

UNOFFICIAL COPY

86221490

86221490

70 49 933 02 9
all

This document has been prepared by and should be returned to David Ley Hamilton, Esquire, Morris, Nichols, Arsht & Tunnell, 1105 N. Market Street, P.O. Box 1347, Wilmington, DE 19899

BOX 333 - HV

2

MORTGAGE

\$27.00

Property of Cook County, Illinois

THIS MORTGAGE (this "Mortgage") is granted as of the 28th day of May, 1986, by PRECISION SCIENTIFIC, INC., a Delaware corporation, (the "Mortgagor"), to MORGAN BANK (DELAWARE), a Delaware bank and trust company having its principal place of business at 302 Market Street, Wilmington, Delaware (the "Mortgagee").

W I T N E S S E T H:

WHEREAS, pursuant to the terms of that certain Term Loan, Revolving Credit and Security Agreement of even date herewith between the Mortgagor and the Mortgagee (the "Loan Agreement") the Mortgagee has agreed to extend credit to the Mortgagor in the amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) for the purpose of providing financing in connection with the Mortgagor's purchase of certain assets and, in order to evidence such indebtedness to the Mortgagee, Mortgagor has executed and delivered notes of even date herewith (the "Term Notes") in the aggregate above-stated principal amount, bearing interest and being payable in accordance with the terms thereof;

WHEREAS, pursuant to the terms of the Loan Agreement the Mortgagee has also agreed to extend additional credit to the Mortgagor in an amount not to exceed Six Million Dollars (\$6,000,000.00) for the purpose of providing additional financing for the Mortgagor's asset purchase and for the purpose of providing working capital financing for the Mortgagor's design, development, manufacture and sale of laboratory equipment and systems and petroleum process monitoring instruments and, in order to evidence such indebtedness to the Mortgagee, Mortgagor has executed and delivered a note of even date herewith (the "Revolving Note") in the above-stated principal amount, bearing interest and being payable in accordance with the terms thereof (the Revolving Note and the Term Notes hereinafter collectively referred to as the "Notes"); and

WHEREAS, the Mortgagor and the Mortgagee have agreed to enter into this Mortgage as an inducement to the Mortgagee to make the aforesaid loans and to secure the prompt payment of all amounts from time to time due under the Notes;

NOW, THEREFORE, in order to secure the payment of all sums due or to become due under the Notes, the Loan Agreement and under the terms of this Mortgage, as well as to secure the performance of all of the covenants and agreements contained

86221490

in the Notes, the Loan Agreement and this Mortgage, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor has granted, bargained and sold, mortgaged, conveyed, aliened, enfeoffed, released, confirmed, assigned, transferred, granted a security interest in, and set-over, and by these presents does grant and convey, bargain and sell, mortgage, grant a security interest in, alien, enfeoff, release, confirm, assign, transfer, and set-over unto the Mortgagee, its successors and assigns, the real estate more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Land").w

TOGETHER with the tenements, hereditaments, appurtenances and all the estates and rights of the Mortgagor in and to the Land.

TOGETHER with all the right, title and interest of the Mortgagor in and to all streets, roads and public places, opened or proposed, adjoining the Land, and all easements and rights of way, public or private, now or hereafter used in connection with the Land.

TOGETHER with all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the extent of the interest of the Mortgagor therein, now or hereafter acquired.

TOGETHER with all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips of land, adjacent to or used in connection with the Land.

TOGETHER with all buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Land.

TOGETHER with all building materials, supplies, equipment, machinery and other chattels delivered or being upon the Land and intended to be incorporated therein or installed thereon.

TOGETHER with any and all awards, damages, payments and other compensation, and any and all claims therefor, and rights thereto, which may result from taking or injury by virtue of the exercise of the power of eminent domain in respect of, or any damage, injury or destruction in any manner caused to, the Land and/or buildings, structures and improvements thereon, or any part thereof, or from any change of grade or vacation of any street abutting thereon, all of which awards, damages, payments, compensation, claims and rights are hereby assigned, transferred and set over to the Mortgagee to the fullest extent permitted by law. The Mortgagee is hereby irrevocably appointed attorney-in-fact for the Mortgagor, effective upon the occurrence of an Event of Default, to settle for, collect and receive any such awards, damages, payments and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor.

TOGETHER with all rights, title and interest of the Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor.

TOGETHER will all proceeds of all of the foregoing.

ALL of which property, and rights therein, hereinabove described or mentioned being hereinafter collectively called the "Mortgaged Property."

This Mortgage shall secure not only any existing principal indebtedness, but also future principal advances to the Mortgagor by the Mortgagee, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within ten years (10) years from the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

The maximum principal amount to be secured hereby is \$10,250,000. This Mortgage shall also secure, in addition to the maximum principal amount, interest, service charges and any disbursements made for the payment of taxes, assessments, or insurance on the Mortgaged Property, and all other costs or expenses incurred by Mortgagee under circumstances as herein provided or as provided in the Loan Agreement or the Notes, with interest on such disbursements.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, forever.

AND at all times until the entire unpaid principal indebtedness of the Notes, and all sums now or hereafter due to the Mortgagee under the terms of the Notes, the Loan Agreement, or this Mortgage, are fully paid, together with all interest thereon.

The Mortgagor further covenants, promises and agrees with the Mortgagee as follows:

ARTICLE I DEFINITIONS

Section 1.1. Terms Defined in Recitals.

The following terms defined in the recitals to this Mortgage shall have the meanings therein set forth:

Land
Loan Agreement
Mortgage
Mortgaged Property
Mortgagee
Mortgagor
Notes

Section 1.2. Other Definitions.

All definitions of documents herein include all amendments, modifications and supplements thereto. All definitions of persons or entities herein include their respective successors and assigns.

ARTICLE II COVENANTS AS TO TAXES AND ASSESSMENTS

Section 2.1. Payment By The Mortgagor.

The Mortgagor shall, at least five (5) days prior to the date on which any interest or penalties shall commence to accrue thereon, cause to be paid and discharged, and upon request shall furnish to the Mortgagee proper receipts for, all taxes, assessments, water and sewer rents and charges and all license or permit fees, levies, and governmental charges, payments in lieu of any of the foregoing, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which are or may have been, or may hereafter be, charged, assessed, levied, confirmed or imposed upon or against the Mortgaged Property, or any part thereof,

86221490

by any lawful authority or by any deed restriction or private agreement, or which may become a lien thereon. Subject to the provisions of Section 8.04, the Mortgagor shall not hereafter suffer, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which by any present or future law may be or become superior, or on a parity to the lien of this Mortgage, either in lien or in distribution out of the proceeds of any judicial sale of the Mortgaged Property, or any part thereof. The Mortgagor will cause to be paid, when due, all charges for utilities whether public or private.

Section 2.2. Advances By The Mortgagee.

If the Mortgagor shall fail to cause to be paid any such taxes, assessments, levies, charges, prior liens or fees as required by Section 2.01 hereof in accordance with the provisions of this Article II, the Mortgagee may at its option, but without any obligation to do so, pay such taxes, assessment, levies, charges, prior liens or fees as required by Section 2.01 hereof and the Mortgagor will repay to the Mortgagee on demand any amount so paid by the Mortgagee with interest at the rate set forth in Section 7.07 hereof and the same shall be secured by this Mortgage.

Section 2.3. No Deduction For Taxes.

The Mortgagor covenants and agrees to pay to the Mortgagee the principal and interest owing on the Notes and all other payments provided under the Notes and herein and the principal and interest on every other obligation secured hereby without deduction or credit for any amount for taxes, charges, levies or other fees assessed or to be assessed against the Mortgaged Property.

ARTICLE III INSURANCE

Section 3.1. Coverages.

The Mortgagor covenants and agrees to insure the Mortgaged Property in such amounts and under such policies of insurance as the Mortgagee may from time request, all at the Mortgagor's cost and expense, including, without limitation, fire and extended risk insurance on the Mortgaged Property and comprehensive public liability insurance, and shall furnish the Mortgagee with certificates evidencing such coverage with provisions for at least thirty (30) days notice to the Mortgagee prior to any cancellation thereof. The Mortgagee shall be named as an additional insured on all such policies of insurance and the Mortgagor and the Mortgagee shall be shown as co-loss payees on all casualty insurance policies. Policies of insurance shall be in a form, and shall be maintained with companies, reasonably acceptable to the Mortgagee.

Section 3.2. Collection of Insurance.

In the event of any loss of or damage to the Mortgaged Property, the Mortgagor will give immediate written notice thereof to the Mortgagee, and the Mortgagee may (but shall not be obligated to), after notice of its intention to do so to the Mortgagor, make proof of loss thereof if not made promptly by the Mortgagor. If an Event of Default shall have occurred and be continuing, the Mortgagee may on behalf of the Mortgagor adjust and compromise any claims under such insurance and collect and receive the proceeds thereof and endorse drafts and the Mortgagee is hereby irrevocably appointed attorney-in-fact of the Mortgagor for such purposes. The Mortgagee shall hold such proceeds for the purposes set forth in Article V of this Mortgage. The Mortgagee may deduct from such proceeds any expenses properly incurred by the Mortgagee in collecting the same, including reasonable counsel fees.

Section 3.3. Rights in Policies Upon Default.

If the Mortgagee shall acquire title to the Mortgaged Property either by virtue of a deed in lieu of foreclosure, or a judicial sale thereof pursuant to proceedings under this Mortgage, then all of the Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in the Mortgagee.

Section 3.4. The Mortgagee's Right to Obtain Insurance.

If the Mortgagor shall fail to procure, pay for and deliver to the Mortgagee any policy or policies of insurance and/or renewals thereof as in this Article III required, the Mortgagee may at its option, but without any obligation to do so, effect such insurance and pay the premiums therefor, and the Mortgagor will repay to the Mortgagee on demand any premiums so paid, with interest at the rate set forth in Section 7.07 hereof, and the same shall be secured by this Mortgage.

ARTICLE IV

GENERAL REPRESENTATIONS AND COVENANTS OF THE MORTGAGOR

Section 4.1. Payments under Notes.

The Mortgagor shall pay or cause to be paid to the Mortgagee the principal of and the interest on the entire unpaid principal indebtedness of the Notes, and all sums now or hereafter due the Mortgagee under the terms of the Loan Agreement and this Mortgage together with all interest thereon, punctually as and when the same shall become due by the terms thereof and hereof.

Section 4.2. Title of The Mortgagor.

The Mortgagor warrants and covenants that it has good and marketable fee simple title to, and is lawfully authorized to mortgage and encumber the Mortgaged Property and that it has not heretofore created or suffered any liens or encumbrances on the Mortgaged Property which remain of record or otherwise in effect as of the date hereof, and that it will not hereafter create or suffer any such liens or encumbrances (other than this Mortgage) without the prior written consent of the Mortgagee. The Mortgagor covenants to warrant and defend title to the Mortgaged Property unto the Mortgagee against all persons and all claims of every kind.

Section 4.3. Sale, Removal, Demolition and Alteration.

The Mortgagor shall not sell, assign or otherwise dispose of (whether in one transaction or in a series of transactions) the Mortgaged Property or any interest therein or undertake or permit any material demolition, alteration or excavation of the Mortgaged Property without the prior written consent of the Mortgagee.

Section 4.4. Repairs and Maintenance.

Throughout the term of this Mortgage, the Mortgagor, at its sole cost and expense, will take good care of the Mortgaged Property and the sidewalks, curbs and vaults, if any, adjoining the Mortgaged Property and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. All repairs made by the Mortgagor shall be equal in quality and

86221490

class to the original work. The necessity for and adequacy of repairs to the Mortgaged Property pursuant to this Mortgage shall be measured by the standard which is appropriate for structures of similar construction and class, provided that the Mortgagor shall in any event make all repairs necessary to avoid any structural damage or injury to the Mortgaged Property and to keep the same in a proper condition for its intended use.

Section 4.5. Inspection and Repairs by The Mortgagee.

The Mortgagor will permit the Mortgagee and the Mortgagee's representatives to enter the Mortgaged Property at reasonable times to inspect the same. In case of any breach or default under this Article IV, the Mortgagee may, at its option, enter the Mortgaged Property to protect, restore or repair any part thereof, but the Mortgagee shall be under no obligation to do so. The Mortgagor will repay to the Mortgagee on demand any sums paid by the Mortgagee to protect, restore or repair any part of the Mortgaged Property, with interest thereon at the rate set forth in Section 7.07 hereof, and the same shall be secured by this Mortgage.

Section 4.6. Compliance With Laws.

Throughout the terms of this Mortgage, the Mortgagor, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments or political subdivisions, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Mortgaged Property, the maintenance and use thereof and the sidewalks, curbs and vaults adjoining the Mortgaged Property, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over property contiguous or adjacent thereto. The Mortgagor will comply with (or contest appropriately in good faith) all orders and notices of violation thereof issued by any governmental authority. The Mortgagor will pay all license fees and similar municipal charges for the use of the Mortgaged Property and the other areas now or hereafter comprising part thereof or used in connection therewith. If the Mortgagor shall fail to perform any covenant herein, the Mortgagee may (but shall be under no obligation to) perform such covenant for the account of the Mortgagor and any sums paid by the Mortgagee in such event shall be repaid by the Mortgagor to the Mortgagee on demand, with interest thereon from the date incurred at the rate set forth in Section 7.07 hereof, and the same shall be secured by this Mortgage.

Section 4.7. No Set-Offs.

The Mortgagor represents to the Mortgagee that it has no knowledge of any offsets, recoupments, counterclaims or defenses to the principal indebtedness secured hereby, or to any part thereof, or the interest thereon, either at law or in equity, and will not assert any setoff, counterclaim, or defense, except the defense of payment.

Section 4.8. Payment of Costs and Expenses of The Mortgagee.

The Mortgagor shall promptly pay upon demand, all expenses and costs incurred by the Mortgagee, including reasonable counsel fees in connection with any action, proceeding, litigation or claim instituted or asserted by or against the Mortgagee or in which the Mortgagee becomes engaged,

wherein it becomes necessary in the opinion of the Mortgagee to defend or uphold the lien of this Mortgage, or the validity or effectiveness of any assignment of any claim, award, payment, property damage insurance recovery or any other right or property conveyed, encumbered or assigned by the Mortgagor to the Mortgagee hereunder, or the priority of any of the same, and all such expenses and costs shall bear interest from the date incurred at the rate set forth in Section 7.07 hereof and shall be secured by this Mortgage.

Section 4.9. Change in Tax Status of Mortgage.

In the event of the passage after the date of this Mortgage of any law of the State of Illinois, or any other governmental entity, changing in any way the laws now in force for the taxation of mortgages for state or local purposes, or the manner of the operation of any such taxes, so as to adversely affect the interest of the Mortgagee, then and in such event, the Mortgagor shall bear and pay the full amount of such taxes, provided that if for any reason payment by the Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the Notes or indebtedness secured hereby wholly or partially usurious, the Mortgagee may, at the Mortgagee's option, declare a portion of the principal indebtedness secured hereby equal in amount to the fair market value of the Mortgaged Property at the time of such declaration, to be immediately due and payable, or the Mortgagee may, at the Mortgagee's option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event the Mortgagor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

Section 4.10. Further Action By The Mortgagor.

The Mortgagor shall at its expense promptly upon request of the Mortgagee do all acts and things, including, but not limited to, the execution of any further assurances, deemed necessary by the Mortgagee, to establish, confirm, maintain and continue the lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto, and all other rights and benefits conferred or intended to be conferred on the Mortgagee hereby, and the Mortgagor shall pay all costs incurred by the Mortgagee in connection therewith, including all filing and recording costs, cost of searches, and reasonable counsel fees incurred by the Mortgagee.

Section 4.11. Protection of Mortgage Lien

The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property, non-compliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon the Mortgagor non-compliance with which may affect the security of this Mortgage, and the Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

86221490

ARTICLE V

DAMAGE OR DESTRUCTION

Section 5.1. Damage or Destruction.

In case of damage to or destruction of the Mortgaged Property or any part thereof, the Mortgagor shall promptly give written notice thereof to the Mortgagee.

Section 5.2. Application of Insurance Proceeds and Other Moneys.

All insurance proceeds payable on account of damage or destruction to the Mortgaged Property shall be deposited with the Mortgagee and, so long as no Event of Default shall have occurred and be continuing, the amount thereof, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss shall be applied by the Mortgagee either to the payment of the cost of restoring, repairing and/or rebuilding the Mortgaged Property as nearly as possible to its value, condition and character prior to the damage (the "Restoration") or, if the Mortgagee decides not to apply the insurance proceeds to the Restoration of the Mortgaged Property, all such proceeds shall be applied by the Mortgagee as a prepayment of the Notes. Proceeds devoted to the Restoration of the Mortgaged Property shall be paid out from time to time as the Restoration progresses upon the written request of the Mortgagor if the work for which payment is requested has been done in a good and workmanlike manner and the Mortgagor presents evidence satisfactory to the Mortgagee of amounts owed or paid by the Mortgagor for completed Restoration work. If estimates received or made by the Mortgagee disclose that the cost of the Restoration may be in excess of the amount of the insurance proceeds available therefor, or if during the period of Restoration the amount of the insurance proceeds shall not be sufficient to complete the Restoration, then, in either of such events, the Mortgagor shall deposit with the Mortgagee the amount, or such security therefor as shall be satisfactory to the Mortgagee, required to complete the Restoration. If the insurance proceeds exceed the amount required for the foregoing purposes and for the payment of all other amounts secured hereby, the excess shall be paid to the Mortgagor. If an Event of Default shall have occurred and be continuing, all insurance proceeds less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss shall, unless Mortgagee elects otherwise, be applied by the Mortgagee as a prepayment on the Notes.

Section 5.3. No Postponement of Payments of the Notes.

No damage or destruction of the Mortgaged Property nor any application of insurance proceeds to the payment of the Notes secured by this Mortgage shall postpone or reduce the amount of any of payments becoming due under the Notes, which shall continue to be made as scheduled until the Notes and all interest due thereunder is paid in full.

ARTICLE VI

CONDEMNATION

Section 6.1. Awards Deposited With The Mortgagee.

In the event that the Mortgaged Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (hereinafter collectively called "Condemnation Proceedings"), the Mortgagor and the Mortgagee shall have the right to participate in Condemnation Proceedings and the award that may be made in any such

proceeding or the proceeds thereof shall be deposited with the Mortgagee and distributed in the manner set forth in this Article VI.

Section 6.2. Condemnation in Whole.

If at any time during the term of this Mortgage the whole or materially all of the Mortgaged Property shall be taken in Condemnation Proceeding or by agreement between the Mortgagor and the Mortgagee and the condemning authority, the Mortgagee shall apply such award or proceeds which it receives pursuant to Section 6.01 hereof first to a prepayment on the Notes and other sums secured by this Mortgage and interest thereon, and any balance then remaining shall be paid to the Mortgagor. For the purposes of this Article VI, "materially all of the Mortgaged Property" shall be deemed to have been taken if the portion of the Mortgaged Property not so taken cannot be repaired or reconstructed so as to constitute a complete structure and facility substantially equal to that which existed prior to the taking and usable in substantially the manner as used prior to the taking.

Section 6.3. Condemnation in Part.

If at any time during the term of this Mortgage title to less than the whole or materially all of the Mortgaged Property shall be taken as aforesaid, all of the award or proceeds collected by the Mortgagee pursuant to Section 6.01 hereof shall be held by the Mortgagee and applied either as a prepayment of the Notes or paid over toward the cost of demolition, repair and restoration of the portion remaining, substantially in the same manner and subject to the same conditions as those provided in Section 5.02 hereof with respect to insurance proceeds. If condemnation proceeds are applied to the costs of demolition, repair and restoration, any balance remaining in the hands of the Mortgagee after payment of such costs shall be retained by the Mortgagee and applied to the payment of the principal and interest on the Notes and all other sums secured by this Mortgage, and any balance then remaining shall be paid to the Mortgagor.

Section 6.4. No Postponement of Note Payments.

No application of condemnation proceeds to the payment of the Notes secured by this Mortgage shall postpone or reduce any payments becoming due under such Notes, which shall continue to be made as scheduled until the Notes and all interest due thereunder is paid in full.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Event of Default.

The occurrence of an "Event of Default" under the Loan Agreement shall constitute an Event of Default hereunder.

Section 7.2. Acceleration; Remedies Upon Default.

Upon the happening of an Event of Default, the entire unpaid balance of the principal, and accrued interest on, the Notes, and all other sums secured by this Mortgage shall become immediately due and payable without notice or demand as provided in the Loan Agreement. Upon acceleration, the Mortgagee may forthwith, and without further delay do all or any of the following:

(a) Foreclosure. Institute an action of mortgage foreclosure on this Mortgage, or take such other action as the law may allow, at law or in equity, for the enforcement

thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of the Notes, with interest, at the rates and pursuant to the methods of calculation specified in the Notes, together with all other sums secured by this Mortgage, all costs of suit, interest at the rate specified in Section 7.07 hereof on any judgment obtained by the Mortgagee from and after the date of any Sheriff's Sale of the Mortgaged Property until actual payment is made by the Sheriff of the full amount due the Mortgagee, and reasonable attorneys' fees, without further stay, any law, usage, or custom to the contrary notwithstanding.

(b) Entry. Enter into possession of the Mortgaged Property, with or without legal action, and by force if necessary; lease the Mortgaged Property or any part thereof; collect all rents and profits therefrom and, after deducting all costs of collection and administration expense, apply the net rents and profits to the payment of taxes, water and sewer rents, charges (including, but not limited to, agents' compensation and fees and costs of counsel and receivers) and to the maintenance, repair or restoration of the Mortgaged Property, or on account and in reduction of the principal or interest, or principal and interest, or other sums hereby secured, in such order and amounts as the Mortgagee in the Mortgagee's sole discretion may elect. The Mortgagee shall be liable to account only for rents and profits actually received by the Mortgagee.

(c) Receivership. Have a receiver appointed to enter into possession of the Mortgaged Property, collect the rents, issues and profits therefrom and apply the same as the court may direct. The Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of the Mortgagor or any other person who may be legally or equitably liable to pay moneys secured hereby and the Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should the Mortgagee or any receiver collect rents, issues or profits from the Mortgaged Property, the moneys so collected shall not be substituted for payment of the debt nor can they be used to cure the default, without the prior written consent of the Mortgagee. The Mortgagee shall be liable to account only for rents, issues and profits actually received by the Mortgagee.

Section 7.3. Other Remedies.

Upon the occurrence of an Event of Default hereunder, the Mortgagee, pursuant to the foregoing remedies, or in addition thereto, (i) shall be entitled to resort to any and all of its rights, remedies and privileges under the Notes, the Loan Agreement or the "Security Documents" (as defined in the Loan Agreement) for the payment of the sums secured hereby in such order and manner as the Mortgagee may deem fit without impairing the Mortgagee's lien in or rights to any of such securities and without affecting the liability of any person, firm or corporation for the sums secured hereby, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Mortgagee from the proceeds of such security; (ii) may, in the Mortgagee's sole discretion, release for such consideration, or none, as the Mortgagee may require, any portion of the Mortgaged Property without, as to the remainder of the security, in anywise impairing or affecting the lien of this Mortgage or the priority thereof or improving the position of any subordinate lienholder with respect thereto, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Mortgagee for such release; and/or (iii) may accept the assignment or pledge of any other property in place thereof as

the Mortgagee may require without being accountable for so doing to any other lienor. In the event of any breach or anticipatory breach by the Mortgagor of any of the covenants, agreements, terms or conditions contained in this Mortgage, the Mortgagee shall be entitled to enjoin such breach or anticipatory breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though other remedies were not provided for in this Mortgage.

Section 7.4. Waiver of Errors and Notices.

The Mortgagor hereby waives and releases all notices not herein elsewhere specifically required of the Mortgagor's default or of the Mortgagee's exercise, or election to exercise, any option or remedy under this Mortgage.

Section 7.5. Remedies Cumulative.

Each right and remedy of the Mortgagee provided for in this Mortgage shall be cumulative and shall be in addition to every other right or remedy provided for in this Mortgage, the Notes, the Loan Agreement, the Security Documents or now or hereafter existing at law, or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Mortgagee of any one or more of the rights or remedies provided for in this Mortgage or now or hereafter existing at law, or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Mortgagee of any or all other rights or remedies provided for in this Mortgage or now or hereafter existing at law, in equity or by statute or otherwise.

Section 7.6. Possession of Mortgaged Property.

After the occurrence of an Event of Default, the Mortgagor shall, on demand, surrender possession of the Mortgaged Property to the Mortgagee and hereby consents that, at any time after such demand, the Mortgagee may enter upon the Mortgaged Property, breaking locks if necessary and without liability for trespass, damages or otherwise, let the same, collect all rents therefrom and apply the rents, after payment of all charges and expenses, on account of the Mortgagor's obligations hereunder and of the debt secured hereby whether then matured or not; and the Mortgagee, by virtue of such right to possession and as attorney-in-fact of the Mortgagor, may dispossess, by summary proceedings or otherwise, any tenant of all or any part of the Mortgaged Property then or thereafter in default under his lease or any tenant whose leasehold estate is subordinate to the lien of this Mortgage whether or not such tenant is so in default; and the Mortgagor hereby irrevocably appoints the Mortgagee attorney-in-fact of the Mortgagor for all such purposes. In the event that the Mortgagor or any party claiming through the Mortgagor is an occupant of part of the Mortgaged Property, the Mortgagor and any such party shall surrender possession to the Mortgagee immediately upon any default hereunder and demand by the Mortgagee, and if the Mortgagor or any party claiming through the Mortgagor remains in possession, such possession shall be as tenant of the Mortgagee, and the Mortgagor or such party shall pay monthly in advance to the Mortgagee such rent for the premises so occupied as the Mortgagee may reasonably demand, and in default of so doing, the Mortgagor or any party claiming through the Mortgagor may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of rents and profits of the Mortgaged Property, the covenants of this paragraph may be enforced by such receiver.

Section 7.7. Advances By The Mortgagee.

Upon the occurrence of an Event of Default (or, in the case of an emergency threatening the Mortgaged Property or the Mortgagee's rights therein, or the occurrence of an event which if uncured will constitute an Event of Default with notice and/or the passage of time), the Mortgagee may, but without any obligation to do so, pay any sum or perform any other obligation for the account of the Mortgagor which the Mortgagor has failed to pay or perform, and sums so spent by the Mortgagee shall be secured by this Mortgage, shall be repayable by the Mortgagor on demand, and shall bear interest from the date of advance by the Mortgagee at the "Past Due Rate" (as defined in the Loan Agreement).

Section 7.8. No Waiver Implied.

Any failure, forbearance or delay by the Mortgagee in insisting upon the strict performance by the Mortgagor of any of the terms, covenants, agreements, conditions and provisions hereof shall not be deemed to be a waiver of any of the terms, covenants, agreements, conditions and provisions hereof, and the Mortgagee, notwithstanding any such failure, forbearance or delay, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms, covenants, agreements, conditions and provisions of this Mortgage to be performed by the Mortgagor. Neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the obligations secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Notes, the Loan Agreement or this Mortgage. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, the Mortgagee may release the obligation of anyone at any time liable for any of the obligations secured by this Mortgage or any part of the security held for such obligations and may extend the time for payment or otherwise modify the terms of the Notes, the Loan Agreement or this Mortgage, or all of them, without, as to the security or the remainder thereof, in anywise impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the obligations as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Property whether or not such lease is subordinate to this Mortgage. For the payment of the obligations secured hereby, the Mortgagee may resort to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

Section 7.9. Sale as a Whole or in Parcels.

In case of any sale under this Mortgage by virtue of judicial proceedings, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee in its sole discretion may elect.

86221490

Section 7.10. Waiver of Exemptions.

The Mortgagor hereby waives and relinquishes the benefits of any present or future laws: (i) exempting the Mortgaged Property or any part thereof from attachment, levy or sale on execution, or any part of the proceeds arising from any sale thereof, (ii) staying execution or other process or extending the time for payment, and (iii) requiring valuation or appraisal of any part of the Mortgaged Property levied or sold on execution on any judgment recovered for the indebtedness secured hereby.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Notices.

All notices given in connection with this Mortgage shall be in writing and shall be delivered either by personal delivery, telex, telegram or by certified or registered mail, return receipt requested, addressed as follows:

If to Mortgagor:

Precision Scientific, Inc.
3731 West Cortland Street
Chicago, Illinois 60647

with a copy to:

John F. Potter
MacDonald, Illig, Jones & Bulton
600 First National Bank Building
Erie, Pennsylvania 16501-1365

and

William Bleil
American Sterilizer Company
2222 West Grandview Boulevard
Erie, Pennsylvania 16506

If to Mortgagee, to:

Morgan Bank (Delaware)
902 Market Street
Wilmington, Delaware 19801
Attention: Mr. Peter W. Atwater

with a copy to:

David Ley Hamilton, Esquire
Morris, Nichols, Arsht & Tunnell
Twelfth and Market Streets
P.O. Box 1347
Wilmington, Delaware 19899

or at such other address as the party affected shall have previously designated by written notice given in the manner hereinabove set forth. Notices shall be deemed given when sent, if sent by telex or telegram; when delivered and receipted for, if hand-delivered; or when receipted for (or upon the date of attempted delivery where delivery is refused) if sent by certified or registered mail.

Section 8.2. Subordinate Financing.

The Mortgagor covenants and agrees that it will not further encumber or mortgage the Mortgaged Property, or any part thereof, or any interest therein without the prior written consent of the Mortgagee.

Section 8.3. Satisfaction of Mortgage.

If the Mortgagor complies with the provisions of this Mortgage and pays to the Mortgagee all sums secured hereby in accordance with the terms of and at the times provided in the Notes, Loan Agreement and this Mortgage, without deduction, fraud or delay, then this Mortgage and the estate hereby granted and created shall then cease, terminate and become void, and the Mortgagee shall execute and deliver such mortgage satisfactions and other documents as the Mortgagor may reasonably request to evidence the same.

Section 8.4. Right to Contest Taxes and Other Charges.

The Mortgagor shall have the right to contest diligently and in good faith taxes, assessments and charges imposed upon it or the Mortgaged Property or the application of laws, ordinances and other requirements to the Mortgaged Property.

Section 8.5. Definitions of Certain Terms.

Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: the word "Mortgagor" shall include its successors and assigns or any subsequent owner or owners of the Mortgaged Property, the word "Mortgagee" shall mean the party to whom this Mortgage is given or any subsequent holder or holders of this Mortgage; the word "person" shall mean an individual, corporation, general partnership, limited partnership, trust, unincorporated association, or any other legal entity; and the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter gender shall include the other genders.

Section 8.6. Amendments.

All amendments and modifications of this Mortgage (including this Section) must be in writing signed by the Mortgagor and the Mortgagee.

Section 8.7. Invalid Provisions Disregarded.

If any term or provision of this Mortgage or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and be enforced to the fullest extent permitted by law.

Section 8.8. Section Headings.

The headings of the articles and sections of this Mortgage are for convenience of reference only and shall not limit or affect the meaning, scope or effect of any terms or conditions hereof.

Section 8.9. Governing Law.

This Mortgage shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 8.10. Acknowledgement.

MORTGAGOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS MORTGAGE WITHOUT CHARGE.

86221490

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed, intending it to be a sealed instrument, as of the day and year first above written.

Witness:

PRECISION SCIENTIFIC, INC.,
a Delaware corporation

[Signature]
[Signature]

By:

[Signature]
Vice President

Attest:

[Signature]
Secretary

[CORPORATE SEAL]

Property of Cook County Clerk's Office

86221490

UNOFFICIAL COPY

STATE OF PENNSYLVANIA)
COUNTY OF ERIE) SS.

I, Connie J. Piatkowski, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel P. Barry, a Vice President of Precision Scientific, Inc., and William J. Bleil, a Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary respectively, appeared before me this day in person and acknowledge that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and said William J. Bleil did also then and there acknowledge that he/she as custodian of the corporate seal of said Corporation did affix said corporate seal of said Corporation to said instrument as his own free and voluntary act, and as the free and voluntary act of said Corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of May A.D. 1986.

Connie J. Piatkowski
Notary Public
Connie J. Piatkowski, Notary Public
Erie, Erie County, Pennsylvania
My Commission Expires Mar. 19, 1990
[Notary Seal]

86221490

UNOFFICIAL COPY

3 5 2 2 1 4 9 0

EXHIBIT A

PARCEL 1:

Lot 51 in J. R. Lane's Subdivision of the South West 1/4 of the North East 1/4 of the South West 1/4 of Section 35, Township 40 North, Range 13 East of the Third Principal Meridian, except the right-of-way of the Chicago, Milwaukee and St. Paul Railway, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-311-034 *TB*

Commonly Known As: 1828 Ridgeway, Chicago, Illinois.

PARCEL 2:

Lot 55 in J. R. Lane's Subdivision of the South West 1/4 of the North East 1/4 of South West 1/4 of Section 35, Township 40 North, Range 13 East of the Third Principal Meridian (except the right-of-way of Chicago, Milwaukee & St. Paul Railway) in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-030 *TB*

Commonly Known As: 1838 N. Ridgeway, Chicago, Illinois.

PARCEL 3:

Lots 31 and 32 in Nieman's Subdivision of the West half of the North West quarter of the North East quarter of the South West quarter of Section 35, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-042 *TB*

Commonly Known As: 3736 W. Cortland, Chicago, Illinois.

PARCEL 4:

Lot 29 and 30 in Nieman's Subdivision of the West 1/2 of the North West 1/4 of the North East 1/4 of South West 1/4 of Section 35, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-039 (L+29) *TB*

Commonly Known As: 3742 W. Cortland, Chicago, Illinois.

PARCEL 5:

Lot 28 in Nieman's Subdivision of West 1/2 of North West 1/4 of North East 1/4 of South West 1/4 of Section 35, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-038 *TB*

Commonly Known As: 3744 W. Cortland, Chicago, Illinois.

PARCEL 6:

Lot 25 in Nieman's Subdivision of the West 1/2 of the North West 1/4 of the North East 1/4 of the South West 1/4 of Section 35, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-035 *TB*

Commonly Known As: 3752 W. Cortland, Chicago, Illinois.

86221490

UNOFFICIAL COPY

3 5 2 2 1 4 9 0

PARCEL 7:

The West 30 feet of lot 23 in Nieman's Subdivision of the West 1/2 of the North West 1/4 of the North East 1/4 of the South West 1/4 of Section 35, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax I.D. No.: 13-35-303-033 JB

Commonly Known As: 3758 W. Cortland, Chicago, Illinois.

PARCEL 8:

That part of Lot 9 in Block 4 in Breidt's Subdivision of the East half of the North half of the West half of the South West quarter of Section 35, Township 40 North, Range 13, East of the Third Principal Meridian, lying North Easterly of a curved line described as follows:

Beginning at a point in the East line of said Lot, 51.4 feet South of the North East corner thereof; thence North Westerly along said curved line convex to the South West having a radius of 380.28 feet a distance of 92.15 feet to a point in the North line of said Lot said point being 75.79 feet West of the North East corner of said Lot, in Cook County, Illinois.

Permanent Tax I.D. No.: ~~13-35-310-014~~

13-35-310-002 JB

Commonly Known As: Chicago, Milwaukee, St. Paul and Pacific Rail Road Parcel.

86221490