

The
Peoples Bank
and Trust Company

Gamble, Gamble

(2) Any and all obligations of Mortgagor to the Mortgagee pursuant to any loan agreement and/or construction loan agreement by and between the Mortgagor and the Mortgagee (the "Loan Agreement") and any advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and

(3) Any and all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee (including obligations of performance) of every kind and description whatsoever, arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidence by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals, modifications and amendments of any of the same; and

(4) All renewals and extensions of any or all of the items described in (1) through (3) above, whether or not any renewal or extension agreement is executed in connection therewith;

and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Mortgagor contained in this Mortgage:

I. GRANTING CLAUSES

The Mortgagor has bargained and sold and does hereby grant, bargain, sell, assign and convey to the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through H, both inclusive, and has granted and does hereby grant to the Mortgagee, its successors and assigns, a security interest in said property and interests in property:

A. Land. All those certain parcel(s) of land more particularly described in Exhibit A, as the description of the same may be amended or supplemented from time to time, and all and singular the reversions and remainders in and to said land the tenements, hereditaments, easements, rights-of-way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any rights, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, and all claims or demands of the Borrower either at law or in equity, in possession or expectancy of, in or to the same (all of the foregoing hereinafter collectively called the "Land").

B. Improvements. All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building material, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by the Borrower or in which the Borrower has or shall acquire an interest (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Estate").

C. Personal Property. All fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements therefor, owned by the Mortgagor and now or hereafter attached to, contained in, or used in connection with the Real Estate or placed on any part thereof, though not attached thereto, and all proceeds thereof, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment, switchboards, stoves, ranges, vacuum cleaning systems, garbage disposers, refrigerators, dishwashers, hot water heaters, trash compactors, other appliances, paging systems, alarm systems, generators, sprinkler systems and other fire prevention and extinguishing apparatus and all other goods, materials, motors, machinery, pipes, equipment, inventory, fittings and fixtures now or hereafter affixed to or located on the Real Estate.

D. Tenant Leases and Rents.

(i) All leases and subleases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate with respect to which the Mortgagor is the lessor or sublessor, whether now existing or hereafter made, including, without limitation, that certain lease from the Mortgagor to Montevallo Foods, L.L.C., on that portion of the Improvements presently occupied by the business known as Lucky's Foodland (the "Leases");

(ii) Any and all guaranties of the lessee's and any sublessee's performance under any of the Leases; and

(iii) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges,

parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or any Improvements thereon, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate, all such monies, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred under this Mortgage, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Rents.

E. **Insurance Policies.** Each and every policy of hazard insurance now or hereafter in effect which insures the Improvements, the Personal Property, or any part thereof, together with all right, title, and interest of the Borrower in and to each and every such policy, including any premiums paid on each such policy and rights to returned premiums.

F. **General Intangibles and Agreements.**

(i) All general intangibles relating to the development or use of the Real Estate, the Personal Property, or any other property or rights conveyed or encumbered hereby, or the management and operation of any business of the Borrower thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals, and other trade secrets.

(ii) The goodwill of any business conducted or operated on the Real Estate, all governmental permits relating to the construction, renovation or operation thereof, and all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof.

(iii) All contracts and agreements (including franchise, leasing, management, operating and concession agreements) affecting the Real Estate, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into.

G. **Proceeds.** All proceeds (including insurance proceeds) of any of the foregoing, or of any part thereof.

H. **Other Property.** Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Mortgagee as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

SUBJECT, ONLY, to such liens, easements, rights-of-way and other encumbrances as may be specifically set forth herein ("Permitted Encumbrances").

All of the property described in the foregoing Granting Clauses A through H, both inclusive, is herein sometimes collectively referred to as the "**Mortgaged Property.**"

TO HAVE AND TO HOLD the Mortgaged Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Mortgagee, its successors and assigns, forever.

II. **ASSIGNMENT OF CONDEMNATION AWARDS**

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of the Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Mortgaged Property as a result of (A) the exercise of the right of eminent domain, (B) the alteration of the grade or of any street or (C) any other injury to or decrease in value of the Mortgaged Property. All such damages, condemnation proceeds and consideration shall be paid directly to the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Indebtedness in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Indebtedness, or apply such balance to the restoration of the Mortgaged Property, or release the balance to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

III. **MORTGAGOR'S REPRESENTATIONS AND WARRANTIES**

To induce the Mortgagee to extend credit to the Mortgagor, the Mortgagor represents and warrants that:

A. **Valid Title.** (i) The Mortgagor is lawfully seized of an indefeasible estate in and to property described in Granting Clauses A and B above (a) in fee simple, or (b) if specifically so described herein, a leasehold estate; (ii) it has a good right to sell and mortgage, grant a security interest in, and assign, the Mortgaged Property; (iii) the Mortgaged Property is subject to no mortgages, liens,

encumbrances, assignments, or security interests other than Permitted Encumbrances; and (iv) the Mortgagor will forever warrant and defend the title to the Mortgaged Property unto the Mortgagee against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

B. **Leasehold Estate.** If the estate subject to this Mortgage is a leasehold estate: (i) the lease is described on **Exhibit B** herein; (ii) such lease is in full force and effect; and (iii) Mortgagor is not in default thereunder.

C. **Maintenance of Lien Priority.** The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignments of, the Mortgaged Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Mortgaged Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

IV. **ADDITIONAL COVENANTS OF MORTGAGOR**

The Mortgagor covenants and agrees that, until the Indebtedness is paid in full and this Mortgage is satisfied in writing by the Mortgagee:

A. **Payment of Taxes and Other Assessments.** The Mortgagor will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Mortgaged Property or on the interests created by this Mortgage or with respect to the filing of this Mortgage, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the lien and other interests created by this Mortgage.

B. **Insurance.** The Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage, perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by the Mortgagee in such manner and in such companies and amounts as the Mortgagee may approve. All such policies shall name the Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Mortgagee, to be attached to each policy) be payable to the Mortgagee. The Mortgagor agrees that the Mortgagor will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder.

With respect to such insurance policies, the Mortgagee is hereby authorized, but not required, on behalf of the Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Indebtedness or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to the Mortgagor, but no such application, holding in reserve or release shall cure or waive any default by the Mortgagor. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Mortgaged Property in extinguishment of the Indebtedness, complete title to all insurance policies held by the Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Mortgaged Property.

C. **Waste, Demolition, Alteration or Replacement.** The Mortgagor shall cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, shall not commit or permit waste thereon, shall not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Real Estate without the express prior written consent of the Mortgagee, shall comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. The Mortgagor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the prior written consent of the Mortgagee and unless the same is immediately replaced with like property of at least equal value and utility.

D. **Environmental Matters.** The Mortgaged Property will not be used to generate, manufacture, refine, transport, treat, store, handle, discharge or dispose of any hazardous or toxic substance (hereinafter referred to as "Hazardous Substances") as defined under any applicable local, state or federal law, ordinance, rule or regulation, including, without limitation, the definition of "Hazardous Substances", as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq). Mortgagor will not use or suffer the use of the Mortgaged Property in any manner other than in full compliance with all applicable federal, state or local environmental laws and regulations regulating the discharge and/or storage of solid, liquid or gaseous waste, or other Hazardous Substances into the environment. The Mortgagor shall promptly notify Mortgagee, orally and in writing, as soon as it knows of or suspects that any Hazardous Substances have been released or that there is any threatened release on the Mortgaged Property or if Mortgagor receives notice of a violation of any law or regulation pertained to Hazardous Substances. Mortgagor hereby agrees to indemnify Mortgagee from and against all loss, damage, liability and expense, including, without limitation, fines, impositions of any kind, assessments, attorneys' fees which Mortgagee may sustain as a result of the incorrectness of the foregoing representations and

warranties and/or the present or future existence of Hazardous Substances or any release thereof in or on the Mortgaged Property, regardless of the source thereof, which obligation shall survive the Indebtedness and satisfaction of the Mortgage of record.

E. Sale, Lease, or Transfer. Mortgagor agrees that neither the Real Estate, nor any part thereof, nor any interest therein, shall be (i) sold, assigned, transferred, conveyed, leased with an option to purchase, exchanged or otherwise disposed of, nor shall the Mortgagor contract with any person for any of the foregoing, without the Mortgagee's prior written consent; or (ii) subjected to any additional mortgage or lien, either voluntarily or involuntarily, without the Mortgagee's prior written consent. Without limitation of the foregoing, Mortgagor shall not cut, remove, sell, or contract to sell any standing timber from the Mortgaged Property without the Mortgagee's prior written consent. Upon the occurrence of any such sale, assignment, transfer, conveyance, lease with an option to purchase, exchange, other disposition, contract, mortgage or lien, this Mortgage shall be deemed to be in default at the option of the Mortgagee and the Mortgagee may, at its sole option, declare the Indebtedness immediately due and payable in full and exercise the remedies on default hereunder.

F. Dissolution or Ownership Change. The Mortgagor agrees that without the prior written consent of the Mortgagee, the Mortgagor (if a partnership, corporation, or limited liability company) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any such dissolution, liquidation or termination, without the Mortgagee's prior written consent, shall constitute a default hereunder. The Mortgagor (if a partnership, corporation, or limited liability company) further agrees that any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Mortgagor, or any other transaction whereby the legal or beneficial ownership of the Mortgagor is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Mortgagor, or the merger or consolidation of the Mortgagor with any other person, shall be treated as a transfer of the Real Estate for purposes of Section E herein.

G. Inspection. Mortgagor shall and hereby does grant and convey to Mortgagee, its agents, representatives, contractors, and employees, an easement and license to enter on the Real Estate at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing, as Mortgagee, in its sole discretion, deems necessary, convenient, or proper to determine whether the ownership, use and operation of the Real Estate are in compliance with the terms and conditions set forth in this Mortgage or any Loan Agreement and with all federal, state, and local environmental laws, ordinances, rules, and regulations. Any tests or inspections made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person or entity. Mortgagee shall have no obligation to perform any such audits, tests, inspections, or examinations, or to take any remedial action. All the costs and expenses incurred by Mortgagee with respect to any audits, tests, inspections, examinations, and interviews which Mortgagee may conduct or take pursuant to this paragraph, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by the Mortgagor, with interest, and shall be secured by this Mortgage.

H. Loan Agreement. Mortgagor, as Borrower, shall comply with all terms and conditions of any Loan Agreement.

V. DEFEASANCE

If the Mortgagor shall: (A) pay in full (i) all of the Indebtedness (as defined herein), including, but not limited to, all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same and all future sums becoming due and payable from Mortgagor to Mortgagee; and (ii) all sums becoming due and payable by the Mortgagor under the terms of this Mortgage, including, but not limited to, all obligations of the Mortgagor under the Loan Agreement, and all advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and (B) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by the Mortgagor, including, without limitation, those set forth in the Loan Agreement, and no Event of Default has occurred; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

VI. EVENTS OF DEFAULT

The happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default") shall constitute a default under this Mortgage:

(a) default shall be made in the prompt payment of the principal of and interest payable on the Note, or any other Indebtedness, as and when due and payable; or

(b) the representations and warranties of the Mortgagor made herein or in any Loan Agreement provide to be untrue or misleading in any material respect; or

(c) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of this Mortgage, any Loan Agreement, or any other document evidencing an Indebtedness of Mortgagor to Mortgagee.

VII. RIGHTS OF MORTGAGEE UPON DEFAULT

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Indebtedness immediately due and payable, whereupon all such Indebtedness shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, any Loan Agreement and any other document evidencing the Indebtedness, and applicable law. The Mortgagor also waives any and all judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Note, any Loan Agreement or other loan document, and applicable law.

B. Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee (or any person, firm or corporation designated by the Mortgagee) the Mortgagee may, but shall not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Mortgaged Property.

C. Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose the Mortgagee's lien on, security interest in, and assignment of, the Mortgaged Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

D. Foreclosure Sale. Upon the occurrence of any Event of Default, or at any time thereafter, the Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) at public outcry, to the highest bidder for cash, at the front or main door of the courthouse in the county where the Mortgaged Property is located, after first giving notice once a week for three consecutive weeks of the time, place and terms of each such sale by publication in a newspaper published in the county wherein the Mortgaged Property is located. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of the Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

E. Personal Property and Fixtures. On the happening of any Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the personal property and fixtures included in the Mortgaged Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral and any right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Article VIII below, at least five (5) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Mortgaged Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the sale and to hold the same as Collateral or to apply it on the Indebtedness in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, elapsing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

F. **Foreclosure Deeds.** The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name for the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

G. **Application of Proceeds.** All payments received by the Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Indebtedness that is then due and payable (including, without limitation, principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, and (iii) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity and entitlement.

VIII. **MISCELLANEOUS PROVISIONS**

A. **Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

B. **No Waiver by Mortgagee.** Mortgagee shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Mortgagee. No delay or omission on the part of Mortgagee in exercising any right shall operate as a waiver of such right or any other right. A waiver by Mortgagee of a provision of this Mortgage shall not prejudice or constitute a waiver of Mortgagee's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Mortgagee, nor any course of dealing between Mortgagee and Mortgagor, shall constitute a waiver of any of Mortgagee's rights or of any of Mortgagor's obligations as to any future transactions. Whenever the consent of Mortgagee is required under this Mortgage, the granting of such consent by Mortgagee in any instance shall not constitute continuing consent to subsequent instances where such consent is required and, in all cases, such consent may be granted or withheld in the sole discretion of Mortgagee.

C. **Waiver of Homestead Exemption.** Mortgagor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Alabama as to all Indebtedness secured by this Mortgage.

D. **Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Mortgagor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Mortgagor, Mortgagee, without notice to Mortgagor, may deal with Mortgagor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Mortgagor from the obligations of this Mortgage or liability under the Indebtedness.

E. **Governing Law.** THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA.

F. **Enforceability.** If any provision of this Mortgage is now, or at any time hereafter becomes, invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

G. **Other Mortgages Encumbering the Real Estate.** The Mortgagor agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Real Estate, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the Mortgagor. The Mortgagor agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Note or other document evidencing an Indebtedness, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Indebtedness secured by this Mortgage. The authority of the Mortgagor to further encumber the Real Estate is limited by the Loan Documents, and this provision is not intended to waive any such limitations.

H. **Meaning of Particular Terms.** Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. The term "Mortgagor" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, partnerships, corporations, limited liability companies, trusts or other entities or organizations.

I. **Advances by Mortgagee.** If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessment and other charges, the keeping of the Mortgaged Property in repair, or the performance of any other term or covenant herein contained, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note or other document evidencing an Indebtedness, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Indebtedness and shall be secured hereby.

J. **Release or Extension by Mortgagee.** The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Mortgaged Property not expressly released, may release any part of the Mortgaged Property or any person liable for any of the Indebtedness and may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any terms, condition or covenant of the Note, this Mortgage, any Loan Agreement, or any other instrument evidencing or securing any of the Indebtedness.

K. **Partial Payments.** Acceptance by the Mortgagee of any payment of less than the full amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Indebtedness has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

L. **Addresses for Notices.** Any notice or communication herein required or permitted to be given shall be in writing and shall be deemed to have been given or delivered when personally delivered, transmitted by legible facsimile, transmitted by reputable overnight courier service, or when mailed by postage prepaid United States first class mail, postage prepaid, to the addresses of the Mortgagor and Mortgagee as set forth herein. Each party shall have the right to specify as its proper address any other address in the United States of America by giving to the other party at least fifteen (15) days' written notice thereof.

M. **Expenses.** The Mortgagor shall pay all costs and expenses incurred by the Mortgagee in connection with preparing and recording this Mortgage and enforcing the Mortgagee's rights hereunder, including reasonable attorneys' fees, to the extent permitted by law.

N. **Titles.** All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

O. **Construction of Mortgage.** This Mortgage may be construed as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation, or contract, or any one or more of them, in order fully to effectuate the lien, security interest and assignment created hereby and the purposes and agreements herein set forth.

IN WITNESS WHEREOF, each of the undersigned has caused this Mortgage to be signed and sealed as of the day and year first above written.

MORTGAGORS: <u>Signature of Corporation</u> _____ Name of Corporation BY: _____ Title: _____ Attest: _____ Title: _____ (CORPORATE SEAL)	MORTGAGORS: <u>Signature of Individual(s)</u> _____(SEAL) _____(SEAL) _____(SEAL)	MORTGAGORS: <u>Signature of Partnership or Limited Liability Company</u> <u>SUNNYSIDE FARM, LIMITED PARTNERSHIP</u> Name of Partnership or Limited Liability Company BY: <u>Jack Mitchell</u> (SEAL) General Partner/Member/Manager <u>General Partner</u> BY: _____ (SEAL) General Partner/Member/Manager (if General Partner, Member or Manager is a corporation, then complete the following) BY: _____
---	--	---

Title: _____

Attest: _____

Title: _____

(CORPORATE SEAL)

STATE OF ALABAMA
COUNTY OF SHELBY

PARTNERSHIP ACKNOWLEDGMENT

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

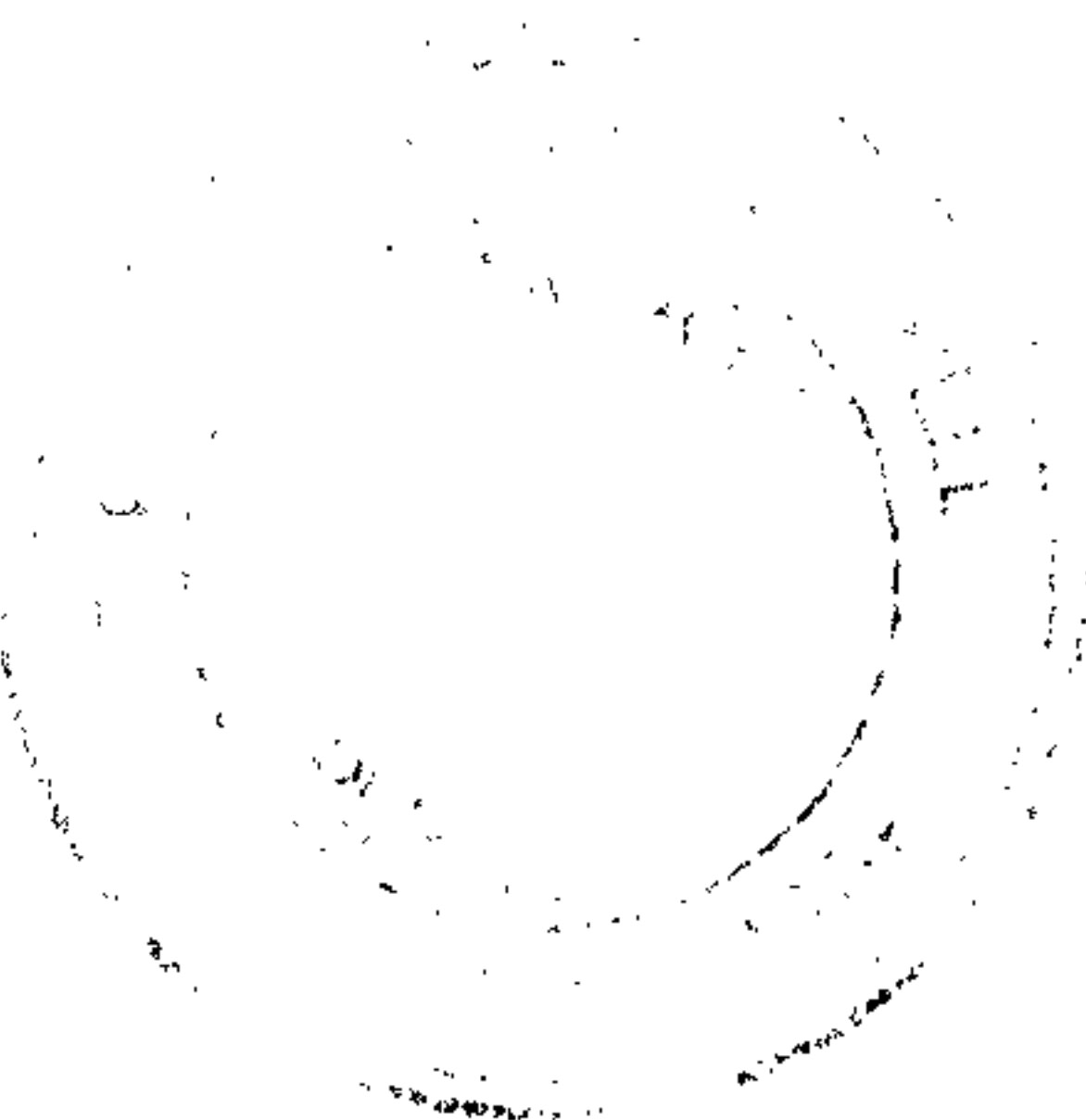
JACK MITCHELL, whose name(s) as general partner of

SUNNYSIDE FARM, LIMITED PARTNERSHIP, a (general) (limited)

(limited liability) partnership, _____ is _____ signed to the foregoing Mortgage, and who _____ is _____ known to me, acknowledged before me on this day that, being informed of the contents of the within Mortgage, _____ he _____ as such general partner and with full authority, executed the same voluntarily for and as the act of said partnership, on the day the same bears date.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 31st day of January, 2005.

(SEAL)



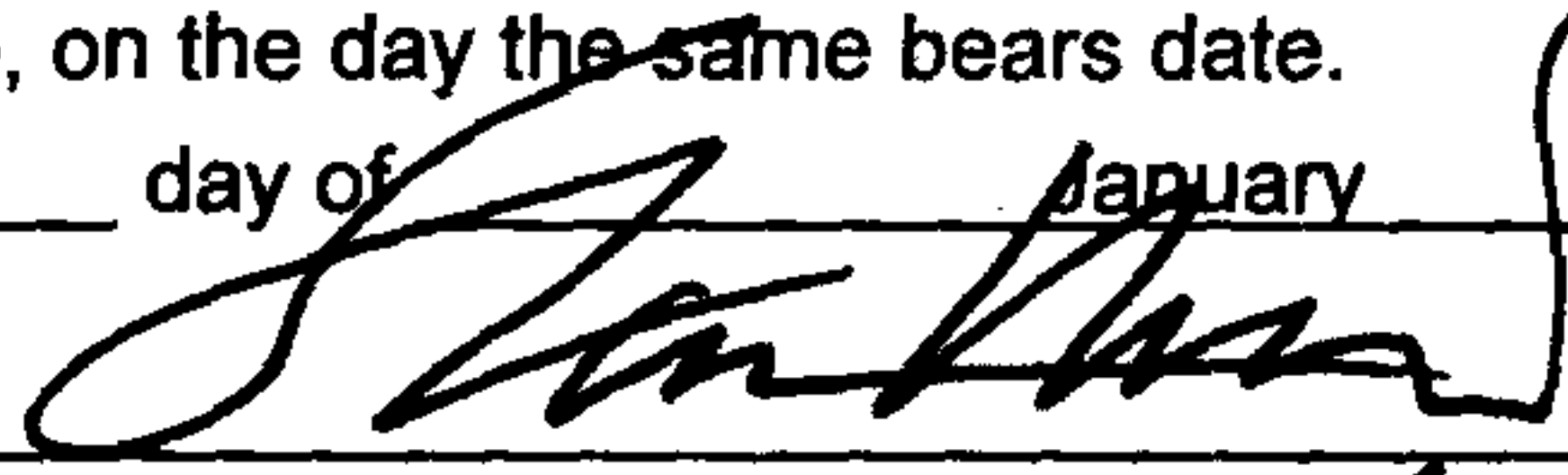

Notary Public
My Commission Expires: 12/15/07

EXHIBIT A

REAL ESTATE

Commence at the southwest corner of Section 3, Township 24 North, Range 12 East, Shelby County, Alabama, and run thence easterly along the south line of said Section 3 a distance of 552.46 feet to a point; thence turn a deflection angle of 46 degrees 20 minutes 42 seconds to the left and run northeasterly 832.81 feet to a point; thence turn 91 degrees 26 minutes 10 seconds left and run northwesterly 477.57 feet to a point; thence turn 91 degrees 29 minutes 28 seconds right and run northeasterly 417.63 feet to a point; thence turn 91 degrees 32 minutes 12 seconds left and run northwesterly 351.94 feet to a point; thence turn 34 degrees 43 minutes 43 seconds right and run north-northwesterly 613.10 feet to a point; thence turn 155 degrees 53 minutes 11 seconds left and run southerly a distance of 151.09 feet to a steel pin corner and the POINT OF BEGINNING of the property being described; thence turn 29 degrees 26 minutes 04 seconds right and run southwesterly along an old existing fence line 673.81 feet to a steel pin corner; thence turn 73 degrees 26 minutes 09 seconds right and run west-northwesterly along an old fence line 737.87 feet to a steel pin corner at a fence corner; thence turn 83 degrees 24 minutes 31 seconds right and run northerly along old fence line 482.21 feet to a steel pin corner on the southerly margin of Alabama Highway No. 25; thence turn 45 degrees 37 minutes 21 seconds right to chord and run northeasterly along said south margin of said Highway No. 25 a distance of 144.47 feet to a concrete right of way monument; thence turn 02 degrees 48 minutes 41 seconds right to chord and continue along said south margin of said Highway No. 25 a distance of 68.40 feet to a concrete right of way monument; thence turn 10 degrees 59 minutes 49 seconds right and continue along said margin of said Highway a distance of 57.22 feet to a concrete right of way monument; thence turn 09 degrees 49 minutes 46 seconds left and continue along said margin of said highway a distance of 49.63 feet to a steel pin corner; thence turn 113 degrees 41 minutes 39 seconds right and run southerly a distance of 167.80 feet to a steel pin corner; thence turn 90 degrees 00 minutes 00 seconds left and run easterly 100.00 feet to a steel pin corner; thence turn 56 degrees 29 minutes 53 seconds right and run southerly 70.51 feet to a steel pin corner; thence turn 80 degrees 17 minutes 15 seconds left and run easterly 30.34 feet to a steel pin corner; thence turn 85 degrees 16 minutes 10 seconds right and run southerly along an existing fence line 129.85 feet to a steel pin corner; thence turn 83 degrees 03 minutes 19 seconds left and run easterly along an existing fence line 525.20 feet to the point of beginning.

According to the survey of Joseph E. Conn, Jr., Alabama Registered PLS #9049, dated September 11, 1997.