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Client Code: PETCO.189GEN/195T-197T

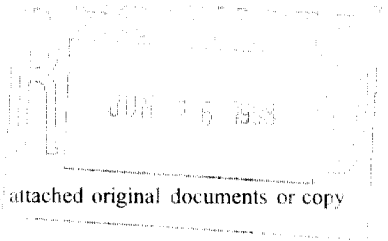
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TO THE HONORABLE COMMISSIONER thereof.

record the attached original documents or copy

1. Name of conveying party(ies): (If multiple assignors, list numerically)

Western Pet Care, Inc.

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State: California
- Other:

Additional name(s) of conveying party(ies) attached?  
 Yes  No

2. Name and address of receiving party(ies):

Name: Petco Animal Supplies, Inc.

Internal Address:

Street Address: 9125 Rehco Road

City: San Diego

State: CA

ZIP: 92121

- Individual(s) citizenship:
- Association:
- General Partnership:
- Limited Partnership:
- Corporation - State: Delaware
- Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designations must be a separate document from Assignment)

Additional name(s) and address(es) attached?

Yes  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other:

Execution Date: (If multiple assignors, list execution dates in numerical order corresponding to numbers indicated in 1 above)  
September 29, 1997

4. Application number(s) or registration number(s):

a. Trademark Application No(s):

b. Trademark Registration No(s):

1,724,918

1,710,159

1,744,933

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Jeffrey L. Van Hoosear

KNOBBE, MARTENS, OLSON & BEAR, LLP

Internal Address: Sixteenth Floor

Street Address: 620 Newport Center Drive

City: Newport Beach

State: CA

ZIP: 92660

7. Total fee (37 CFR 3.41): \$90.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

6. Total number of applications and registrations involved: 3

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct, and any attached copy is a true copy of the original document.

Jeffrey L. Van Hoosear

Name of Person Signing

Signature

June 23, 1998

Date

Total number of pages, including cover sheet, attachments and document: 6

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02 FC:482

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of September 29, 1997 (the "Agreement"), by and among PETCO ANIMAL SUPPLIES, INC., a Delaware corporation ("Parent"), WESTERN ACQUISITION CORP., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), WESTERN PETCARE, INC., a California corporation (the "Company"), and CYNTHIA MUESSE, the sole stockholder of the Company (the "Stockholder").

### WITNESSETH:

WHEREAS, the Stockholder owns all of the outstanding capital stock of the Company;

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company have each determined that it is advisable and in the best interests of their respective stockholders for Parent to enter into a business combination with the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance of such combination, the Boards of Directors of Parent, Merger Sub and the Company have each approved the merger (the "Merger") of Merger Sub with and into the Company in accordance with the applicable provisions of the California Corporation Code (the "CCC") and the Delaware General Corporation Law (the "DGCL"), and upon the terms and subject to the conditions set forth herein; and

WHEREAS, Parent, Merger Sub and the Company intend, by approving resolutions authorizing this Agreement, to adopt this Agreement as a plan of reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Merger Sub, the Stockholder and the Company hereby agree as follows:

### ARTICLE I.

#### THE MERGER

SECTION 1.01. *The Merger.* Subject to the terms and conditions of this Agreement and the CCC and DGCL, at the Effective Time (as defined in Section 1.03 hereof), Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company as the surviving corporation after the Merger is hereinafter referred to as the "Surviving Corporation." The Surviving Corporation will then be merged into Parent in a merger qualifying under Section 368(a)(1)(A) of the Code.

SECTION 1.02. *Closing.* Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place at the offices of Latham & Watkins, 701 "B" Street, Suite 2100, San Diego, California, on September 30, 1997 (the "Closing Date").

SECTION 1.03. *Effective Time.* If all of the conditions to the Merger set forth in Articles VI and VII shall have been satisfied or waived in accordance herewith and this Agreement shall not have

business or financial condition of the Company. Neither the Stockholder nor the Company has received any notice to the effect that, or otherwise been advised that, the Company is not in compliance with any such statutes, regulations, rules, judgments, decrees, orders, ordinances or other laws, and the Stockholder and the Company have no reason to anticipate that any existing circumstances are likely to result in violations of any of the foregoing which failure or violation could, in any one case or in the aggregate, have a Material Adverse Effect on the business or financial condition of the Company.

SECTION 2.17. *No Brokers.* Except as set forth on the Company Disclosure Schedule, neither the Stockholder nor the Company nor any of their respective officers, directors, employees, stockholders or affiliates has employed or made any agreement with any broker, finder or similar agent or any person or firm which will result in the obligation of Parent or any of its affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

SECTION 2.18. *No Other Agreements to Sell the Assets or the Company.* Neither the Stockholder nor the Company nor any of their respective officers, directors, stockholders or affiliates have any commitment or legal obligation, absolute or contingent, to any other person or firm other than Parent to sell, assign, transfer or effect a sale of any of the Company's assets (other than inventory in the ordinary course of business), to sell or effect a sale of any shares of capital stock of the Company, to effect any merger, consolidation, liquidation, dissolution or other reorganization of the Company, or to enter into any agreement or cause the entering into of an agreement with respect to any of the foregoing.

SECTION 2.19. *Proprietary Rights.*

(a) *Proprietary Rights.* The Company Disclosure Schedule lists all of the Company's federal, state and foreign registrations of trademarks and of other marks, trade names or other trade rights, and all pending applications for any such registrations and all of the Company's patents and copyrights and all pending applications therefor, in which the Company has any interest whatsoever, whether or not registered, that are used by or on behalf of the Company in connection with its business (collectively, "Proprietary Rights"). The Company has no patents, or pending patents. The Proprietary Rights listed on the Company Disclosure Schedule are all those used by the Company in connection with its business.

(b) *Royalties and Licenses.* No person has a right to receive a royalty or similar payment in respect of any Proprietary Rights whether or not pursuant to any contractual arrangements entered into by the Stockholder or the Company. Neither the Stockholder nor the Company has any licenses granted, sold or otherwise transferred by or to it nor other agreements to which it is a party, relating in whole or in part to any of the Proprietary Rights.

(c) *Ownership and Protection of Proprietary Rights.* The Company owns and has the sole right to use each of the Proprietary Rights. Except as set forth on the Company Disclosure Schedule and except for applications pending, all of the trademarks listed on the Company Disclosure Schedule have been duly issued and except as set forth on the Company Disclosure Schedule, all of the other Proprietary Rights exist, are registered and are subsisting. None of the Proprietary Rights is involved in any pending or threatened litigation. Neither the Stockholder nor the Company has received any notice of invalidity or infringement of any rights of others with respect to such trademarks. The Stockholder and the Company have taken all reasonable and prudent steps to protect the Proprietary Rights from infringement by any other firm, corporation, association or person. To

the best of the Stockholder's and the Company's knowledge, no other firm, corporation, association or person (i) has the right to use any such trademarks on the goods on which they are now being used in the Company's market area either in identical form or in such near resemblance thereto as to be likely, when applied to the goods of any such firm, corporation, association or person, to cause confusion with the trademarks or to cause a mistake or to deceive, (ii) has notified the Stockholder or the Company that it is claiming any ownership of or right to use such Proprietary Rights, or (iii) is infringing upon any such Proprietary Rights in any way. To the best of the Stockholder's and the Company's knowledge, the Company's use of the Proprietary Rights is not infringing upon or otherwise violating the rights of any third party in or to such Proprietary Rights, and no proceedings have been instituted against or notices received by the Stockholder or the Company that are presently outstanding alleging that the Company's use of the Proprietary Rights infringes upon or otherwise violates any rights of a third party in or to such Proprietary Rights. To the best of the Stockholder's and the Company's knowledge, all of the Proprietary Rights are valid and enforceable rights of the Company in the Company's market area and will not cease to be valid and in full force and effect by reason of the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated by this Agreement.

SECTION 2.20. *Benefit Plans.*

(a) With respect to each employee benefit plan ("Benefit Plan"), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained by the Company or any of its subsidiaries covering any employee of the Company or any of its subsidiaries, the Company has made available to Parent, where applicable, a true, correct and complete copy of (i) the most recent annual report (Form 5500) filed with the Internal Revenue Service, (ii) such Benefit Plan, (iii) each trust agreement and group annuity contract, if any, relating to such Benefit Plan, and (iv) the most recent actuarial report or valuation relating to a Benefit Plan subject to Title IV of ERISA. Set forth on the Company Disclosure Schedule is a list of each such Benefit Plan.

(b) With respect to all Benefit Plans maintained or contributed to by the Company or any of its subsidiaries, individually and in the aggregate, there exists no material condition or set of circumstances, in connection with which the Company or any of its subsidiaries would be subject to any material liability (except liability for benefits claims and funding obligations payable in the ordinary course) under ERISA, the Code or any other applicable law.


(c) Except as set forth on the Company Disclosure Schedule, with respect to all Benefit Plans maintained by the Company or any of its subsidiaries, individually and in the aggregate, there are no material funded benefit obligations for which contributions have not been made or properly accrued and there are no material unfunded obligations which have not been accounted for by reserves.

(d) All Benefit Plans maintained by the Company or any of its subsidiaries have been operated in compliance in all material respects with the applicable provisions of ERISA and the Code and all reports and returns required to be filed thereunder have been duly and timely filed. No prohibited transactions within the meaning of Title I of ERISA or Section 4975(c)(1) of the Code have occurred with respect to said plans. Except as set forth on the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party or has contributed to any Multiemployer Plan as defined in Section 3(37) of ERISA. Each of the Company and its subsidiaries has complied in all material respects with the continuation of coverage and notification requirements of the Consolidated

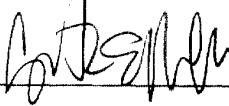
12. On or about February 2, 1995, a customer, Carolyn Nye, at the Huntington Beach store, purchased a collar that she claimed caused the death of her dog; recovery was sought from the manufacturer for defense and indemnity who denied the claim. To our knowledge no further action was taken.
- 2.15 The Company does not maintain a reserve for its income taxes. The Company has not created a reserve for its attorneys fees connected with this transaction. A list of other contingent liabilities related to customer disputes and potential claims is outlined in the Disclosure Statement under Section 2.13; no reserve has been created for these potential liabilities.
- 2.19 The only proprietary rights owned by the Company are rights in a service mark for the name "The PetCare Company." The Company has licensed (on a non-exclusive basis) the use of this service mark to L. Turner Corporation under a 10-year licensing agreement commencing in 1992. The Stockholder and the Company do not represent that the Company has the sole right against all persons to use the service mark. The Company is aware that the name PetCare Super Stores is being used in the Mid-West, and conceivably this use infringes upon the use of Company's service mark. The Company has not undertaken to enforce its intellectual property rights in the PetCare Company service mark against PetCare Super Stores. Further, the Company has not undertaken to inquire on a local or nationwide basis for uses of name equivalent or similar to the Company's registered service mark.
- 2.20 The Company maintains a group-health plan pursuant to Section 125 of the Internal Revenue Code.
- 2.21 One of the Stockholder's brothers, Allen Muesse, is a director of the Corporation. Additionally, the Stockholder's brother, Henry Muesse, is an employee of the Company.
- 2.22 See disclosure under 2.15 above.
- 2.24 The Stockholder and the Company can only represent that it is their belief that the insurance coverage they maintain is adequate for purposes of conducting the business. The Stockholders have not undertaken to survey the industry or make a determination as to what is customary in the industry with respect to insurance coverage for this type of business, and they do not represent their coverage is customary for the industry in which the Company is engaged.
- 2.25 The Stockholder does not warrant or represent the collectibility from coupon issuers of coupons delivered to the Company as partial consideration for retail

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

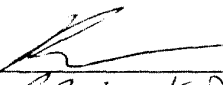
PETCO ANIMAL SUPPLIES, INC.

By:   
Name: BRIAN K DEVINE  
Title: CEO

WESTERN PETCARE, INC.

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WESTERN ACQUISITION CORP.

By:   
Name: BRIAN K DEVINE  
Title: PRESIDENT

  
CYNTHIA MUESSE