

RELEASED 6-14-05 SEE
BOOK 2005 PAGE 2659

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "ASSIGNMENT") is made this 30th day of June, 1988, by and between ROSE ACRE FARMS, INC., an Indiana corporation (the "MORTGAGOR"), whose address is R. R. 5, Seymour, Indiana 47274, and COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., "Rabobank Nederland", New York Branch (the "MORTGAGEE"), whose address is 245 Park Avenue, New York, New York 10167.

RECITALS:

Mortgagor has executed and delivered to Mortgagee a Term Loan Agreement, dated June 30, 1988, (the "Credit Agreement"), which authorizes certain borrowings by Mortgagor from Mortgagee, to be secured by certain security agreements, including this Assignment; and Mortgagor also executed and delivered to Mortgagee a Promissory Note, dated June 30, 1988, (the "Note"), pursuant to the terms of the Credit Agreement.

To secure payment of the Note and Credit Agreement, Mortgagor has executed and delivered to Mortgagee a Mortgage and Security Agreement of even date herewith (the "Mortgage"), covering, inter alia, real estate situated in the Counties of Madison and Guthrie, State of Iowa, legally described on Exhibit "A" attached hereto and incorporated herein by reference and all right, title and interest of Mortgagor in and to the buildings, improvements, fixtures and equipment now or hereafter located thereon (collectively, the "Mortgaged Collateral").

NOW, THEREFORE, in consideration of the premises, and in further consideration of the sum of One Dollar (\$1.00) paid by Mortgagee to Mortgagor, the receipt and sufficiency of which is hereby acknowledged:

ARTICLE I

ASSIGNMENT

1.1 Mortgagor does hereby grant, transfer and assign to Mortgagee all of the right, title and interest of Mortgagor in and to:

- (a) Any and all present or future leases, subleases, concessions, licenses, other use contracts or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Collateral or all or any part of any present or future im-

for assignment of 1st mortgage
see 1/18/85, 12-18-86
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for 1st mortgage
see 1/18/85, 2-12-91
1/18/85, 3-25-92
1/18/85, 3-25-92

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1988 JUN 30 PM 1:04

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee \$65.00

provements located on the Mortgaged Collateral, together with any and all extensions, modifications and renewals thereof (all of which are hereinafter collectively referred to as the "Leases", and singularly referred to as "Lease"); and

- (b) All rents, income and other payments of every kind due or payable or to become due or payable to Mortgagor, by virtue of the Leases, or otherwise due and payable or to become due or payable to Mortgagor as a result of any use, possession or occupancy of any portion or portions of the Mortgaged Collateral or as the result of the use of or lease of any personal property in or on the Mortgaged Collateral (collectively, the "Rents"), whether the Rents accrue before or after foreclosure of the Mortgage or during the period of redemption thereof.

1.2 This Assignment is made for the purpose of securing the following (collectively, the "Obligations"):

- (a) Payment of all indebtedness evidenced by the Credit Agreement, the Note and all other sums secured by the Mortgage, the Note and this Assignment; and
- (b) Performance and discharge of each and every obligations, covenant and agreement of Mortgagor contained herein and in the Credit Agreement, the Note and Mortgage.

ARTICLE II

WARRANTIES AND REPRESENTATIONS

- 2.1 Mortgagor hereby covenants and warrants to Mortgagee that:
- (a) No Leases are currently in effect covering any part of the Mortgaged Collateral except those with respect to which Mortgagor has heretofore been advised in writing by the Mortgagee.
 - (b) Mortgagor will be absolute owner of the Leases with full right, title, power and authority to assign the same and the Rents; and such Leases and Rents have not been, and will not be mortgaged, pledged, assigned or in any manner encumbered except as set forth in this Assignment;

- (c) Each Lease shall be valid and enforceable in accordance with its terms; and no Lease shall be materially altered, modified or amended without the prior written consent of Mortgagee, which consent will not be unreasonably withheld;
- (d) No part of the Mortgaged Collateral is the homestead of any person;
- (e) Mortgagor has not performed any act or executed any instrument and is not bound by any law, charter or agreement which might prevent Mortgagee from operating under any of the terms and conditions hereof, or which would limit Mortgagee in such operation; and
- (f) No rents have been waived, anticipated, discounted, compromised or released, except as may be permitted by the Leases; provided, however, that Mortgagor may collect, in advance, the first and last month's rent due under any Lease and the tenants under the Lease have no defenses, setoffs or counterclaims against Mortgagor.

2.2 To protect the security of this Assignment, Mortgagor agrees as follows:

- (a) To faithfully abide by, perform and discharge each and every obligation, covenant and agreement which Mortgagor hereafter becomes liable to observe or perform under any future Lease; to give prompt written notice to Mortgagee of any notice of default on the part of Mortgagor received from a tenant under any Lease; at the sole cost and expense of Mortgagor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease; not to borrow against, pledge or assign the Rents or anticipate the Rents except as herein permitted, or reduce the amount of the Rents or other payments under the Leases or waive, excuse, condone, or in any manner release or discharge the tenants thereunder of or from the obligations, covenants, conditions and agreements by said tenants to be performed, including the obligation to pay the Rents called for thereunder in the manner and at the place and time specified therein; not to materially modify, amend or terminate any of the Leases or accept a

surrender thereof without the prior consent of Mortgagee (which consent will not be unreasonably withheld) except by reason of the expiration of the stated terms of the Leases; and not to permit any assignment of any Lease or a subletting of any premises by any tenant without the prior consent of Mortgagee.

- (b) At Mortgagor's sole cost and expense, to appear in and defend any action or proceedings arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Mortgagor or any tenants thereunder, and to pay all costs and expenses of Mortgagee, including reasonable attorney's fees, in any such action or proceeding in which Mortgagee may appear or with respect to which it may incur costs;
- (c) To transfer and assign to Mortgagee, upon written notice by Mortgagee, any and all specific Leases Mortgagee requests. Such transfer or assignment by Mortgagor shall be upon the same or substantially the same terms and conditions as are herein contained; and Mortgagor will properly file or record such assignments, at Mortgagor's expense, if requested by Mortgagee;
- (d) To transfer, upon demand, to Mortgagee any security deposits held by Mortgagor under the terms of the Leases. Such security deposits may be held by Mortgagee without any allowance of interest thereon and shall become the absolute property of Mortgagee upon any default hereunder, to be applied in accordance with the provisions of the Leases. Until Mortgagee makes such demand and the deposits are paid over to Mortgagee, Mortgagee assumes no responsibility to the tenants under the Leases for any such security deposits;
- (e) To pay immediately upon demand all sums expended by Mortgagee under the authority hereof, together with interest thereon at the Default Rate, as that term is defined in the Credit Agreement, and the same shall be added to the said indebtedness and shall be secured hereby and by the Mortgage; and
- (f) To deliver to Mortgagee consents or estoppel statements of tenants in such form as may be required by Mortgagee.

2.3 Should Mortgagor fail to make any payment or do any act as herein provided, then Mortgagee may, but without obligation to do so, and without releasing Mortgagor from any obligation hereof, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and also the right to perform and discharge each and every obligation, covenant, and agreement of Mortgagor in the Leases contained, and, in exercising any such powers, to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Mortgagor hereby irrevocably constitutes and appoints Mortgagee or any representative of Mortgagee its true and lawful attorney in Mortgagor's name and stead:

- (a) To perform all of the acts and things required of Mortgagor in this Section 2.3; and
- (b) To perform all acts and things provided in Section 4.1 hereof.

ARTICLE III

PRESENT ASSIGNMENT

This Assignment shall constitute a perfected, absolute and present assignment, provided that, so long as no default exists in the Obligations, Mortgagor may collect, but not prior to accrual, except as otherwise set forth herein, all Rents, and may retain and use the same:

- (a) For payment to Mortgagee of the Obligations;
- (b) For the accounting for or repayment when due of all tenant security deposits, with interest thereon if required, pursuant to the provisions of Iowa law;
- (c) For payment of all delinquent or current real estate taxes and special assessments payable with respect to the Mortgaged Collateral, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
- (d) For payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow

payments for such premiums, to the escrow payments then due;

- (e) For payment of expenses incurred for the keeping of the covenants required of a lessor or licensor pursuant to the provisions of laws;
- (f) For payment of expenses incurred for normal maintenance and repairs of the Mortgaged Collateral; and
- (g) The remainder thereof for the enjoyment of Mortgagor.

The provisions of the foregoing section are intended to be a mere license in favor of Mortgagor and a mere deferral of Mortgagee's exercise of its perfected, absolute and present rights hereunder, and shall not be construed to be a future assignment thereof.

ARTICLE IV

MORTGAGEE'S RIGHTS

4.1 Upon or at anytime after the existence of an Event of Default in any of the Obligations, as defined in the Credit Agreement or Mortgage, Mortgagee may, at its option, either:

- (a) Collect and receive Rents directly from tenants, and in the name, place and stead of Mortgagor do and perform the acts and things which a receiver is authorized to do or perform pursuant to the provisions of Iowa law; or
- (b) Apply for, and Mortgagor hereby consents to, the appointment of a receiver of the Mortgaged Collateral.

4.2 Mortgagee shall be entitled to the rights and remedies granted herein whether or not proceedings for the foreclosure of the Mortgage have been commenced, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred without regard to waste, adequacy of the security, or solvency of Mortgagor. The exercise of any of the foregoing rights or remedies shall not cure or waive any Event of Default in the Obligations or invalidate any act done by virtue of such Event of Default.

4.3 All Rents collected by Mortgagee, or by a receiver, as the case may be, shall be held and applied in the following order:

- (a) To pay all expenses of managing and operating the leased premises, as Mortgagee, in its discretion, determines.
- (b) To Mortgagee in payment of the Obligations as Mortgagee, in its discretion, determines.

The rights, powers and remedies of Mortgagee under this Assignment and the application of the Rents pursuant to this Section 4.3 shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose the Mortgage, after the foreclosure sale of the Mortgaged Collateral in connection with the foreclosure of the Mortgage, and until expiration of the period of redemption from any such foreclosure sale, whether or not any deficiency from the unpaid balance of the Obligations exists after such foreclosure sale.

4.4 If the Mortgaged Collateral is sold at a mortgage foreclosure sale:

- (a) If Mortgagee is the purchaser at the foreclosure sale, the Rents shall be paid to Mortgagee to be applied to the extent of any deficiency remaining after the sale, the balance to be retained by Mortgagee. In such case, if the Mortgaged Collateral is redeemed by Mortgagor or any other party entitled to redeem, the Rents shall be applied first to the items described in Section 4.3 above, and the balance thereof as a credit against the redemption price, with any remaining excess Rents to be paid to Mortgagor. If the Mortgaged Collateral is not redeemed, any remaining excess Rents shall belong to Mortgagee, whether or not a deficiency exists;
- (b) If Mortgagee is not the purchaser at the foreclosure sale, the Rents shall be paid to Mortgagee to be applied first to the extent of any deficiency remaining after the sale, and the balance shall be retained by the purchaser. In such case, if the Mortgaged Collateral is redeemed by Mortgagor or any other party entitled to redeem, the Rents received following the date of the foreclosure sale shall be applied as a credit against the redemption price and any remaining excess Rents shall be paid to Mortgagor. If the Mortgaged Collateral is not redeemed, any remaining excess Rents shall be paid: first, to Mortgagee to the extent of any deficiency remaining unpaid; second, to the purchaser at the foreclosure sale in an

amount equal to the interest accrued upon the sale price; and third, the remainder to the purchaser.

4.5 A receiver appointed pursuant hereto shall have the authority granted to it by Iowa statutes, and without limitation shall be entitled to enter upon, take possession of, manage and operate the Mortgaged Collateral; make, enforce, modify and accept the surrender of Leases; obtain or evict tenants; fix or modify Rents and do any acts which the receiver deems proper to protect the Mortgaged Collateral; sue for or otherwise collect and receive all Rents, including those past due and unpaid, and enforce all rights of Mortgagor under the Leases; make any repairs or alterations and improvements to the Mortgaged Collateral or any part thereof which the receiver deems proper; order, purchase, cancel, modify, amend and in any and all ways control and deal with any and all policies of insurance of any kind and all kinds now or hereafter on or in connection with the whole or any part of the Mortgaged Collateral and to adjust any loss of damage thereunder; adjust, bring suit at law or in equity for, settle or otherwise deal with, any taking of any or all of the Mortgaged Collateral for public purposes or any claim for real or alleged harm or damage to said Mortgaged Collateral and execute any and all instruments deemed by the receiver to be necessary or appropriate in connection therewith; and adjust, settle or otherwise deal with any real estate tax abatements and execute any and all instruments deemed by the receiver to be necessary or appropriate in connection therewith.

4.6 Mortgagor shall pay, and shall protect, defend, indemnify and hold Mortgagee harmless from and against, any and all attorneys' fees and expenses incurred by Mortgagee in exercising its rights and remedies hereunder.

4.7 Mortgagee shall not be obligated to collect or attempt to collect any Rents which are not in fact paid to it or its agent. Further, Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor under any Lease, or to do any of the things for which rights, interests, power and authority are herein granted to Mortgagee. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Collateral upon Mortgagee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Collateral by the tenants or any other party, or for any dangerous or defective condition of the Mortgaged Collateral or for any negligence in the management, upkeep, repair or control of the Mortgaged Collateral resulting in loss or injury or death to any tenant, licensee, employee or stranger. Mortgagor shall protect, defend, and indemnify Mortgagee against and hold it harmless from any liability, loss or damage which it may incur under any Lease or

under this Assignment and from any claims and demands which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease (except, in both instances, any liability, loss, damage, claim or demand arising out of any act or omission of Mortgagee or its agents occurring after Mortgagee has taken actual possession of the leased premises or the Mortgaged Collateral). If Mortgagee incurs any such liability, loss or damage under any Lease or under this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Rate, as that term is defined in the Credit Agreement, shall be secured hereby and by the Mortgage, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

4.8 This Assignment shall not operate to prevent Mortgagee from pursuing any remedy which it now has or hereafter may have under the terms or conditions of the Mortgage, the Note or the Credit Agreement or any other instrument securing the same, or by law.

4.9 The tenants under each of the Leases are hereby irrevocably authorized and directed to recognize the claims of Mortgagee, or its assigns, hereunder without investigating the reason for any action taken by Mortgagee, or the validity or the amount of indebtedness owing to Mortgagee, or the existence of any default in the Credit Agreement, Note, Mortgage, or under this Assignment, or the application of the Rents to be made by Mortgagee. Mortgagor hereby irrevocably directs and authorizes each tenant to pay to Mortgagee all sums due under its Lease and consents and directs that said sums shall be paid to Mortgagee without the necessity for a judicial determination that an Event of Default has occurred hereunder or under the Credit Agreement, the Note or Mortgage or that Mortgagee is entitled to exercise its rights hereunder. To the extent such sums are paid to Mortgagee, Mortgagor agrees that the tenants shall have no further liability to Mortgagor for the same. The sole signature of Mortgagee shall be sufficient for the exercise of any rights under this Assignment and the sole receipt by Mortgagee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Collateral.

4.10 Mortgagee, and not Mortgagor, shall be deemed to be the creditor of the tenants of the Leases in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting any such tenants (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) with an option to Mortgagee to apply any money received by Mortgagee as such credit in reduction of the Obligations.

4.11 Upon request of Mortgagee, Mortgagor will execute and deliver, during the term of this Assignment, such further instruments as Mortgagee may deem necessary to make this Assignment and any further assignment effective.

ARTICLE V

NOTICE

All notices, demands or other communications which are required or permitted to be given or served by either party hereunder shall be deemed given when given in accordance with the Mortgage.

ARTICLE VI

UNIFORM COMMERCIAL CODE

In addition to its being, but without in any way limiting or impairing its validity as, an assignment of leases and rents, if and to the extent provided under Iowa law, this Assignment shall also constitute a Security Agreement under the Uniform Commercial Code as enacted in the State of Iowa, creating in favor of Mortgagee, until the Obligations are fully paid, a first and prior security interest in the Leases and the Rents. Accordingly, Mortgagor hereby acknowledges to Mortgagee that Mortgagee shall have, in addition to all other rights and remedies afforded to it herein or in the Note and Mortgage, all rights and remedies afforded to secured parties by the Uniform Commercial Code to the extent such rights and remedies are applicable. Mortgagor shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such financing statements and other assurances as Mortgagee may reasonably request to create, perfect and preserve the security interest herein created and shall, at its sole cost and expense, cause such financing statements and assurances to be filed or recorded as Mortgagee may reasonably request.

ARTICLE VII

MISCELLANEOUS

7.1 This Assignment, and each and every covenant, agreement and other provision hereof, shall be binding upon Mortgagor, its successors and assigns, including without limitation each and every record owner of the Mortgaged Collateral or any other person having an interest therein from time to time, and shall inure to the benefit of Mortgagee and its successors and assigns.

7.2 This Assignment is made with reference to and shall be governed by the laws of the State of Iowa. It is the intention of the parties hereto that this Assignment shall confer upon Mortgagee the fullest rights, remedies and benefits available pursuant to Iowa law.

7.3 All subsequently executed Leases and oral rental agreements will become subject to the provisions hereof without the necessity of any further action on the part of Mortgagor or Mortgagee. Mortgagor shall, promptly on request of Mortgagee, execute and deliver to Mortgagee such further evidence of similar assignments thereof as Mortgagee may request.

7.4 Mortgagee may take or release additional security, may release any party primarily or secondarily liable for the repayment of the Obligations, may grant extensions, renewals or indulgences with respect to such Obligations, and may apply any other security therefor held by it to the satisfaction of the Obligations without prejudice to any of its rights hereunder.

7.5 Upon the payment in full of the Obligations, and the complete performance of all of Mortgagor's obligations under the Mortgage, evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage, this Assignment shall be void and of no effect.

7.6 All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby.

7.7 This Assignment may be executed in duplicate counterparts for purposes of recording in the counties where the Mortgaged Collateral is located; and such executed counterparts shall be construed as a whole as one and deemed to be a single instrument.

7.8 Mortgagor hereby acknowledges receipt of a copy of this Assignment.

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Exhibit A
to
Assignment of Leases and Rents
Dated June 30, 1988

The following described real estate situated in Guthrie County, Iowa, to wit:

THE WEST HALF (W1/2) OF THE NORTHEAST QUARTER (NE1/4) AND LOT ONE (1) OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4) AND LOT ONE (1) OF THE NORTHEAST QUARTER (NE1/4) OF THE NORTHWEST QUARTER (NW1/4), ALL IN SECTION THIRTY-SIX (36), TOWNSHIP EIGHTY (80) NORTH, RANGE THIRTY-TWO (32), WEST OF THE 5TH P. M., IN GUTHRIE COUNTY, IOWA.

AND

The following described real estate situated in Madison County, Iowa, to wit:

THE EAST HALF (1/2) AND THE NORTHEAST QUARTER (1/4) OF THE NORTHWEST QUARTER (1/4) 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, T76N, R28W 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.