

1016

FILED NO. \_\_\_\_\_

BOOK 191 PAGE 55

97 SEP 10 PM 12: 13

MICHELLE UTSLI  
RECORDER  
MADISON COUNTY, IOWA

SEARCHED ✓  
RECORDED ✓  
INDEXED

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF  
RENTS AND FIXTURE FINANCING STATEMENT

REC \$ 190 00  
AUD \$ \_\_\_\_\_  
R.M.F. \$ 1 00

Dated as of September 4, 1997

By and Between

RELEASE 12-15-04 SEE  
BOOK 2004 PAGE 5940

ROSE ACRE FARMS, INC.,  
an Indiana Corporation

and

COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,  
"Rabobank Nederland," New York Branch,  
as Collateral Agent

LOCATION OF PREMISES:  
(check one)

- |                                     |                    |                          |                    |
|-------------------------------------|--------------------|--------------------------|--------------------|
| <input type="checkbox"/>            | Adair County, IA   | <input type="checkbox"/> | Jackson County, IN |
| <input type="checkbox"/>            | Guthrie County, IA | <input type="checkbox"/> | Newton County, IN  |
| <input checked="" type="checkbox"/> | Madison County, IA | <input type="checkbox"/> | White County, IN   |

NOTICE: THIS INSTRUMENT SECURES, INTER ALIA, OBLIGATIONS WHICH PROVIDE FOR A VARIABLE RATE OF INTEREST AND OBLIGATORY OR NON-OBLIGATORY FUTURE/REVOLVING CREDIT ADVANCES, ALL SUCH OBLIGATORY OR NON-OBLIGATORY FUTURE/REVOLVING CREDIT ADVANCES SHALL HAVE THE SAME LIEN PRIORITY AS IF MADE ON THE DATE HEREOF.

THIS INSTRUMENT SHALL BE EFFECTIVE AS AND SHALL CONSTITUTE A FIXTURE FILING FROM THE DATE OF ITS FILING FOR RECORD IN THE REAL PROPERTY RECORDS OF THE COUNTY IN WHICH THE PREMISES (AS DEFINED HEREIN) ARE LOCATED.

This Instrument was prepared by:  
Steven C. Turner  
Baird, Holm, McEachen, Pedersen, Hamann & Strasheim  
1500 Woodmen Tower  
Omaha, Nebraska 68102

Amended 05-22-03  
see 2003-3005

2478299

INDEX

	PAGE
1. Secured Indebtedness . . . . .	6
2. Mortgagor's Warranties . . . . .	8
3. Insurance . . . . .	8
4. Payment of Impositions . . . . .	13
5. Escrow Fund . . . . .	13
6. Liens . . . . .	14
7. Compliance with Permitted Encumbrances and Laws . . . . .	14
8. Permitted Contests . . . . .	14
9. Condemnation . . . . .	15
10. Leases and Rents . . . . .	16
11. Preservation and Maintenance of Mortgaged Property . . . . .	17
12. Transfer or Encumbrances of the Mortgaged Property . . . . .	17
13. Notices . . . . .	18
14. Sale of Mortgaged Property . . . . .	18
15. Change in the Laws Regarding Taxation . . . . .	18
16. Documentary Stamps . . . . .	19
17. Right of Entry . . . . .	19
18. Additional Rights . . . . .	19
19. Performance of Other Agreements . . . . .	20
20. Events of Default . . . . .	20
21. Right to Cure Defaults . . . . .	23
22. Environmental Matters . . . . .	24
23. Non-Waiver . . . . .	26
24. Security Agreement . . . . .	26
25. Fixture Filing . . . . .	27
26. Authority . . . . .	28
27. Actions and Proceedings . . . . .	28
28. Inapplicable Provisions . . . . .	28
29. Duplicate Originals . . . . .	28
30. Certain Definitions . . . . .	28
31. No Oral Change . . . . .	29
32. Power of Attorney . . . . .	29
33. Further Acts, Etc. . . . .	29
34. Headings, Etc. . . . .	29
35. Filings of Mortgage, Etc. . . . .	29
36. Usury Laws . . . . .	30

INDEX

	PAGE
37. Sole Discretion of Mortgagee . . . . .	30
38. Recovery of Sums Required To Be Paid . . . . .	30
39. Marshalling and Other Matters . . . . .	31
40. Waiver of Notice . . . . .	31
41. Indemnification . . . . .	31
42. Release of Mortgaged Property . . . . .	31
43. Governing Law . . . . .	32
44. Order of Enforcements . . . . .	32

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FINANCING STATEMENT ("**Mortgage**"), made as of the 4th day of September, 1997, by **ROSE ACRE FARMS, INC.**, an Indiana corporation ("**Mortgagor**"), whose address for purposes of this Mortgage is 6874 N. Base Road, Seymour, Indiana 47274, to and in favor of **COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.**, a banking association, New York Branch ("**Rabobank**"), whose address for purposes of this Mortgage is 245 Park Avenue, New York, New York 10167, in its capacity as Collateral Agent for Rabobank, **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA** ("**Prudential**"), **FARM CREDIT SERVICES OF MID-AMERICA, ACA** ("**FCS**"), and any other Lenders or Noteholders (as those terms are defined below), if any (Rabobank in its capacity and as Collateral Agent for itself, Prudential, FCS and such other Lenders or Noteholders, if any, is hereinafter referred as the "**Mortgagee**").

W I T N E S S E T H :

WHEREAS, Mortgagor, Rabobank and FCS have entered into that certain Amended and Restated Revolving Credit Agreement dated as of the date of this Mortgage (the "**Credit Agreement**"; and Rabobank, FCS, and any and all other "Banks" under the Credit Agreement are hereinafter collectively referred to as the "**Lenders**"), under the terms of which Lenders agreed to lend and Mortgagor agreed to borrow, the principal sum of up to \$35,000,000.00.

WHEREAS, Mortgagor, Prudential and FCS have entered into that certain Note Agreement dated as of the date of this Mortgage (the "**Note Agreement**"; and any holders of the notes from time to time outstanding under the Note Agreement are hereinafter collectively referred to as the "**Noteholders**"), under the terms of which Noteholders agreed to lend and Mortgagor agreed to borrow, the principal sum of \$30,000,000.00 (unless otherwise indicated, the Note Agreement and the Credit Agreement are hereinafter collectively referred to as the "**Loan Agreements**").

WHEREAS, Mortgagor and Rabobank have also entered into that certain Reimbursement Agreement dated as of February 15, 1991 (the "**February Reimbursement Agreement**") relating to that certain Letter of Credit issued to Citizens Fidelity Bank and Trust Company, Indiana, as Trustee, in the amount of \$6,430,000.00, dated as of February 15, 1991 (the "**February Letter of Credit**").

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

WHEREAS, Rabobank, Prudential and FCS have entered into that certain Collateral Agent and Intercreditor Agreement dated as of the date of this Mortgage (the "Collateral Agency Agreement").

WHEREAS, to induce the Lenders to enter into the Credit Agreement and Noteholders to enter into the Note Agreement, Mortgagor agrees to execute and deliver this Mortgage, as security for the payment and performance of all of Mortgagor's indebtedness, liabilities and obligations under the Loan Agreements, and any and all other indebtedness, liabilities and obligations now or at any time and from time to time hereafter owing by the Mortgagor to Lenders and Noteholders.

NOW, THEREFORE, Mortgagor, for good and valuable consideration, to secure the payment of an indebtedness hereinafter described and collectively referred to as "Debt," does hereby grant a security interest in the below described Mortgaged Property and does hereby irrevocably mortgage, grant and convey, and by these presents does irrevocably mortgage, convey, grant, transfer and assign to Mortgagee, all of the real property described in Exhibit "A" attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: All right, title and interest of the Mortgagor in the Premises, now owned or hereafter acquired, and all right, title, interest and estate of Mortgagor now owned or hereafter acquired in and to the following property, rights, interests, and estates (the Premises, the Improvements, together with the following property, rights, interests, and estates being hereinafter collectively called the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property and the reversion and reversions, remainder and remainders, and all land laying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights courtesy, property, possession, claim and demand whatsoever, both in law and in equity, of Mortgagor of, in and to the Mortgaged Property and every part and parcel thereof, with the appurtenances thereto;

(b) subject to any prior liens, security interests, encumbrances or leases, all goods which may become fixtures, machinery, furniture, equipment, processing equipment, dryers, mixers, grinders, augers, scales, vats, tanks, shelves, conveyors, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator,

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

2

equipment or fixtures and compressors) and other articles of personal property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenances thereto, or used or usable in connection with the present or future operation, maintenance and occupancy of the Mortgaged Property, including without limitation all apparatus, machinery, motors, elevators, fittings, radiators, compressors, refrigeration equipment, drying equipment, mixing or blending equipment, handling equipment, weighing equipment, shelving, carpeting, water softeners, all plumbing, heating, lighting, ventilating, refrigerating, air conditioning and sprinkler systems and equipment, sound and music distribution systems, call systems, and components thereof, and fixtures and appurtenances thereto, incinerators and garbage disposal equipment, and all tangible personal property now or thereafter owned by Mortgagor and located on and used or usable in the operation and maintenance of the Premises and Improvements (and all other personal property, either similar or dissimilar to the foregoing, used or usable in the operation and maintenance of the Premises and Improvements and located in and on the same), together with all replacements and substitutions therefor, now owned or hereafter acquired by Mortgagor and located in or on said Premises and Improvements, together with all materials intended for construction, reconstruction, replacement, alteration, and repair of the improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Mortgaged Property (hereinafter collectively called the "**Equipment**"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code), superior in lien to the lien of the Mortgage; and together with all condemnation awards and rights under insurance policies and leases described below pertaining to said Premises or the Improvements now or thereafter located thereon;

(c) all awards or payments, including interest thereon, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter entered into (the "**Leases**") and all oil and gas or other mineral royalties, bonuses and rents, issues and profits from the Mortgaged Property (the "**Rents**") and all proceeds from the sale or other dispositions of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the

proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property; and

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property.

TO HAVE AND TO HOLD the Mortgaged Property upon and subject to the agreements hereinafter set forth:

When used in this Mortgage, capitalized terms shall have the meanings specified in this Section unless the context clearly requires otherwise:

Applicable Environmental Law means the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act ("SARA"), the Toxic Substances Control Act, the Occupational Safety and Health Act ("OSHA"), and any other federal, state or local statute, rule or regulation in effect in any jurisdiction in which Mortgagor is or hereafter may be doing business or where the Mortgaged Property or any other real or personal property owned, occupied, operated or used by Mortgagor is or hereafter may be located, pertaining to health, the environment (as defined in CERCLA), or any Contaminant, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, as now or hereafter may be enacted or amended, and all licenses, orders, permits, certificates or the like promulgated under any of the foregoing.

Contaminant means any pollutant, hazardous or toxic substance or waste, or contaminated material, including petroleum and petroleum products, asbestos and asbestos-containing products, ureaformaldehyde and all other materials and substances designated or regulated as a hazardous or toxic substance or waste, pollutant or contaminant under any Applicable Environmental Law.

Enforcement Action means any pending or threatened action, proceeding, investigation or order instituted by the United States Environmental Protection Agency, any other federal, state or local governmental authority, or any other individual or entity, related to any suspected or actual Environmental Activity, Contaminant, or noncompliance with any Applicable Environmental Law on, at, through or under any of the Mortgaged Property or any other real or personal property owned, occupied, constructed, operated or used by Mortgagor or any business conducted thereon or therewith.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

4

Environmental Activity means any past, present or future, storage, holding, existence, release, threatened release, production, emission, discharge, spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, generation, processing, treatment, abatement, handling or transportation of any Contaminant on, at, through or under the Mortgaged Property or any other property owned, occupied, constructed, operated or used by Mortgagor not in compliance with any Applicable Environmental Law.

Indebtedness means all indebtedness, liabilities and obligations of the Mortgagor to Lenders or Noteholders, without priority, including the following:

(a) The aggregate principal sum of \$30,000,000.00, with interest thereon according to the terms and conditions of the Note Agreement and those certain promissory notes executed and delivered by Mortgagor pursuant to the terms of the Note Agreement, including (i) those certain promissory notes to Prudential in the principal amount of \$17,000,000.00 and \$3,000,000.00, respectively; and (ii) that certain promissory note to FCS in the principal amount of \$10,000,000.00, and any other note given in substitution therefor or in modification, renewal, or extension thereof, in whole or in part (collectively, the "**Term Notes**"), the terms of which are incorporated herein by reference, with interest thereon at the rate or rates set forth therein, and all other sums due Noteholders as provided in the Note Agreement and the Term Notes; and

(b) The aggregate principal sum of \$35,000,000.00 (or so much thereof as which may now or hereafter be advanced), with interest thereon according to the terms and conditions of the Credit Agreement and those certain promissory notes executed and delivered by Mortgagor pursuant to the terms of the Note Agreement, including (i) that certain promissory note to Rabobank in the principal amount of \$20,000,000.00; and (ii) that certain promissory note to FCS in the principal amount of \$15,000,000.00, and any other note given in substitution therefor or in modification, renewal, or extension thereof, in whole or in part (collectively, the "**Revolving Credit Notes**"), the terms of which are incorporated herein by reference, with interest thereon at the rate or rates set forth therein, and all other sums due Lenders as provided in the Credit Agreement and the Revolving Credit Notes; and

(c) The aggregate principal amount of \$6,430,000.00 including (i) the repayment of all indebtedness of the Mortgagor arising under the February Reimbursement Agreement on account of any draft drawn under the February Letter of Credit, and which indebtedness is due and payable on the day a draft under the February Letter of Credit is honored, and all renewals, extensions and modifications thereof and any agreement or note issued in evidence thereof or in substitution therefore; (ii) the payment of the annual commission for causing the issuance of the February Letter of Credit designated in the February Reimbursement Agreement; (iii) the payment of all other sums as may be advanced by Rabobank in accordance with the February Reimbursement Agreement; (iv) interest on all amounts described above at an annual rate which shall at all times be equal to the rate of interest announced by Rabobank from time to time as its base rate plus 1 1/2%; and (v) the payment and performance of all other indebtedness, liabil



ities or obligations of the Mortgagor to Rabobank arising as a result of the covenants and agreements of the Mortgagor contained in the February Reimbursement Agreement or this Mortgage; and

(d) Any and all sums, together with interest accruing thereon as herein provided, that may hereafter be advanced by or on behalf of the Mortgagee under the terms of this Mortgage as a result of the failure of the Mortgagor to perform its obligations under this Mortgage.

Leases includes all leases, subleases, licenses, concessions, contracts or other agreements, whether written or oral, now or hereafter in effect, that grant a possessory interest in and to or the right to use any portion of the Mortgaged Property.

Loan Documents means, collectively, this Mortgage, the Note Agreement, the Credit Agreement, the Notes and all mortgages, security agreements or assignments of leases or rents securing the Mortgagor's obligations thereunder, and any and all extensions, modifications or renewals thereof.

Notes means, collectively, the Term Notes and the Revolving Credit Notes.

Release Date shall mean the earlier of the date on which either: (a) The Debt secured by this Mortgage has been paid and performed in full and this Mortgage has been released, in writing; or (b) If the Mortgagee becomes the owner of the Mortgaged Property by way of foreclosure of the lien hereof, deed in lieu of such foreclosure or otherwise, the Mortgaged Property has been sold by it.

Rents includes all consideration, whether money or otherwise, paid or payable for the use or occupancy of the Mortgaged Property by a third party.

Site Assessment Report means any site environmental assessment report pertaining to the Mortgaged Property, procured by or presented to Mortgagee in conjunction with this Mortgage.

1. Secured Indebtedness. This Mortgage is made to secure and enforce the payment and performance of the Indebtedness.

This Mortgage also secures all indebtedness, liability or obligation at any time and from time to time owing by the Mortgagor to the Lenders or the Noteholders, as the case may be, on account of any and all existing, outstanding, present, or future loans, guaranties, advances, accommodations and other extensions of credit for any purpose whether such indebtedness, liability or obligation is direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

6

several, to the same extent and having the same priority as if such future or additional loans, advances, or readvances were made on the date of the execution of this Mortgage. The total amount of principal secured by this Mortgage may be increased or decreased from time to time, but the total unpaid principal balance so secured at any one time shall not exceed the maximum principal amount of NINETY FIVE MILLION DOLLARS (\$95,000,000.00) plus interest thereon at the applicable rate therefor and any disbursements made under the Loan Documents or this Mortgage including, without limitation, the payment of taxes, assessments, levies, insurance premiums, attorneys' fees, costs incurred for the protection of the Mortgaged Property, or otherwise with interest on such disbursements at the rate specified in the Loan Documents, from time to time. It is agreed that any such indebtedness, liability or obligation shall be equally secured with, and have the same priority as, the original principal and shall be subject to all of the terms, provisions, and conditions of this Mortgage, whether or not, any written instrument, agreement or document evidencing such indebtedness, liability or obligation contain a recital that it or they are secured by this Mortgage.

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF NINETY-FIVE MILLION AND 00/100 DOLLARS (\$95,000,000.00). LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

ANY PERSON TAKING A JUNIOR MORTGAGE OR OTHER LIEN UPON THE MORTGAGED PROPERTY OR ANY INTEREST THEREIN SHALL TAKE SUCH LIEN SUBJECT TO THE (A) AMENDMENT, MODIFICATION OR SUPPLEMENTATION OF THIS MORTGAGE, THE NOTES, THE OTHER LOAN DOCUMENTS OR ANY OTHER DOCUMENT OR INSTRUMENT EVIDENCING, SECURING OR GUARANTEEING THE DEBT; (B) VARIATIONS IN THE RATE OF INTEREST AND THE METHOD OF COMPUTING THE SAME; (C) IMPOSITION OF ADDITIONAL FEES AND OTHER CHARGES; AND (D) EXTENSION OF THE MATURITY OF THE NOTES OR ANY OTHER PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING THE DEBT, IN EACH AND EVERY CASE WITHOUT OBTAINING THE CONSENT OF THE HOLDER OF SUCH JUNIOR LIEN AND WITHOUT THE LIEN OF THIS MORTGAGE LOSING ITS PRIORITY OVER THE RIGHTS OF ANY SUCH JUNIOR LIEN. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED, HOWEVER, AS WAIVING ANY PROVISION CONTAINED IN THIS MORTGAGE WHICH PROVIDES, AMONG OTHER THINGS, THAT IT SHALL CONSTITUTE AN EVENT OF DEFAULT IF ALL OR ANY PART OF THE MORTGAGED PROPERTY OR ANY INTEREST THEREIN SHALL BE SOLD, CONVEYED OR FURTHER ENCUMBERED.

NOTHING HEREIN SHALL CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL OR FUTURE LOANS OR ADVANCES IN ANY AMOUNT.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

The Indebtedness and all other indebtedness, obligations, and liabilities secured hereby are herein sometimes called the "Debt."

Mortgagor will pay the Debt at the time and in the manner provided in the applicable agreements relating to such Debt, the Loan Documents and this Mortgage. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Mortgagor's Warranties. Mortgagor warrants that Mortgagor has good title to Mortgaged Property and has the right to grant a security interest in and to mortgage, give, grant, bargain, sell, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor presently possesses an unencumbered fee simple estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those shown in Exhibit "B" attached hereto (the "**Permitted Encumbrances**"). Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

Mortgagor further warrants that all the Improvements now or hereafter located on the Premises are, or will be located entirely within the boundaries of the Premises; that the Mortgaged Property complies with all applicable zoning, building, environmental use, any federal, state and local laws and regulations and all covenants, restrictions and easements of record; that all streets, easements, utilities and related services necessary for the operation of the Mortgaged Property are available; and all financial data and documentation furnished by Mortgagor to Mortgagee, Lenders or Noteholders are true and correct in all material respects as of the date hereof. The warranties of this paragraph will survive foreclosure of this Mortgage and shall run with the Premises.

Mortgagor shall not, without the prior written consent of Mortgagee in each instance, (a) initiate or acquiesce in any zoning reclassification of the Mortgaged Property; (b) permit any change in the general nature of the occupancy or use of the Mortgaged Property; (c) permit any building or other improvements located on any premises not constituting part of the Mortgaged Property to rely on the Mortgaged Property or any interest therein to fulfill any municipal or governmental requirement; (d) permit any of the Improvements to rely on any premises not constituting part of the Mortgaged Property to fulfill any municipal or governmental requirement; (e) impair the integrity of the Mortgaged Property as a single zoning lot; or (f) grant or permit the granting of any easements, licenses, covenants, conditions or declarations of use applicable to or binding upon the Mortgaged Property. Any act or omission by Mortgagor which violates any of the provisions of this paragraph shall be void.

3. Insurance.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

8

(a) Risks to be Insured and Policy Provisions. Subject to the provisions of paragraph 5 hereof, Mortgagor, at its sole cost and expense, will maintain or cause to be maintained the following:

(i) Comprehensive general liability insurance covering any and all liability of the insured with respect to or arising out of the ownership, maintenance, use or occupancy of the Mortgaged Property, and all operations incidental thereto including, but not limited to, structural alterations, new construction and demolition, and including coverage for those hazards generally known in the insurance industry as explosion, collapse and underground property damage ("XCU"), said insurance to have limits of not less than FIVE MILLION DOLLARS (\$5,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability;

(ii) Insurance ("**Building Insurance**") on all buildings, fixtures and improvements located on and forming a part of the Mortgaged Property (inclusive of foundations, footings and similar structures below grade) against all perils generally included within the classification of "all risks," including fire and earthquake, in amounts at least equal to 90% of the full replacement cost thereof as such replacement cost shall be determined from time to time at the reasonable request of Mortgagee by an expert selected and paid by Mortgagor and approved by Mortgagee. In addition, the Building Insurance shall be written in such a manner that, in the event of loss, the amount of coverage afforded to the insured shall not be reduced or diminished by reason of the application of any co-insurance or average clause. Such insurance shall, during the course of any construction or repair of any improvements on the premises, be on All Risk Builder's Risk 100% Completed Value Non-Reporting Form or other form approved by Mortgagee;

(iii) Insurance on personal property against fire and any peril generally included within the classification of "extended coverage" in amounts at least equal to the actual cash value thereof as such values shall be determined from time to time at the reasonable request of Mortgagee;

(iv) Rental value or business interruption insurance (or a combination thereof as Mortgagee may require) on all buildings, fixtures and improvements located on and forming a part of the Mortgaged Property as above described (including parking and common areas) against loss by the perils covered by the Building Insurance in amounts satisfactory to Mortgagee. Such rental value or business interruption insurance shall (i) be blanket on all buildings, fixtures and improvements (including parking and common areas), and (ii) contain no monthly or other periodic limitation;

(v) To the extent not covered by the Building Insurance, boiler and machinery insurance ("**Boiler-Machinery Insurance**") on steam boilers and other steam apparatus and systems located from time to time on the premises and use and occupancy ("**U & O**") insurance thereon in such amounts and in such form as may be approved from time to time by Mortgagee;

(vi) To the extent Mortgagee determines that such insurance is reasonably required, additional insurance commonly referred to in the insurance industry as "Demolition and Increased Cost of Construction Insurance" covering loss of undamaged portions, demolition, site clearing, increased cost of construction and increased time of repair or replacement thereof occasioned by the operation of any law or ordinance regulating the construction, repair or use of said buildings, fixtures and improvements as above described;

(vii) To the extent required by Mortgagee, Workmen's or workers' compensation insurance as required by law and employer's liability insurance with limits of liability of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00);

(viii) If the Mortgaged Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "**Act**"), Mortgagor shall keep the buildings, fixtures and improvements and all personal property located on and forming a part of the Mortgaged Property covered for the term of the last to terminate of the Loan Agreements by flood insurance up to the maximum limit of coverage available under the Act but not in excess of the amount of \$5,000,000; and

(ix) Such other insurance with respect to the Mortgaged Property in such amounts and against such insurable hazards as Mortgagee from time to time may reasonably require.

All insurance required hereunder, including the comprehensive general liability (the "**Policies**"), shall (a) provide that coverage shall not be cancelled until at least fifteen (15) days' written notice of such revision, cancellation or reduction shall have been given to Mortgagee; (b) be issued by insurance companies which are qualified to do business in the State where the Premises is located (the State where the Premises is located is hereinafter referred to as the "**State**") and which have a current rating of A Class XII or better in Bests' Insurance Guide; and (c) be satisfactory to Mortgagee in all other reasonable respects.

The comprehensive general liability insurance to be maintained by Mortgagor pursuant to this paragraph 3 shall (a) name Mortgagee as an additional insured, (b) subject to

the limitation of liability contained in the Policies, apply severally as to Mortgagor and Mortgagee, (c) subject to the limitation of liability contained in the Policies, cover each of them as insureds in the same manner as if separate policies had been issued to each of them, (d) subject to the limitation of liability contained in the Policies, contain no provisions affecting any rights which any of them would have as claimants if not so named as insureds, (e) be primary insurance with respect to or arising out of the ownership, maintenance, use or occupancy of the Mortgaged Property with any other valid and collectible insurance available to Mortgagee constituting excess insurance.

The Building Insurance and Boiler-Machinery Insurance required hereunder to be maintained by Mortgagor shall name Mortgagee as an additional insured.

(b) Delivery of Policy. Mortgagor will deliver to Mortgagee original policies or certified copies of policies in form satisfactory to Mortgagee evidencing the insurance which is required under subparagraphs (a)(i) through (a)(ix), and Mortgagor shall promptly furnish to Mortgagee copies of all renewal notices and all receipts of paid premiums received by it. At least five (5) days prior to the expiration date of a required policy, Mortgagor shall deliver to Mortgagee a binder for a renewal policy in form satisfactory to Mortgagee. If the Mortgagor has a blanket insurance policy in force providing coverage for several properties of the Mortgagor, including the Mortgaged Property, Mortgagee will accept a certificate of such insurance together with a certified copy of such blanket insurance policy; provided the certificate sets forth the types and amounts of insurance coverage, and such types and amounts are at least equal to the types and amounts required hereinabove, the original policy of insurance is written by a carrier or carriers acceptable to Mortgagee, insures against the risks set forth hereinabove, cannot be cancelled without fifteen (15) days prior written notice to Mortgagee, is in amounts satisfactory to Mortgagee, and has a Replacement Cost Endorsement meeting the requirements of paragraphs (a)(ii).

(c) Assignment of Policy. If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall, as collateral security, have all of the right, title and interest of Mortgagor in and to any insurance policies required under subparagraph 3(a) hereof and the unearned premiums thereon and in and to the proceeds resulting from any damage to Mortgaged Property prior to such sale or acquisition.

(d) Notice of Damage or Destruction; Adjusting Loss. If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagor will promptly give written notice thereof to the insurance carrier and Mortgagee, and will not adjust any damage or loss which is estimated by Mortgagee in good faith to exceed \$500,000 unless Mortgagee shall have joined in such adjustment; but if there has been no adjustment of any such damage or loss within six months from the date of occurrence thereof and if an Event of Default shall exist at the end of such six-month period or at any time thereafter, Mortgagee may alone

make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagor does hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagor.

(e) Application of Insurance Proceeds. All sums paid under any insurance policy required in subparagraphs 3(a)(ii) through (a)(vi), and in subparagraph 3(a)(viii) in excess of \$200,000.00, shall be paid to Mortgagee and held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the Mortgaged Property. In the event that such proceeds are made available to reimburse Mortgagor for the cost of the rebuilding or restoration of the Improvements which form a part of the Mortgaged Property, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. Any Improvements restored or rebuilt shall be of at least equal value and at least as functional as prior to such damage or destruction. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed upon the disbursing party being furnished with satisfactory evidence of the estimated cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments, so that the disbursing party can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time; and, at all times, the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the Improvements may reasonably exceed the sum of \$200,000.00, then the Mortgagee shall approve plans and specifications of such work before such work shall be commenced, which approval shall not be unreasonably delayed or withheld. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, following an Event of Default at the option of the Mortgagee, be applied to the reduction of the Debt, pursuant to the Collateral Agency Agreement.

(f) Reimbursement of Mortgagee's Expenses. Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses, together with interest from the date of disbursement at the Default Rate as stated and defined in Credit Agreement (unless collection of interest from Mortgagor at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law, which Default Rate

or highest rate which may be collected is hereinafter referred to as the "**Default Rate**") shall be additional amounts secured by this Mortgage.

4. Payment of Impositions. Subject to the payments in the manner provided in paragraph 5 hereof and to paragraph 8 relating to contests, Mortgagor shall pay all taxes (both real and personal), assessments, water charges, sewer charges, ground rents, maintenance charges and all other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "**Impositions**") before the same shall become delinquent. Mortgagor will deliver to Mortgagee, upon request, evidence satisfactory to Mortgagee that the Impositions are not delinquent. Mortgagor shall pay all taxes levied upon this Mortgage, or the Debt secured hereby, together with any other taxes or assessments which may be levied under the laws of the State against the Mortgagee, on account of this indebtedness, excluding any taxes measured by mortgagees income. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property.

5. Escrow Fund. Upon written demand by Mortgagee to Mortgagor to do so after the occurrence of an Event of Default under the Loan Documents, Mortgagor shall pay to Mortgagee on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the taxes and assessments imposed against the Mortgaged Property or any part thereof payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called the "**Escrow Fund**"). Not later than one month prior to the date when the taxes, assessments and insurance premiums will become delinquent, the amount in the Escrow Fund shall be sufficient to pay such taxes, assessments and insurance premiums. Mortgagee shall apply the Escrow Fund to pay said taxes, assessments and insurance premiums prior to the date that a delinquency occurs or a penalty attaches for nonpayment so long as the amount of the Escrow Fund. Mortgagor hereby pledges to Mortgagee any and all moneys now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. If the amount of the Escrow Fund shall exceed the amounts due pursuant to paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, (1) return any excess to Mortgagor, or (2) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property or the authorized agent of such owner. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default (hereinafter defined), Mortgagee



may apply any sums in its hands to the payment of the following items, pursuant to the Collateral Agency Agreement, in the order as set forth below:

- I. Impositions;
- II. Insurance premiums;
- III. Interest due on the unpaid balance of the Debt;
- IV. The unpaid principal balance of the Debt;
- V. All other charges payable pursuant to the Loan Documents and this Mortgage including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other moneys held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor. Mortgagee shall provide Mortgagor with an accounting of the amounts held in and charged against the Escrow Fund at such time as Mortgagor may reasonably request.

6. Liens. Subject to paragraph 8 hereof relating to contests, the Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on the Mortgaged Property or any part thereof which might or could be held to be superior or inferior to the lien of this Mortgage, other than the liens set forth in Exhibit "B" hereto. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. Compliance with Permitted Encumbrances and Laws. Subject to paragraph 8 relating to contests, Mortgagor shall comply in all material respects with all present and future material statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof and shall comply in all material respects with all material covenants, conditions and restrictions applicable to the Mortgagor which are contained in any documents constituting a permitted encumbrance as set forth in Exhibit "B" hereto.

8. Permitted Contests. Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 4 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagor shall (a) contest, in good faith, the existence, the amount or the validity thereof, the amount of

damages caused thereby or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (1) the collection of, or other realization upon the tax, assessment, lien, encumbrance or charge so contested, (2) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (3) any interference with the use or occupancy of the Mortgaged Property or any part thereof, and (b) shall give such security to Mortgagee as may be demanded by Mortgagee to ensure compliance with the foregoing provisions of this paragraph 8. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in paragraph 8.

9. Condemnation.

(a) Mortgagor hereby irrevocably assigns to Mortgagee any award or payment which may become payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly, temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called "Taking"). Immediately upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement permitting or consenting to the taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing. All Taking awards shall be adjusted jointly by Mortgagor and Mortgagee.

(b) If at the time of the taking for which compensation or award is payable the Mortgagor shall not be in default herein, then, and in such case, all such compensation or award shall, at the discretion of the Mortgagee, be applied toward the restoration, repair, replacement or rebuilding of the Mortgaged Property; provided, however, that as a condition precedent thereto Mortgagor shall furnish to the satisfaction of Mortgagee appropriate evidence of the cost thereof, and if the compensation or award is insufficient therefor, the Mortgagor shall furnish proof of financial ability in such form as Mortgagee may reasonably require for such restoration, repair, replacement or rebuilding. Mortgagee may, at its option, require that any compensation or award received in excess of such cost be applied, pursuant to the Collateral Agency Agreement, to the reduction of the Debt. If Mortgagor shall, at the time of the Taking for which said compensation or award is payable, be in default under the terms hereof, then Mortgagee may, in its sole discretion, apply, pursuant to the Collateral Agency Agreement, all of said compensation or award toward the reduction of the Debt.

(c) Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses (including reasonable attorneys' fees) incurred in the collection of awards and their disbursement in accordance with this paragraph, and all such expenses, together with interest from the date of disbursement at the Default Rate, shall be additional amounts secured by this Mortgage.

10. Leases and Rents. Mortgagee has the right to enter the Mortgaged Property for the purpose of enforcing its interest in the Leases and the Rents. Nevertheless, subject to the terms of this paragraph 10, Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Mortgagor the right to collect the Rents. Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in the payment of the Debt. The right of the Mortgagor to collect the Rents may be revoked by Mortgagee upon any Event of Default (hereinafter defined).

Upon or at any time after an Event of Default, unless such default is cured prior to the time Mortgagee acts, Mortgagee may enter upon the Mortgaged Property, collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. All Leases shall be written on a standard form of lease which has been approved by Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. No material changes may be made to the Mortgagee approved standard lease without the prior written consent of Mortgagee. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed leases either: (i) on a form other than a previously approved standard form lease, or (ii) containing below market rental rates; shall be subject to the prior written approval of the Mortgagee. All Leases (except those identified in Exhibit "B") shall provide that they are subordinate to the Mortgage, that the lessee attorns to Mortgagee, and that the lessees will execute such tenant estoppel certificates as required by Mortgagee. Mortgagor shall not, without the consent of Mortgagee, cancel or modify any Leases or accept prepayments of installments of Rent for a period of more than one (1) month in advance or further assign the whole or any part of the Leases or the Rents without the consent of Mortgagee. In respect of any Lease, Mortgagor will (a) fulfill or perform each and every provision thereof on the lessor's part to be fulfilled or performed, (b) promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder, and (c) enforce all of the terms, covenants and conditions contained in the Leases upon the lessee's part to be performed, short of termination thereof. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor and may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

16

11. Preservation and Maintenance of Mortgaged Property. Mortgagor (i) shall keep the Improvements now or hereafter erected on the Premises in safe and good repair and condition, ordinary depreciation excepted; (ii) shall, upon damage or destruction of the Mortgaged Property or any part thereof by fire or other casualty, restore, repair, replace or rebuild the Mortgaged Property that is damaged or destroyed to the condition it was in immediately prior to such damage or destruction, whether or not any insurance proceeds are available or sufficient for such purpose; unless failure to restore, repair, replace or rebuild would have no material adverse effect upon the value of the Premises; (iii) shall constantly maintain the parking and landscaped areas of the Mortgaged Property; (iv) shall not commit waste or permit impairment or deterioration of the Mortgaged Property; (v) shall not alter or permit the alteration by any tenant of the design or structural character of any building now or hereafter erected on the Premises or hereafter constructed, or permit any tenant to construct, additions to existing buildings or additional buildings on the Premises without the prior written consent of the Mortgagee; (vi) shall not remove from the Premises any of the fixtures and personal property included in the Mortgaged Property except in the ordinary course of business unless the same is immediately replaced with property of at least equal value and utility, and this Mortgage becomes a valid first lien on such property; and (vii) shall maintain the roofs of the Improvements in safe, sound and good repair and condition.

12. Transfer or Encumbrances of the Mortgaged Property.

Mortgagor acknowledges that Lenders and Noteholders have examined both the creditworthiness of Mortgagor and Mortgagor's experience in owning and operating properties such as the Mortgaged Property in determining whether or not to enter into the Loan Documents, that Lenders and Noteholders have relied on Mortgagor's creditworthiness and experience in deciding to enter into the Loan Documents, and that Lenders and Noteholders will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Lenders and Noteholders have a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. In the event Mortgagor shall, without the prior written consent of Mortgagee, further encumber the Mortgaged Property with any lien imposed in connection with any other financing, or sell, transfer or convey the Mortgaged Property or any part thereof or the right to manage or control the operation of the Mortgaged Property, or any part thereof, or allow any corporate interest of Mortgagor to be sold, transferred or assigned, or permit the Mortgaged Property or any part thereof to be sold, transferred, or conveyed, or pledge the Mortgaged Property or any part thereof, then in any of such events, the entire Debt shall become due, at the option of Mortgagee. A sale, transfer or conveyance within the meaning of this paragraph 12 shall be deemed to include (a) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (b) an agreement by Mortgagor leasing all or a

substantial part of the Mortgaged Property or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; but a sale, transfer or conveyance within the meaning of this paragraph 12 shall not include any merger, consolidation, acquisition, sale or lease permitted in accordance with the Loan Agreements. Mortgagee reserves the right to condition its consent hereunder upon a modification of the terms hereof and the Loan Documents and on assumption of this Mortgage (which Mortgagee, in its sole and absolute discretion, may allow on a one-time basis) as so modified by the proposed transferee, payment of a transfer or assumption fee, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, transfer, conveyance or further encumbrance of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, transfer, conveyance, or further encumbrance of the Mortgaged Property regardless of whether voluntary or not or whether or not Mortgagee has consented to any previous sale, transfer, conveyance, or further encumbrance of the Mortgaged Property. Mortgagor was ably represented by an attorney at law in the negotiation of this Mortgage, the terms and conditions of which were bargained for at arm's length and without duress of any kind.

In the event of the voluntary sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Mortgaged Property on the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's liability, covenants or undertakings hereunder.

13. Notices. Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be deemed given when postmarked, addressed and mailed as provided for in Credit Agreement.

14. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee be sold in one or more parcels or in several interests or portions and in any order or manner.

15. Change in the Laws Regarding Taxation. If any law is enacted or adopted after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which changes the laws now in force for the taxation of mortgage, security instruments or debts secured thereby or the manner of the operation of any such taxes or which otherwise imposes a tax, either directly or indirectly, on the Loan Documents, the Debt or this Mortgage, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest

and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable or provide the basis for a defense of usury then, in that event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable, and upon the timely payment by Mortgagor of the Debt by reason thereof, any prepayment fee or premium otherwise due under the Loan Documents or this Mortgage shall be deemed waived by Mortgagee.

16. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Loan Documents or this Mortgage, or impose any tax or charge of the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

17. Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

18. Additional Rights. Not in limitation but in addition to any other rights Mortgagee may have under this Mortgage, Mortgagee shall have the following rights and remedies with respect to the environmental status of the Mortgaged Property:

(a) Right of Entry for Environmental Status. Mortgagee shall have the right to, at any reasonable time, enter on and upon the Mortgaged Property at any time and from time to time for the purpose of making such audit tests, inspections, and examinations (Inspections), including subsurface exploration and testing, as Mortgagee, in its discretion, deems necessary, convenient, or proper to determine whether the ownership, use and operation of the Mortgaged Property and the conduct of the activities engaged in thereon are in compliance with Applicable Environmental Laws. Any Inspection shall, to the extent possible, be conducted in a manner so as to minimize any material disruption of the Mortgagor's business operation. Mortgagee, or its designated agents, shall have the right to inspect and copy all of Mortgagor's records relating to environmental matters relating to the Mortgaged Property and to enter all buildings or facilities of Mortgagor for such purpose. Following an Event of Default, all of the costs and expenses reasonably incurred by Mortgagee with respect to the audits, tests, inspections and examinations which Mortgagee may conduct, including the fees of the engineers, laboratories and contractors, shall be paid by Mortgagor. Mortgagee may, but shall not be required to, advance such costs and expenses on behalf of Mortgagor. All such costs and expenses so advanced shall be secured by this Mortgage and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Rate.

(b) Mortgagee shall have the right but not the obligation, and without limitation of Mortgagee's other rights under this Mortgage, to enter onto any of the Mortgaged Property to conduct or to take such other actions as it deems necessary or advisable to clean up, remediate, encapsulate, remove, resolve or minimize the impact of, or otherwise deal with, any

Contaminants or Enforcement Actions or breaches of any Applicable Environmental Law pertaining to the Mortgaged Property or any part thereof which could result in an order, suit or other action against Mortgagor or which, in the sole opinion of Mortgagee, could otherwise jeopardize its security under this Mortgage. Any such steps shall, to the extent possible, be conducted in a manner so as to minimize any material disruption of the Mortgagor's business operations. All costs and expenses reasonably incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Rate.

(c) Mortgagee shall have the right, in its sole discretion, to require Mortgagor with respect to Mortgaged Property to periodically (but not more frequently than once during the term of this Mortgage, unless an Enforcement Action with respect to the Mortgaged Property is then outstanding or an Event of Default under this Mortgage has occurred, in which case this limitation will not apply) require the performance (at Mortgagor's sole expense) of an environmental assessment of any of the Mortgaged Property reasonably satisfactory in scope, form and content to Mortgagee. Said environmental assessment must be performed by an environmental consultant satisfactory to Mortgagee. Should Mortgagor fail to provide said environmental assessment within forty-five (45) days of Mortgagee's written request, Mortgagee shall have the right but not the obligation to retain an environmental consultant to perform said environmental assessment. All costs and expenses incurred by Mortgagee in the exercise of such rights shall be secured by this Mortgage and shall be immediately due and payable by Mortgagor within 15 days after invoice, with interest thereon at the Default Rate.

19. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

20. Events of Default. The Debt shall become due at the option of Mortgagee upon any one or more of the following events ("**Event of Default**"):

(a) if any portion of the Debt is not paid when due, taking into account any applicable grace period;

(b) if any of the Impositions is not paid before the same shall become delinquent, unless the same are being contested in good faith by appropriate proceedings;

(c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request, if such failure shall remain uncured for ten days after written notice;

(d) if Mortgagor does not comply with the provisions of paragraphs 10, 11, and 12, if such failure shall remain uncured for ten days after written notice;

(e) if any representation or warranty of Mortgagor, made herein, or in any certificate, report, financial statement or other instrument furnished in connection with entering into the Loan Documents or making any loan thereunder, shall prove false or misleading in any material respect;

(f) if Mortgagor shall make an assignment for the benefit of creditors;

(g) if a receiver, liquidator or trustee of Mortgagor shall be appointed or if Mortgagor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against Mortgagor, or if any proceeding for the dissolution or liquidation of Mortgagor shall be instituted and, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor, upon the same not being discharged, stayed or dismissed within thirty (30) days or if Mortgagor shall generally not be paying its debts as they become due;

(h) if Mortgagor shall be in default under any other term, covenant or condition of the Loan Documents or this Mortgage, and such failure under this Mortgage shall remain uncured ten days after written notice;

(i) if Mortgagor shall be in default in any material respect under any other material agreement, lease, mortgage, deed of trust or security agreement covering any part of the Mortgaged Property or described in Exhibit "B" as a Permitted Encumbrance whether it be superior or inferior to the lien of this Mortgage, excluding, however, any default not prohibited by the Loan Agreements;

(j) if the Mortgaged Property becomes subject (i) to any lien which is superior to the lien of this Mortgage, other than a lien for local real estate taxes and assessments not yet delinquent and any Permitted Encumbrances, or (ii) to any mechanic's, materialmen's, construction, or other lien which is or is asserted to be superior to the lien of this Mortgage and such lien shall remain undischarged for thirty (30) days;

(k) if Mortgagor fails to cure promptly any violations of laws or ordinances materially affecting or which may be interpreted to affect the Mortgaged Property;

(l) if any governmental authority or other individual or entity asserts any material lien or claim against Mortgagor, any of the Mortgaged Property or any other real or personal property owned, occupied, operated or used by Mortgagor for damages or costs relating to a



response to Environmental Activity or any other violation of any Applicable Environmental Law; provided, however, such claim shall not constitute an Event of Default if, within ten (10) business days of the assertion of the claim: Mortgagor shall prove to Mortgagee's satisfaction that Mortgagor has commenced and is diligently pursuing either (1) a cure or remediation of any circumstance which constitutes the basis for the claim, and continues diligently to pursue such cure or remediation to completion or (2) proceedings for an injunction, a restraining order or other appropriate relief preventing such governmental authority or individual or entity from asserting such claim, which relief is granted within thirty (30) business days of the claim and the injunction, order or relief and is not thereafter dissolved or reversed on appeal.

Upon the occurrence of any one of the foregoing Events of Default, Mortgagee shall have the option, without further notice or demand, to declare the Debt immediately due and payable and, irrespective of whether Mortgagee exercises said option, it may exercise any and all rights and remedies available at law and in equity, including but not limited to the following:

(a) Mortgagee may enter upon, take immediate possession of, manage, and operate the Mortgaged Property or any part thereof; make repairs and alterations and do any acts which Mortgagee deems proper to protect the security hereof, including but not limited to those granted Lenders and Noteholders pursuant to the Loan Documents; and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees the Mortgagee's costs, upon the Debt and in such order as Mortgagee may determine pursuant to the Collateral Agency Agreement. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any Notice of Default hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Mortgagee's continuance in possession or receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence of a default. Any of the actions referred to in this paragraph may be taken by Mortgagee at such time as Mortgagee is so entitled without regard to the adequacy of any security for the Debt.

(b) Mortgagee shall, without regard to the adequacy of any security for the Debt, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Mortgaged Property and operate the same and collect the rents, issues and profits therefrom.

(c) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants hereof.

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

22

(d) Mortgagee may elect to cause the Mortgaged Property or any part thereof to be sold as follows:

(i) Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Premises without causing structural damage thereto as if the same were personal property and dispose of the same in accordance with subparagraph (iii) below, separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(ii) Mortgagee may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided or provided in the Loan Documents secured hereby (or immediately upon the expiration of any redemption or stay period required by law), or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(iii) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted in subparagraph (i) above, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the Uniform Commercial Code of the State or in accordance with any other remedy provided by law. Both Mortgagor and Mortgagee shall be eligible to purchase any part or all of such property at any such disposition.

(iv) Mortgagee shall apply the proceeds of any sale or disposition hereunder, pursuant to the Collateral Agency Agreement.

21. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligations to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be due upon demand from Mortgagee to Mortgagor. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall be paid at the Default Rate, for the period after notice from

Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms of this Mortgage, with interest, shall be deemed to be secured by this Mortgage.

22. Environmental Matters.

(a) Environmental Representations and Evaluations. Mortgagor hereby represents and warrants to Mortgagee that, except as expressly described in the Site Assessment Report:

(i) The Mortgaged Property complies, in all material respects with Applicable Environmental Law concerning the Mortgaged Property.

(ii) The Mortgagor has been issued and will maintain all required federal, state, and local permits, licenses, certificates and approvals material to the Mortgaged Property (collectively "Permits") relating to (1) air emissions; (2) discharges to surface water or ground water; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes (intended hereby and hereinafter to include any and all such materials listed in any federal, state or local law, code or ordinance) and all rules and regulations promulgated thereunder as hazardous or potentially hazardous; or (6) other environmental, health or safety matters.

(iii) The Mortgagor has not received notice of, nor knows of, or suspects the facts which might constitute any material violations of Applicable Environmental Laws with respect to its business, operations, assets, equipment, property, leaseholds or other facilities.

(iv) Except in accordance with a valid governmental permit, license, certificate or approval, there has been no material emission, spill, release or discharge into or upon (1) the air; (2) soils or any improvements located thereon; (3) surface water or ground water; or (4) the sewer, septic system or waste treatment, storage or disposal system servicing the Mortgaged Property of any contaminants at or from the Mortgaged Property and accordingly the Mortgaged Property is free in all material respects of all such toxic or hazardous substances or wastes.

(v) To the knowledge of Mortgagor, there has been no complaint, nor has there been any order, directive, claim, citation or notice by any governmental authority or any person or entity which has not been satisfactorily resolved with respect to (1) air emissions; (2) spills, releases or discharges to soils or improvements located thereon, surface water, ground water, or the sewer, septic system or waste treatment, storage or disposal systems servicing the premises; (3) noise emissions; (4) solid or liquid waste

disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or wastes; or (6) other environmental health or safety matters affecting the Mortgaged Property ("**Environmental Matters**").

(vi) The Mortgagor has no material indebtedness, obligations or liability, or to the knowledge of Mortgagor, any contingent liability with respect to the storage, treatment, clean up, or disposal of any solid waste, hazardous waste or other toxic or hazardous substances.

(b) Additional Environmental Covenants. Mortgagor shall, from the date hereof to the Release Date, unless the Mortgagee shall otherwise consent in writing:

(i) Obtain and maintain in full force and effect, any permit, license, or similar authorization required by any Applicable Environmental Law to own, construct, occupy, operate or use the Mortgaged Property.

(ii) Take any and all actions reasonably necessary to prevent any actual or threatened violation of any Applicable Environmental Law; and in the event any violation of Applicable Environmental Law is threatened or does occur, take any and all steps necessary to prevent the occurrence or continuation thereof, and to correct or remediate any effect thereof in accordance with the provisions of any Applicable Environmental Law.

(iii) If Mortgagor shall receive notice or obtain any other knowledge of any Enforcement Action; receive notice or obtain any other knowledge of any other violation of Applicable Environmental Law has or may have occurred or is about to occur; receive notice from any governmental authority or private party alleging that Mortgagor may be liable or responsible for costs associated with response to or cleanup of any Environmental Activity or any other violation of any Applicable Environmental Law or any consequence thereof; or receive notice of the enactment or promulgation of any Applicable Environmental Law not in force as of the date hereof which would impair the value of any of the Mortgaged Property to Mortgagee; then Mortgagor shall notify Mortgagee within three (3) days of Mortgagor's receipt thereof and shall provide Mortgagee with such additional information in regard thereto as Mortgagee may from time to time request.

(c) Indemnification. Without any intent to limit the provisions of any other indemnification or hold harmless agreement, Mortgagor indemnifies, agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse it with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed

or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason of or arising out of (i) the breach of any representation or warranty of Mortgagor set forth herein; and (ii) the failure of Mortgagor to perform any obligation herein required to be performed by Mortgagor, from the date hereof to the Release Date; provided, however, this indemnity shall not apply with respect to matters caused by or arising out of the gross negligence or willful misconduct of the Mortgagee. This indemnity applies, without limitation, to any violation from the date hereof to the Release Date of any Applicable Environmental Law and any and all matters arising out of any act, omission, event or circumstance existing or occurring on or prior to the Release Date (including without limitation the presence on the Mortgaged Property or release from the Mortgaged Property of any Contaminant), regardless of whether such act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence; provided, however, such indemnity shall not apply with respect to matters caused by or arising out of the gross negligence or willful misconduct of Mortgagee. The provisions of this subparagraph shall survive the Release Date and shall continue thereafter in full force and effect.

23. Non-Waiver. The failure of Mortgagee to insist upon strict performance of a term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) failure of Mortgagee, or Noteholders or Lenders, as the case may be, to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by Mortgagee, or Noteholders or Lenders, as the case may be, extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or their the Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant thereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions.

24. Security Agreement. This Mortgage is both a real property Mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. MORTGAGOR BY EXECUTING AND DELIVERING THIS MORTGAGE HAS GRANTED AND HEREBY GRANTS TO MORTGAGEE, AS SECURITY FOR THE DEBT, A SECURITY INTEREST IN THE MORTGAGED PROPERTY TO THE FULL EXTENT THAT THE MORTGAGED PROPERTY MAY BE SUBJECT TO THE UNIFORM COMMERCIAL CODE OF THAT

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND FIXTURE FINANCING STATEMENT

0232278.03

26

STATE OR STATES WHERE THE MORTGAGED PROPERTY IS SITUATED (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, pursuant to the Collateral Agency Agreement.

25. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property (as more particularly described in item (b) of the granting clause of this Mortgage) which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

- (a) Name and address of Debtor:

Rose Acre Farms, Inc.  
6874 N. Base Road  
Seymour, Indiana 47274

- (b) Name and Address of Secured Party:

Cooperatieve Centrale Raiffeisen-  
Boerenleenbank B.A.  
Rabobank Nederland,  
245 Park Avenue  
New York, New York 10167

- (c) This document covers goods which are to become fixtures.  
(d) Description of Real Estate: See Exhibit "A".  
(e) Owner of Record of Real Estate: Debtor.

(f) This Financing Statement covers Proceeds.

(g) Products of the Collateral are also covered.

26. Authority. Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

27. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decide should be brought to protect its interests in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage, deed of trust, or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

28. Inapplicable Provisions. If any term, covenant or condition of the Loan Documents or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Loan Documents and this Mortgage shall be construed without such provision.

29. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

30. Binding Effect; Certain Definitions. All provisions and covenants of this Mortgage run with the land and shall inure to and bind the parties and their respective vendees, successors and assigns. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor or any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," and the words "Loan Documents" shall mean "the Loan Documents or any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

31. No Oral Change. This Mortgage may not be modified, amended, changed, discharged or terminated orally, but only in writing signed by the person against whom the enforcement of the modification, amendment, change, discharge or termination is sought.

32. Power of Attorney. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee under this Mortgage at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to paragraph 33.

33. Further Acts, Etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, conveyed, confirmed, pledged, assigned, and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

34. Headings, Etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

35. Filings of Mortgage, Etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time to time will cause this Mortgage and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required under any present or future law in order to publish notice of and fully protect the lien or security interest hereof upon and the interest of Mortgagee in the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal taxes (except those based upon income), duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold



harmless and indemnify Mortgagee, their successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

36. Usury Laws. This Mortgage and the Loan Documents are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due under the Loan Documents at a rate which could subject the holder of the Loan Documents to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Loan Documents, Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Loan Documents at a rate in excess of such maximum rate, the rate of interest under the Loan Documents shall be deemed to be immediately reduced to such maximum rate and all prior interest payments in excess of the maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Loan Documents.

37. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive.

Any and all of Mortgagee's rights under this Mortgage shall be exercised by it in its sole discretion and for the benefit of Mortgagee only. Mortgagee shall have no obligation to enter any of the Mortgaged Property or to take any other action which it is authorized by this Mortgage to take for the protection of its security. Any action which it may elect to take shall be for its own benefit and all third party beneficiary rights are hereby expressly negated. Mortgagee shall have no responsibility for the conduct of Mortgagor's environmental practices on the Mortgaged Property or in any other location. Any action or inaction by Mortgagee hereunder shall not be deemed to constitute the taking of control over Mortgagor's waste disposal, waste management, or other environmental practices with respect to any of the Mortgaged Property or any other real or personal property owned, occupied, operated or used by Mortgagor or any business conducted thereupon or therewith.

38. Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

39. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law without Mortgagee waiving any right to a deficiency judgment on the Debt, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law without Mortgagee waiving any right to a deficiency judgment on the Debt.

40. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

41. Indemnification. Mortgagor shall protect, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of or a lien on the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property, or any part thereof, or on the adjoining sidewalks, curbs, adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof, or on the adjoining sidewalks, curbs, adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof. Any amount payable to Mortgagee by reason of the application of this paragraph 41 shall become immediately due and payable and shall bear interest at the Default Rate, from the date loss or damage is sustained by Mortgagee until paid. The obligations of Mortgagor under this paragraph 41 shall survive any termination or satisfaction of this Mortgage.

42. Release of Mortgaged Property. In case Mortgagor shall well and truly perform its obligations secured by this Mortgage and pay or cause to be paid the Debt and any and all other moneys agreed to be paid by Mortgagor under the terms, provisions and conditions of the Loan Documents then the Mortgagee, its successors or assigns, shall release the lien of this Mortgage. Any part of the Mortgaged Property may be released from the lien of this Mortgage

conveyed at any time by a written instrument executed by the Mortgagee without affecting the validity and priority of the lien of this Mortgage upon the remainder of the Mortgaged Property.

43. Governing Law. This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of New York, except to the extent of procedural and substantive matters relating only to the creation, perfection and foreclosure of liens, and enforcement of rights and remedies against the Mortgaged Property, which matters shall be governed by the laws of the State.

44. Order of Enforcement. This Mortgage is one of several mortgages securing the Indebtedness. In the Event of a Default, the Mortgagee may proceed against any of the property secured by the mortgages at such time and in such order and manner as Mortgagee may elect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Mortgage, Security Agreement, Assignment of Rents and Fixture Financing Statement to be signed, executed and delivered in their name and behalf by officers duly authorized the day and year first above written.

ROSE ACRE FARMS, INC., an Indiana corporation

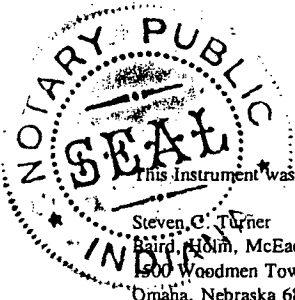
By: Lois Rust  
Name: LOIS RUST  
Title: PRESIDENT

By: Ruth Ann Hendrix  
Name: Ruth Ann Hendrix  
Title: Secretary

STATE OF INDIANA       )  
  ) ss.  
COUNTY OF Jackson    )

On this 2 day of September, 1997, before me the undersigned, a Notary Public in and for the said County and State, personally appeared Lois Rust and Ruth Ann Hendrix, being the President and the Secretary of Rose Acre Farms, Inc., an Indiana corporation, who is personally known to me to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Linda Starr  
Notary Public



This instrument was prepared by:  
Steven C. Turner  
Baird, Stolin, McEachen, Pedersen, Hamann & Strasheim  
1500 Woodmen Tower  
Omaha, Nebraska 68102

34

EXHIBIT "A"  
PREMISES  
MADISON COUNTY, IOWA  
OWNED BY ROSEACRE FARMS, INC.

The East half (E1/2) and the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section Thirty-four (34), in Township Seventy-six (76) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa, EXCEPT a parcel of land in the Northeast Quarter of the Southeast Quarter of Section 34, Township 76 North, Range 28 West of the 5th Principal Meridian, Madison County, Iowa, more particularly described as follows: Commencing at the Southeast corner of Section 34, Township 76 North, Range 28 of the 5th P.M., Madison County, Iowa, thence North 00 degrees 00 minutes 00 seconds, 1,918.38 feet along the east line of said Section 34 to the point of beginning. Thence North 90 degrees 00 minutes 00 seconds West 183.00 feet; thence North 00 degrees 00 minutes 00 seconds 100.00 feet; thence South 90 degrees 00 minutes 00 seconds East 183.0 feet to the East line of said Section 34; thence South 00 degrees 00 minutes 00 seconds 100.00 feet to the point of beginning.

## EXHIBIT "B"

## PERMITTED ENCUMBRANCES

## MADISON COUNTY, IOWA

## OWNED BY ROSEACRE FARMS, INC.

1. Easement for Public Highway granted to State of Iowa along South line of the Premises, as contained in instrument dated August 7, 1931, filed August 7, 1931 in Book 66 of Deeds, Page 572.
2. Easements for Public Highway purposes granted to Madison County along North line of Parcel II, as contained in Instrument dated March 21, 1961, filed March 22, 1961 in Book 91 of Deeds, Page 280.
3. Easement for communication systems purposes granted to Northwestern Bell Telephone Company being 1 Rod in Width and located within the South 1320 feet of Parcel II, as contained in Instrument dated March 10, 1966, filed April 22, 1966 in Book 93 of Deeds, Page 601.
4. Easement for Public Highway purposes granted to State of Iowa for Primary Road No. 92 as contained in Instrument filed November 16, 1966 in Book 94 of Deeds, Page 373.
5. Easement for electric transmission line purposes granted to Farmer's Electric Cooperative, Inc., in Instrument filed January 21, 1987 in Book 122 of Deeds, Page 647.
6. Easement for electric transmission line purposes granted to Farmer's Electric Cooperative, Inc. as contained in Instrument dated March 3, 1987, filed March 10, 1987 in Book 119 of Deeds, Page 800.
7. Financing Statement filed February 1, 1988 as UCC Rec. 3, Page 366 in favor of Metlife Capital.  
Continuation Statement filed January 26, 1993 as Fixture Filing No. 1869.
8. Any liens, security interests, encumbrances or leases upon Equipment (as defined in the Mortgage) which are prior in time to the lien, security interest or encumbrance created by the Mortgage.
9. Any Impositions which are a lien upon the Premises, which are not delinquent.
10. Any lien, security interest or encumbrance in favor of Rabobank (as defined in the Mortgage).