

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), dated and effective as of the 22nd day of November, 1988, by PET-AG, INC., a Delaware corporation having its principal place of business located at 30 W. 432 Route 20 Elgin, Illinois 60120 ("Mortgagor") in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association with its principal place of business located at 33 North LaSalle Street, Chicago, Illinois 60690 ("Mortgagee"), has reference to the following facts and circumstances:

WHEREAS, Mortgagor, is obligated and indebted to Mortgagee for loans, advances, extensions of credit or other financial accommodations to, on behalf of or for the benefit of Mortgagor (the "Loan"), pursuant to that certain Loan and Security Agreement between Mortgagor and Mortgagee dated of even date herewith (the "Loan Agreement"), as evidenced by the certain Promissory Note dated as of November 29, 1988 in the original principal amount of \$1,900,000.00 (the "Promissory Note") and that certain Installment Note dated as of November 29, 1988 in the original principal amount of \$800,000.00 (the "Installment Note"; the Installment Note and the Promissory Note are collectively referred to herein as the "Notes"), executed and delivered to Mortgagee by Mortgagor; and

NOW, THEREFORE, in order to secure payment of "Mortgagor's Liabilities" (as hereinafter defined) and in consideration of the Loan and any other financial accommodations at any time made by Mortgagee to or for the benefit of Mortgagor, Mortgagor agrees with Mortgagee as follows:

1. DEFINITIONS AND TERMS

1.1 The following words, terms and/or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof, giving effect to the numerical difference; whenever the context so requires, the use of "it" in reference to Mortgagor shall mean Mortgagor as identified at the beginning of this Mortgage:

(A) "And/or": one or the other or both, or any one or more or all, of the things or "Persons" (hereinafter defined) in connection with which the conjunction is used.

(B) "Charges": all national, federal, state, county, city, municipal and/or other governmental (or any instrumentality, division, agency, body or department thereof) charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges,

~~THIS INSTRUMENT PREPARED BY AND AFTER RECORDING SHOULD BE RETURNED TO:~~ Rochelle P. Slater, Esq., 140 South Dearborn Street, Suite 1400, Chicago, Illinois 60603.  
PIN Number: 06-28-100-004

Common Address: 30 W. 432 Route 20  
Elgin, Illinois 60120

Box 15  
J Moore  
Please return to: JOAN MOORE  
Floor Title Insurance Co.  
203 N. LaSalle St., Suite 1400  
Chicago, IL 60601  
Re: 88-545872-14

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claims or encumbrances upon and/or relating to the "Mortgaged Property" (hereinafter defined), "Mortgagor's Liabilities" (hereinafter defined) and/or "Mortgagor's Obligations" (hereinafter defined).

(C) "Documents": the definition ascribed to this term in Paragraph 2.3 below.

(D) "Encumbrances": all liabilities, claims, debts, exceptions, easements, restrictions, security interests, Charges and all other types of encumbrances.

(E) "Equipment": all present and future apparatus, machinery, equipment, furniture, fixtures and articles of personal property of any and every kind and nature whatsoever, required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including, without limitation, any such item now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, and all other related or other such services.

(F) "Event of Default": the definition ascribed to this term in Paragraph 6.1 below.

(G) "Leases": all present and future leases, agreements, tenancies, licenses and franchises of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessee's performances thereunder.

(H) "Mortgaged Property": (a) the Premises; (b) the "Rents" (hereinafter defined); (c) the Leases; (d) the Equipment (which shall be deemed to be a part of the Premises, whether physically attached thereto or not); (e) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; (f) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; and (g) all proceeds of each and every of the foregoing.

(I) "Mortgagor's Liabilities": (a) the payment of any and all monies, including, without limitation, the payment, when due or declared due, of the principal sum of the Loan Agreement and the Notes and interest thereon (including all additional interest set forth therein), now and/or hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of the Loan Agreement and the Notes; (b) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage (including, without limitation, all advances made to protect and preserve the value of the Mortgaged Property and the priority of Mortgagee's lien thereon); and (c) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee, howsoever evidenced,

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created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms and provisions of this Mortgage, the Notes, or the Loan Agreement.

(J) "Mortgagor's Obligations": the prompt, full and faithful performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage, the Notes and/or the Loan Agreement.

(K) "Other Agreements": all agreements, instruments and documents, including, without limitation, loan agreements, security agreements, guaranties, notes, letters of credit, mortgages and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of Mortgagor and delivered to Mortgagee, or issued by Mortgagee upon the application and/or other request of, and on behalf of Mortgagor.

(L) "Person": any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

(M) "Premises": all of the following described real estate, and all of Mortgagor's estate, right, title and interest therein, situated, lying and being in the Township of Hanover, County of Cook, State of Illinois, and legally described on Exhibit A attached hereto and made a part hereof and commonly known as 30 W. 432 Route 20 Elgin, Illinois 60120 together with all buildings, improvements, tenements, easements, hereditaments and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other publicways abutting said real estate, whether before or after vacation thereof.

(N) "Rents": all present and future rents, issues, avails, profits and proceeds of or from the Premises, the Leases and/or the Equipment.

## 2. CONVEYANCE

2.1 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby does warrant, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to Mortgagee, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if Mortgagor, its successors or assigns, shall satisfy, discharge and otherwise pay to Mortgagee, its successors or assigns, in full, Mortgagor's Liabilities and keep and perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense. Notwithstanding anything herein to the contrary, Mortgagor's Liabilities hereunder shall in no event exceed Four Million Dollars (\$4,000,000.00). Any future advances made by Mortgagee under this revolving credit shall have the same priority as any amounts initially advanced under the Promissory Note. All advances made by Mortgagee under the Promissory Note shall be made within twenty (20) years from the date of the initial advance under the Promissory Note.

Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. Therefore, to secure the payment by Mortgagor of Mortgagor's Liabilities, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property.

2.3 Mortgagor, immediately upon request by Mortgagee, at Mortgagor's sole expense, will make, execute and deliver and/or will cause to be made, executed and delivered to and/or for the benefit of Mortgagee, in form and substance reasonably acceptable to Mortgagee, all Documents that Mortgagee is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Loan Agreement, or the Notes or required to perfect or continue perfected, as valid Encumbrances, the Encumbrances granted herein or in the Notes or the Loan Agreement or in the Other Agreements by Mortgagor to Mortgagee upon the Mortgaged Property. "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.4 Mortgagor shall be liable for and shall pay to Mortgagee upon the execution of this Mortgage, the reasonable costs, fees and expenses incurred by Mortgagee in the negotiation, documentation, and closing of the Loan, including, but not limited to, the reasonable attorneys' fees, costs and expenses incurred by Mortgagee.

### 3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) Mortgagor promptly will pay, or cause to be paid, when due or declared due pursuant to the terms of this Mortgage, Mortgagor's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Mortgagor's Obligations.

(B) Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Loan Agreement and the Notes, to encumber the Mortgaged Property to Mortgagee as provided herein, in the Notes, in the Loan Agreement, or in the Other Agreements, and to perform all of Mortgagor's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Notes, the Loan Agreement, and the Other Agreements.

(C) The execution, delivery and performance by Mortgagor of and under this Mortgage, the Notes, the Loan Agreement and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor or any of the Mortgaged Property is or hereafter shall become a party or by which Mortgagor or any of the Mortgaged Property is or hereafter shall become bound.

(D) Mortgagor has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Mortgagor is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Mortgagor shall maintain adequate reserves in amount to pay fully all such liabilities which hereafter may accrue.

(E) All of the Leases, if any, are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Mortgagor to Mortgagee in writing, no advance payments have been or shall be made thereunder.

(F) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially adversely affect the Mortgaged Property, the operation or the business thereof, Mortgagee's Encumbrances thereon, the collectibility of the obligations under the Notes, the ability of Mortgagor to repay the obligations under the Notes or the financial condition of the Mortgaged Property or the operation or business thereof.

(G) Mortgagor and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contain or shall contain any term or condition that is materially burdensome to said business or materially different than those of the foregoing customarily possessed or held by other parties conducting or operating a similar business.

(H) The location, existence and use of the Premises and the Equipment are and shall remain in material compliance with all applicable laws, rules, ordinances and regulations, including, without limitation, building and zoning laws, and all covenants and restrictions of record.

(I) Mortgagor is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(J) Mortgagor is not using the Mortgaged Property for any offensive purpose in material violation of any applicable environmental, health or safety laws, rules or regulations, including, but not limited to, the Resource Conservation and Recovery Act as amended ("RCRA"), the Toxic Substances Control Act as amended ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act as amended ("CERCLA"), the Clean Air Act as amended ("CAA") and the Clean Water Act as amended ("CWA"), regulations thereunder and correspondence state statutes and regulations. Mortgagor has any and all required permits, certificates, consents and approvals required under any applicable environmental, health or safety laws, rules or regulations. Mortgagor knows of no existing violation of any applicable environmental, health or safety law, rule or regulation in connection with the use of the Mortgaged Property.

(K) Unless otherwise consented to by the Mortgagee in writing, all hazardous waste accumulations at the Mortgaged Property shall be in tanks and/or containers, as defined in 40 CFR 260.10 and shall be in compliance with applicable United States

88-515872

Environmental Protection Agency and State of Illinois small quantity generator limitations under RCRA, regulations thereunder and corresponding Illinois statutes and regulations.

(L) All underground storage tanks containing regulated substances or petroleum shall be operated in compliance with the Resource Conservation and Recovery Act, regulations thereunder, and corresponding Illinois statutes and regulations. Those underground storage tanks located on the Mortgaged Property contain water, and Mortgagor shall use such tanks only for water storage.

(M) No burial, disposal, or landfilling of hazardous waste or hazardous substances or regulated substances or other pollutants (as such are defined in RCRA, TSCA, CERCLA, CAA or CWA) will be carried on at the Mortgaged Property without the express written consent of the Mortgagee. Further, Mortgagor shall operate no surface impoundment, lagoon, or other earthen device for the purposes of treatment, storage or disposal of hazardous wastes and hazardous substances.

(N) Mortgagor shall not use, release, or cause to be used or released asbestos as defined by 29 CFR 1910.1001(a). Any repairs, maintenance or modifications to the Mortgaged Property which may result in release of asbestos shall be performed by or under the supervision of personnel appropriately accredited by the State of Illinois or the United States Environmental Protection Agency.

(O) Mortgagor shall provide to Mortgagee, within ten (10) days of receipt thereof, a copy of any administrative, civil or criminal complaint received by Mortgagor alleging (a) violations of environmental, health and safety statutes, ordinances, or regulations or (b) bodily injury or property damage arising from Mortgagor's operations at or ownership of the Mortgaged Property.

3.2 Mortgagor covenants with and warrants and represents to Mortgagee that it is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all Encumbrances except (i) the Encumbrances of Mortgagee, and (ii) those Encumbrances described on Exhibit B attached hereto and made a part hereof.

3.3 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) Mortgagor will not materially change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any trade fixture or demolish any building or improvement located in or on the Premises without Mortgagee's prior written consent which shall not unreasonably be withheld, except (i) for the substitution for or replacement of a trade fixture with a fixture of comparable value or (ii) if such trade fixture is not required in the conduct of Mortgagor's business as presently conducted and the value of the Mortgaged Property shall not be impaired or diminished. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Mortgagee diminishes its value, and subject to the provisions of subparagraphs 4.1(B)(2) and 4.3(B) of

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this Mortgage, if Mortgagee elects to release insurance or condemnation proceeds to Mortgagor, Mortgagor shall promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Mortgagor shall permit Mortgagee, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times.

(B) Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all Charges, that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Mortgagee duplicate receipts evidencing payment of any Charges in the nature of real estate taxes assessed against the Mortgaged Property thereof or partial payment thereof, if payable in installments, at least thirty (30) days before delinquency, except such receipts evidencing payment of any Charges in the nature of real estate taxes assessed against the Mortgaged Property shall be delivered to Mortgagee at least ten (10) days before delinquency, provided that Mortgagor shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Charges, and upon such good faith contest to delay or refuse payment thereof, if (i) Mortgagor establishes adequate reserves to cover such contested Charges and (ii) either such contest will not affect the priority or value of Mortgagee's lien on the Mortgaged Property or Mortgagor otherwise takes steps reasonably acceptable to Mortgagee to protect the priority and value of Mortgagee's lien on the Mortgaged Property. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage or the Notes, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.

(C) Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances (including, without limitation, mechanics liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, and, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof, provided that Mortgagor shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Encumbrance, and upon such good faith contest to delay or refuse payment thereof if, (i) Mortgagor establishes adequate reserves to cover such contested Encumbrance and (ii) either such contest will not affect the priority or value of Mortgagee's lien on the Mortgaged Property or Mortgagor otherwise takes steps reasonably acceptable to Mortgagee to protect the priority and value of Mortgagee's lien on the Mortgaged Property. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(D) Without the prior written consent of Mortgagee, Mortgagor shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagor's interest therein. Without the prior written consent of Mortgagee, Mortgagor shall not sell or otherwise transfer all or any portion of the Mortgaged Property or Mortgagor's interest therein. Mortgagee, in its sole discretion, may deliver or withhold such consent based upon Mortgagee's

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determination, to its sole satisfaction, of the credit worthiness and ability of the proposed assignee, transferee or purchaser to satisfy, perform and discharge Mortgagor's Liabilities in a proper and timely fashion and manner. Mortgagee, in its sole discretion, may condition the delivery of its consent upon Mortgagor agreeing to provide for such additional terms and conditions in the Loan Agreement, the Notes, this Mortgage or the Other Agreements as may be acceptable to Mortgagee, in its sole discretion.

(E) All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2 above and Mortgagor will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2 above and except as otherwise provided in the Loan Agreement

3.4 If Mortgagor shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, or otherwise defaults in the performance of Mortgagor's Obligations, or fails to pay the premiums for the insurance which is required to be maintained hereunder, or unless being contested in the manner herein provided, fails to pay and discharge all Encumbrances as herein agreed, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Mortgagee in taking such action together with a per annum rate of interest thereon (computed on the basis of a 360-day year and charged for actual days elapsed) equal to 3% plus the rate of interest announced and/or published publicly from time to time by American National Bank and Trust Company of Chicago at its principal place of business in Chicago, Illinois as its corporate base (or equivalent) rate of interest, from the date of Mortgagee's payment thereof until repaid by Mortgagor to Mortgagee, shall be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagor's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

## 4. TAXES, INSURANCE AND CONDEMNATION

4.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) Mortgagor, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties and contingencies as Mortgagee, from time to time, may require in companies, form, amounts and for such periods as are satisfactory to Mortgagee, but, in any event, for not less than the full replacement cost of the Mortgaged Property. All such policies and renewals thereof shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses naming



Mortgagee as a loss payee as well as a standard waiver of subrogation endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days prior written notice to Mortgagee of any intended cancellation. Mortgagor will give immediate written notice to Mortgagee of any material loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than thirty (30) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee receipts for the payment of the premiums on all policies and renewals thereof. In the event of foreclosure of title to the Mortgaged Property in extinguishment of Mortgagor's Liabilities, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(B)(1) Subject to (B)(3) hereof, if there exists no Event of Default under this Mortgage and any claim under an insurance policy is less than \$50,000, Mortgagee shall be permitted to resolve such claim under such policy. If there exists an Event of Default under this Mortgage or any claim is in excess of \$50,000, full power is hereby conferred on Mortgagee:

- (a) to settle and compromise all claims under all policies;
- (b) to demand, receive and receipt for all moneys becoming due and/or payable under all policies;
- (c) to execute, in the name of Mortgagor or the name of Mortgagee, any proofs of loss notices or other instruments in connection with all material claims under all policies; and
- (d) to assign all policies to any holder of Mortgagor's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(B)(2) In the event of payment under any of the policies, during such time as there exists an Event of Default under this Mortgage or the claim under such policy is in excess of \$50,000, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee, in its sole and absolute discretion, may:

- (a) apply such proceeds, wholly or partially after deducting all costs of collection, including reasonable attorneys' fees, either:
  - (i) toward the alteration, reconstruction repair or restoration of the Mortgaged Property or any portion thereof; or
  - (ii) as a payment on account of Mortgagor's Liabilities (without affecting the amount or time of subsequent payments required be

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made by Mortgagor to Mortgagee under the Loan Agreement and the Notes) whether or not then due and payable;

or

- (b) deliver the same to Mortgagor; provided, however in the case of a payment on account of damage or destruction of the Mortgaged Property where restoration is economically feasible and the Mortgaged Property can be repaired or restored within 180 days, such proceeds shall be applied by Mortgagee in accordance with (a)(i) above. Mortgagor shall continue to pay Mortgagor's Liabilities as and when due notwithstanding any loss of use of all or a part of the Mortgaged Property.

(f)(3) So long as there does not exist an Event of Default under this Mortgage and the claim under any insurance policy does not exceed \$50,000, in the event of payment under such policy on account of damage or destruction of the Mortgaged Property where (i) restoration is economically feasible, (ii) the Mortgaged Property can be repaired or restored within 180 days, (iii) following such repair or restoration, the value of the Mortgaged Property shall be equal or greater to its value prior to such damage or destruction, and (iv) such proceeds shall either be sufficient to repair or restore the Mortgaged Premises or Mortgagee shall add such funds as are necessary to accomplish such repair or restoration, such proceeds shall be delivered to Mortgagee and applied toward the alteration, reconstruction, repair or restoration of the Mortgaged Premises; provided, however, such proceeds shall be deposited into a construction loan escrow account, and prior to any disbursement from such account, Mortgagor shall provide Mortgagee with contractor's sworn statements and contractors', subcontractors' and materialmen's waivers of lien, so as to preserve the priority of the lien of this Mortgage.

4.2 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) After the occurrence of a default or an Event of Default under this Mortgage, Mortgagee, at its election may require Mortgagor to deposit with Mortgagee on the first (1st) day of each month until Mortgagor's Liabilities are fully paid, a sum equal to one-twelfth (1/12) of one hundred fifteen percent (115%) of that portion of the total annual Charges arising with respect to the Mortgaged Property for the most recent ascertainable tax year which if not paid would result in a lien or encumbrance upon the Mortgaged Property. Subject to the provisions of this Paragraph and provided that no Event of Default then exists, and no event which with notice or lapse of time or both would become an Event of Default then exists, Mortgagee shall, if it has required deposits by Mortgagor, pay when and to whom due and payable under applicable law, all of the aforesaid Charges. Notwithstanding the foregoing, Mortgagee does not hereby assume any of Mortgagor's obligations under said laws to make such payments and nothing contained herein, or in the Note, shall require Mortgagee to perform any such obligations of Mortgagor except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Upon the occurrence of a default or an Event of Default under this Mortgage, the Loan Agreement, or the Notes, Mortgagee shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all such payments.

98-55872

(B) If the deposits required by Subparagraph (A) above are insufficient to pay the Charges for which they are provided, on or before thirty (30) days before the same shall become due and payable, Mortgagor shall deposit with Mortgagee such additional monies as are necessary to pay, in full, such Charges.

(C) Upon the occurrence of a default or an Event of Default under this Mortgage, upon the written request of Mortgagee, Mortgagor shall establish with Mortgagee an insurance escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by Mortgagor pursuant to this Mortgage with respect to the Mortgaged Property. Such insurance escrow shall be in such amount as is satisfactory to satisfy the required premiums under such policies as reasonably estimated by Mortgagee, and shall be subject to such other terms and conditions as Mortgagee, in its sole and absolute discretion, may determine.

4.2 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, without limitation, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to Mortgagee as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein);

(B) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagor's name, in Mortgagee's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(1) apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Mortgagor to Mortgagee under the Loan Agreement and/or the Notes;

(2) use the same, or any part thereof, to satisfy, perform or discharge any of Mortgagor's Obligations;

(3) use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Mortgagee; or

(4) release the same to Mortgagor; provided, however if it is economically feasible to repair or replace such portion of the Mortgaged Property so taken and such repair or replacement can be accomplished within 180 days, then such proceeds shall be applied by Mortgagee in accordance with (B)(3) above.

(C) Mortgagor, promptly after request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause

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the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay all of Mortgagor's Liabilities, as and when due and payable. If, prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the reasonable attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

## 5. LEASES AND RENTS

5.1 So long as there does not exist an Event of Default under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied first to the payment of all Charges upon the Mortgaged Property, second to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, third to the maintenance and repairs required hereby and lastly to the payment of Mortgagor's Liabilities as they come due, before using any part of the Rents for any other purposes.

5.2 At all times, Mortgagee or any of Mortgagee's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagor, Mortgagee, a nominee of Mortgagee or in any or all of said names.

5.3 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (a) promptly upon Mortgagor's receipt or learning thereof, inform Mortgagee, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors of the Leases; (b) not permit or agree to any material extension, compromise or settlement or make any material change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (c) promptly upon Mortgagor's receipt or learning thereof, furnish to and inform Mortgagee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4 Upon demand therefor by Mortgagee, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as Mortgagee may request.

5.5 Upon the occurrence of an Event of Default under this Mortgage:

(A) Mortgagor shall deliver to Mortgagee the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Mortgagee, which endorsement and/or assignment shall be in form and substance acceptable to Mortgagee.

(B) Mortgagee, then or at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, may notify any or all of the obligors of the Leases that the Leases have been assigned to Mortgagee and Mortgagee (in its

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name, in the name of Mortgagor or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Mortgagee.

(C) Mortgagor shall irrevocably direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.

(D) Mortgagee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee or in both names.

(E) Mortgagee may, at such time or times thereafter as Mortgagee, without notice to Mortgagor, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (i) demand payment of the Rents and performance of the Leases; (ii) enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) exercise any or all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (iv) settle, adjust, compromise, extend or renew the Leases and/or the Rents; (v) settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (vi) take control, in any manner, of the Rents; (vii) prepare, file and sign Mortgagor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (viii) endorse the name of Mortgagor upon any payments or proceeds of the Rents and deposit the same to the account of Mortgagee; and (ix) do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

(F) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes: (i) to be held by Mortgagee as additional collateral for the payment of Mortgagor's Liabilities; (ii) to be applied to Mortgagor's Liabilities, in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (iii) to be applied to such obligations of Mortgagor or the Mortgaged Property or the operation or business thereof as Mortgagee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (iv) to be remitted to Mortgagor.

## 6. DEFAULT

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(A) if Mortgagor fails or neglects to perform, keep or observe any of Mortgagor's Obligations within thirty (30) days of notice from Mortgagee, or fails or neglects to perform, keep or observe any other term, provision, condition, covenant, warranty or representation contained in this Mortgage, in the Notes, in the Loan Agreement, or in the Other Agreements, which is required to be performed, kept or observed by Mortgagor;

(B) if any material statement, report or certificate made or delivered by Mortgagor, or any of its partners, officers, employees or agents, to Mortgagee is not true and correct in any material respect when made or delivered;

(C) if Mortgagor fails to pay Mortgagor's Liabilities, when due and payable;

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(D) if the Mortgaged Property or any other of Mortgagor's assets are attached, seized, subjected to a writ of distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within thirty (30) days thereafter;

(E) if a petition under any section or chapter of any state or federal bankruptcy law or statute, or any similar law or regulation shall be filed by Mortgagor or if Mortgagor shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Mortgagor for its dissolution or liquidation;

(F) if Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs or if a petition under any section or chapter of any state or federal bankruptcy law or statute or any similar law or regulation is filed against Mortgagor or if any case or proceeding is filed against Mortgagor for its dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof;

(G) if an application is made by Mortgagor for the appointment of a receiver, trustee or custodian for the Mortgaged Property or any other of Mortgagor's assets;

(H) if an application is made by any Person other than Mortgagor for the appointment of a receiver, trustee, or custodian for the Mortgaged Property or a material portion of any other of Mortgagor's assets and the same is not dismissed within sixty (60) days after the application therefor;

(I) if a notice of lien, levy or assessment is filed of record with respect to all or any of Mortgagor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, including, without limitation, the Pension Benefit Guaranty Corporation or if any Charges owing at any time or times hereafter to any one of them becomes an Encumbrance upon the Mortgaged Property or any other of Mortgagor's assets and the same is not released or contested in such manner as to stay the enforcement thereof within thirty (30) days after the same becomes an Encumbrance; or

(J) Occurrence of a default or event of default under the Notes or the Loan Agreement.

6.2 Upon the occurrence of an Event of Default, without notice to or demand of Mortgagor, except as may be required by law, all of Mortgagor's Liabilities shall become immediately due and payable, and Mortgagee, in its sole discretion and at its sole election, without notice of such election, and without demand, may do any one or more of the following:

(A) Collect Mortgagor's Liabilities at once by foreclosure or otherwise, including exercising any rights or remedies granted to Mortgagee as "Secured Party" under this Mortgage, the Loan Agreement or the Notes without notice of broken covenant or condition (and in case of such default and the exercise of such option, Mortgagor's Liabilities shall bear interest, from the date of such default, at the rate provided in Paragraph 3.4 hereof).

(B) Subject to applicable law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying

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or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same, or any part thereof, from time to time, and after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagee immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(C) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(D) In the event of the commencement of any suit by Mortgagee to foreclose this Mortgage, Mortgagee shall have the right to apply to the court in which such proceedings are pending for entry of an order placing Mortgagee in possession of the Mortgaged Property. In the event an order is entered placing Mortgagee in possession of the Mortgaged Property, Mortgagee may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property,

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including, without limitation, make all repairs and replacements deemed necessary by Mortgagee and lease the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in such foreclosure proceedings. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing Mortgagee in possession served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. If Mortgagor shall remain in physical possession of the Mortgaged Property after entry of an order placing Mortgagee in possession, Mortgagor's possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any other Person authorized by Mortgagee, after entry of such order, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of Subparagraph (B) and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all or of any part of the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage, the Loan Agreement or the Notes) the following: all of the costs and expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing, and selling the same, including, without limitation, the costs, charges, expenses and attorneys' fees specified in Paragraph 6.4 below; receivers' fees; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment or like premiums, if any, provided for in the Notes or the Loan Agreement; and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Notes, the Loan Agreement, the Other Agreements, or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or attorneys' fees by reason of the employment of counsel for advice with respect to this Mortgage, the Notes, the Loan Agreement, the Other Agreements, or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Mortgagee's reasonable attorneys' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof

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from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 and 6.4 above, second, to the balance of Mortgagor's Liabilities, and third, the surplus, if any, to Mortgagor.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and assigns, and each and every Person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (a) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (b) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at any sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefor.

6.7 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage, the Loan Agreement or the Notes as the same become due under this Mortgage, the Loan Agreement or the Notes, or for any other of Mortgagor's Liabilities which shall become due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

6.8 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and Mortgagee may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage, the Loan Agreement or the Notes may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

6.9 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all of Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for in the Loan Agreement, the Notes and the Other Agreements and payment of all costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee for the preparation, execution and/or recording of such release.

6.10 Upon occurrence of an Event of Default and acceleration of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other Person, or a payment thereof received upon or on account of a foreclosure of

this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Loan Agreement, the Notes, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of Mortgagor's Liabilities and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments required under the prepayment privilege, if any, contained in the Loan Agreement, the Notes and the Other Agreements.

6.11 (A) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the Loan secured hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the Loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein, or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest.

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, or in the Loan Agreement, the Notes, or in the Other Agreements.

6.12 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Loan Agreement, the Notes or the Other Agreements shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither Mortgagor, nor any other Person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Loan Agreement, the Notes, or the Other Agreements or by reason of the release, regardless of consideration, of the whole or any part of the security held for Mortgagor's Liabilities, 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 of Mortgagor's Liabilities or modifying the terms of the Loan Agreement, the Notes, the Other Agreements or this Mortgage without first having obtained the consent of Mortgagor or such other Person, and, in the latter event, Mortgagor, and all such other Persons, shall continue to be liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

## 7. MISCELLANEOUS

7.1 Every provision for notice, demand or request required in this Mortgage or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon), or mailed to, as hereinafter provided, the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, return receipt requested, addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day following posting as aforesaid. For the purposes herein, notices shall be sent to Mortgagor and Mortgagee as follows:

To Mortgagor:

Pet-Ag, Inc.  
30 W. 432 Route 20  
Elgin, Illinois 60120

with a copy to:  
Ritt and Dalton, P.C.  
1130 North McLean Boulevard  
Elgin, Illinois 60123  
Attention: Raymond F. Dalton, Jr.

To Mortgagee:

American National Bank and Trust  
Company of Chicago  
33 North LaSalle Street  
Chicago, Illinois 60690  
Attn: Owen B. Beacom

with a copy to:

Fagel, Haber & Maragos  
140 South Dearborn Street  
Suite 1400  
Chicago, Illinois 60603  
Attention: Rochelle P. Slater

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee.

7.4 This Mortgage was executed and delivered in and, except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.6 To the extent that any of Mortgagor's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Mortgaged Property or any part thereof, Mortgagee shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior titles and equities are by the holder(s) thereof assigned to Mortgagee or released.

7.7 All the terms and conditions of the Loan Agreement and the Notes are incorporated herein by reference. In the event of any conflict between the provisions of this Mortgage and the provisions of the Loan Agreement or the Notes, then in such event the provisions of the Loan Agreement or the Notes shall control.

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

PET-AG, INC., a Delaware corporation

By: Walter C. Quednau  
Walter C. Quednau, II  
Its: President

ATTEST:

Ev: Dale E. Kuffel  
Dale E. Kuffel (type name)  
Its: Secretary

Property of Cook County Clerk's Office

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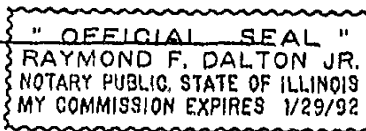
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, Raymond F. Dalton Jr, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on November 22, 1988, Walter C. Burrows II and Dale E. KubPahl personally known to me to be the PRESIDENT and SECRETARY, respectively of Pet-Ag, Inc. and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument their free and voluntary act and as the free and voluntary act of the corporation.

GIVEN under my hand and Notarial Seal this 22nd day of November, 1988.

Raymond F. Dalton Jr  
Notary Public

My commission expires:



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EXHIBIT A TO MORTGAGE DATED NOVEMBER 22, 1988

## LEGAL DESCRIPTION

That part of the NorthWest Quarter of Section 28, Township 41 North, Range 9 East of the Third Principal Meridian, lying North of Lake Street, described as follows:

Commencing at the iron stake in the East line of the NorthWest Quarter of said Section 28, 1171.5 feet South of the NorthEast corner of the NorthWest Quarter of said Section 28; thence West-erly at right angles to the East line of the NorthWest Quarter of said Section 28, 571.3 feet to an iron stake; thence South West-erly deflecting 71 Degrees 7 Minutes left from the last mentioned line 309.5 feet to the center line of the Public Highway known as Lake Street; thence South Easterly deflecting 90 Degrees 00 Minutes, left from the last mentioned line, 404 feet along the center line of the Public Highway to a point of curve; thence South Easterly along a curved line tangent to the last mentioned line convex NorthEasterly having a radius of 2864.93 feet, 313.1 feet (as measured on 25 cords) to the intersection of the center line of the Public Highway with the East line of the NorthWest Quarter of said Section 28; thence Northerly along the East line of the NorthWest Quarter of said Section 28, 542.6 feet more or less to the place of beginning, in Cook County, Illinois.

Permanent Tax Number: 06-28-100-004

Volume: 61

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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EXHIBIT B TO MORTGAGE DATED NOVEMBER 22, 1988

The following encumbrances listed on Schedule B of Ticor Title Insurance Company commitment for ALTA form B policy (commitment number 244862) attached hereto as Schedule I:

Special Exceptions Numbers 1-6

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SCHEDULE B

Commitment No. 244862

I. The following are the requirements to be complied with:

1. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed of record.

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2. Standard Exceptions:

- (A) Rights or claims of parties in possession not shown by the public records.
- (B) Easements, or claims of easements, not shown by the public records.
- (C) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the premises.
- (D) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

3. Special Exceptions:

- 1. General Taxes for the year 1988.  
General Taxes for the year 1987 are not yet due or payable.

Total 1987 taxes billed:

\$15,614.40

- 2. Possible unrecorded utility easements over that part of the land falling in Lake Street as disclosed by manholes shown on survey prepared by Burnidge and Westphal, Inc. and Job No. BW 86-329, dated October 27, 1986.
- 3. Rights of the State of Illinois, the municipality and the public in and to that part of the land which falls in Lake Street.
- 4. Rights of way for drainage ditches, tiles, feeders and laterals, if any.

93-545872

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SCHEDULE B - CONTINUED

Commitment No. 2-4862

5. An encroachment, as disclosed by a survey, onto the land, of improvements situated on adjoining premises.  
 Location : Along the Westerly line of the land approximately 139 feet Southwesterly of the Northwesterly corner of the land  
 Consisting of : Fence by 1.16 feet
6. An encroachment, as disclosed by a survey, of improvements located on the land, onto land adjacent.  
 Location : Over Westerly line of the land beginning at Northwesterly corner thereof and running Southwesterly approximately 60 feet  
 Consisting of : Fence by distance graduating to 1.07 feet
7. A mortgage to secure an indebtedness of the amount stated herein.  
 Mortgagor: Pet-Ag, Inc., a Delaware Corporation  
 Mortgagee: Citicorp Industrial Credit, Inc., a Delaware Corporation  
 Dated: December 29, 1986  
 Amount: \$212,000.00  
 Recorded: January 5, 1987  
 Document: 87,003,359
8. A mortgage to secure an indebtedness of the amount stated herein.  
 Mortgagor: Pet-Ag, Inc., a Delaware Corporation  
 Mortgagee: Citicorp Industrial Credit, Inc., a Delaware Corporation  
 Dated: December 29, 1986  
 Amount: \$1,000,000.00  
 Recorded: January 5, 1987  
 Document: 87,003,360
9. A security interest in certain real chattels affixed to the land as disclosed by the following financing statement noted herein.  
 Secured Party: Citicorp Industrial Credit, Inc., a Delaware Corporation  
 Debtor: Pet-Ag, Inc., a Delaware Corporation  
 Recorded: January 5, 1987  
 Document: 87 U 00203
10. We should be furnished an ALTA Extended Coverage Owner's or Loan Policy Combined Statement executed by the Purchasers/Mortgagors, Mortgagee and Seller. The date of the statement should cover the date of disbursement or the date of this Commitment, whichever is later.
- NOTE: In the event Purchaser/Mortgagor or Seller is a Trust, the Statement must be executed by the beneficiary thereof, not the Trustee.
11. Mechanics' or materialmen's liens or other statutory liens for work, labor or material not shown of record.

-93-545872

Commitment No. 244862

12. We should be furnished evidence as to who is in possession of the land.
13. Rights of parties in possession under unrecorded leases, if any.
14. Subject to encroachments, overlaps, unrecorded easements or other matters which may be disclosed by a current survey of the land, properly certified to the Company, made in accordance with (i) the "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by American Land Title Association and American congress on Surveying and Mapping in 1962 and reaffirmed September 21, 1979; (ii) the laws of the State of Illinois, and (iii) Illinois Land Survey Standards jointly established and adopted by the Chicago Bar Association, Illinois State Bar Association, Illinois Registered Land Surveyors Association and Society of Professional Land Surveyors in 1968.
15. Consequences of the failure of the Lender to pay out properly the whole or any part of the loan secured by the mortgage described in Schedule A, as affecting:
  - (1) The validity of the lien of said mortgage; and
  - (2) The priority of the lien over any other right, claim, lien or encumbrance which has or may become superior to the lien of said mortgage before the disbursement of the entire proceeds of the loan.
16. We should be furnished with a certified copy of the directors' resolutions authorizing the contemplated conveyance or mortgage.  
 NOTE: In the event the contemplated conveyance comprises a sale of all, or substantially all, of the assets of the Corporation, we must also be furnished with a certified copy of the shareholders' resolution authorizing the conveyance or mortgage.
17. The identity of the Proposed Insured for the Loan Policy should be furnished.
18. The amount of insurance required for the Loan Policy should be furnished.

END OF SCHEDULE B

DEPT-01 \$26.00  
 143333 TRAN 7925 11/22/88 13:39:00  
 \*0201 \* C \* -88-545872  
 GRANT COUNTY RECORDER

36.00

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26/1/88

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Property of Cook County Clerk's Office

10-2020  
PROPERTY TAX MAPS  
PROPERTY TAX MAPS

10-2020

10-2020