceding the date of the investment; (or, the bonds, debentures and preferred stock of any (railroad) corporation carrying on business in the United States which shall for a period of five consecutive years immediately preceding the date of the investment have paid in full the interest or dividend on the bonds, debentures, or

stock on which a fixed rate of dividend is payable standing in order of priority next after that in which the investment is made, or if such stock standing next in priority as aforesaid shall not bear a fixed rate of dividend shall for the said period have paid dividends at the rate of five per cent. per annum at least on such last-mentioned stock.)

11. [INDEMNITY CLAUSE.] I declare that each of my trustees shall be liable for his own receipts, payments, and willful defaults, and for nothing else, and that no one shall be liable for the other.

12. [POWER OF TRUSTEES TO SELL, MORTGAGE, PLEDGE, OR LEASE.] I hereby authorize and empower my trustees to sell at public or private sale (mortgage, pledge) or lease, any portion or the whole of the estate real or personal which they may hold under the trusts hereby created, and to execute and deliver good and sufficient deeds and other instruments to convey and transfer the same or for any such purpose. And whenever it shall become necessary to make a final distribution of any property held under the said trusts, my trustees shall have like authority for the purpose of such distribution to sell and convert into money the whole or any portion of such property, whether real or personal. And upon all sales by my trustees the purchasers shall not be bound to see to the application of the purchase money.

13. [APPOINTMENT OF TRUSTEES—EXEMPTION FROM BOND.] I appoint —— and —— to be trustees of this my will; and I direct that my trustees shall be exempt from giving any official bond.

14. [NEW TRUSTEES.] I declare that the number of my trustees shall be kept up to two, and that whenever a vacancy shall occur such vacancy shall be filled in the manner provided by law; but during her life my said wife shall have the power of appointing a new trustee or new trustees.

15. [MEANING OF "MY TRUSTEES."] I declare that in the interpretation of this my will the expression "my trustees" shall, where the context permits, mean and include the trustees or trustee for the time being hereof, whether original or substituted.

16. [APPOINTMENT OF EXECUTORS—EXEMPTION FROM BOND.] I appoint —— and —— to be executors of this my will, and I direct that they shall be exempt from giving any official bond.

17. [EXECUTORS' POWER TO SELL.] I authorize and empower the executors at any time acting hereunder, whenever in the settlement of my estate they shall deem it advisable, to sell at private or public sale the whole or any part of my estate real or personal, and to execute good and sufficient deeds or other instruments of transfer. And no purchaser at any such sale shall be bound to see to the application of the purchase money.

In witness, *etc.*

4. Will Giving Property in Trust for Wife for Life and Thereafter Subject to Her Appointment to Children and Issue of Deceased Children—Power of Trustees to Retain Investments

I, ——, of ——, do make this my last will and testament:

1. [DEBTS AND FUNERAL EXPENSES.] I direct my executors to pay all my just debts and funeral expenses as soon as may be after my decease.

2. [HOUSEHOLD AND PERSONAL ARTICLES TO WIFE.] I give to my wife —— absolutely all articles of household, domestic, or personal use or adornment belonging to me.

3. [RESIDUE IN TRUST FOR WIFE FOR LIFE WITH GIFT OVER SUBJECT TO HER APPOINTMENT TO CHILDREN AND ISSUE.] I de-

vise and bequeath all the residue of my estate, real and personal, which is hereinafter called the trust estate, unto my said wife and my friend ———, who and the survivor of whom and all other the trustees or trustee for the time being hereof are hereinafter referred to as “my trustees,” to hold the same upon the trusts following, namely: To pay the income thereof to my said wife for her life; and after her death to pay and divide the capital and income of the trust estate among my children and issue in such shares and subject to such powers and provisions as my said wife shall by deed or will appoint; and in default of any such appointment and so far as any such appointment may not extend to pay and divide the same among my children living at my death and the issue then living of any then deceased child of mine, in equal shares, but so that the issue of any such deceased child of mine shall take per stirpes only such share as such child of mine would have taken if then living.

4. [POWER OF TRUSTEES TO RETAIN OR SELL—VERY BROAD DISCRETION AS TO INVESTMENTS.] I authorize and empower my trustees to retain the whole or any part of the said residue of my estate in the securities, stocks, or other property in which it may be invested at the time of my death or to sell the whole or any part thereof and to invest and reinvest the proceeds. And I declare that in making investments my trustees shall not be bound to such securities and property only as are sanctioned by law for the investment of trust funds, but they may in their discretion invest in other securities and property deemed by them to be safe.

5. [APPOINTMENT OF EXECUTORS.] I appoint my said wife and the said ——— to be the executors of this my will.

In witness, *etc.*

TIFF. FORMS—84

5. Will Giving Entire Estate to Wife, and If She Does Not Survive Testator to Children and Issue of Deceased Children—Minors' Shares in Trust

I, ———, of ———, do make this my last will, hereby revoking all wills and testamentary dispositions heretofore made by me:

1. [WHOLE ESTATE TO WIFE IF SHE SURVIVE TESTATOR.] I give, devise, and bequeath all my estate whatsoever and wheresoever, both real and personal, to which I may be entitled or which I may have power to dispose of at my death, unto my wife, ———, absolutely, if she shall be living at my death.

2. [IF WIFE DO NOT SURVIVE, TO CHILDREN AND ISSUE OF DECEASED CHILDREN BEING OF FULL AGE.] In the event that my said wife shall not survive me, then I give, devise, and bequeath all my said estate to my children in equal shares; but in case either or any of them shall have died in my lifetime leaving issue living at my death, such issue shall take by representation and per stirpes between them the share which his or her parent would have taken had such parent survived me: Provided, however, that this article shall not be operative in favor of any such person who shall not at my death have attained his or her legal majority.

3. [SHARES OF MINORS IN TRUST.] In the event that any person who would otherwise have been entitled under the preceding article to a share of my estate shall not at my death have attained his or her legal majority, then I give, devise, and bequeath the share to which such person would have been so otherwise entitled unto ———, of ———, and ———, of ———, hereinafter called my trustees, in trust to collect and receive the rents, profits, and income of such share, hereinafter called the trust fund, and to pay the net income thereof to the guardian of such person during his or her minority, and,

when such person shall have attained his or her legal majority, to pay over and transfer to him or her absolutely the corpus or capital of his or her share, but in the event that such person shall die without having attained his or her legal majority, to divide, pay over, and transfer the said corpus or capital to the persons or person who would under the laws of the state of — be entitled to his or her personal estate in case of his or her intestacy.

4. [INVESTMENT CLAUSE.] (*See Form No. 3, cl. 10, p. 1326.*)

5. [TRUSTEES' INDEMNITY.] (*See Form No. 3, cl. 11, p. 1327.*)

6. [POWER OF TRUSTEES TO SELL, ETC.] (*See Form No. 3, cl. 12, p. 1327.*)

7. [APPOINTMENT OF EXECUTORS, ETC.] I appoint my said wife as executrix of this my will, and if she shall not survive me, then I appoint as executors the persons who are above named as trustees; and I direct that no bond shall be required of her or them. (*Add executor's power of sale, if desired. See Form No. 3, cl. 17, p. 1328.*)

In witness, *etc.*

6. Will Giving Business to Son and Residue to Wife if Surviving; Otherwise to Son and Issue

I, —, of —, make this my last will and testament:

1. [PECUNIARY LEGACY TO WIFE.] I bequeath to my wife, —, the sum of \$—.

2. [BEQUEST OF BUSINESS AND DEVISE OF BUSINESS PREMISES TO SON.] I bequeath and devise unto my son —, if he shall survive me, the good will of my business of a manufacture of —, at present carried on by me at —, and the land, building, and premises on which the said business is carried on, described as (*description*); and I declare that this

gift shall include all trade-marks and letters patent, goods manufactured and unmanufactured, stock in trade, machinery, plant, and effects belonging to me in connection with or used for the purposes of the said business, and the benefits of all contracts subsisting in relation thereto at my death, and all book debts which shall then be owing to me in relation to the said business, and all securities for money, cash, or money at the bank to the credit of my business account; and my said son shall take over and discharge all liabilities in connection with my said business existing at the time of my death, and shall indemnify my estate against the same.

3. [RESIDUE TO WIFE, IF SURVIVING, AND OTHERWISE TO SON AND ISSUE.] All the rest, residue, and remainder of my estate, real and personal, I devise and bequeath unto my said wife absolutely, if she shall survive me. If my said wife shall not survive me, then I devise and bequeath the same unto my said son absolutely, if he shall survive me; but, if he shall not survive me, then to his issue living at my death per stirpes and not per capita.

4. [APPOINTMENT OF EXECUTORS.] I appoint my said wife and my said son to be executors of this my will.

In witness, *etc.*

7. Will Giving Legacies, Dwelling House and Annuity to Wife, and Residue to Individuals

I, ———, of ———, hereby revoke all former wills and codicils and declare this to be my last will as follows:

1. [BEQUEST OF WATCH AND PERSONAL ARTICLES TO SON.] I bequeath to my son, ———, my gold watch and chain, and all my clothing and other articles of my own personal use and adornment.

2. [PECUNIARY LEGACY TO WIFE.] I bequeath to my wife the sum of \$———, to be paid as soon as possible.

3. [LEGACY TO SON.] I bequeath to my said son the sum of \$—— in money or in securities to be set over to him at their market value.

4. [BEQUESTS TO SERVANTS.] I bequeath to each of the following persons, namely, ——, ——, and ——, the sum of \$——, provided they shall respectively remain in my employ until the time of my decease.

5. [DEVISE OF DWELLING HOUSE, FREED FROM MORTGAGE, AND OF CONTENTS, TO WIFE; IF SHE DO NOT SURVIVE, TO SON.] I devise and bequeath unto my said wife absolutely, if she shall survive me, the house and premises now occupied by us and known as No. —— street, in the city of ——, free and discharged from all sums secured thereon by way of mortgage or otherwise at my death, which sums I direct shall be paid out of my estate, together with the contents of the said house not hereinbefore disposed of, and excepting also any moneys, securities, or other evidences of debt or other legal instruments that may be therein at my death. In the event that my said wife shall not survive me, then I devise and bequeath the said house and premises (but subject to any sums secured thereon as aforesaid) and the said contents of the said house unto my said son.

6. [ANNUITY TO WIFE.] I give to my said wife, if she shall survive me, an annuity of \$—— during her life, to be paid by equal quarterly installments, and to provide therefor I direct my executors hereinafter named to set apart, appropriate, and hold in trust for such purpose such part or parts of my estate as shall, in their opinion, be sufficient by the income thereof to pay such annuity; and I declare that when such appropriation shall have been made such annuity shall be wholly charged on the investments so appropriated, hereinafter referred to as "the annuity fund," in exoneration of the rest of my estate, but the capital of the annuity fund may be resorted to in case at any time the income thereof is insufficient to pay

such annuity; and I further declare that on the cesser of the said annuity by the death of my said wife the annuity fund shall be and become a part of my residuary estate.

7. [LEGACY IN TRUST FOR GRANDSON UNTIL HE ATTAINS THIRTY YEARS.] I give and bequeath to my trustees hereinafter named, the survivor of them and their successors, the sum of \$——, to take, hold, receive, manage, invest, and reinvest the same, and to apply such part of the income thereof as they shall see fit to the education, support, and benefit of my grandson, ——, until he shall attain the age of thirty years, and when he shall attain that age to pay over and transfer to him the principal fund and accumulated income thereon so held in trust. If my said grandson shall not attain the age of thirty years, my trustees shall hold the said trust fund in trust for his issue living at his death, and if there be none such then in trust for such persons as would be entitled to his personal estate upon his dying intestate.

8. [INHERITANCE TAXES PAYABLE OUT OF ESTATE.] I direct that any and all the foregoing legacies, devises, and annuity shall be clear of all legacy duties and inheritance, transfer, or other taxes, and that all such duties and taxes shall be paid out of my estate.

9. [GIFT OF RESIDUE TO SON, BROTHER, AND SISTER AND ISSUE BY REPRESENTATION.] All the rest, residue of my estate real and personal, whatsoever and wheresoever, I give, devise and bequeath unto my said son, my brother, ——, and my sister, ——, equally share and share alike, and in case of the death of either or any of them before my own death, leaving issue living at my death, such issue shall take between them by representation and per stirpes the share which such son, brother, or sister would have taken had he or she survived me.

10. [RELEASE OF DEBTS OF SON.] I release my said son from any legal liability to pay any debt which may be due or owing from him to me at the date of my death.

11. [PROVISION FOR WIFE TO BE IN LIEU OF DOWER.] I direct that the foregoing provisions for my said wife be taken and accepted by her in lieu and bar of all dower and right of dower or other right in my estate.

12. [APPOINTMENT OF EXECUTORS AND TRUSTEES—NO BOND.] I appoint my said wife and my said son to be executors and trustees of this my will, and no bond shall be required of them or either of them.

13. [POWER OF EXECUTORS AND TRUSTEES TO SELL.] I authorize and empower the executors or executor and trustees or trustee for the time being hereunder, whether original or substituted, to sell at public or private sale any portion or the whole of my estate or of the estate or estates which they may hold in trust, as the case may be, except such as I have specifically bequeathed or devised to my said wife or my said son, at either private or public sale, at such times and on such terms as they shall deem best, and to execute good and sufficient deeds or other instruments of transfer.

14. [BROAD POWER OF TRUSTEES AS TO INVESTMENTS.] I authorize and empower the trustees or trustee for the time being hereunder, whether original or substituted, to retain and hold under the trusts hereby created any securities, stocks, or other property in which my estate may be invested at the time of my death, with full power to sell the same, and to invest and reinvest the proceeds in such investments other than investments sanctioned by law for the investment of trust funds as they shall deem best.

15. [PROVISION AGAINST CONTEST.¹] If any devisee, legatee, or beneficiary under this my will shall contest the validity or object to the probate thereof, or attempt to vacate the same

¹ A provision for forfeiture in case of contest is generally held valid, but some courts hold that the penalty will not be imposed where the contest is justified under the circumstances.

or to alter or change any of the provisions thereof, such person shall thereby be deprived of all beneficial interest thereunder and of any share in my estate, and the share of such person shall become a part of my residuary estate, and such person shall be excluded from taking any part of such residuary estate, and the same shall be divided equally among the other persons entitled to take such residuary estate.

In witness, *etc.*

8. Will with Various Specific and Pecuniary Legacies, Devise of Dwelling House to Wife for Life and Remainder to Daughter, and Residue in Trust for Wife and Children, with Power in Trustees to Carry on Testator's Business

I, ———, of ———, hereby revoke all former wills and codicils, and declare this to be my last will as follows:

1. [APPOINTMENT OF EXECUTORS AND TRUSTEES AND GUARDIAN.] I appoint ———, of ———, and ———, of ———, who and the survivor of whom and all other the trustees or trustee for the time being hereof are hereinafter referred to as "my trustees," to be the executors and trustees of this, my will, and my wife, ———, to be guardian of my infant children; and no bond shall be required of them or either of them.

2. [BEQUEST OF SPECIFIC LEGACIES.] I bequeath the following specific legacies:

(1) [HOUSEHOLD AND PERSONAL ARTICLES TO WIFE, IF LIVING, OTHERWISE TO CHILDREN.] I give all my household furniture and effects, books, pictures, works of art, musical instruments, jewelry, clothing, and other articles of household, domestic, or personal use or adornment to my wife, ———, absolutely, if she shall survive me; and otherwise I give the same to such of my children as shall survive me, if more than

one, in equal shares, to be divided among them in such manner as they (*or*, my executors) think fit.

(2) [READY MONEY TO WIFE.] I give to my said wife absolutely all ready money which at my death may be in or about my place of residence, and also any money which may then stand to my credit on account current at the ——— Bank (*or*, at my banker's; *or*, at any bank).

(3) [LIFE INSURANCE POLICY.] I give to my said wife absolutely the policy of insurance on my life for the sum of \$——— effected with the ——— Insurance Company, dated the ——— day of ———, and numbered ———, and all sums payable in respect thereof.

(4) [SHARES OF STOCK.] I give to my niece, ———, absolutely twenty of my shares of the preferred stock of the ——— Railway Company; and I hereby declare that, if at my death I shall not be possessed of a sufficient amount of the said stock to satisfy the above bequest, my executors shall out of my estate purchase sufficient thereof to make up the deficiency.

3. [BEQUEST OF PECUNIARY LEGACIES—DECLARATION FOR PAYMENT FREE OF INHERITANCE TAXES.] I bequeath the following pecuniary legacies, which shall be free of all inheritance or other tax or duty:

(1) [TO WIFE—DECLARATION AS TO TIME OF PAYMENT, PRIORITY, AND INTEREST.] I give to my wife the sum of \$———, which shall be paid as soon as possible and in priority of all other legacies hereby bequeathed, and shall carry interest from the day of my death at the rate of six per cent. per annum.

(2) [TO SON, WITH REDUCTION FOR SUBSEQUENT, BUT NOT PRIOR, ADVANCEMENTS.] I give to my son ——— the sum of \$———; and I declare that any advancement which I have before the date hereof made to him shall be in addition to, and not in satisfaction of, his said legacy, but that any ad-

vancement which I may hereafter make to him, unless I shall in writing direct to the contrary, shall be offset and be taken to be in reduction pro tanto of the said legacy.

(3) [CONTINGENT LEGACY.] I give to ———, if he shall attain the age of twenty-one years, the sum of \$——.

(4) [TO BROTHER SUBJECT TO DEDUCTION OF DEBTS.] I give to my brother, ———, the sum of \$——, subject to the deduction therefrom of any sums owing by him to me at the time of my death.

(5) [TO COLLEGE TO FOUND FELLOWSHIP.] I give to ——— College, for the purpose of founding a fellowship in the said college, to be known as the ——— fellowship, the sum of \$——, to be invested and the income paid or applied each year to or for the benefit of some graduate student of the said college pursuing studies therein in the higher branches of philosophy.

(6) [TO HOSPITAL.] I give to the ——— Hospital the sum of \$—— absolutely.

(7) [TO EXECUTORS.] I give to each of my executors who shall prove my will the sum of \$——.

4. [DEVISE OF DWELLING HOUSE TO WIFE FOR LIFE, AND AFTER DEATH TO DAUGHTER—DIRECTION FOR REPAIRS AND INSURANCE.] I devise my dwelling house and premises (*description*) to my wife during her life, and after her death to my daughter, ———, absolutely. And I direct that my wife shall during her life at her own expense keep the said house and premises in good repair and condition and insured against fire to the full value thereof to the satisfaction of my trustees.

5. [RESIDUE IN TRUST.] I give, devise, and bequeath all the residue of my estate real and personal unto my trustees to have and to hold the same, which is hereinafter referred to as the trust fund, upon and for the following trusts and purposes:

(1) [INCOME TO WIFE.] To pay the income to my said wife during her life.

(2) [CAPITAL TO CHILDREN WITH SUBSTITUTIONARY GIFTS TO CHILDREN.] Subject thereto in trust for all my children who, being male, have attained or shall attain majority, or, being female, have attained or shall attain majority or previously marry, the share which would have belonged to any child already dead or who may die before me (*or*, before the period of distribution) leaving issue then living to go to such issue by substitution per stirpes:

[DAUGHTERS' SHARE IN TRUST, WITH POWER OF APPOINTMENT.] Provided, that the share of the trust fund of every daughter of mine who shall survive me (*or*, the period of distribution) shall be retained and invested by my trustees and held upon the following trusts, namely: To pay the income thereof to her during her life, and from and after her death to pay and transfer the said share to and among such person or persons as she shall by will appoint, and in default of any such appointment in trust for her statutory next of kin as if she had died intestate and such share had formed part of her personal estate.

6. [POWER OF TRUSTEES TO RETAIN INVESTMENTS OR SELL AND REINVEST.] I authorize and empower my trustees to hold and keep all or any part of my estate in the investments or property in which my estate may be invested at the time of my decease, with full power in their discretion at any time to call in and to sell the same or any part thereof at private or public sale, and to execute good and sufficient deeds therefor, and to invest and reinvest the same or any part thereof in such investments proper for the investment of trust funds as they may think fit. And no purchaser at any such sale shall be bound to see to the application of the purchase money.

7. [POWER TO CARRY ON TESTATOR'S BUSINESS IN PARTNERSHIP OR OTHERWISE, AND INTRODUCE SONS, ETC.] I hereby declare that it shall be lawful for my trustees, if they in their sole discretion shall see fit to do so, to carry on the business of ——— now carried on by me at ——— (*or, now carried on by me at ——— with ——— and ———, under articles of partnership dated the ——— day of ———*) for such period as they may deem expedient, either alone or in partnership with any person or persons who may be a partner or partners therein, or to discontinue the same, as they may deem expedient, and from time to time, and upon the expiration of the term of any partnership for the time being, to renew the same for any period determinable or otherwise as they may deem expedient, and at any time or times to vary the terms contained in any partnership articles, and to employ therein or withdraw therefrom any capital which may be employed therein at my death, or to advance with or without taking security any additional capital which they may deem desirable for effectually carrying on such business, and to arrange and agree for the introduction either immediately or at any future time of any person or persons as a partner or partners therein, and as to the division of the profits thereof or the payment of any sum in lieu of profits to any partner, and as to the hiring or employment of any persons therein at such salary or remuneration as they may think proper, and as to the extension or curtailment of the business thereof, and for the purposes aforesaid to enter into and to execute and do all such agreements, deeds, and acts as may be necessary or expedient.

8. [APPOINTMENT OF NEW TRUSTEE.] I direct that the number of my trustees shall be kept up to two, and whenever any vacancy shall occur I desire the ——— court of the county of ———, and state of ———, to fill such vacancy by the appointment of the nominee of my said wife during her life,

and after her death by the appointment of the nominee of the majority of the cestui que trustent under this my will who are at the time sui juris.

9. [INDEMNITY CLAUSE.] (*See Form No. 3, cl. 11, p. 1327.*)

10. [EXECUTORS' POWER TO SELL.] (*See Form No. 3, cl. 17, p. 1328.*)

In witness, *etc.*

9. Will of Widower Making Bequests to Son and Married Daughter, Releasing Mortgage Debt, Giving Residue in Trust, to Permit Two Daughters to Occupy House and Enjoy Income During Spinsterhood, with Discretion to Apply Income for Married Daughters, and Remainder to Testator's Children and Issue

I, ———, of ———, do make this my last will and testament, hereby revoking all wills by me heretofore made:

1. [BEQUEST OF PERSONAL ARTICLES TO SON.] I bequeath to my son, ———, my watch and chain and clothing and all other articles of my own personal use and adornment.

2. [LEGACIES FREE OF INHERITANCE TAX TO SON AND MARRIED DAUGHTER, WITH PROVISION FOR DEDUCTION OF ADVANCEMENTS.] I bequeath the following legacies, free of all legacy duties and inheritance or other taxes: To my said son, ———, the sum of \$———; and to my daughter ——— the sum of \$———: Provided, that any money or other property advanced by me in my lifetime to or for the benefit of my said son or of my said daughter which may remain at the time of my death in my books of account charged against him or her shall be offset and applied in reduction pro tanto of their respective legacies.

3. [RELEASE OF MORTGAGE DEBT TO MARRIED DAUGHTER.] I release to my said daughter ———, or to her representatives if she shall die in my lifetime, a certain debt of \$———, se-

cured by a mortgage to me upon her house and land situate in ——— dated the ——— day of ———, or so much thereof as shall remain unpaid at the time of my death, and all interest thereon, and I direct that her note for the said debt shall be cancelled and the said mortgage released of record.

4. [RESIDUE IN TRUST.] I devise and bequeath all the rest, residue, and remainder of my estate of every kind and nature whatsoever, which is hereinafter called the trust fund, unto the ——— Trust Company, a corporation organized and existing under the laws of the state of ———, hereinafter referred to as my trustee, to have and to hold the same upon and for the trusts hereinafter set forth.

5. [TRUSTEE TO PERMIT UNMARRIED DAUGHTERS OR DAUGHTER TO RESIDE IN DWELLING HOUSE AND USE FURNITURE, ETC.—PROVISIONS FOR SALE OF HOUSE.] I direct that my trustee shall permit my daughters ——— and ———, so long as they shall both live and remain unmarried, and, in the event of the death or marriage of either of them, shall permit the other, so long as she shall live and remain unmarried, to reside in and occupy, or at their or her option to demise and let and receive and enjoy the rents of, my dwelling house, known as number ——— ——— street, in said city of ———, together with the lands and premises thereto attached and appertaining, and to use all the household furniture and utensils, carpets, linen, plate, pictures, books, and other articles of every kind which shall at the time of my death be therein or thereon or ordinarily used in connection therewith, except money, securities, or other evidences of debt, and the articles hereinbefore bequeathed to my said son, without paying any rent or other compensation therefor, my trustee keeping the said premises in good order, repair, and condition, and paying all taxes and assessments thereon, and keeping the same insured against fire and other casualties in

such amount as my trustee shall deem proper: Provided, that my trustee may sell the said house and premises, if requested in writing to do so by my said daughters while both of them shall remain unmarried, or, in the event of the death or marriage of one of them, if so requested by the other of them remaining unmarried, and that in the event of any such sale or sales my trustee shall invest the proceeds and pay the income thereof to my said unmarried daughters or daughter, as the case may be, so long as they or either of them shall live and remain unmarried in lieu of their or her right to reside in and occupy the said house and premises.

6. [INCOME OF TRUST FUND TO UNMARRIED DAUGHTERS OR DAUGHTER—DISCRETION OF TRUSTEE TO APPLY INCOME FOR MARRIED DAUGHTERS.] I direct that my trustee shall, subject to the foregoing provisions of article 5 hereof, pay the income of the trust fund to my said daughters —— and —— (unmarried daughters) in equal shares, so long as they shall both live and remain unmarried, and, in the event of the death or marriage of either of them, shall pay the whole income thereof to the other so long as she shall live and remain unmarried, in quarterly payments, or in more frequent payments if my trustee shall see fit: Provided, that in the event that my said daughter —— (married daughter), or either of my said daughters —— or —— (unmarried daughters) who may have married, shall by reason of having become a widow or for any other cause be in the judgment of my trustee insufficiently provided for, then my trustee shall pay to such daughter or expend for her use and benefit so much of the income of the trust fund (not exceeding one-third of the income thereof derived from other sources than the proceeds of any sale made under the foregoing provisions of the fifth article hereof) as my trustee in the discretion of the trustee shall deem proper.

7. [ON DEATH OR MARRIAGE OF BOTH UNMARRIED DAUGHTERS TRUSTEE TO DIVIDE TRUST FUND AMONG TESTATOR'S CHILDREN AND ISSUE.] My trustee shall continue to hold the trust fund so long as my said daughters —— and ——, or either of them, shall live and remain unmarried, and no longer; and whenever there shall no longer be one of them living and unmarried, I direct that then my trustee shall divide, convey, transfer, and pay the property and estate which shall then comprise the trust fund, absolutely and free of trust, in equal shares, among and to my children who shall survive me, namely, my three daughters and my son above named, and their respective issue, if any one or more of my said children shall have died leaving issue who shall be then living, the issue of any such deceased child taking his or her share by representation and per stirpes.

8. [POWER OF TRUSTEE TO SELL AND LEASE.] I authorize and empower my trustee, in the trustee's discretion, at any time, to sell at private or public sale, or to lease, the whole or any part of the estate and property which may comprise the trust fund, subject, however, to the provisions of the fifth article hereof, and to execute and deliver good and sufficient instruments to convey, lease, and transfer the same.

9. [INVESTMENT CLAUSE.] (*See Form No. 8, cl. 6, p. 1339.*)

10. [APPOINTMENT OF EXECUTOR—EXEMPTION FROM BOND.] I appoint the said —— Trust Company to be executor hereof, and I direct that my executor as well as my trustee above named shall be exempt from giving any official bond. (*Add executors' power to sell. See Form 3, cl. 17, p. 1328.*)

In testimony, etc.

10. Will of Married Woman Exercising Power of Appointment Contained in Her Father's Will in Favor of Her Husband for Life, and if She Has no Children or Issue, in Favor of Her Husband Absolutely, and, Subject Thereto, in Favor of Her Children and Issue Absolutely, and in Default of Issue in Favor of Next of Kin

I, ———, of ———, do make this my last will, hereby revoking all former wills and codicils made by me:

1. [RECITAL OF POWER.] Whereas, by the last will of my father, ———, dated the ——— day of ———, and proved and admitted to probate in and by the probate court of the county of ———, and state of ———, on the ——— day of ———, he gave all the residue of his estate, hereinafter called the trust fund, to the trustees therein designated in trust to pay the income thereof to his wife, ———, during her life and from and after her death to me during my life, and from and after my death to hold the trust fund in trust for such person or persons as I should by will appoint; and whereas, the said (*father's wife*) has died.

[APPOINTMENT.] Now, therefore, in the exercise of the said power of appointment and of all powers enabling me in this behalf, I hereby direct and appoint as follows:

[LIFE INTEREST TO HUSBAND, AND, IF NO ISSUE, ABSOLUTELY.] In the event of my husband surviving me the trustees for the time being of the above-recited will shall from and after my death pay the income of the trust fund to my said husband during his life, but in the event of my said husband surviving me and no child of mine or any issue of any child of mine surviving me the said trustees shall hold the trust fund in trust for my said husband absolutely.

[SUBJECT THERETO, TO CHILDREN AND ISSUE ABSOLUTELY.] In the event of any child of mine or any issue of any child of mine surviving me, then, subject always to the said trust to pay the income to my said husband during his life if he shall survive me, the said trustees shall hold the trust fund in trust absolutely for my children living at my death in equal shares: Provided, that if any child of mine shall have died in my lifetime leaving issue living at my death, such issue shall stand in the place of such deceased child and take per stirpes the share of the trust fund which such deceased child would have taken if he or she had survived me.

[IN DEFAULT OF ISSUE, TO NEXT OF KIN.] In the event of neither my said husband nor any child or issue of any child of mine shall survive me, then the said trustees shall hold the trust fund in trust for the persons or person who would be entitled under the laws of the state of ——— to my personal estate if I had died intestate.

2. [DEVISE AND BEQUEST OF TESTATRIX'S OWN PROPERTY.] I devise and bequeath all my estate real and personal (*as the case may be*).

3. [APPOINTMENT OF EXECUTOR.] I appoint my said husband the sole executor of this my will; but, if he shall not survive me, I appoint ——— as executor thereof.

In witness, *etc.*

II

Codicils

**11. Codicil Substituting Trustee and Executor, Revoking
Legacy and Devise, and Giving Devised
Premises in Trust**

I, ———, of ———, declare this to be a codicil to my will which bears date the ——— day of ———:

[RECITAL OF FORMER APPOINTMENT, LEGACY, AND DEVISE, AND DEATH OF APPOINTEE, LEGATEE, AND DEVISEE.] Whereas, by my said will I appointed my wife, ———, to be a trustee thereunder and the sole executrix thereof, and bequeathed to her the sum of \$———, and devised to her the dwelling house and premises therein described; and whereas, my said wife has since died.

1. [REVOCATION OF APPOINTMENT AND SUBSTITUTION.] Now, I hereby revoke the appointment of my said wife as trustee and executrix of my said will, and I appoint my brother ——— to be a trustee thereunder and the sole executor thereof in her place. And I declare that my said will shall be construed as if the name of my said brother were substituted therein as a trustee and as executor for the name of my said wife.

2. [REVOCATION OF LEGACY AND DEVISE AND DEVISE IN TRUST.] And I hereby revoke the said bequest and the said devise, and I devise the said dwelling house and premises to my trustees thereby and hereby appointed upon the same trusts as are declared in the sixth article of my said will.

3. [CONFIRMATION OF WILL.] In all other respects I confirm my said will.

In witness whereof I have hereunto set my hand this ——— day of ———.

12. Codicil Revoking Settlement of Property in Favor of Sister, and Giving the Same to a Niece on the Same Trusts by Reference

I, ———, of ———, hereby declare this to be a codicil to my will, which bears date the ——— day of ———:

Whereas, by the fourth article of my said will I bequeathed certain property and estate upon certain trusts therein declared in favor of my sister ———, and her children, issue and next of kin: Now I hereby revoke the said bequest, and declare that my trustees shall hold the said property and estate upon trusts, and with and subject to powers and provisions in favor of my niece ———, her children, issue and next of kin, similar in all respects to the trusts, powers, and provisions by my said will declared in favor of my said sister, as if the name of my said niece were throughout my said will substituted in respect to the said property and estate. And in all other respects I confirm my said will.

In witness, *etc.*

13. Second Codicil, Increasing Legacy to Wife, Giving Lapsed Legacy to Children and Grandchildren of Original Legatee, and Revoking Another Legacy

I, ———, of ———, declare this to be a second codicil to my will which bears date the ——— day of ———:

[INCREASED LEGACY TO WIFE.] Whereas, by my said will I gave to my wife, ———, a legacy of \$5,000: Now, I hereby revoke such legacy, and I hereby bequeath to my said wife in lieu thereof the sum of \$10,000.

[BEQUEST OF LAPSED LEGACY TO CHILDREN AND GRANDCHILDREN OF DECEASED LEGATEE.] And whereas, by my said will I gave to my friend ——— the sum of \$——; and whereas,

the said —— has since died: Now, I hereby revoke the said legacy, and I bequeath the said sum of \$—— to his children who shall be living at my death, in equal shares: Provided, that if any child of his shall die in my lifetime leaving a child or children living at my death such child or children shall take, equally if more than one, the share of said legacy which his, her, or their parent would have taken if then living.

[REVOCATION OF LEGACY TO NEPHEW.] And whereas, by my said will I gave to my nephew —— the sum of \$——: Now, I hereby revoke the said legacy in all respects.

[CONFIRMATION OF WILL AND FIRST CODICIL.] In all other respects I confirm my said will and a first codicil thereto bearing date the —— day of ——.

In witness, *etc.*

III

Miscellaneous Clauses

(I) PRELIMINARY CLAUSES

14. Commencement of Will

(For forms of commencement, see the preceding Precedents of Wills.)

15. Commencement of Concurrent Will

This is the last will of me, ——, of ——, of the state of ——, which I hereby declare shall affect and operate upon all my estate, real and personal, saving and excepting only my real estate in British Columbia, which I have devised by another will of even date herewith, such other will to take effect concurrently herewith and independently hereof.

16. Direction as to Burial

I desire that my body may be buried (*or*, that my body may be cremated and my ashes deposited) in my family vault in the _____ Cemetery.

(II) APPOINTMENTS OF EXECUTORS, TRUSTEES, AND GUARDIANS

17. Appointment of Executors ²

I appoint _____ and _____ to be executors of this, my will.

18. Exemption from Bond ³

And I direct that he (*or*, they; *or*, my said executors) be exempt from giving any (surety or sureties upon his (*or*, her; *or*, their)) official bond(s).

19. Appointment of Trustees with Provision for Substitution in Case of Vacancy ⁴

I appoint _____, _____, and _____ to be trustees of this my will; and in case any one or more of them shall die in my lifetime, or shall refuse or be unable to act, then I appoint _____, _____, and _____ to fill in the order named any vacancy in the office of trustee hereof that may occur by reason

² See, also, preceding forms of wills, Form 3, cl. 16; Form 4, cl. 5; Form 5, cl. 7; Form 6, cl. 4; Form 7, cl. 12; Form 8, cl. 1; Form 9, cl. 10; Form 10, cl. 3.

³ In most states the statute requires a bond, with sureties, in such sum as the probate court may direct, conditioned for the faithful performance of the duties of the trust. The statutes differ as to how far the testator may dispense with a bond or with sureties.

⁴ For other forms, see the preceding forms of wills, viz.: Form 3, cl. 13; Form 4, cl. 3; Form 7, cl. 12.

of such death, refusal, or inability as aforesaid. And I declare that the expression "my trustees" used throughout this my will shall include, where the context permits, the trustees or trustee for the time being of this my will, whether original or substituted.

20. Appointment of Executors and Trustees

I appoint —— and —— to be executors and trustees of this, my will.

21. Appointment of Guardian ⁵

I appoint my said wife (*or*, my friend; *or*, my trustees) to be guardian(s) of my infant child or children.

(III) SPECIFIC BEQUESTS ⁶

22. Bequest of Furniture and Effects in House

I give to —— absolutely all articles of household or domestic use or adornment which shall be in or about my house at —— (or such other house as I may reside in) at my death.

⁵ See, also, Form 1, p. 1322; Form 8, cl. 1, p. 1336.

⁶ For other specific bequests see the preceding forms of wills, viz.: Bequest of household and personal articles. Form 3, cl. 1; Form 4, cl. 2; Form 8, cl. 2 (1).

Bequest of business. Form 6, cl. 2.

Bequest of watch and personal articles. Form 7, cl. 1; Form 9, cl. 1.

Bequest of life insurance policy. Form 8, cl. 2 (3).

Bequest of shares of stock. Form 8, cl. 2 (4).

Release of mortgage debt. Form 9, cl. 3.

23. Bequest of Household and Personal Effects to Daughters

I give all my household furniture and effects and my jewelry and all other articles of household or personal use or adornment to such of my daughters as shall survive me, if more than one, in equal shares, to be divided among them in such manner as my executors think fit.

24. Bequest of Household and Personal Effects to Daughters Contingently on Their Attaining Twenty-One Years or Marrying

I give all my household furniture, *etc.* (*as in preceding form*), to such one or more of my daughters as shall survive me and attain the age of twenty-one years or marry under that age; and I declare that until the final division thereof my trustees may in their discretion either permit any one or more of my daughters, whether her or their interest or interests shall have vested or not, to have the use and enjoyment thereof or of any portion thereof or may deposit the same for safe custody in such place as they think fit.

25. Bequests to Daughter of Effects in Her Rooms

I give to my daughter ——— all household furniture, pictures and other effects ordinarily used by her in her bedroom and sitting room in my house at ———.

26. Bequest of Household and Personal Effects to Wife

I give all my household furniture, plate, plated articles, linen, china, books, manuscripts, pictures, drawings, prints, engravings, etchings, lithographs, works of art, musical instruments, printed music, watches, jewelry, clothing, and other articles of

household or domestic or personal use or adornment to my wife, ———, absolutely.

27. Bequest to Wife of Such Personal and Household Effects as She May Select and Residue to Daughters

I give to my wife, ———, such of my household furniture, *etc.* (as in preceding form), as she may select up to the value of ——— dollars, the value of the selected articles to be determined by my executors. The residue thereof not selected by her I give to my daughters in equal shares; and in case they do not agree as to the allotment thereof between them, I direct my executors to make such allotment as they shall see fit.

28. Bequest of Household and Personal Effects to Wife for Life or Widowhood, and Thereafter to Children

I give all my household furniture, *etc.* (as in Form 26, p. 1352), to my wife, ———, to be used and enjoyed by her during her life (she keeping the same in good repair and condition, reasonable wear and tear excepted, and insured in their reasonable value against loss or damage by fire) and after her death (or remarriage, whichever shall first happen) I give and bequeath the same to my children in equal shares. I direct that my executors shall make an inventory of the said chattels, and shall take a receipt of the same from my said wife, and shall file the said inventory and receipt in the probate court.⁷

⁷ It is not the practice to require of the life tenant in such case a bond or other security as a condition of delivery of and for safe-keeping the chattels, unless there is danger of their being wasted, in which case the life tenant may be required to give bond.

29. Bequest of Farming Stock

I give to my son, ——, absolutely all my stock of corn, hay, and grain, cattle, horses, cows, calves, sheep, lambs, swine, live stock and animals of all kinds and also my farming utensils, tools and implements, reaping, harvesting, threshing, and other agricultural machines, wagons, carts, carriages (automobiles), harnesses, saddles, and other accoutrements, and all other live and growing crops whatsoever which shall at my death be in and upon my farm at —— (or any other farm belonging to me at my death).

30. Bequest of Ready Money

I give to my wife, ——, absolutely all ready money which at my death may be in or about my place of residence, and also all money standing to my credit on account current at the —— Bank (*or*, at any bank).

31. Bequest of Library

I give to —— my library of books, including the bookcases.

32. Bequest of Letters and Papers

I give to —— all my letters, copies of letters, papers, manuscripts, memoranda, diaries, and writings, but not legal documents, securities for money, and books of account.

33. Bequest of Sporting Implements

I give to my son ——, absolutely, all my fishing tackle, guns, and sporting implements.

34. Bequest of a Debt

I give to —— all sums of money owing to me from —— and all interest due and to become due thereon and all mortgages or other securities for the same.

35. Release of Debts

I forgive and release unto —— all sums, whether for principal or interest, which at my death may be owing by him to me, and I declare that, if the said —— shall die in my lifetime, his legal representatives shall be entitled to the benefit of this gift as if he had died immediately after my death.

(IV) SPECIFIC DEVISES *

36. Devise of all Real Estate

I devise all my lands and real estate whatsoever and where-soever to —— absolutely.

37. Devise of Described Real Estate

I devise all those parcels of land situated in —— and described as (*description*) to —— absolutely.

38. Devise to Joint Tenants or Tenants in Common

I devise my dwelling house and premises described as (*description*) to my daughters —— and —— as joint tenants (*or*, as tenants in common in equal shares).

* For other specific devises, see the preceding forms of wills, viz.:
Devise of dwelling house to wife. Form 2, cl. 1; Form 3, cl. 3.
Devise of dwelling house freed from mortgage. Form 7, cl. 5.
Devise of dwelling house to wife for life, remainder to daughter.
Form 8, cl. 4.

39. Devise to a Hospital

I devise all the lands and real estate which I now own in _____ to the _____ Hospital absolutely.

40. Devise with Provision against Lapse

I devise all that parcel of land (*description*) to _____ absolutely; and, if he shall die in my lifetime, I declare that this devise shall not lapse, and the said land shall devolve in all respects as if his death had happened immediately after mine.

41. Same—Another Form

I devise all that parcel of land (*description*) to _____ absolutely; and, if he dies in my lifetime, I devise the same to the persons or person, not being creditors or a creditor, who would be entitled under the provisions of any testamentary provision made by him or by virtue of his intestacy, as the case may be, if he had died immediately after me.

42. Devise to Person with Gift over on Death without Issue

I devise my lands and hereditaments at _____ to _____ absolutely; but, if he dies without leaving issue living at his death, then I devise the said lands and hereditaments to _____ absolutely.

43. Devise to Testator's Children and Issue of Deceased Children

I devise all my real estate whatsoever and wheresoever to my children living at my death and the issue living at my death of any child of mine who may have died in my life-

time, if more than one, as tenants in common, in equal shares as between brothers and sisters, but so that such issue shall take, through all generations, if more than one, the share which their parent would have taken if such parent had survived me.

44. Devise to Testator's Sons with Successive Gifts Over if They Predecease Him

I devise my lands and real estate at ———, described as (*description*), to my eldest son, ———, in fee simple; but, if he dies in my lifetime without leaving issue (male) living at my death, then to my second son, ———, in fee simple; but, if he dies in my lifetime without leaving issue (male) living at my death, then to my third son, ———, in fee simple; and, if he dies in my lifetime without leaving issue (male) living at my death, I declare that the said lands and real estate shall fall into and become part of my residuary estate.

45. Devise to Testator's Children and Grandchildren Attaining Twenty-One per Stirpes

I devise my lands and premises described as (*description*) unto and to the use of such child or children of mine as shall be living at my death and the child or children then living of any child of mine who may have died in my lifetime, if more than one, as tenants in common, but so that the children of any deceased child of mine shall together take, if more than one, in equal shares as tenants in common, only the share which their parent would have taken had such parent survived me; but, if any such child or grandchild of mine dies under the age of twenty-one without leaving issue living at his or her death, I devise the share of such child or grandchild so dying, whether original or accrued under this present clause,

to the uses and subject to the provisions, including this present clause, hereby declared in respect to the other shares hereby originally devised to my children and grandchildren living at my death.

46. Devise Subject to Payment of Debts, Legacies, Etc.

I devise my lands and real estate situate at ———, but subject to and charged, in exoneration of my personal estate, with the payment of my debts, funeral, and testamentary expenses and the legacies and annuities given by this my will or any codicil thereto, to ——— absolutely.

47. Devise Subject to a Mortgage

I devise my land at ———, described as (*description*), subject to and charged with the payment of all sums, both principal and interest, secured thereon by mortgage at my death, to ——— absolutely.

48. Devise in Exercise of Special Power of Appointment

In the exercise of the power for this purpose given to me by the will of my deceased father dated the ——— day of ———, and proved and admitted to probate in and by the probate court of ——— on the ——— day of ——— (*or*, by an indenture dated the ——— day of ———, recorded ———, and made between ——— and of every or any other power enabling me in this behalf, I devise and appoint all the lands and real estate which may at my death be subject to such power of appointment to my daughter ——— absolutely.

(V) GENERAL LEGACIES ***49. Legacy with Provision against Lapse**

I give to —— the sum of —— dollars; and, if he shall die in my lifetime, I declare that this legacy to him shall not lapse, but shall pass to his personal representatives as part of his estate as if he had died immediately before me (*or, as if my will had taken effect immediately before his death*).

50. Legacy to Daughters of a Friend and the Children of Deceased Daughters

I give to each of the daughters of my friend —— the sum of —— dollars; and, if any such daughters shall die in my lifetime leaving a child or children living at my death, I give to such child or children a like sum, to be divided among them, if more than one, in equal shares.

51. Legacy Contingent on Attaining Twenty-Five Years or Marrying

I give to ——, if she shall attain the age of twenty-five years or marry before attaining that age, the sum of —— dollars, together with interest thereon from the date of my death until payment or investment as hereinafter directed at

* For other general legacies, see the preceding forms of wills, viz.: Pecuniary legacies. Form 2, cls. 2, 3; Form 3, cl. 2; Form 6, cl. 1; Form 7, cls. 2-4; Form 8, cl. 3.

Bequests to servants. Form 7, cl. 4.

Contingent legacy. Form 8, cl. 3 (3).

Legacy in trust. Form 7, cl. 7.

Declaration as to time of payment. Form 8, cl. 3 (1).

Legacies subject to reduction for advancements. Form 8, cl. 3 (2); Form 9, cl. 2.

Legacies subject to deduction of debts. Form 8, cl. 3 (4).

Provisions for payment of inheritance tax by estate. Form 3, cl. 4; Form 7, cl. 8; Form 8, cl. 3; Form 9, cl. 2.

the rate of —— per cent. per annum; and I declare that, if the said —— shall be under that age and unmarried at my death, my trustees shall invest the said sum of —— dollars in any form of investment hereby authorized, with power to vary such investment from time to time, and shall stand possessed of all such investments and of the investments for the time being of any accumulations of income made under the direction hereinafter contained and the income thereof respectively, upon trust to pay and apply the whole or any part of such income to or for the benefit of the said ——, and from time to time to invest the residue, if any, of such income in manner aforesaid, and to stand possessed of all the aforesaid investments in trust for the said —— if she attains the age of twenty-five years or marries; but if she dies unmarried under that age, then I declare that the aforesaid investment shall fall into and form part of my residuary estate.

52. Legacy to Children and an Illegitimate Child

I give to each of my children, including ——, the sum of —— dollars.

53. Gift to Charitable Institutions of One Year's Subscription

I give to each of the following hospitals and institutions (*naming them*) to which I shall in the twelve calendar months preceding my death have subscribed any sum of money which shall be unpaid at the time of my death a sum of money equal to the amount of such subscription then remaining unpaid, which shall be taken to be in payment of such subscription, and not as additional thereto.

54. Legacies to Executors

I bequeath to each of my hereinafter named executors who shall act in the execution of this my will the sum of ——— dollars, to be in lieu of all commissions and fees.

55. Declaration as to Time of Payment and Priority of Legacies and Payment Free from Inheritance Tax

I give the following legacies, which I declare shall be paid within ——— months from my death, and in priority of all other legacies hereby or by any codicil hereto bequeathed, and free of inheritance tax or legacy duty, and shall carry interest from my death at the rate of ——— per cent. per annum, that is to say (*specify the legacies*).

(VI) GIFTS OF RESIDUE ¹⁰

56. Devise and Bequest of Residue to Individual

I devise and bequeath all my estate real and personal whatsoever and wheresoever not hereby or by any codicil hereto otherwise specifically disposed of, (including any property over which I may have any power of appointment) after payment of my debts, funeral and testamentary expenses, and the legacies bequeathed hereby or by any codicil hereto, unto ——— absolutely.

¹⁰ For other gifts of residue, see the preceding forms of wills, viz.:

Gift of residue to wife and children. Form 2, cl. 4.

Gift of residue to wife if surviving, otherwise to son and issue. Form 6, cl. 3.

Gift of residue to individuals and issue by representation. Form 7, cl. 9.

Gift of residue in trust. Form 3, cl. 5; Form 4, cl. 3; Form 8, cl. 5; Form 9, cl. 4.

57. Bequest of Residuary Personal Estate

I bequeath all other personal estate, including (*or, except*) chattels real, not hereby or by any codicil hereto otherwise specifically disposed of, to which I may be entitled at the time of my death, unto ——— absolutely.

58. Devise of Residuary Real Estate

I devise all the residue of my real estate other than (*or, including*) chattels real, not hereby or by any codicil hereto otherwise specifically disposed of, to which I may be entitled at my death, unto ——— absolutely.

(VII) GIFTS IN TRUST ¹¹

59. Trust of Income for Wife During Widowhood Subject to Obligation to Maintain Children

In trust to pay the income thereof to my said wife during her widowhood, she thereout maintaining and educating my sons while under the age of twenty-one years and my unmarried daughters.

60. Trust of Income to Daughters with Power of Disposition to Survivor

In trust to pay the income thereof to my daughters, ———, ———, and ———, and the survivors and survivor of them during their or her respective lives, and after the death of such survivor in trust as to both capital and income of the trust fund for such persons and in such manner as such survivor shall by will appoint.

¹¹ For other gifts in trust, see the preceding forms of wills, viz.: Form 3, cls. 5-15; Form 4, cls. 3, 4; Form 5, cl. 3; Form 7, cls. 6, 7; Form 8, cl. 5; Form 9, cls. 4-8.

61. Trust of Personalty for Sons at Twenty-One and Daughters at that Age or Previous Marriage

In trust for my children who, being male, attain the age of twenty-one years, or, being female, either attain that age or marry under that age, and, if more than one, in equal shares as tenants in common.

62. Trust of Personalty for Children and Issue of Deceased Children of Testator, Living at his Death, at Twenty-One

In trust for my children living at my death who attain the age of twenty-one years and the children or other issue then living of any then deceased child of mine who attain the age of twenty-one years, if more than one in equal shares, as tenants in common, but so that the children of other issue of any deceased child of mine, if more than one, shall take equally between them as tenants in common only the share which their parent would have taken had such parent been living at my death and attained a vested interest.

63. Trust of Personalty for Children and Grandchildren in Unequal Shares

In trust as to two unequal sixth parts for my son ——— absolutely; as to one other sixth equal part for my son ——— if and when he attains the age of twenty-one years; and as to the remaining three equal sixth parts in trust in equal shares for my grandchildren ——— and ——— if and when they shall respectively attain the age of twenty-one years, or in case of my said granddaughter ——— if and when she shall marry under that age. If the share of any of my said sons or grandchildren shall fail to vest as aforesaid, my trustees shall hold

such share in trust for the other or others of my said sons and grandchildren in equal shares as tenants in common.

64. Trust of Personalty for Wife and Children Equally

In trust for my wife, ———, and my children in equal shares as tenants in common, my wife's share to be equal to the share of each of my children.

65. Trust of Personalty for Brothers and Sisters and Children of Deceased Brothers and Sisters

In trust for my brothers and sisters living at my death and the children then living of any then deceased brother or sister of mine who attain the age of twenty-one years or, being female, marry under that age, if more than one, as tenants in common, but so that the children of any such deceased brother or sister shall take equally between them as tenants in common only the share which their parent would have taken had he or she survived me.

66. Trust of Personalty for Two as Tenants in Common on Attaining Twenty-One, with Gift Over on the Death of Either to the Other

In trust for ——— and ——— if and when they shall respectively attain the age of twenty-one years in equal shares as tenants in common, and in case either of them shall die in my lifetime or before attaining the age of twenty-one years I bequeath the share hereinbefore bequeathed to the one so dying to the other of them if and when he shall attain the age of twenty-one years.

67. Declaration Against Lapse of Share of Residue

I declare that any share of the residue hereinbefore bequeathed shall not lapse by reason of the death in my lifetime of any beneficiary who would, if living, at my death become entitled thereto under this my will, but shall at my death pass to the representatives of such beneficiary as if such beneficiary had died immediately after me (*or, but shall be retained by my trustees upon the like trusts as if such beneficiary had died immediately after me*).

68. Trust for Imbecile Son

I declare that my trustees shall set apart and hold the sum of ——— dollars upon trust to pay and apply in whole or any part of the income thereof to or for the benefit of my son ——— during his life, and to accumulate any surplus income ¹² at compound interest, with power to pay the said income or any part thereof to any person or persons having care of my said son without seeing to the application thereof, and with power also at all times to apply such accumulations as if they were income of the then current year, and after the death of my said son my trustees shall hold the said sum and accumulations, if any, and the income thereof respectively in trust (*as may be desired*).

69. Gift for Annuity to a Trustee in Trust for a Person of Unsound Mind

I give to (*trustee*) during the life of my son ——— an annuity of ——— dollars to be paid by equal quarterly payments, the first of which shall be made three months after

¹² In some states the accumulation of the income of personalty is limited by statute.

my death. And I authorize my trustees to provide for the payment of the said annuity either by purchase from some insurance company of good standing or by setting apart and appropriating so much of my residuary estate, hereinafter called "the annuity fund," as shall in their opinion be sufficient by means of the income thereof to pay such annuity; and I declare that when the said annuity shall have been provided for in either of the ways aforesaid, such annuity shall be wholly charged on the purchased annuity or the annuity fund, as the case may be, in exoneration of the rest of my estate. And I further declare that the capital of the annuity fund, if any, may be resorted to in case at any time the income thereof be insufficient to pay the said annuity, and that on the cesser of the said annuity the annuity fund, if any, shall revert to and become part of my residuary estate, and that any surplus income arising from the annuity fund, if any, shall be applied as income of my residuary estate.* And I direct the said (*trustee*) to hold the said annuity of ——— dollars upon trust to pay therefrom all expenses of and incidental to the provision of a home and the care and maintenance of my said son ———; and I declare that the said (*trustee*) shall have full and uncontrolled discretion as to the application of the said annuity, and that if and so long as my said son shall reside with the said (*trustee*) he shall be entitled to retain for his own benefit out of the said annuity the sum of ——— dollars by way of rent.

70. Gift of an Annuity in Trust for a Spendthrift and his Wife and Children

(*Follow preceding form to *.*) And I direct the said (*trustee*) to hold the said annuity of ——— dollars upon trust to pay and apply the same to or for the benefit of my said son during his life, or until he shall alienate or charge or incur the same, or become bankrupt, or do or suffer any act or thing

whereby the same or any part thereof would but for this present provision become vested in or payable to any other person or persons, and after the happening of any event hereinbefore mentioned,** I declare that the said annuity of —— dollars shall be applied as income of my residuary estate (*or, in lieu of the above words following the,** the effect of which is to terminate the annuity, substitute the following:* "Upon trust to apply the said annuity during the residue of the life of my said son either for his benefit or for the benefit of his wife or child or children, if any, for the time being, or any one or more of them exclusively of the others or other of them in such manner in all respects as my trustees may think fit; and in case there is no such wife, child, or children in existence, then for the benefit of my said son or the person or persons for the time being entitled to the income of my residuary estate as my trustees may in their sole and uncontrolled discretion think best.")

(VIII) POWERS OF TRUSTEES AND OTHER TRUSTEE CLAUSES

71. Power as to Investments

(*See the preceding forms of wills, viz.: Form 3, cls. 6, 10; Form 4, cl. 4; Form 7, cl. 14; Form 8, cl. 6.*)

72. Power to Trustees to Sell or Mortgage for Payment of Incumbrances ¹³

I authorize my trustees at any time or times in their discretion to sell or mortgage at such price and upon such terms and conditions as they may think fit all or any part of the real or personal property forming part of my residuary (*or, the*

¹³ A broad power to sell, etc., is usually to be preferred. See Form 3, cl. 12, p. 1327; Form 7, cl. 13, p. 1335; Form 8, cl. 6, p. 1339; Form 9, cl. 8, p. 1344.

trust) estate for the purpose of paying or securing to the respective mortgagees or mortgagee for the time being any mortgage debt or debts owing by me at my death. And I declare that no purchaser or mortgagee shall be concerned to inquire as to the propriety of any sale or mortgage under this power or as to the application of any money raised thereby.

73. Power to Trustees to Purchase Trust Property

I authorize my son ———, notwithstanding that he shall be a trustee of this my will (*or, my trustees or any of them*), at any time or times to purchase, whether at public or private sale, all or any part of the property forming part of my residuary estate.

74. Power to Trustees to Appropriate and Partition

I declare that my trustees shall have power to appropriate and partition any real or personal property forming part of my residuary estate towards the share of any person or persons therein under the trusts hereinbefore contained, and to charge any share with such sums by way of equality of partition as they may think fit, and for such purposes to fix the value of any real or personal estate so appropriated as they think fit. And I declare that every such valuation, appropriation, and partition shall be binding upon all persons interested in this my will.

75. Power to Trustees to Delegate Trusts with Regard to Property Outside of State

I empower my trustees or my executors to appoint from time to time upon such terms as they may think fit any person or persons as their attorney or attorneys for the purpose of exercising any of the trusts or powers herein expressly or im-

pliedly given to my trustees or executors with respect to any property belonging to me without the state of _____.

76. Power to Trustees to Employ Agents

My trustees shall have power, instead of acting personally, to employ and pay any other person or persons to transact any business or to do any act of whatever nature in relation to the trusts of this my will, including the receipt and payment of money, without being liable for loss thereby incurred.

77. Employment of Trustee as Lawyer or in Other Professional Capacity

Any one of my trustees being a lawyer or being engaged in any profession or business may be so employed to act, and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trusts hereof, including acts which a trustee could have done personally.

78. Power to Trustees to Act on Opinion of Counsel

My trustees shall have power to take and act upon the opinion of such counsel learned in the law as they may see fit, whether in relation to the interpretation of this my will or any other document or matter or as to the administration of the trusts hereof without being liable to any person beneficially interested with respect to any act done in accordance with such opinion. But nothing herein shall prevent my trustees from applying to the court, if they shall think fit, or shall prevent any of the beneficiaries from so doing.

79. Direction that Opinion of Majority of Trustees shall Prevail

I declare that, should any difference of opinion at any time exist between my trustees for the time being of this my will in relation to the doing or forbearing to do anything or otherwise in the execution of the trusts of this my will, the opinion and determination of the majority of such trustees shall prevail and be binding (notwithstanding that any one or more of such trustees may be personally interested or concerned in the matter in dispute).

80. Maintenance of Minor Children out of a Common Fund ¹⁴

I direct my trustees to receive the income arising from my residuary estate (*or*, from the trust fund), or from so much thereof as shall not for the time being have become transferable to any child of mine under the trusts hereinbefore declared, and to pay or apply such income or so much thereof as my trustees shall see fit for the maintenance, education, or benefit of such of my children as shall for the time being be under the age of twenty-one years, or any one or more exclusively of the others or other of such children in such proportions, at such times, and in such manner in all respects as my trustees shall in their sole discretion think proper, with liberty in my trustees to pay the whole or any part of the said income to the guardian or guardians of any of the said children for the purposes aforesaid without seeing to the application thereof. And I direct my trustees to invest the surplus, if any, of the said income in manner hereby authorized, and to accumulate the same at compound interest, with power to

¹⁴ For another form of maintenance clause, see Form 3, cl. 8, p. 1325.

apply such accumulations as if the same were income for the current year. And so soon as there shall no longer be any child of mine under the age of twenty-one years I direct my trustees to pay and divide the residue of the said accumulations remaining unapplied for the purposes aforesaid to and between such of my children as shall have attained the age of twenty-one years in the same proportions as the residuary (*or, trust*) fund is hereinbefore made distributable among such children.

81. Advancements to Testator's Children

I declare that at any time or times (but during the life of ——— only with her consent in writing) my trustees may raise any part or parts, not exceeding altogether one-half (*or, any sum or sums not exceeding ——— dollars in the whole*), of the then presumptive or vested share (*or, legacy*) of any child (*or other issue*) of mine under the trusts hereinbefore declared, and may pay or apply the same as my trustees shall think fit for the advancement or benefit of such child (*or issue*).

82. Devolution of Powers of Trustees ¹⁵

I declare that all powers or trusts hereinbefore given to or imposed on my trustees hereinbefore named may be exercised or performed by the survivors or survivor of them (*or, the executors or administrators of such survivor*) or other the trustees or trustee for the time being of this my will.

¹⁵ See, also, Form 3, cl. 15, p. 1328; Form 8, cl. 1, p. 1336.

83. Power to Appoint New Trustees ¹⁶

I declare that, if any trustee of this my will shall die, or remain out of the state of —— for more than one year, or desire to be discharged, or refuse to act, or be incapable of acting as such trustee, then and as often as the same shall happen, it shall be lawful for —— during his (*or*, her) life, and after his (*or*, her) death for the surviving or continuing trustees or trustee hereof for the time being—and for the purpose of this clause a retiring trustee shall be deemed a continuing trustee if willing to act—or for the personal representatives of the last surviving or continuing trustee, to appoint a new trustee or new trustees hereof in the place of the trustee so dead or remaining out of the said state or desiring to be discharged or refusing or being incapable as aforesaid, and that on every new appointment the trust property shall forthwith be conveyed to or otherwise vested in such new trustee jointly with any other trustee thereof for the time being. And I declare that every trustee so appointed shall as well before as after such trust property shall have been so conveyed or otherwise vested in him have the same powers, authorities, and discretions and may in all respects act as if he had originally been appointed a trustee by this my will.

84. Power to Appoint Additional or Separate Trustees

I declare that it shall be lawful at all times, notwithstanding that there may not be any vacancy in the number of my trustees, to increase the number thereof or to appoint separate trustees of any portion or portions of my estate and property hereby devised and bequeathed and held on separate and dis-

¹⁶ See, also, Form 3, cl. 14, p. 1327; Form 8, cl. 8, p. 1340.

tinct trusts, and that any one or more of my trustees may under this power be appointed or remain a separate trustee or separate trustees.

85. Trustees' Indemnity Clause ¹⁷

I declare that no trustee of this my will shall be liable for any loss not attributable to his own dishonesty or to the willful commission of an act known by him to be a breach of trust.

(IX) POWERS OF EXECUTORS

86. Power to Executors to Sell Real and Personal Estate ¹⁸

I authorize and empower my executors or the survivor of them, or the executors or executor for the time being of this, my will, if and whenever in the settlement of my estate they shall deem it advisable, to sell at private or public sale at such price as they shall think fit the whole or any part of my real and personal estate, and to execute good and sufficient deeds and other instruments necessary or proper to convey and transfer the same to the purchasers, who shall not be bound to see to the application of the purchase money.

87. Power to Executors to Mortgage

I authorize and empower my executors or the survivor of them, or the executors or executor for the time being of this my will, if and whenever in the settlement of my estate they shall deem it advisable, to mortgage upon such terms and con-

¹⁷ For another form, see Form 3, cl. 11, p. 1327.

¹⁸ This power is desirable to obviate the expense and delay of obtaining from the probate court license to sell, which is otherwise required for real estate. For other forms, see Form 3, cl. 17, p. 1328; Form 7, cl. 13, p. 1335.

ditions as they may think fit all or any part of my real estate, and I declare that no mortgagee shall be bound to see to its application of any money raised thereby.

88. Power to Executors to Defer Calling in Debts

I authorize my executors to defer the calling in of any debt or debts (bearing interest) which may be owing to me from _____ at my death for such period (not exceeding _____ years) as they may see fit, without requiring any security or further security therefor, provided the interest be regularly paid, without being responsible for any loss by reason of such omission to call in or require security.

89. Power of Executors to Postpone Payment of Legacies

I declare that the payment of the legacies hereinbefore bequeathed to (*names*) may, if my executors think fit, be postponed for not exceeding _____ years from my death, and shall carry interest at the rate of _____ per cent. per annum from my death, payable half yearly.

90. Power to Executors to Arrange and Compromise

I authorize the executors or executor for the time being of this my will to pay all debts and liabilities claimed to be owing by me or my estate upon such evidence as they shall think proper, and to satisfy all debts and liabilities claimed to be owing to me or my estate for such sums and upon such terms of payment and security as they shall see fit, and to accept any composition therefor, and to compromise, submit to arbitration, and settle all accounts, matters, and differences relating to my estate, and generally to act in the premises as they shall deem expedient, without being answerable for any loss occasioned thereby.

91. Power to Executors to Carry on Testator's Business¹⁹

I authorize my executors or executor for the time being to carry on the whole or any part of the business of —— now carried on by me at —— until such time as they shall deem it expedient to sell the same or to wind up the said business, as the case may be, and to employ therein any capital which may be employed therein at my death, and to augment or decrease the capital employed therein, and to appoint any person, including any one or more of themselves, manager, or agent to act therein at a salary or otherwise, and generally to act in the premises as if they were absolute owners thereof without being liable or responsible for any loss arising thereby, and, in case the same shall be carried on at a loss, I declare that my executors shall be reimbursed for all loss so incurred by them out of my general estate.

92. Power to Executors to Wind up and Sell Testator's Partnership Business

In the event of my dying while I am a member of the firm of ——, I authorize my executors to ascertain my share in the said business, and either to procure immediate payment of the value thereof, or in their discretion to allow the whole or any part of my share to remain in the said business as a loan bearing interest at —— per cent. per annum for any period not exceeding —— years from my death, and to arrange for the payment of my said share with or without taking security for such payment and without being responsible for any loss occasioned thereby, and also to sell and concur with the other partners or partner in selling the said business to any company or individual or in winding up the affairs thereof, and in

¹⁹ See, also, Form 8, cl. 7, p. 1340.

winding up the said business to pay, compound, or submit to arbitration all accounts, debts, or other sums due or owing upon such evidence strictly legal or not as to my executors may seem satisfactory, and to sell upon credit and give time for payment, with or without taking security therefor, for such price or prices and upon such terms as my executors may think fit, and generally to enter into and do all such agreements, releases, and acts as may be necessary to wind up the same in the manner most beneficial to my estate.

(X) TESTIMONIUM CLAUSES

(The testimonium clause is followed by the testator's signature and by the seal, if any.)

In witness (*or, testimony*) whereof I (the said ———) have hereunto set my hand (*or, subscribed my name*) this ——— day of ———.

In witness whereof I have hereunto set my hand (and seal) this ——— day of ———.

In testimony whereof I have subscribed my name (and set my seal) to this my last will and testament, contained in ——— (typewritten) sheets of paper, upon each of the foregoing of which I have also written my name (at ———, in the state of ———) this ——— day of ———.

(XI) ATTESTATION CLAUSES

(The attestation clause should be followed by the signatures of the witnesses, and it is desirable, and in some states provided, that they shall write opposite their names their respective places of residence.)

Signed (*or, subscribed*) by the above-named ——— (with his mark) as his last will (*or, codicil to his last will, which bears*

date the —— day of ——) in the presence of us, who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

Signed, sealed, published, and declared by ——, the above-named testator, as and for his last will and testament, in the presence of us, who at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses this —— day of ——.

The foregoing instrument, consisting of —— pages, was on this —— day of —— subscribed at the end thereof by ——, the above-named testator, and by him signed, sealed, published, and declared to be his last will and testament, in the presence of us and each of us, who thereupon at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Signed by the above-named testator, ——, by the hand of ——, as the last will of the said testator, by his direction and in his presence, and in the presence of us, who at his request (*as in first form*).

(In some states it is required that a person who signs the testator's name by his direction shall write his own name as a witness to the will.)

Signed (*as in first form*), the alteration (*or*, erasure; *or*, interlineation) in line —— of page —— hereof having been made previously thereto.

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*Ex lib**D. F. N.**11/23/15.*

