



JRF:7/31/87

521

MORTGAGE

THIS MORTGAGE, made this 31st day of July, 1987, between BIG DUTCHMAN (the "Mortgagor"), a Pennsylvania general partnership with offices at P. O. Box 9, Route 322 West, New Holland, Pennsylvania 17557, and MERIDIAN BANK (the "Mortgagee"), a Pennsylvania banking corporation, with offices at 51 South Duke Street, Lancaster, Pennsylvania 17602.

W I T N E S S E T H:

THAT, the Mortgagee has agreed to make a Four Million and 00/100 Dollar (\$4,000,000.00) Term Loan (the "Term Loan") to the Mortgagor on this date; and

THAT, the Mortgagee has also agreed to make line of credit loans and advances (individually, a "Line of Credit Loan" and collectively, the "Line of Credit Loans") not to exceed, in the aggregate, the sum of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00); and

THAT, the terms and conditions of the Term Loan and the Line of Credit Loans are set forth in a Term Loan and Line of Credit Agreement (the "Term Loan and Line of Credit Agreement") dated July 31, 1987 between the Mortgagor and the Mortgagee, the terms and conditions of which are incorporated herein by reference thereto; and

THAT, the Term Loan is evidenced by the Mortgagor's Four Million and 00/100 Dollar (\$4,000,000.00) Promissory Note (the "Term Note") and the Line of Credit Loans are evidenced by the Mortgagor's Two Million Five Hundred Thousand and 00/100 Dollar (\$2,500,000.00) Line of Credit Note (the "Line of Credit Note"); and

THAT, the Term Note and the Line of Credit Note are collectively referred to herein as the "Notes"; and

THAT, all capitalized terms which are defined in the Term Loan and Line of Credit Agreement and which are used herein shall have the meanings set forth in the Term Loan and Line of Credit Agreement; and

THAT, the Mortgagee has required, and the Mortgagor has agreed to grant to the Mortgagee, this Mortgage and Security Agreement on the Mortgaged Property as security for the repayment of up to One Million and 00/100 Dollars (\$1,000,000.00) of the unpaid principal balance of and accrued interest on the Term Loan and the Line of Credit Loan.

NOW, THEREFORE, in consideration of the indebtedness, and as security for the payment and performance to the Mortgagee of up to One Million and 00/100 Dollars (\$1,000,000.00) of the unpaid principal balances of and accrued

BOOK 144 PAGE 620

✓ *Gieser Little*

JRF:7/30/87

interest on the Notes and this Mortgage according to their respective terms and conditions including, without limitation, (i) any future advances made by Mortgagee to or for the benefit of the Mortgagor at any time or times hereafter pursuant to the terms of the Notes or this Mortgage (notwithstanding the fact that the Line of Credit Note may, at any time and from time to time, have a zero balance), or (ii) any renewals, modifications or extensions thereof, and for performance of the agreements, conditions, covenants, provisions and stipulations contained in the Notes and in this Mortgage, Mortgagor does hereby give, grant, bargain, sell, warrant, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, deposit, pledge, set over and confirm unto Mortgagee and does agree that Mortgagee shall have a mortgage and security interest in the following described property and all substitutions therefor and proceeds, products, replacements, reversions and remainders of such property (collectively the "Mortgaged Property") now owned or held or hereafter acquired, to wit:

(i) the premises described in Exhibit "A" attached hereto and made a part hereof, together with all of the easements, rights-of-way, privileges, liberties, tenements, hereditaments, gores, streets, alleys, passages, ways, waters, water courses, covenants, rights, leasehold estates and appurtenances thereunto belonging or appertaining and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy (collectively, the "Realty");

(ii) all structures or buildings and all additions and improvements thereto now or hereafter erected upon the Realty including, without limitation, all Equipment (as defined in subparagraph (iii) below), now or hereafter forming part of such structures or buildings (collectively, the "Improvements");

(iii) all machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature whatsoever including, without limitation, all electrical, anti-pollution, heating, lighting, laundry, incinerating, power, air conditioning, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, communication, garage and cooking systems, devices, engines, pipes, pumps, tanks, motors, conduits, ducts, compressors and switchboards, and all storm doors and windows, dishwashers, attached cabinets and partitions (collectively the "Equipment") not included in the Improvements and all articles of personal property of every kind and nature whatsoever, including all shades, awnings, beds, screens, furniture and carpets, now or hereafter affixed to, attached to, placed upon, used or usable in any way in connection with the use, enjoyment, occupancy or operation of the Realty or the Improvements or the plant or business thereon, but excluding any such Equipment or article of personal property belonging to any tenant of the Realty or Improvements (all of the foregoing being collectively referred to as the "Chattels"); and

BOOK  
144 PAGE 621

JRF:7/30/87

(iv) all building materials, machinery and equipment delivered on site to the Realty during the course of, or in connection with, construction of the Improvements; and

(v) all proceeds of the conversion, voluntary or involuntary, of any of the Realty, Improvements or Chattels into cash or liquidated claims, including proceeds of insurance, and any and all awards heretofore or hereafter made to Mortgagor by any governmental or other lawful authority for taking or damaging or affecting the value of any of the Mortgaged Property, including any award for any change of grade of streets, deprivation of use or access, or de facto condemnation, which awards are hereby assigned to Mortgagee; and

(vi) any and all tenements, hereditaments and appurtenances belonging to the Realty or any part hereby mortgaged or intended so to be, or in any way appertaining thereto, and all streets, alleys, passages, ways, water courses and all leasehold estates, easements and covenants now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of the Realty over ground adjoining the Realty and all rights to enforce the maintenance thereof, and all other rights, liberties and privileges of whatsoever kind or character, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the Mortgaged Property or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, unto Mortgagee, to its own use forever.

UNDER AND SUBJECT to any covenants, restrictions, reservations, conditions and easements (the "Permitted Encumbrances") set forth in the Term Loan and Line of Credit Agreement, it being understood and agreed, however, that the recital thereof herein shall not be construed as a revival of any Permitted Encumbrance which for any reason may have expired.

PROVIDED ALWAYS, and this instrument is upon the express condition that, if the Mortgagor pays to Mortgagee the principal sum mentioned in the Notes and all interest thereon, and if the Mortgagor performs all of its liabilities and obligations under the Loan Documents, all in accordance with their terms, and at the times and in the manner specified, without deduction, fraud or delay, and if Mortgagor performs and complies with all of the agreements, conditions, covenants, provisions and stipulations contained herein and if the Line of Credit Loans shall have been repaid in full and no credit availability shall then be available thereunder, then this Mortgage and the estate hereby granted shall cease and become void.

MORTGAGOR REPRESENTS, COVENANTS AND WARRANTS to and with Mortgagee that until the indebtedness secured hereby is fully repaid:

1. Warranty of Title. Mortgagor warrants that it has good and marketable title to an estate in fee simple absolute in the Realty and

JRF:7/30/87

Improvements subject only to the Permitted Encumbrances; that this Mortgage is a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; and that Mortgagee shall, subject to Mortgagor's right of possession prior to an Event of Default, quietly enjoy and possess the Mortgaged Property. Mortgagor shall preserve such title and the validity and priority of the lien hereof and shall forever warrant and defend the same to the Mortgagee against the claims of all persons and parties whomsoever.

2. Payment and Performance. Mortgagor shall, in accordance with the terms of the Notes and this Mortgage, pay and perform all of its obligations and liabilities under the Notes, perform and comply with all of the agreements, conditions, covenants, provisions and stipulations of the Notes and this Mortgage, and timely perform all of its obligations and duties as landlord under any lease of all or any portion of the Mortgaged Property now or hereafter in effect.

3. Maintenance of Mortgaged Property. Mortgagor shall keep and maintain or cause to be kept and maintained the Mortgaged Property in good order and condition and will make or cause to be made, as and when necessary, all repairs, renewals and replacements thereto, structural and nonstructural, exterior and interior, ordinary and extraordinary. Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property; shall not remove or demolish, or materially alter the structural character of, the Mortgaged Property without the prior written consent of Mortgagee; and shall not permit the Mortgaged Property to become vacant, deserted or unguarded; shall not make, suffer or permit any nuisance to exist on the Mortgaged Property; and shall not do any other act which, in the sole opinion of Mortgagee, would tend to impair the value of the Mortgaged Property or the lien or security of this Mortgage.

4. Insurance Coverages. Mortgagor shall continuously maintain such types of insurance on the Mortgaged Property as Mortgagee may require from time to time. Such insurance shall include the following:

(a) insurance against loss or damage to the Mortgaged Property by fire, vandalism and malicious mischief and all of the risks covered by insurance now known as "All-Risk Fire and Extended Coverage" in an amount not less than the greater of (i) the unpaid principal balance of the Notes, or (ii) not less than eighty percent (80%) of the insurable value of the Realty, the Improvements and the Chattels then existing (exclusive of the cost of excavations, foundations and footings below the lowest basement floor);

(b) comprehensive public liability insurance (including coverage for any elevators and escalators which are a part of the Mortgaged Property and completed operations coverage for the Improvements for a period of one year after construction of such Improvements has been completed) on an "occurrence basis" against claims for "personal injury", including bodily injury, death and property damage occurring on, in or

BOOK 144 PAGE 623

JRF:7/30/87

about the Mortgaged Property or the adjoining streets, sidewalks, passageways, alleys, driveways, easements, vaults or gores;

(c) during the course of any construction on or repair of the Mortgaged Property, builders' completed value risk insurance against "all risks" including (i) bodily injury and property damage general liability including underground, collapse and explosion (XCU) coverage, (ii) bodily injury and property damage automobile liability including hired and nonowned automobiles, and (iii) excess liability coverage, in the aggregate amount of 100% of insurable construction on a contract price basis; and

(d) sprinkler, boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery and pressure piping, and sprinkler, fire extinguishing, heating, air conditioning, elevator and escalator systems, machinery and equipment and insurance against loss of occupancy or use arising from the breakdown of any such equipment.

5. Policies of Insurance; Procedures.

(a) All such policies shall be in form reasonably satisfactory to Mortgagee, shall be maintained in full force and effect, shall be endorsed with a standard mortgagee clause in favor of Mortgagee, shall not be subject to contribution, and shall provide for at least thirty (30) days' written notice of cancellation to Mortgagee. Certificates of insurance, addressed to Mortgagee and showing Mortgagee as a mortgagee loss payee or an additional insured, as the case may be, evidencing such insurance coverage described above may be delivered to Mortgagee in lieu of the policies therefor unless otherwise requested by Mortgagee as provided below. The amounts of the insurance policies shall at all times satisfy any co-insurance requirements thereof. If such insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Mortgagor or by any tenant of any of the Mortgaged Property or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Mortgagor shall immediately obtain new or additional insurance satisfactory to Mortgagee. Mortgagor shall pay as they become due all premiums for such insurance, shall renew or replace each policy, shall deliver to Mortgagee, upon request, evidence of the payment of the full premium therefor not less than ten (10) days prior to the expiration date of each policy, and shall deliver to Mortgagee, upon request, all original policies or a certified copy thereof, with standard non-contributory mortgagee clauses in favor of and acceptable to Mortgagee and marked "premium paid".

(b) Mortgagor shall promptly comply with and conform to (i) all provisions of each such insurance policy and (ii) all requirements of the insurers thereunder, applicable to Mortgagor or any of the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Property, even if such compliance necessitates structural changes or improvements or

BOOK 144 PAGE 624

JRF:7/30/87

results in interference with the use or enjoyment of any of the Mortgaged Property. Mortgagor shall not use any of the Mortgaged Property in a manner which would permit the insurer to cancel or increase the premium for any insurance policy.

(c) In the event of loss, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may make proof of loss if not promptly made by Mortgagor. If Mortgagee shall elect to make proof of loss under such policy, Mortgagee shall be and hereby is authorized to adjust, collect and compromise, in its discretion, all claims under such policies and to execute and deliver on behalf of Mortgagor all necessary proofs of loss, receipts, vouchers and releases required by the insurers; and Mortgagor agrees to sign, upon the request of Mortgagee, all such proofs of loss, receipts, vouchers and releases. Each insurer is hereby authorized and directed to make payment under such policies, including return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to endorse any draft therefor. All insurance proceeds shall be payable to Mortgagee and, if no Event of Default exists, and if the Mortgagor and Mortgagee mutually agree to rebuild or restore the Mortgaged Property (or, if no such mutual agreement can be obtained within ten (10) days after Mortgagee's receipt of insurance proceeds, then upon the written opinion of a registered architect to be selected by the Mortgagor and acceptable to the Mortgagee to the effect that the Mortgaged Property so damaged can be rebuilt, reconstructed or restored within six (6) months of the date of such loss), and if the Mortgagor shall have complied with the provisions of Paragraph 15 below, such proceeds shall be held by Mortgagee and shall be advanced to or for the account of Mortgagor for the repair and restoration of the Mortgaged Property as provided in Paragraph 15 below; provided, however, that if an Event of Default exists, such proceeds may, at Mortgagee's option, be applied to any part of the indebtedness secured hereby and in any order (notwithstanding that any of the indebtedness secured hereby may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property.

(d) Such policies of insurance and all renewals thereof are hereby assigned to Mortgagee as additional security for payment of the indebtedness hereby secured and Mortgagor hereby agrees that any values available thereunder upon cancellation or termination of any of such policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to Mortgagee as assignee thereof. If Mortgagee becomes the owner of any of the Mortgaged Property by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the absolute property of Mortgagee.

6. Taxes and Other Charges. Mortgagor shall pay, on or before the date of filing of a lien therefor, all taxes of every kind and nature (including real property taxes or contributions in lieu thereof, personal property taxes and income, franchise, withholding, profits and gross receipts



JRF:7/30/87

taxes), water and sewer rents and all charges for any easement or agreement maintained for the benefit of any of the Mortgaged Property, all general and special assessments, levies, permits, inspection and license fees, all other public charges whether of a like or different nature imposed upon or addressed against the Mortgagor, any of the Mortgaged Property or against the interest of Mortgagee therein, or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution from the proceeds of any judicial sale (collectively, the "Impositions"); except to the extent that any such Impositions are being contested in good faith as provided herein.

7. Alienation; Discharge of Liens. Without the prior written consent of Mortgagee, which consent may be granted or withheld in the sole discretion of Mortgagee, Mortgagor shall abstain from and will not cause or permit, to the extent it may do so, any transfer of a legal or equitable interest in, or title to, any of the Mortgaged Property, voluntarily or by operation of law whether by sale, exchange, conveyance, merger, consolidation or otherwise. Furthermore, Mortgagor (a) agrees to pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and other which, if unpaid, might result in or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, (b) covenants that, except for the Permitted Encumbrances, it shall not create or cause or permit to exist any lien on, or security interest in, any of the Mortgaged Property, and (c) agrees to observe and perform all of the terms, covenants and conditions of the Permitted Encumbrances (all of the foregoing are collectively referred to herein as the "Liens"), except to the extent that such Liens are being contested in good faith as provided herein. If Mortgagor shall create, consent to or suffer the creation of any Lien in or on any of the Mortgaged Property, or fails to have any Lien which may be imposed without Mortgagor's consent discharged and satisfied of record within thirty (30) days after its imposition, Mortgagor may at its option declare the entire unpaid principal balance of the Notes to be due and payable immediately, whereupon such principal, all accrued interest, any prepayment charge and other sums provided for in the Notes and all other indebtedness secured hereby shall become due and payable immediately.

8. Compliance with Law and Regulations. Mortgagor shall comply with all laws, ordinances, regulations and orders of all federal, state, municipal and other governmental authorities relating to the Mortgaged Property (collectively, the "Legal Requirements"), subject to the Mortgagor's right of contest as provided herein.

9. Right of Contest. Mortgagor may in good faith contest, by proper legal proceedings, the validity of any Legal Requirement or the validity or amount of any Imposition or Lien, provided (a) an Event of Default shall not have occurred and shall not exist during the course of any such contest, (b) Mortgagor provides Mortgagee with security satisfactory to Mortgagee assuring compliance with the Legal Requirement or with the payment of the contested Imposition or Lien and any additional charge, interest, penalty or expense



JRF:7/30/87

which may arise or be incurred as a result of such contest, (c) such contest operates to suspend enforcement of compliance with the Legal Requirement, collection of the Imposition or execution on the Lien and is maintained and prosecuted with diligence, and (d) Mortgagor shall comply with such Legal Requirement or pay or discharge such contested Imposition or Lien and all charges, interest, penalties and expense, if any, and shall deliver to Mortgagee evidence acceptable to Mortgagee of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to Mortgagor, and in any event not less than thirty (30) days before the date any of the Mortgaged Property may be sold or otherwise transferred because of noncompliance with the Legal Requirement or nonpayment of the Imposition or the Lien.

10. Security Agreement. This Mortgage constitutes a security agreement under the Pennsylvania Uniform Commercial Code, Act No. 86 of November 1, 1979, P. L. 255, 13 Pa. C.S.A. Section 9101, et seq. (the "Pennsylvania Uniform Commercial Code") and creates a security interest in all that property (and the proceeds thereof) included in the Mortgaged Property which might otherwise be deemed "personal property". Mortgagor shall execute, deliver, file and refile any financing statements, continuation statements or other security agreements Mortgagee may require from time to time to confirm the lien of this Mortgage with respect to such property. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file such instruments for and on behalf of Mortgagor. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property and the records normally pertaining to personal property, all of the Mortgaged Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Mortgagee's option (to the extent permitted by law), as part of the Realty whether or not any such item is physically attached to the Realty or Improvements or serial numbers are used for the better identification of certain items. The mention in any financing statement of any of the Mortgaged Property shall never be construed as in any way altering any of the rights of Mortgagee or adversely affecting the priority of the lien granted hereby, but such mention in the financing statement is hereby declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, including the Federal government and any authority or agency thereof, must be filed in accordance with the provisions of the Pennsylvania Uniform Commercial Code. A carbon, photographic or other reproduction of this Mortgage or of any financing statements signed by Mortgagor in connection herewith shall be sufficient as a financing statement and may be filed to perfect the security interest created hereby. The Mortgaged Property includes goods which are or are to become fixtures and this Mortgage is intended to serve as a fixture filing under Section 9402(f) of the Pennsylvania Uniform Commercial Code.

11. Inspection. Mortgagee and any person authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

JRF:7/30/87

12. Declaration of No Setoff. Within one (1) week after requested to do so by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of this Mortgage, in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the obligation secured by this Mortgage and whether there are any setoffs or defenses against them.

13. Required Notices. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

(a) a fire or other casualty causing damage to any of the Mortgaged Property,

(b) receipt of notice of condemnation of any of the Mortgaged Property,

(c) receipt of notice relating to a Legal Requirement, Imposition or Lien,

(d) commencement of any litigation affecting the Mortgaged Property.

14. Condemnation. Mortgagor hereby assigns, transfers and sets over to Mortgagee the entire proceeds of any award or claim for damage for any of the Mortgaged Property taken or damaged under the power of eminent domain or by condemnation. The proceeds of the award shall be applied in reduction of the indebtedness secured hereby unless Mortgagor elects to restore or rebuild, in which event the proceeds shall be held by Mortgagee according to the provisions of Paragraph 15 below and used to reimburse Mortgagor for the cost of restoring and rebuilding all buildings and improvements in accordance with plans and specifications to be submitted to and approved by Mortgagee. If Mortgagor shall elect to restore or rebuild the Mortgaged Property so taken or condemned, it shall have the right to do so under the same terms and conditions as provided for damage or destruction to the Mortgaged Property as provided in Paragraph 5 above. If the amount of such award is insufficient to cover the cost of rebuilding and restoration, Mortgagor or Buyer shall deposit such cost in excess of the award with Mortgagee before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such costs of building and restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

15. Restoration. Restoration of any of the Mortgaged Property pursuant to the provisions of this Mortgage shall be performed only in accordance with the following conditions:

(a) prior to commencement of restoration, the contracts, contractors, plans and specifications for the restoration shall have been approved by Mortgagee, and Mortgagee shall be provided with mechanic's lien insurance and an acceptable surety bond insuring satisfactory completion of the restoration;

JRF:7/30/87

(b) at the time of any disbursement, no Event of Default and no mechanic's or materialmen's liens shall have been filed and remain undischarged and a satisfactory bringdown of the title insurance shall be delivered to Mortgagee;

(c) disbursements shall be made from time to time in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt of satisfactory evidence of the stage of completion and of performance of the work in a good and workmanlike manner in accordance with the contracts, plans and specifications;

(d) prior to commencement of restoration and at any time during restoration, if the estimated cost of restoration, as determined by the Mortgagee, exceeds the amount of insurance proceeds or condemnation proceeds awarded, Mortgagor shall, immediately upon demand by Mortgagee, pay the amount of any such excess to Mortgagee to be added to such restoration fund. Any sums so added by Mortgagor which remain in the restoration fund upon completion of restoration shall be refunded to Mortgagor. If any sum remains in the restoration fund after completion of restoration and any refund to Mortgagor, such sum remaining in the restoration fund shall, at Mortgagee's option, be applied to any part of the indebtedness secured hereby and in any order (notwithstanding that any of such indebtedness secured hereby may not then be due and payable) or be paid to Mortgagor.

BOOK 144 PAGE 629

16. Right to Remedy Defaults. In the event that Mortgagor should fail to pay, observe or perform the provisions of Paragraph 9 regarding the right to contest any Legal Requirement, Imposition or Lien, or fail to pay insurance premiums, or fail to make necessary repairs, or permit waste, Mortgagee, at its election and after fifteen (15) days' written notice to Mortgagor, shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee, in the exercise of its prudent business judgment, deems advisable to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall be secured hereby and shall bear interest at the taxable rate specified in the Notes.

17. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) the occurrence of an Event of Default as defined in either of the Notes; or

(b) Mortgagor's failure to observe or perform any covenant, condition, term or provision contained in this Mortgage for a period of fifteen (15) days or more after written notice to the Mortgagor or, as to any such covenants, conditions, terms or provisions which are not readily

JRF:7/30/87

susceptible of being cured within such fifteen (15) day period, Mortgagor's failure to commence a cure therefor within such fifteen (15) day period and to diligently pursue such cure thereafter ; or

(c) the occurrence of any Event of Default as defined in the Term Loan and Line of Credit Agreement.

18. Remedies.

(a) Upon the occurrence of any Event of Default, then the entire unpaid balance of principal, accrued interest and all other sums secured by this Mortgage shall become immediately due and payable, at the option of the Mortgagee, without notice or demand.

(b) When the entire indebtedness secured hereby shall become due and payable, either because of maturity or because of the occurrence of any Event of Default, or otherwise, then forthwith:

(i) Foreclosure. Mortgagee may institute an action of Mortgage Foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the indebtedness secured hereby, with interest at the rate set forth in the Notes, together with all other sums due by Mortgagor in accordance with the provisions of the Notes and this Mortgage, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for Impositions, Liens, insurance or repairs to the Mortgaged Property, all costs of suit, together with interest at the applicable rate set forth in the Notes, on any judgment obtained by Mortgagee from and after the date of any sheriff's sale until actual payment is made by the sheriff of the full amount due Mortgagee, and reasonable attorneys' fees for collection; or

(ii) Possession. Mortgagee may enter into possession of the Mortgaged Property, with or without legal action, and by force, if necessary, collect therefrom all rents (which term shall also include sums payable for use and occupation) and, after deducting all costs of collection and administration expenses, apply the net rentals to any or all of the following in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect: the payment of Impositions, Liens, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Mortgaged Property, and on account and in reduction of the principal or interest, or both, hereby secured. For the purpose of obtaining possession of the Mortgaged Property, Mortgagor hereby authorizes and empowers any attorney of any court of record in the Commonwealth of

BOOK 144 PAGE 630

JRF:7/30/87

BOOK 144 PAGE 631

Pennsylvania or elsewhere, as attorney for Mortgagor and all persons claiming under or through Mortgagor, to sign an agreement for entering in any competent court an amicable action in ejectment for possession of the Mortgaged Property and to appear for and confess judgment against Mortgagor, and against all persons claiming under or through Mortgagor, in favor of Mortgagee, for recovery by Mortgagee of possession thereof, for which this Mortgage, or a copy thereof verified by affidavit, shall be a sufficient warrant; and thereupon a writ of possession may immediately issue for possession of the Mortgaged Property, without any prior writ or proceeding whatsoever and without any stay of execution. If for any reason after such action has been commenced it shall be discontinued, or possession of the Mortgaged Property shall remain in or be restored to Mortgagor, Mortgagee shall have the right for the same Event of Default or any subsequent Event of Default to bring one or more further amicable actions as above provided to recover possession of the Mortgaged Property. Mortgagee may bring an amicable action in ejectment and confess judgment therein before or after the institution of proceedings to foreclose this Mortgage or to enforce the Notes, or after entry of judgment therein or on the Notes, or after a sheriff's sale of the Mortgaged Property in which Mortgagee is the successful bidder, it being the understanding of the parties that the authorization to pursue such proceedings for obtaining possession and confession of judgment therein is an essential part of the remedies for enforcement of the Mortgage and the Notes, and shall survive any execution sale to Mortgagee.

(c) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Notes and this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced.

(d) Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Notes or this Mortgage, or pursuant to any other judicial proceedings under the Mortgage, may be sold in one parcel as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

19. Remedies Cumulative.

(a) The rights and remedies of Mortgagee as provided in this Mortgage, in the Notes and in the warrants attached thereto or contained therein shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to

JRF:7/30/87

exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(b) Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or of the Notes shall not be deemed to be a waiver of any of the terms or provisions of the Mortgage and Notes, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.

(c) Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Mortgage or the Notes, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Mortgage or Notes without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

(d) Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

(e) For payment of the indebtedness secured hereby, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

20. Mortgagor's Waivers. Mortgagor hereby waives and releases:

(a) all errors, defects and imperfections in any proceeding instituted by Mortgagee under the Notes or this Mortgage or both,

(b) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time of payment, and

(c) unless specifically required herein or in the Notes, all notices of Mortgagee's election to exercise, or Mortgagee's actual exercise of any right or remedy under the Notes or this Mortgage.



JRF:7/30/87

21. Counsel Fees. If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Property or title thereto, the lien created by this Mortgage or Mortgagee's interest therein, or if Mortgagee engages counsel to collect any of the indebtedness or to enforce performance of the agreements, conditions, covenants, provisions or stipulations contained in the Notes or this Mortgage, Mortgagee's costs, expenses and reasonable counsel fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the taxable rate set forth in the Notes, and until paid they shall be deemed to be part of the indebtedness evidenced by the Notes and secured by this Mortgage.

22. Notices. All notices, requests and demands to or upon the Mortgagor or the Mortgagee shall be deemed to have been given or made when transmitted by personal service or, when deposited in the United States Mails, registered or certified mail, return receipt requested, addressed as follows or to such other address as the respective parties may designate in writing:

(a) To the Mortgagor:

Big Dutchman  
P. O. Box 9  
Route 322 West  
New Holland, Pennsylvania 17557

Attention: Mr. Donald Schapel

with a copy to:

Hershey AgriTech, Inc.  
255 Plane Tree Drive  
Lancaster, Pennsylvania 17601

Attention: Mr. Donald Hershey

(c) To the Mortgagee:

Meridian Bank  
51 South Duke Street  
Lancaster, Pennsylvania 17602

Attention: Mr. Robert E. Murphy  
Assistant Vice President  
Susquehanna Valley Region

23. Amendment. This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.



JRF:7/30/87

24. Applicable Law. This Mortgage shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

25. Construction. Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

(a) the word "Mortgagor" shall mean the person who executes this Mortgage and any subsequent owner of the Mortgaged Property and its successors and assigns;

(b) the word "Mortgagee" shall mean the person specifically named herein as "Mortgagee" or any subsequent holder of this Mortgage;

(c) the word "Person" shall mean individual, corporation, partnership or unincorporated association;

(d) the use of any gender shall include all genders;

(e) the singular number shall include the plural and the plural the singular, as the context may require;

(f) if Mortgagor be more than one person, all agreements, conditions, covenants, provisions, stipulations, warrants of attorney, authorizations, waivers, releases, options, undertakings, rights and benefits made or given by Mortgagor shall be joint and several, and shall bind and affect all persons who are defined as "Mortgagor" as fully as though all of them were specifically named herein wherever the word "Mortgagor" is used.

26. Captions. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

27. Industrial Plant Mortgage. This Mortgage is an industrial plant mortgage within the broadest interpretation of the "Industrial Plant Mortgage Doctrine" or the "Assembled Economic Unit Doctrine".

28. Advance Money Mortgage. The indebtedness secured hereby is to be advanced pursuant to the terms of the Term Loan and Line of Credit Agreement. It is understood and agreed that this Mortgage covers present and future advances in the aggregate amount secured hereby which are now or will

BOOK 144 PAGE 634

JRF:7/30/87

hereafter be made by the Mortgagee to or for the benefit of the Mortgagor pursuant to the Term Loan and Line of Credit Agreement and that the lien of such future advances shall relate back to the date of this Mortgage.

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, Mortgagor has duly executed this Mortgage, under seal, the day and year first above written.

BIG DUTCHMAN,  
a General Partnership

By: HERSHEY AGRITECH, INC.,  
a General Partner

By *Richard P. Van Graft*  
Vice President

Attest: *Bruno S. Schenck*  
Assistant Treasurer

By: MEERPOHL LIMITED PARTNERSHIP,  
a General Partner

By: MEERPOHL CORPORATION,  
its General Partner

By *Richard P. Van Graft*  
Vice President

Attest: *Richard P. Van Graft*  
Secretary

Attest: *Donald Hershey*  
Assistant Secretary

BOOK 144 PAGE 635

JRF:7/31/87

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

A parcel of land situated in the NE 1/4 of Section 6, Township 24 North, Range 13 East, and more exactly described as follows: Begin at center of the North side of said Section and go Eastward along it, 309.3 feet; thence at an angle of 87 degrees 07 minutes 30 seconds to the right 1966.82 feet to intersection of South boundary of Highway 25; thence at an angle of 91 degrees 38 minutes to the left and along said boundary, 316.5 feet to a point of beginning of said land; thence continue Eastward along Highway boundary, 315.2 feet; thence at an angle of 91 degrees 38 minutes a distance of 449.0 feet; thence at an angle of 88 degrees 22 minutes to the right a distance of 315.2 feet; thence at an angle of 91 degrees 38 minutes to the right 449.0 feet to the poing of beginning.

PARCEL 2:

Begin at the center of North side of Section 6, Township 24 North, Range 13 East and proceed Easterly along the North side of said Section 6, a distance of 309.3 feet; thence at an angle to the right of 87 degrees 07 minutes 30 seconds a distance of 1916.82 feet to the North right of way line of Highway 25; thence at an angle to the left of 91 degrees 38 minutes and along said North right of way line a distance of 783.4 feet; thence at an angle to the right of 91 degrees 38 minutes a distance of 50.1 feet to a point on the South right of way line of Highway 25, the point of beginning; thence continue along last named line a distance of 280.0 feet; thence at an angle to the right of 90 degrees 00 minutes a distance of 151.5 feet; thence at an angle to the right of 90 degrees 00 minutes a distance of 275.8 feet to South right of way of Highway 25; thence at an angle to the right of 88 degrees 22 minutes and along said South right of way a distance of 151.7 feet to the point of beginning.

PARCEL 3:

A parcel of land situated in SW 1/4 of NE 1/4 of Section 6, Township 24 North, Range 13 East and described as follows: Begin at the SE corner of said SW 1/4 of NE 1/4 and go Westward along the South side of same 576.0 feet; thence at an angle of 90 degrees 00 minutes to the right 75.0 feet; thence at an angle of 90 degrees 00 minutes to the left 120.0 feet; thence at an angle of 90 degrees 00 minutes to the left 75.0 feet to the South side of said quarter-quarter section; thence at an angle of 90 degrees 00 minutes to the right and along this side 415.51 feet to the SE border of paved county highway; thence at an angle of 122 degrees 43 minutes to the right and along this border, 819.54 feet to intersection South border of Highway 25; thence at an angle of 53 degrees 32

JRF:7/31/87

minutes to the right and along this border, 678.60 feet to East side of said quarter-quarter section; thence at an angle of 94 degrees 31 minutes to the right and along this side 733.91 feet to the point of beginning.

EXCEPT PROPERTY conveyed to W. L. Lawler and W. L. Lawler, Jr., d/b/a Lawler Manufacturing Company, by deed dated February 27, 1959, recorded in the Probate Office of Shelby County, Alabama, in Deed Book 201, Page 23.

ALSO; Except property conveyed to Lawler Manufacturing Company, Inc., a corporation, by deed dated October 18, 1967, recorded in Deed Book 250, Page 631, in said Probate Office.

SITUATED IN SHELBY COUNTY, ALABAMA.

BOOK 144 PAGE 637

JRF:7/31/87

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF LANCASTER

I, Wicki Lynn Shunk, a Notary Public in and for said County and said State, hereby certify that RICHARD MCGRATH, whose name as Vice President of HERSHEY AGRITECH, INC., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31st day of July, 1987.

Wicki Lynn Shunk  
Notary Public

My Commission Expires:

Wicki Lynn Shunk  
Notary Public  
My Commission Expires Nov. 19, 1990

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF LANCASTER

I, Wicki Lynn Shunk, a Notary Public in and for said County and said State, hereby certify that BRUNO S. SCHMALHOFER, whose name as Assistant Treasurer of HERSHEY AGRITECH, INC., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31st day of July, 1987.

Wicki Lynn Shunk  
Notary Public

My Commission Expires:

Wicki Lynn Shunk  
Notary Public  
Lancaster, Pa.  
My Commission Expires Nov. 19, 1990

BOOK 144 PAGE 638

JRF:7/31/87

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF LANCASTER

I, Vicki Lynn Shunk, a Notary Public in and for said County and said State, hereby certify that RICHARD P. MCGRATH, whose name as Vice President of MEERPOHL CORPORATION, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31st day of July, 1987.

Vicki Lynn Shunk  
Notary Public

My Commission Expires:

VICKI LYNN SHUNK, Notary Public  
Lancaster, Lancaster County, Pa.  
My Commission Expires Nov. 19, 1990

BOOK 144 PAGE 639

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF LANCASTER

I, Vicki Lynn Shunk, a Notary Public in and for said County and said State, hereby certify that RICHARD P. MCGRATH, whose name as Secretary of MEERPOHL CORPORATION, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31st day of July, 1987.

Vicki Lynn Shunk  
Notary Public

My Commission Expires:

VICKI LYNN SHUNK, Notary Public  
Lancaster, Lancaster County, Pa.  
My Commission Expires Nov. 19, 1990

JRF:7/31/87

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF LANCASTER :

I, WAYNE L. HERSHEY, a Notary Public in and for said County and said State, hereby certify that DONALD C. HERSHEY, whose name as Assistant Secretary of MEERPOHL CORPORATION, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31st day of July, 1987.

Wayne L. Hershey

Notary Public

My Commission Expires:

WAYNE L. HERSHEY, NOTARY PUBLIC  
EAST HEMPFIELD TWP., LANCASTER COUNTY  
MY COMMISSION EXPIRES OCT. 6, 1990  
Member, Pennsylvania Association of Notaries

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1987 AUG -7 AM 9:36

Thomas A. Suberlin, Jr.  
JUDGE OF PROBATE

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax 1500.00  
3. Recording Fee 52.50  
4. Indexing Fee 1.00  
TOTAL 1553.50