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601.05

**REAL ESTATE MORTGAGE****THE STATE OF ALABAMA**

Chilton

County

*This instrument was prepared by:***THIS INSTRUMENT PREPARED BY**

John Hollis Jackson, Jr.

Attorney at Law

Box 1818

Clanton, Alabama 35045

KNOW ALL MEN BY THESE PRESENTS: That whereas Jimmy Lee Hayes and Billy Ray Hatley, each  
individually and as general partners d/b/a PEACHES & CREAM OF CHILTON COUNTY, INC., and  
Rebecca Hayes, the wife of Jimmy Lee Hayes and Maude S. Hayes, a single woman,

have become justly indebted to The Peoples Savings Bank, with offices in Clanton, Alabama, (together with its successors and assigns, hereinafter called "Mortgagee"), in the principal sum of Four Hundred Thousand Six Hundred Thirty-Eight and 75/100 Dollars (\$400,638.75) together with interest thereon, as evidenced by a promissory note or notes, dated 2/1/90, and due and payable as follows: in accord with the terms and provisions of said promissory note.

NOW, THEREFORE, in consideration of the premises and of the sum of Ten Dollars (\$10.00) this day cash in hand paid by Mortgagee to the undersigned, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of said indebtedness and any renewals or extensions thereof and the interest thereon, and all other indebtedness (including Future Advances) now or hereafter owed by any of the undersigned to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure compliance with all the covenants and stipulations hereinafter contained, the undersigned Jimmy Lee Hayes and Billy Ray Hatley, each  
individually and as general partners d/b/a PEACHES & CREAM OF CHILTON COUNTY, INC., and  
Rebecca Hayes, the wife of Jimmy Lee Hayes and Maude S. Hayes, a single woman,

(whether one or more, hereinafter called the "Mortgagors") do hereby grant, bargain, sell and convey unto the said Mortgagee the following described real estate situated in Chilton and Shelby County, State of Alabama, viz:

SEE EXHIBIT "A" FOR LEGAL DESCRIPTIONS

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Peoples Sav. Bank  
 P.O. Box - 269  
 Clanton Al.  
 35045 -

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagors in and to all buildings and improvements.

TO HAVE AND TO HOLD the same and every part thereof unto Mortgagee, its successors and assigns forever.

And for the purpose of further securing the payment of said indebtedness the Mortgagors warrant, covenant and agree with Mortgagee, its successors and assigns, as follows:

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1. That they are lawfully seized in fee and possessed of said mortgaged property and have a good right to convey the same as aforesaid, that they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.
  2. That they will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed legally upon said mortgaged property, and should default be made in the payment of same, or any part thereof, said Mortgagee may pay the same (but Mortgagee is not obligated to do so).
  3. That they will keep the buildings on said premises continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind, and such other hazards as Mortgagee may specify, with loss, if any, payable to said Mortgagee, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay premiums therefor as the same become due. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damages to said premises caused by any casualty. If Mortgagors fail to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind, and other hazards for the benefit of Mortgagors and Mortgagee, or Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the indebtedness secured by this mortgage, less cost of collection same, or to be used in repairing or reconstructing the premises, as Mortgagee may elect.
  4. That all amounts so expended by Mortgagee for insurance or for the payment of taxes or assessments or to discharge prior liens shall become a debt due Mortgagee, shall be at once payable without demand upon or notice to any person, shall bear interest at the rate of interest payable on the principal sum of the note described above or, if no such rate of interest is specified or if the rate specified would be unlawful, at the rate of 8% per annum from date of payment by Mortgagee, and such debt and the interest thereon shall be secured by the lien of this mortgage; and upon failure of Mortgagors to reimburse Mortgagee for all amounts so expended, at the election of the Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and this mortgage subject to foreclosure and the same may be foreclosed as hereinafter provided.
  5. To take good care of the mortgaged property described above and not to commit or permit any waste thereon, and to keep the same repaired and at all times to maintain the same in as good condition as it now is, reasonable wear and tear along excepted.
  6. That no delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of said Mortgagors, and that the procurement of insurance or payment of taxes or other liens or assessments by Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, liens, or assessments, it being agreed that no terms or conditions contained in this mortgage can be waived, altered, or changed except as evidenced in writing signed by Mortgagors and by Mortgagee.
  7. That they will well and truly pay and discharge every indebtedness hereby secured as it shall become due and payable including the note or notes above described, any renewals or extensions thereof, and any other notes or obligations of Mortgagors to Mortgagee whether now owing or hereafter incurred.
  8. That after any default on the part of Mortgagors, Mortgagee shall be entitled as a matter of right to the appointment without notice to any party, of a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises and with such other powers as may be deemed necessary, and that a reasonable attorney's fee not exceeding 15 percent of the unpaid debt after default shall, among other expenses and costs, be fixed, allowed and paid out of such rents, issues and profits or out of the proceeds of the sale of said mortgaged property.
  9. That all the covenants and agreements of Mortgagors herein contained shall extend to and bind their heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to the Mortgagee shall inure to the benefit of the successors and assigns of Mortgagee.
  10. That the debt or debts hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard to the form and contents of such statement and without regard to the existence or non-existence of the debt, or any part thereof, or of the lien on which such statement is based.
  11. That the debt or debts hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if Mortgagors should sell or transfer the mortgaged property, or any part thereof during the lifetime of this mortgage, without first having obtained the written consent of Mortgagee.
  12. That the provisions of this mortgage and of the note or notes secured hereby are severable, and that the invalidity or unenforceability of any provision of this mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this mortgage or of such note or notes.

UPON CONDITION, HOWEVER, that if Mortgagors shall well and truly pay and discharge all the indebtedness hereby secured (including future advances) as the same shall become due and payable and shall in all things do and perform all acts and agreement by them herein agreed to be done according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void; but should default be made in the payment of any indebtedness hereby secured or any renewals or extensions thereof or any part or installment thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by said Mortgagee under the authority of any of the provisions of this mortgage or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any lien or encumbrance thereon so as to endanger the debt(s) hereby secured, or should a petition to condemn any part of the mortgaged property be filed by any authority having power of eminent domain, or should Mortgagors sell or transfer the mortgaged property, or any part thereof without first having obtained the written consent of Mortgagee, or should Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured; or any portion or part of same which may not at said date have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived; and Mortgagee shall have the right to enter upon and take possession of the property hereby conveyed and after or without taking such possession to sell the same before the Court House door of the County (or the division thereof) where said property, or a substantial part of said property, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said County, and upon the payment of the purchase money Mortgagee or auctioneer is authorized to execute to the purchaser a good and sufficient deed to the property sold. Mortgagee shall apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee not exceeding 15 percent of the unpaid debt after default if the original amount financed exceeded \$300; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment of the indebtedness hereby secured and interest thereon; whether the same shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagors or to whomsoever then appears of record to be the owner of Mortgagors' interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder. Mortgagors hereby waive any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagee may, at its option, sell said property en masse regardless of the number of parcels hereby conveyed.

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IN WITNESS WHEREOF the undersigned have hereunto set their hand(s) and seal(s) or has caused this instrument to be executed by its officer(s) thereunto duly authorized, this 5th day of February 19 90

BEACHES & CREAM OF CHILTON COUNTY, INC.

BY: Jimmy Lee Hayes (SEAL)  
individually and as general partner

BY: Billy R. Hayes (SEAL)  
individually and as general partner

X Rebecca S. Hayes (SEAL)

X Maudie S. Hayes (SEAL)

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

(Corporate Seal)

THE STATE OF ALABAMA,

INDIVIDUAL ACKNOWLEDGMENT

CHILTON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jimmy Lee Hayes, individually and as general partner of PEACHES & CREAM OF CHILTON COUNTY, INC., and Billy Ray Hatley, individually and as general partner of PEACHES & CREAM OF CHILTON COUNTY, INC., and Rebecca Hayes,

whose name is signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that,

being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of February, 19 90

(Notarial Seal)

Jimmy S. Linnman

Notary Public

THE STATE OF ALABAMA,

INDIVIDUAL ACKNOWLEDGMENT

CHILTON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Maude S. Hayes

whose name 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 the conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of February, 19 90

(Notarial Seal)

Jimmy S. Linnman

Notary Public

THE STATE OF ALABAMA,

CORPORATE ACKNOWLEDGEMENT

COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_

whose name as \_\_\_\_\_ President

of the \_\_\_\_\_, a corporation, is signed to the fore-

going conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the 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 \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(Notarial Seal)

Notary Public

## EXHIBIT "A"

### PARCEL I:

Part of SE 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:  
Commence at the Southwest corner of said 1/4 Section; thence run East along the South line of same for 1,826.71 feet; thence 122 deg. 59 min. 53 sec. left and run Northwesterly for 399.97 feet to a point on the Northerly right of way line of Oak Mountain Park Road; thence continue Northwesterly along the same course for 846.69 feet; thence 91 deg. 18 min. 39 sec. right and run Northeasterly for 152.01 feet; thence 90 deg. 00 min. left and run Northwesterly for 349.02 feet; thence 90 deg. 00 min. left and run Southwesterly for 160.00 feet; thence 88 deg. 41 min. 21 sec. right and run Northwesterly for 25.0 feet to a point on the South right of way line of Alabama Highway 119; thence 91 deg. 18 min. 39 sec. right and run Northeasterly along said right of way line for 253.07 feet; thence 14 deg. 02 min. 10 sec. right and continue Northeasterly for 9.51 feet to a point on the Southerly right of way line of a County Road; thence 30 deg. 57 min. 50 sec. right and run Easterly along said right of way line for 62.56 feet to an angle point in said right of way; thence 45 deg. 00 min. right and run Southeasterly along said right of way line for 390.67 feet; to an angle point in said right of way; thence 90 deg. 00 min. left and run Northeasterly for 575.98 feet to a point on the Westerly right of way line of I-65 Service Drive; thence 86 deg. 19 min. 31 sec. right and run Southeasterly along said right of way for 142.98 feet; thence 22 deg. 07 min. 10 sec. right and run Southeasterly along said right of way line for 266.08 feet to the beginning of a curve to the right, said curve having a radius of 3,579.72 feet and subtending a central angle of 3 deg. 16 min. 07 sec.; thence 8 deg. 19 min. 34 sec. right to the chord of said curve and run Southerly along the arc of said curve and along said right of way line for 35.15 feet to the point of beginning; thence continue along said curve and said right of way line for a distance of 169.07 feet to the end of said curve; thence from said chord, 9 deg. 37 min. 54 sec. left and run Southeasterly along said right of way line for a distance of 46.32 feet to a point; thence turn an angle to the right of 95 deg. 36 min. 03 sec. and run Southwesterly for 240.53 feet to a point; thence turn an angle to the right of 95 deg. 08 min. 53 sec. and run Northwesterly 128.03 feet to a point; thence turn an angle to the right of 64 deg. 24 min. 19 sec. and run Northwesterly 250.0 feet to the point of beginning; being situated in Shelby County, Alabama.

PARCEL II: Lot No. 6 and the South  $\frac{1}{2}$  of Lot No. 5 in Block "B" according to the Map or Plat of Highland View, a subdivision of the City of Clanton, Alabama, as said Map was prepared in August, 1950, by Samuel D. Brown, said Map or Plat being recorded in Book 3 at Page 5, Office of Judge of Probate, Chilton County, Alabama, and said Highland View being the land in the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 3, Township 21-North, Range 14-East, Chilton County, Alabama.

PARCEL III: Lot 3 and Lot 32 of the High Forest Subdivision as the same is recorded in the Office of the Judge of Probate of Chilton County, Alabama, in Map Book 4 at Page 128.

PARCEL IV: An undivided one-half interest in and to the following described real estate: That part of Outlot H, Concordia Park, which is bounded by Summit Street on the South, Iowa Avenue on the West, Jones Street on the North and the unopened portion of Park Avenue on the East, according to the map or plat of the Town of Thorsby, Alabama, on record in the Office of the Judge of Probate of Chilton County, Alabama, in Map Book 1 at Page 20, and all subsequent additions and amendments thereto being included herein by reference.

PARCEL V: A lot or parcel of land described as follows: Begin at the point where the East line of Southwest Quarter of Southwest Quarter of Section 35, Township 22, Range 14 intersects the North boundary of Alabama State Highway number 22, (Fourth Avenue North) in the City of Clanton, Alabama, and from thence run North along said East line a distance of 300 feet to a point; from thence run West and parallel with the North line of Alabama Highway Number 22, a distance of 166 feet to a point; from thence run South and parallel with the East line of Southwest Quarter of Southwest Quarter of Section 35, Township 22, Range 14, a distance of 300 feet to a point on the North boundary of Alabama Highway Number 22, said point being marked by a concrete marker designated as P.O.T. Station Number 1260+00 and set 25 feet North of center line of said Highway Number 22; from thence run East along the North boundary of said highway a distance of 166 feet to the beginning point. All of said property being situated in the Southwest Quarter of the Southwest Quarter of Section 35, Township 22, Range 14, Chilton County, Alabama.

PARCEL VI: 40 feet off the South side of Lots 7 and 8 in Block 30 on the East side of the Louisville & Nashville Railroad according to the map of the City of Clanton on file in the Office of the Judge of Probate of Chilton County, Alabama, in Map Book 1 at Pages 1-4, said parcel of land conveyed containing 40 feet on Sixth Street, and being bounded on the South by the alley.

PARCEL VII: An undivided one-half interest in and to the following described real estate: Block 35 of the Resurvey of Outlot A of the Town of Thorsby, Chilton County, Alabama, according to the Resurvey of the same as recorded in Deed Book 41 at Page \_\_\_ in the Office of the Judge of Probate of Chilton County, Alabama.

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

90 FEB 13 PM 2:16

*William B. Jones, Jr.*  
JUDGE OF PROBATE

1. Deed Tax	—	\$	—
2. Mtg. Tax	—	\$	601.05
3. Recording Fee	—	\$	15.00
4. Indexing Fee	—	\$	3.00
5. No Tax Fee	—	\$	—
6. Certified Fee	—	\$	1.00
Total	—	\$	620.05

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