

04-969-CD  
NATIONAL CITY BANK OF PENNSYLVANIA vs. HAROLD D. S. et al

National city et al vs Harold Shaw et al  
2004-969-CD

Plff John Joyce  
vs

Harold L Shaw  
Janet L. "  
AKA Janet L. McKeown

Harold & Janet Shaw  
RD #2 Box 113  
Culwensville, PA 16833

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONAL CITY BANK OF  
PENNSYLVANIA, Successor in Interest to  
Integra Bank,

Plaintiff,

vs.

HAROLD D. SHAW and JANET L. SHAW  
a/k/a JANET L. McKEOWN,

Defendants.

TO DEFENDANT(S):

You are hereby notified to plead to the ENCLOSED  
COMPLAINT WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF

  
ATTORNEY FOR PLAINTIFF

I hereby certify that the address of the Plaintiff is:

116 Allegheny Center Mall  
Pittsburgh, PA 15212-5356

and the addresses of the Defendants are:

RD #2, Box 113  
Curwensville, PA 16833

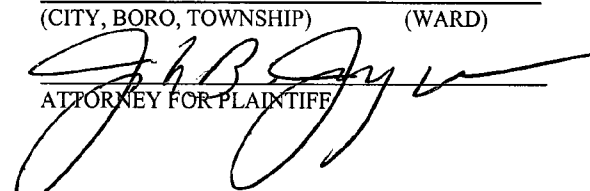
2816 Grandview Road  
Curwensville, PA 16833

  
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF LOCATION

I HEREBY CERTIFY THAT THE LOCATION OF  
THE REAL ESTATE AFFECTED BY THIS LIEN IS

(CITY, BORO, TOWNSHIP) (WARD)

  
ATTORNEY FOR PLAINTIFF

) CIVIL DIVISION

) NO.: 04-969-CD

) ISSUE NO.:

) TYPE OF PLEADING:

) CIVIL ACTION - COMPLAINT IN  
) MORTGAGE FORECLOSURE

) CODE -

) FILED ON BEHALF OF PLAINTIFF:

) National City Bank of Pennsylvania,  
) Successor in Interest to Integra Bank

) COUNSEL OF RECORD FOR THIS  
) PARTY:

) John B. Joyce, Esquire  
) Pa. I.D. #68242

) GRENN & BIRSIC, P.C.  
) One Gateway Center, 9<sup>th</sup> Floor  
) Pittsburgh, PA 15222  
) (412) 281-7650

FILED

JUN 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONAL CITY BANK OF  
PENNSYLVANIA, Successor in Interest to  
Integra Bank,

CIVIL ACTION

NO.:

Plaintiff,

vs.

HAROLD D. SHAW and JANET L. SHAW  
a/k/a JANET L. McKEOWN,

Defendants.

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service**

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONAL CITY BANK OF  
PENNSYLVANIA, Successor in Interest to  
Integra Bank,

Plaintiff,

vs.

HAROLD D. SHAW and JANET L. SHAW  
a/k/a JANET L. McKEOWN,

Defendants.

CIVIL ACTION

NO.:

**CIVIL ACTION - COMPLAINT IN MORTGAGE FORECLOSURE**

AND NOW, comes Plaintiff, National City Bank of Pennsylvania, Successor in Interest to Integra Bank, by its attorneys, Grenen & Birsic, P.C., files this Complaint in Mortgage Foreclosure as follows:

1. The Plaintiff is National City Bank of Pennsylvania, Successor in Interest to Integra Bank, which has its principal place of business at 116 Allegheny Center Mall, Pittsburgh, PA 15212-5356.
2. Defendant, Harold D. Shaw, is an individual whose last known address is RR 2, Box 112, Curwensville, PA 16833.
3. Defendant, Janet L. Shaw a/k/a Janet L. McKeown, is an individual whose last known address is 2816 Grandview Road, Curwensville, PA 16833.
4. On or about April 4, 1996, Defendants, Harold D. Shaw and Janet L. Shaw a/k/a Janet L. McKeown (hereinafter "Defendants"), executed a Business Term Note ("Note") in favor of Integra Bank in the original principal amount of \$121,000.00. A true and correct copy of said Note is marked as **Exhibit "A"**, attached hereto and made a part hereof.

5. On or about April 4, 1996, as security for payment of the aforesaid Note, Defendants made, executed and delivered to Integra Bank an Open-End Mortgage and Security Agreement ("Mortgage") in the original principal amount of \$121,000.00 on the premises hereinafter described, said Mortgage being recorded in the Office of the Recorder of Deeds of Clearfield County on April 4, 1996, in Mortgage Book Volume 1748, Page 115. A true and correct copy of said Mortgage containing a description of the premises subject to said Mortgage is marked **Exhibit "B"**, attached hereto and made a part hereof.

6. Defendants are the record and real owners of the aforesaid mortgaged premises.

7. Defendants are in default under the terms of the aforesaid Mortgage and Note for, *inter alia*, failure to pay the monthly installments of principal and interest when due.

8. Plaintiff was not required to send Defendants, Harold D. Shaw and Janet L. Shaw a/k/a Janet L. McKeown, written notice pursuant to 35 P.S. §1680.403C (Homeowner's Emergency Mortgage Assistance Act of 1983 - Act 91 of 1983) prior to the commencement of this action for the reasons that:

(a) the mortgaged premises is not the principal residence of the Defendants [35 P.S. §1680.401(a) (1)]; and

(b) the mortgaged premises is not a one or two family owner-occupied residence [35 P.S. §1680.401C(a) (2)].

9. Plaintiff was not required to send Defendants, Harold D. Shaw and Janet L. Shaw a/k/a Janet L. McKeown, written notice of Plaintiff's intention to foreclose said Mortgage pursuant to 41 P.S. §403 (Act 6 of 1974) prior to the commencement of this action for the reasons that:

(a) said Mortgage is not a "residential mortgage" as defined in 41 P.S. §101;

(b) the Defendants are not "residential mortgage debtors" as defined in 41 P.S. §101; and

(c) the mortgaged premises is not "residential real property" as defined in 41 P.S. §101.

10. On or about April 4, 2004, Defendants executed and delivered an Affidavit of Business Loan to Plaintiff stating under oath that the subject loan was for business purposes. A true and correct copy of the Affidavit of Business Loan is marked **Exhibit "C"**, attached hereto and made a part hereof.

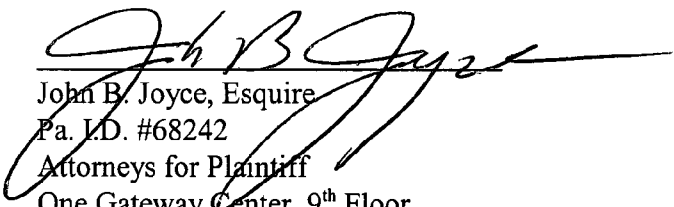
11. The amount due and owing Plaintiff by Defendants is as follows:

Principal	\$	93,185.68
Interest through 6/15/04	\$	8,251.25
Late Charges to 6/15/04	\$	629.73
Attorney Fees	\$	1,250.00
Title Search, Foreclosure and Execution Costs	\$	<u>2,750.00</u>
<b>TOTAL</b>	<b>\$</b>	<b>106,066.66</b>

WHEREFORE, Plaintiff demands judgment in mortgage foreclosure for the amount due of **\$106,066.66**, with interest thereon at the rate of **\$28.48** per diem from June 15, 2004, and additional late charges, additional reasonable and actually incurred attorneys' fees, plus costs (including increases in escrow deficiency) and for foreclosure and sale of the mortgaged premises.

GRENN & BIRSIC, P.C.

By:

  
John B. Joyce, Esquire  
Pa. I.D. #68242  
Attorneys for Plaintiff  
One Gateway Center, 9<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(412) 281-7650

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

## **EXHIBIT "A"**

**TERM NOTE**

**\$121,000.00**

Erie, Pennsylvania  
April 4, 1996

**FOR VALUE RECEIVED** and intending to be legally bound hereby, undersigned, **Harold D. Shaw and Janet L. Shaw ("Makers")**, who are **Pennsylvania RESIDENTS**, having a principal office at **RD 2, Box 113, Curwensville, PA 16833**, promises to pay to the order of **INTEGRA BANK ("Bank")** in immediately available funds at the **ERIE** office of Bank at **801 STATE STREET, ERIE, PA 16501**, or at such other location as the holder hereof may from time to time designate, the principal sum of **One hundred twenty-one thousand and no/100 dollars (\$121,000.00)**, payable as follows:

**\$121,000.00** with interest on unpaid principal computed from the date of each advance at the rate of **eleven (11.00) percent per annum**, payable monthly commencing **May 15, 1996**, payments to be made in installments as follows: **\$1,406.91** each, including principal and interest, payable monthly beginning **May 15, 1996**, and the balance of principal and interest and all other indebtedness is due and payable on or before **[15] fifteen years** from the date of this note; provided that any installments shall be applied first to interest accrued to date of receipt of said installments and the balance, if any to principal; balance at maturity. If any payment due under this note (whether at the stated payment date, at the stated maturity, by acceleration or otherwise) is more than **fifteen (15) days** late, Maker shall pay Bank a late charge to equal **five percent (05.00%)** of such late payment.

**Interest is computed on the basis of a year of 360 days and actual days elapsed.**

The aforesaid interest rates shall continue to apply whether or not judgment shall have been entered on this Note.

If any payment of the principal of or interest on this Note shall become due and payable on a **Saturday, a Sunday, or any other day** on which Bank is not open for business, such payment shall be made on the next succeeding business day, and such extension of time shall in such case be included in computing interest in connection with such payment.

Notwithstanding any provision of this Note to the contrary, it is the intent of Maker and Bank that Bank shall not at any time be entitled to receive, collect or apply, and Maker and Bank shall not be deemed to have contracted for, as interest on the principal indebtedness evidenced hereby, any amount in excess of the maximum rate of interest permitted to be charged by applicable law, and in the event Bank ever receives, collects or applies as interest any such excess, such excess shall be deemed partial payment of the principal indebtedness evidenced hereby, and if such principal shall be paid in full, any such excess shall forthwith be paid to Maker. In the event that, but for this paragraph, the rate of interest applicable to this Note would at any time exceed the maximum lawful rate, then this Note and all interest hereon shall thereupon be immediately due and payable.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce or to make possible the production of an agricultural commodity, further explained in **7 CFR Part 1940, Subpart G, Exhibit M.**

Maker shall be in default under this Note upon the happening of any of the following events of default:

(a) a default in the payment when due of any installment of the principal of or interest on this Note or performance of any obligation, covenant or liability contained or referred to herein or in any other document executed in connection herewith;

(b) any warranty, representation or statement made or furnished to Bank by or on behalf of Maker proves to have been false or misleading in any material respect when made or furnished;

(c) any letter of credit pledged as collateral for the obligations evidenced by this Note is not renewed or extended thirty (30) days prior to expiration or termination thereof;

(d) the occurrence of any event which constitutes a default under or results in the acceleration of indebtedness of Maker to any person (including Bank) under any note, indenture, agreement or undertaking;

(e) if Maker is a corporation or partnership, any material change in the ownership of the outstanding capital stock or partnership interests of Maker, as the case may be, as the same existed on the date hereof;

(f) any change in the condition, financial or otherwise, of Maker which, in the reasonable opinion of Bank, has or could have a material adverse effect on Maker, on the assets of Maker, or on the validity or enforceability of this Note or any other document executed in connection herewith or given in support hereof;


(g) the death, incarceration or adjudication of legal incompetence of any person who is a Maker or any person liable to Bank for any of the obligations of Maker;

(h) a judgment is entered against Maker or any person liable to Bank for any of the obligations of Maker, or any of Maker's assets are attached in a legal proceeding; or

(i) the dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of proceedings under any bankruptcy or insolvency laws by or against, Maker or any person liable to Bank for any of the obligations of Maker.

Upon the occurrence of any of the events of default mentioned in clauses (a) through (g) hereof and at any time thereafter, Bank may declare all liabilities and obligations of Maker to Bank, including those evidenced by this Note, immediately due and payable, and the same shall thereupon become immediately due and payable without any further action on part of Bank, and upon the occurrence of any event of default mentioned in clauses (h) or (i) hereof, all liabilities and obligations of Maker to Bank, including those evidenced by this Note, shall immediately become due and payable without any action upon the part of Bank.

The DEMAND for payment clause is hereby removed from this document per the Conditional Commitment for Guaranty from the FmHA in order to allow for a repayment schedule to be set forth.

  
Gigi L. Gearhart

LENDER

This Note is secured as follows:

This Note is secured by collateral identified in that certain Open-End Mortgage and Security Agreement executed by the undersigned in favor of Bank dated the same.

This Note is secured by collateral identified in that certain Assignment of Proceeds of Dairy Products as Collateral executed by the undersigned in favor of Bank dated the same.

Maker hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

Maker shall pay Bank on demand any reasonable out-of-pocket expenses, including reasonable legal fees, arising out of or in connection with any action or proceeding, including any action or proceeding arising in or related to any insolvency, bankruptcy or reorganization involving or affecting Maker, taken to protect, enforce, determine, or assert any right or remedy under this Note and any mortgage or security agreement, including the collateral covered thereby, securing the same.

This Note shall bind Maker and the heirs, personal representatives, successors and assigns of Maker, and the benefits hereof shall inure to the benefit of Bank and its successors and assigns. All references herein to "Maker" shall be deemed to apply to Maker and to the heirs, personal representatives, successors and assigns of Maker, and all references herein to "Bank" shall be deemed to apply to Bank and its successors and assigns.

This Note and any other documents delivered in connection herewith and the rights and obligations of the parties hereto and thereto shall for all purposes be governed by and construed and enforced in accordance with the substantive law of the Commonwealth of Pennsylvania without giving effect to conflict of laws principles.

MAKER DOES HEREBY EMPOWER THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR FOR MAKER AND, WITH OR WITHOUT ONE OR MORE COMPLAINTS FILED, CONFESS JUDGMENT OR JUDGMENTS AGAINST MAKER IN ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA AT ANY TIME AFTER THE DATE OF THIS NOTE AND WHETHER OR NOT THIS NOTE IS THEN DUE OR IN DEFAULT, IN FAVOR OF BANK, ITS SUCCESSORS AND ASSIGNS, FOR THE UNPAID PRINCIPAL BALANCE OF THIS NOTE AND ALL INTEREST ACCRUED HEREON, TOGETHER WITH COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF 10%, BUT IN NO EVENT LESS THAN \$500.00, FOR COLLECTION OF SUCH SUMS, AND MAKER HEREBY FOREVER WAIVES AND RELEASES ANY AND ALL ERRORS IN SAID PROCEEDINGS AND WAIVES STAY OF EXECUTION AND STAY, CONTINUANCE OR ADJOURNMENT OF SALE ON EXECUTION. THE AUTHORITY AND POWER TO APPEAR FOR AND ENTER JUDGMENT AGAINST MAKER SHALL NOT BE EXHAUSTED BY ONE OR MORE EXERCISES THEREOF AND MAY BE EXERCISED FROM TIME TO TIME AND AS OFTEN AS BANK OR ITS SUCCESSORS AND ASSIGNS SHALL DEEM NECESSARY OR DESIRABLE.

IN WITNESS WHEREOF, Maker, intending to be legally bound, has executed this Note on the day and year first above written with the intention that this Note shall constitute a sealed instrument.

WITNESS:

*John L. Shaw*

*as to both*

*Harold D. Shaw*  
(Individual) Harold D. Shaw

*Janet L. Shaw*  
(Individual) Janet L. Shaw

**ADDENDUM TO THE TERM NOTE**

*This document serves as ADDENDUM to a Term Note dated*

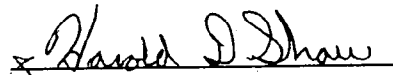
April 4, 1996 (DATE)

*Attached hereto and made part hereof*

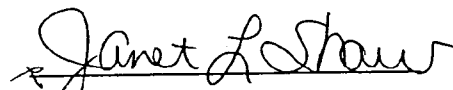
*The attached note stands as partial consolidation of \$127,000.00 (ORIGINAL AMOUNT OF LOAN) Guaranteed Operating Loan/Farm Ownership Loan 6000 (NOTE NUMBER) evidenced but such note is not paid off or satisfied. Principal consolidated into this new note is \$56,000 (OF CURRENT OUTSTANDING PRINCIPAL BALANCE ONLY) plus fees (N/A). \$121,000.00 (NEW LOAN AMOUNT) new loan request incorporated herewith.*

**WITNESS:**



  
Harold D. Shaw (Individual)

as to both

  
Janet L. Shaw (Individual)

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## **EXHIBIT “B”**

(All notices to be given to Mortgagee pursuant to 42 Pa. C.S.A. ( 8143 shall be given as set forth in Section 9.01 of this Mortgage.)

THIS OPEN-END MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of the 4th day of April, 1996, by Harold D. Shaw and Janet L. Shaw (husband and wife) ("Mortgagor"), Pennsylvania residents, with an address at R. D. # 2 Box 113, Curwensville, PA 16833, in favor of INTEGRA BANK ("Mortgagee"), a State Charter Bank operating under the laws of the Commonwealth of Pennsylvania, with an address at 801 State Street, Erie, PA 16501.

This Mortgage is an "Open-End Mortgage" as set forth in 42 Pa. C.S.A. ( 8143 and secures obligations up to a maximum amount of indebtedness outstanding at any time of One hundred twenty-one thousand and no/100---Dollars (\$121,000.00) plus accrued and unpaid interest, advances for the payment of taxes and municipal assessments, maintenance charges, insurance premiums, costs incurred for the protection of the Mortgaged Property (as hereinafter defined) or the lien of this Mortgage, expenses incurred by Mortgagee by reason of default by Mortgagor under this Mortgage and advances for construction, alteration or renovation of the Mortgaged Property, together with all other sums due hereunder or secured hereby.

WITNESSETH:

WHEREAS, Mortgagor is the owner of a certain tract or parcel of land described in Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon.

NOW THEREFORE, for the purpose of securing the payment and performance of the following obligations (collectively, "Secured Obligations"):

(x) all indebtedness, together with all interest thereon, evidenced by the following instrument or agreement: TERM NOTE OF MORTGAGOR TO MORTGAGEE DATED April 4, 1996 IN THE STATED PRINCIPAL AMOUNT OF \$121,000.00 EVIDENCING A TERM LOAN A TERM LOAN BY MORTGAGEE TO MORTGAGOR UNDER TERM LOAN AGREEMENT DATED April 4, 1996, and any renewals, modifications and extensions thereof, the provisions of the foregoing document being incorporated herein by this reference (the foregoing document, together with this Mortgage, and all other documents or instruments delivered in connection with or in support of the Secured Obligations are collectively called the "Loan Documents");

(a) any sums advanced by Mortgagee under this Mortgage or which may otherwise become due pursuant to the provisions of this Mortgage; and

(b) all other obligations of Mortgagor to Mortgagee now existing or hereafter arising, whether or not pursuant to any other loan, line of credit, letter of credit, or other extension of credit made by Mortgagee to or for the account of Mortgagor, or whether or not pursuant to any agreement, document or instrument at any time given to evidence, secure or otherwise support, or in connection with, any of the foregoing, including but not limited to any guaranty made by Mortgagor to Mortgagee of any loan or other extension of credit made by Mortgagee to any other person or entity, whether or not made prior or subsequent to the date of this Mortgage and whether or not currently contemplated or in any way related to any of the other Secured Obligations; provided, nevertheless, that this Mortgage shall not extend to or secure any obligation of Mortgagor which is defined as consumer credit under Regulation Z promulgated by the Board of Governors of the Federal Reserve System and which is not exempted from application thereof.

Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, grants, bargains, sells, conveys and mortgages to Mortgagee and agrees that Mortgagee shall have a security interest in and lien on the following described property, all accessions and additions thereto, all substitutions therefor, and replacements and proceeds thereof (collectively, "Mortgaged Property") now owned or held or hereafter acquired, to wit:

- (i) all of Mortgagor's estate in the premises described in Exhibit A, together with all of the easements, rights and appurtenances thereunto belonging (collectively, "Realty");
- (ii) all improvements now or hereafter erected upon the Realty (including all Equipment, as hereinafter defined, constituting fixtures) (collectively, "Improvements");
- (iii) all goods, machinery, equipment and fixtures of every kind and nature whatsoever now or hereafter attached or located in or on the Mortgaged Property, or used or usable in connection with the ownership, use,

operation, occupancy, maintenance, repair or security of the Realty or Improvements (collectively, "Equipment");

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- (iv) all leases and other agreements now or hereafter in existence relating to the use, occupancy or possession of the Realty, Improvements or Equipment, or any part thereof, and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder, and the right to receive and collect the rents and other sums payable thereunder and all guaranties thereof (collectively, "Leases");
- (v) all revenues, income, rents, issues and profits of the Realty, Improvements, Equipment and Leases (collectively, "Rents"), including all proceeds of the conversion, voluntary or involuntary, of the Realty, Improvements and Equipment, including proceeds of insurance and condemnation awards or payments in lieu thereof; and
- (vi) all Mortgagor's rights and interests in all agreements now or hereafter in existence providing for or relating to the construction, alteration, maintenance, repair, operation or management of the Mortgaged Property or any part thereof, as well as the plans and specifications therefor, and all copies thereof and, to the extent permitted by the relevant authorities, all licenses, permits and approvals for the ownership, construction, maintenance, operation, use and occupancy of the Mortgaged Property or any part thereof (collectively, "Other Property").

TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, its successors and assigns, to its own use forever in accordance with the provisions hereof.

#### Article 1 Representation and Warranties

Mortgagor represents and warrants to Mortgagee as follows:

1.01 Warranty of Title. Except as may otherwise be set forth on Exhibit A hereto, Mortgagor has good and marketable title to an estate in fee simple absolute in the Realty and Improvements and has all right, title and interest in all other property constituting a part of the Mortgaged Property, and this Mortgage constitutes a valid and enforceable lien upon and security interest in the Mortgaged Property, in each case free and clear of all liens and encumbrances, except as may be set forth on Exhibit A hereto.

1.02 No Litigation. There is no litigation or governmental investigation of any type pending or, to the best of Mortgagor's knowledge, threatened which questions the capacity or authority of Mortgagor to fulfill its obligations under this Mortgage or the other Loan Documents or, if determined adversely, could materially affect the business or financial condition of Mortgagor, or Mortgagor's use, ownership, control or occupancy of any portion of the Mortgaged Property.

1.03 No Conflicts. The execution, delivery and performance of this Mortgage and the other Loan Documents do not conflict with any statute, regulation, rule or ordinance, or any judgment or order of any court or governmental authority, and do not conflict with or constitute a default under any agreement or other document by which Mortgagor or the Mortgaged Property is bound.

1.04 Licenses and Permits. All licenses, permits, consents and approvals necessary to occupy and operate the Mortgaged Property as now occupied and operated are in full force and effect, and the Mortgaged Property and the use thereof complies in all respects with all Legal Requirements (as hereinafter defined).

1.05 Due Organization, Etc. Each party (other than individuals) to each of the Loan Documents is duly organized and validly existing under the laws of the jurisdiction of its formation and is duly authorized and qualified to do business in each jurisdiction wherein its activities require such authorization or qualification. Each of the Loan Documents has been duly executed and delivered by the parties thereto pursuant to all requisite power and authority. Each of the Loan Documents constitutes the legal, valid, and binding obligation of each of the parties thereto, enforceable in accordance with their respective terms. Each party to each of the Loan Documents who is an individual is at least eighteen years of age and is under no legal disability or incapacity.

Until all of the Secured Obligations shall have been fully paid, satisfied and discharged:

2.01 Payment and Performance of Secured Obligations. All Secured Obligations shall be paid or performed when due as provided in the Loan Documents.

2.02 Legal Requirements. Mortgagor shall promptly comply with and conform to all present and future laws, statutes, codes, ordinances, orders, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency and all covenants, restrictions and conditions which may be applicable to Mortgagor or to any of the Mortgaged Property or the use thereof (collectively, "Legal Requirements").

2.03 Impositions. (a) Before interest or penalties are due thereon and otherwise when due, Mortgagor shall pay all taxes, charges, general and special assessments, including without limitation any condominium or planned unit development assessments, if any, levies, permits, inspection and license fees, all obligations secured by mortgages and other liens, all payments under any Leases, all water and sewer rents and charges, and all other charges and liens whether of a like or different nature, even if unforeseen or extraordinary, now or hereafter imposed upon or assessed against Mortgagor or any of the Mortgaged Property by any governmental authority, agency or body, or any other party. The obligations referred to in this section are hereinafter collectively referred to as the "Impositions." Within thirty (30) days after the payment of any Imposition, Mortgagor shall deliver to Mortgagee evidence acceptable to Mortgagee of such payment. Mortgagor shall also deliver to Mortgagee, within ten (10) days of receipt thereof, copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority.

(b) Mortgagee may pay or perform any Imposition and add the amount so paid or the cost incurred to the Secured Obligations, and all such amounts shall be due and payable on demand, together with interest thereon from the date of payment by Mortgagee until paid by Mortgagor at the highest rate applicable to any portion of the Secured Obligations but in no event exceeding the highest rate permitted by law ("Default Rate").

2.04 Maintenance and Impairment of Security. Mortgagor shall keep the Mortgaged Property in good condition, order, and repair and will make, as and when necessary, all repairs and replacements, ordinary and extraordinary. Mortgagor shall not demolish or alter any portion of the Mortgaged Property, nor commit or suffer waste with respect thereto, nor permit the Mortgaged Property to become deserted or abandoned. Mortgagor shall permit Mortgagee and its agents at any time, and from time to time, to enter upon and visit the Mortgaged Property for the purpose of inspecting and appraising the same. Mortgagor shall not take or permit any action with respect to the Mortgaged Property which will in any manner impair the security of this Mortgage.

2.05 Use of Mortgaged Property. The Mortgaged Property shall be used only in a manner permitted under applicable Legal Requirements.

2.06 Performance of Leases. (a) Mortgagor shall promptly (i) perform all of the provisions of the Leases on the part of the lessor thereunder to be performed, (ii) appear in and defend any action or proceeding in any manner connected with the Leases or the obligations of Mortgagor thereunder, and (iii) within ten (10) days after execution, deliver to Mortgagee a fully executed counterpart of each Lease, or a copy thereof.

(b) Each Lease hereafter executed with respect to the Realty or Improvements or any part thereof shall provide that (i) the tenant thereunder, at the request of any transferee in foreclosure of this Mortgage or in lieu thereof, shall attorn to such other transferee and shall recognize such transferee as landlord under the Lease, provided that Mortgagee shall not be required to provide any non-disturbance or similar agreement to any tenant, (ii) neither Mortgagee nor any such transferee or its successors or assigns shall be bound by (A) any prepayment of an installment of rent or other obligation under any Lease, or (B) any amendment or modification to any Lease, made without the written consent of Mortgagee or such transferee, or (C) any obligations under the Lease to have been performed prior to the date that Mortgagee or such transferee shall have acquired title to the Mortgaged Property, (iii) such Lease shall not be amended, extended or consensually terminated without the prior written consent of Mortgagee, and (iv) such Lease shall incorporate the terms of Section 8.07 of this Mortgage. By the recordation of this Mortgage, the foregoing provisions shall be binding upon each lessee of a Lease hereafter executed with respect to the Realty or Improvements even if not contained expressly in such Lease. Each tenant, upon request by Mortgagee or such successor in interest, shall execute and deliver an instrument or instruments confirming the foregoing provisions.

Until all of the Secured Obligations shall have been fully paid, satisfied and discharged:

3.01 Leases. (a) Mortgagor shall not (i) execute an assignment or pledge of the Rents or the Leases other than in favor of Mortgagee, or (ii) accept any prepayment of an installment of any Rents or other obligations due under any of the Leases prior to the due date of such installment.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, enter into, amend, extend, or consent to the surrender of any Lease or give any consent or waiver to any tenant pursuant to any Lease.

3.02 Sale of Mortgaged Property, Etc. Mortgagor shall not sell, assign, give, mortgage, pledge, hypothecate, encumber, lease, or otherwise transfer the Mortgaged Property or any part thereof or interest therein, voluntarily or involuntarily, without Mortgagee's prior written consent.

3.03 Maintenance of Existence; Transfers of Interests. (a) If Mortgagor is other than an individual, Mortgagor will not dissolve or liquidate, nor merge or consolidate with any other entity, nor permit any other entity to merge into it, nor amend, supplement or modify its articles of incorporation, bylaws, partnership agreement or other document relating to its formation, structure or governance, as the case may be, without the prior written consent of Mortgagee. Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and its right to own property and transact business in each jurisdiction where any part of the Mortgaged Property is located.

(b) If Mortgagor is other than an individual, and unless Mortgagee gives its prior written consent, no interests in Mortgagor will be sold, assigned, transferred, pledged, mortgaged, hypothecated or otherwise encumbered, and all such interests shall be maintained in the percentages existing as of the date of this Mortgage.

#### Article 4 Insurance, Condemnation and Restoration

4.01 Insurance. (a) Mortgagor shall maintain comprehensive public liability insurance, fire insurance with extended coverage, builder's risk insurance with respect to any construction, renovation or reconstruction, flood insurance (if the Mortgaged Property is located in an area that has been identified by any governmental agency as a flood hazard area), contractual liability insurance for all indemnification obligations of Mortgagor under all Leases, and such other insurance as may be required from time to time by Mortgagee. The amounts, coverages and other terms and conditions of the insurance policies shall at all times be satisfactory to Mortgagee and shall satisfy any coinsurance requirements of Mortgagee. Mortgagor shall pay as they become due all premiums for such insurance, shall keep each policy in full force and effect, shall deliver to Mortgagee evidence of the payment of the full premium therefor at least twenty (20) days prior to the expiration date of each policy, and shall deliver to Mortgagee duplicate original policies of insurance, with noncontributory mortgagee clauses in favor of and acceptable to Mortgagee. Mortgagor's liability insurance policy shall specifically name Mortgagee as an additional insured. Each policy shall provide for written notice to Mortgagee at least thirty (30) days prior to any cancellation, nonrenewal or amendment of such insurance.

(b) Mortgagor shall promptly comply with and conform to (i) all provisions of each insurance policy, and (ii) all requirements of the insurers thereunder applicable to Mortgagor or any of the Mortgaged Property. Mortgagor shall not use or permit any party to use any of the Mortgaged Property in any manner which would permit the insurer to cancel any insurance policy.

(c) No separate insurance concurrent in form or contributing in the event of loss with the insurance required to be maintained under this section shall be maintained without the prior written consent of Mortgagee.

4.02 Rights of Mortgagee to Proceeds. In the event of loss, Mortgagee shall have the exclusive right to adjust, collect and compromise all insurance claims. All insurance proceeds shall be payable solely to Mortgagee, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact to endorse any drafts therefor, and such proceeds may, at Mortgagee's sole option, be applied to all or any part of the Secured Obligations and in any order (notwithstanding that such Secured Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose. Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

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4.03 Condemnation. Mortgagor, immediately upon obtaining knowledge of institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by Mortgagee, and any award or compensation shall be applied, at Mortgagee's option, to any part of the Secured Obligations and in any order (notwithstanding that any of such Secured Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose. Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

#### Article 5 Default

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

(X) "BORROWER AGREES THAT THE LOAN SECURED BY THIS INSTRUMENT WILL BE IN DEFAULT SHOULD ANY OAN PROCEEDS BE USED FOR A PURPOSE THAT WILL CONTRIBUTE TO EXCESSIVE EROSION OF HIGHLY ERODIBLE LAND OR TO THE CONVERSION OF WETLAND TO PRODUCE AN AGRICULTURAL COMMODITY, AS FURTHER EXPLAINED IN 7 CFR PART 1940, SUBPART G, EXHIBIT M", per the Conditional Commitment for Guarantee from the FmHA.

(a) a failure to pay any Secured Obligations when due in accordance with the terms thereof;

(b) Mortgagor shall fail to perform or observe any of the obligations in Article 3 or 4 of this Mortgage;

(c) a failure by Mortgagor to duly perform and observe any other provision in this Mortgage, and such failure shall continue for a period of thirty (30) days after notice from Mortgagee or for such other period as may be set forth in other sections of this Mortgage;

(d) a failure by Mortgagor or any obligor or guarantor to duly perform and observe any other provision in any of the Loan Documents applicable to it, and such failure shall continue beyond the grace period, if any, set forth therein, or the occurrence of any default or event of default as defined under any of the Loan Documents;

(e) any representation or warranty made herein or in any of the Loan Documents, or in any other instrument or document which now or hereafter pertains to or is delivered in connection with any of the Secured Obligations, proves to be incorrect, now or hereafter, in any material respect;

(f) Mortgagor, or any obligor or guarantor of any of the Secured Obligations, shall become insolvent or unable to pay its or his or her debts as the same mature, or a petition shall be filed by or against Mortgagor or any such party in bankruptcy or seeking the appointment of a receiver, trustee or conservator for Mortgagor or any such party or for any portion of its or his or her property, or for reorganization or to effect a plan or other arrangement with or for the benefit of creditors, or Mortgagor or any such party shall consent to the appointment of a receiver, trustee or conservator for Mortgagor or any such party or for any portion of its or his or her property;

(g) any attachment proceeding is commenced against Mortgagor or any obligor or guarantor for the collection of any indebtedness or liability of Mortgagor or any such party of any of the Secured Obligations;

(h) foreclosure proceedings are instituted against the Mortgaged Property upon any other lien or claim whether alleged to be superior or junior to the lien of this Mortgage; or

(i) Mortgagor shall at any time deliver or cause to be delivered to Mortgagee a notice pursuant to 42 Pa. C.S.A. § 8143 electing to limit the indebtedness secured by this Mortgage.

5.02 Demand Obligation. Nothing in this Mortgage or any of the other Loan Documents shall be construed to limit the applicability of any term of the Loan Documents providing for the payment of any Secured Obligations on the request of Mortgagee.

#### Article 6 Remedies

6.01 Rights and Remedies of Mortgagee. If an Event of Default occurs, Mortgagee may, at its option and notwithstanding any contrary provisions in the Loan Documents, without demand, notice or delay, do one or more of the following:

1748 (REV) 120 Mortgagee may declare the entire unpaid principal balance of the Secured Obligations, together with all interest thereon, to be due and payable immediately (and in the case of an Event of Default under subsection 5.01(f) or (g), all such indebtedness shall automatically and immediately become due and payable without notice or any other act).

(b) Mortgagee may (i) institute and maintain an action of mortgage foreclosure against the Mortgaged Property and the interests of Mortgagor therein, (ii) institute and maintain an action on any instruments evidencing the Secured Obligations or any portion thereof, (iii) collect the Rents by demand upon tenants or otherwise, (iv) take possession of the Mortgaged Property or any portion thereof, with or without legal action and by force, if necessary, (v) have a receiver appointed for the Mortgaged Property or any portion thereof without proof of depreciation, waste, inadequacy of value, insolvency or any other matter, and (vi) take such other action at law or in equity for the enforcement of any of the Loan Documents as the law may allow, and in each such action Mortgagee shall be entitled to all costs of suit and attorneys' fees.

(c) Mortgagor hereby irrevocably authorizes and directs each and every present and future tenant of any of the Mortgaged Property, without further inquiry, to pay all Rents directly to Mortgagee immediately upon receipt of a demand by Mortgagee to make such payment. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of Rents to Mortgagee, and any such payment or performance to Mortgagee shall discharge the obligations of the tenant to make such payment or performance to Mortgagor. Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against any and all claims, liabilities, damages, costs and expenses, including attorneys' fees, which may be asserted against or incurred by Mortgagee by reason of any failure by Mortgagor to perform any obligations of Mortgagor under any Lease. Mortgagee may apply the Rents received by Mortgagee to the payment of any one or more of the following, in such order and amounts as Mortgagee, in its sole discretion, may elect, whether or not the same shall be then due: the Secured Obligations, Impositions, claims, insurance premiums, other carrying charges, invoices of persons who at any time have supplied goods or services to or for the benefit of any of the Mortgaged Property, and all other costs and expenses of maintenance, repair, restoration, management, operation, ownership, use, leasing, occupancy, protection, security, alteration or improvement of any of the Mortgaged Property, and costs of enforcing Mortgagee's rights under the Loan Documents, including any foreclosure sale hereunder, and including all attorneys' fees and costs.

6.02 Sale in Parcels or Units. The Mortgaged Property may be sold by appropriate proceedings in one parcel or unit and as an entity, or in such parcels or units, and in such manner or order, as Mortgagee in its sole discretion may elect.

6.03 Confession of Judgment in Ejectment. At any time after the occurrence of an Event of Default, without further notice, regardless of whether Mortgagee has asserted any other right or exercised any other remedy under this Mortgage or any of the other Loan Documents, it shall be lawful for any attorney licensed in the Commonwealth of Pennsylvania, as attorney for Mortgagor, to file an agreement for entering in any competent court an amicable action and judgment in ejectment against Mortgagor and all persons claiming under Mortgagor for the recovery by Mortgagee of possession of all or any part of the Mortgaged Property, for which this Mortgage shall be sufficient warrant. If for any reason after such action shall have commenced, the same shall be stayed or terminated and the possession of the Mortgaged Property remain in or be restored to Mortgagor, Mortgagee shall have the right upon any subsequent default or defaults to bring one or more amicable action or actions as hereinbefore set forth to recover possession of all or any part of the Mortgaged Property.

6.04 Remedies Cumulative, Etc. All remedies contained in this Mortgage are cumulative, and Mortgagee also has all other remedies provided by law or in equity or in any of the other Loan Documents. No delay or failure by Mortgagee to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or a waiver of any Event of Default. Mortgagee may exercise any one or more of its rights and remedies without any obligation to Mortgagor or any third party to marshal its collateral.

## Article 7 Environmental Matters

7.01 Definitions. For purposes of this Mortgage, the following terms have the following meanings:

(a) "Environmental Laws" means all federal, state and local laws, statutes, codes and ordinances now or hereafter enacted pertaining to environmental matters, including but not limited to The Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C.A. { 9601, et seq., The Resource Conservation and Recovery Act, 42 U.S.C.A. { 6901, et seq., The Solid Waste Management Act, 35 Purdon's Stats. { 6018.101, et seq., The Clean Streams Law, 35 Purdon's Stats. { 591.1, et seq., The Hazardous Sites Cleanup Act, 35 Purdon's Stats. { 6020.101, et seq., The Storage Tank and Spill Prevention Act, 35 Purdon's Stats. { 6021.101, et seq., and The Dam Safety Encroachments Act, 32 Purdon's Stats. { 693.1, et seq., together with any rules,

regulations and orders now or hereafter promulgated or issued thereunder, all as amended and recodified from time to time.

(b) "Regulated Substances" means any asbestos, asbestos-containing material, petroleum, petroleum products and any other substances or materials, the use, generation, release, discharge, spilling, emission, storage, burial or disposal of which is regulated by any Environmental Law, including any substances and materials defined as "hazardous," "toxic," or the like, in any Environmental Law.

7.02 Environmental Warranties and Covenants. (a) Mortgagor shall keep the Mortgaged Property free of any Regulated Substances and shall promptly remove any Regulated Substances which may now or hereafter be located, by whatever means or cause, in, on, or under, or otherwise affect the Mortgaged Property, except for Regulated Substances used in connection with the operation of the Mortgaged Property and stored and used strictly in accordance with all applicable Environmental Laws. Mortgagor shall not permit any Regulated Substances to be used, generated, released, discharged, spilled, emitted, stored, buried or disposed of in, on or from the Mortgaged Property, except for Regulated Substances stored and used as provided in the preceding sentence.

(b) Mortgagor warrants that no part of the Mortgaged Property constitutes "wetlands," or the like, as defined in any Environmental Law, and no such area of the Mortgaged Property has been dredged, filled or otherwise affected, except in accordance with all applicable Environmental Laws.

(c) Mortgagor warrants that, except as heretofore disclosed in writing to Mortgagee, there are no above-ground or underground tanks located on the Mortgaged Property. All tanks now or hereafter in or on the Mortgaged Property, as well as all lines and dispensing equipment, shall be licensed, permitted and maintained in accordance with all Environmental Laws.

(d) If Mortgagee shall incur damages, losses, liabilities, charges, costs or expenses, including, without limitation, any attorneys' fees or disbursements, consultant's fees or disbursements, removal costs, costs incurred in taking protective measures, costs incurred in complying with any Environmental Laws, or if Mortgagee shall become subject to any penalties, fines or judgments relating to the use, generation, release, discharge, spilling, emission, storage, burial or disposal of Regulated Substances in, on or under, or affecting the Mortgaged Property, Mortgagor shall pay on demand all such damage, loss, liability, charge, cost and expense, including attorneys' fees, which Mortgagee may incur by reason thereof, and all such sums shall be Secured Obligations and shall bear interest from and after demand at the Default Rate.

7.03 Survival of Warranties and Covenants. The warranties and covenants contained in this article shall survive the repayment of the Secured Obligations, the exercise of any remedies with respect to this Mortgage and the Secured Obligations, and the transfer of title to any of the Mortgaged Property to Mortgagee, by foreclosure, judicial sale or deed in lieu thereof, and shall accrue to any entity controlled by, controlling, or under common control with, Mortgagee who shall acquire title to any of the Mortgaged Property as aforesaid.

## Article 8 Additional Rights and Obligations

8.01 Installments for Insurance, Taxes and Other Charges. Without limiting the effect of any other provision of this Mortgage, Mortgagor shall, if requested by Mortgagee, pay to Mortgagee on the first day of each month an amount equal to one-twelfth (1/12) of the annual premiums for the insurance policies referred to hereinabove and the annual Impositions and any other item which at any time may be or become a lien upon the Mortgaged Property ("Escrow Charges"); and on demand from time to time, Mortgagor shall pay to Mortgagee any additional sums necessary to pay when due all Escrow Charges. The amounts so paid shall be security for the Secured Obligations and shall be used in payment of the Escrow Charges so long as no Event of Default shall have occurred. No amount so paid to Mortgagee shall be deemed to be trust funds but may be commingled with general funds of Mortgagee, nor shall any sums paid bear interest. Upon the occurrence of an Event of Default, Mortgagee shall have the right, at its election, to apply any amount so held against the Secured Obligations due and payable in such order as Mortgagee may deem fit, and Mortgagor hereby grants to Mortgagee a lien upon and security interest in such amounts and in any accounts relating thereto for such purpose.

8.02 Mortgagee's Right to Protect Security. Mortgagee is hereby authorized to do any one or more of the following irrespective of whether an Event of Default has occurred: (a) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (b) take such action as Mortgagee may determine to pay, perform or comply with any Impositions or Legal Requirements, to cure any Events of Default, and to protect its security in the Mortgaged Property, including the curing of any actual or potential defaults under any Leases, the recordation or filing of financing statements and other documents to further assure the enforceability or priority of Mortgagee's liens and security interests, advance sums on behalf of Mortgagor to pay, perform or comply with any Imposition, Legal Requirement, lien, claims, costs and expenses in connection with the Mortgaged Property, including payment for

(c) perform or cause to be performed at Mortgagor's sole expense such environmental testing and audits, including but not limited to taking samples for examination, as Mortgagee in its sole and absolute discretion deems necessary or desirable; and for the purpose of exercising any such powers and all other rights and powers granted by this Mortgage to Mortgagee, Mortgagee is hereby appointed attorney-in-fact for Mortgagor. All sums paid by or otherwise owing to Mortgagee under this section shall be paid by Mortgagor to Mortgagee on demand and, until paid such sums shall be added to the principal secured hereby, shall be included as part of the Secured Obligations and shall bear interest at the Default Rate from the date of demand therefor.

**8.03 Mortgagee's Costs and Expenses.** In the event of an Event of Default or the exercise by Mortgagee of any of its rights hereunder, or if Mortgagee shall become a party, either as plaintiff or defendant or otherwise, to any suit or legal proceeding affecting any of the Mortgaged Property or the Secured Obligations, or if review and approval of any document, or any other matter related to any of the Secured Obligations, is required by or requested of Mortgagee, Mortgagor shall pay to Mortgagee on demand its costs, expenses and attorneys' fees incurred in connection therewith. Such amounts shall be added to the principal secured hereby, shall be included as part of the Secured Obligations, and shall bear interest at the Default Rate from the date of demand therefor.

**8.04 Waivers by Mortgagor.** Mortgagor, to the extent permitted by law, hereby waives all errors and imperfections in any proceedings instituted by Mortgagee under any of the Loan Documents and all benefit of any present or future statute of limitation or repose, or moratorium law, or any other present or future law, regulation or judicial decision which (a) exempts any of the Mortgaged Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution, (b) provides for any stay of execution, marshaling of assets, exemption from civil process, redemption, extension of time for payment or valuation or appraisal of any of the Mortgaged Property, or (c) conflicts with any provision of any of the Loan Documents.

**8.05 Payment of Fees.** The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution, acknowledgment, filing and recording of this Mortgage, any financing statements, releases, continuation statements, and any instruments of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the other Loan Documents.

**8.06 Further Assurances.** Mortgagor agrees to execute such further assurances as may be requested by Mortgagee for the purposes of further evidencing, carrying out and/or confirming this Mortgage and for all other purposes intended by this Mortgage.

**8.07 Subordination to Leases.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part, (but not with respect to the priority of entitlement to insurance proceeds or any award in condemnation or with respect to any option to purchase) to any and all Leases, upon the execution by Mortgagee and recording of a unilateral declaration to that effect at any time hereafter in the Office of the Recorder of Deeds in and for the county wherein the Realty is situate.

**8.08 Subrogation.** If the proceeds of any loan or other credit extended by Mortgagee, the repayment of which is hereby secured, is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to any additional security held by the holder of such lien or encumbrance.

**8.09 Guaranty Obligations.** If this Mortgage directly or indirectly secures any obligation or obligations of another person or entity to Mortgagee, then Mortgagor further agrees that:

(a) Mortgagee may do any of the following without notice to Mortgagor or to any other party obligated to Mortgagee with respect to any of the Secured Obligations, and without adversely affecting the validity or enforceability of this Mortgage: (i) release, surrender, exchange, compromise or settle the Secured Obligations or any part thereof; (ii) change, renew or waive the terms of the Secured Obligations or any part thereof; (iii) change, renew or waive the terms of any Loan Document or any other note, instrument or agreement relating to the Secured Obligations, such rights in Mortgagee to include without limitation the right to change the rate of interest charged with respect to the Secured Obligations or any part thereof (in which event the obligations of Mortgagor shall be deemed also to include all interest at such changed rate); (iv) grant any extension or indulgence with respect to the payment or performance of the Secured Obligations or any part thereof; (v) enter into any agreement of forbearance with respect to the Secured Obligations or any part thereof; (vi) release, surrender, exchange or compromise any security held by Mortgagee for any of the Secured Obligations; (vii) release any other person who is a guarantor or surety or other obligor of, or who has agreed to purchase, the Secured Obligations or any part thereof; and (viii) release, surrender, exchange or compromise any security or lien held by Mortgagee for the Secured Obligations or any part thereof. Mortgagor agrees that

Mortgagee may do any of the above as Mortgagee deems necessary or advisable. Mortgagee's sole discretion, without giving any notice to Mortgagor and that Mortgagor will remain liable for full payment and performance of the Secured Obligations. VOL 1448 PAGE 1223

(b) Mortgagor waives and agrees not to enforce any of the rights of Mortgagor against any guarantor or other obligor of any of the Secured Obligations, or obligor of any obligations which the Secured Obligations secure, unless and until all Secured Obligations shall have been paid in full to Mortgagee, including but not limited to (i) any right of Mortgagor to be subrogated in whole or in part to any right or claim with respect to any of the Secured Obligations or any portion thereof, and (ii) any right of Mortgagor to require the marshaling of assets which might otherwise arise from partial payment or performance by Mortgagor to Mortgagee on account of the Secured Obligations or any portion thereof.

8.10 Restatement of Representations and Warranties. Each representation or warranty made by Mortgagor in this Mortgage or in any other Loan Document or certificate related thereto shall be deemed to be restated as of the date of each advance made or credit extended by Mortgagee constituting a Secured Obligation.

#### Article 9 Miscellaneous Matters

9.01 Notices. (X) Except as otherwise provided in this Mortgage, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes when delivered in person or when deposited in the United States mail, by registered or certified mail, return receipt requested, directed to the party to receive the same at the addresses set forth at the beginning of this Mortgage or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing.

(a) All notices given by Mortgagor to Mortgagee pursuant to 42 Pa. C.S.A. { 8143(c) shall be given to Mortgagee in accordance with this Section 9.01 and must be signed by all parties necessary to bind Mortgagor in accordance with the applicable documents of formation of Mortgagor and all applicable laws.

(b) All notices given to Mortgagee by any person or entity (other than Mortgagor) pursuant to 42 Pa. C.S.A. { 8143(d) shall be in writing and shall be sent exclusively by registered or certified mail, return receipt requested, to Mortgagee at the address set forth above.

9.02 Status of Parties. It is understood and agreed that the relationship of the parties is that of Mortgagor and Mortgagee and that nothing herein shall be construed to constitute a partnership, joint venture or co-tenancy between Mortgagor and Mortgagee.

9.03 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be inapplicable, invalid, illegal, or unenforceable in any respect, such inapplicability, invalidity, illegality, or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such inapplicable, invalid, illegal, or unenforceable provision had never been contained herein.

9.04 Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind, and inure to the benefit of the heirs, personal representatives, successors and assigns of Mortgagor and Mortgagee.

9.05 Time of Essence. Time is of the essence as to all of Mortgagor's obligations hereunder and under the other Loan Documents, and under any and all other documents relating in any manner to any of the Secured Obligations.

9.06 Section Headings. The section headings in this Mortgage are used only for convenience in finding the subject matters and are not part of this Mortgage or to be used in determining the intent of the parties or otherwise interpreting this Mortgage.

9.07 Performance by Mortgagee. Any act which Mortgagee is permitted to perform under the Loan Documents may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee.

9.08 Attorney-in-Fact. Each appointment of Mortgagee as attorney-in-fact for Mortgagor in this Mortgage is irrevocable and coupled with an interest.

9.09 Joint and Several Obligations. If there is more than one party identified in this Mortgage as "Mortgagor," then each such party so identified shall be liable, jointly and severally, for all obligations of Mortgagor hereunder, and all references to "Mortgagor" herein shall refer to each such party individually and to all, or any two or more, of such parties collectively.

9.10 No Oral Modification. This Mortgage may be modified, amended, discharged or waived only by an agreement in writing, signed by all of the parties hereto.

1748-1/69  
If Mortgagor pays to Mortgagee in full the Secured Obligations, then this mortgage shall become void.

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has caused this Mortgage to be duly executed the day and year first above written with the intention that this Mortgage shall constitute a sealed instrument.

WITNESS:

Barbara H. Schickling  
as to both

Harold D. Shaw (SEAL)  
Harold D. Shaw (Individual)  
Janet L. Shaw (SEAL)  
Janet L. Shaw (Individual)

ATTEST:

Corporation or Partnership

By \_\_\_\_\_  
(Name and Title)

(SEAL)

By \_\_\_\_\_  
(Name and Title)

#### CERTIFICATE OF RESIDENCE

The undersigned certifies that the residence of Mortgagee is 801 State Street, Erie County, Erie, Pennsylvania, 16501.

~~INTEGRA BANK~~

By Barbara H. Schickling  
~~XXXX~~ Barbara H. Schickling, Esquire  
Attorney for Mortgage

#### INDIVIDUAL ACKNOWLEDGMENT

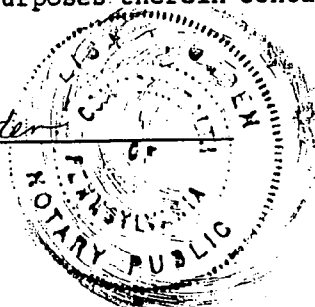
COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )

SS:

On this, the 4th day of April, 1996, before me, a notary public, personally appeared HAROLD D. SHAW and JANET L. SHAW, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that such person executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lisa A. Ogden  
Notary Public



My Commission Expires:

NOTARIAL SEAL  
LISA A. OGDEN, Notary Public  
Boggs Twp., Clearfield County, Pa.  
My Commission Expires Nov. 16, 1998

ALL the four (4) described parcels of real estate in the Township of Penn, County of Clearfield and State of Pennsylvania, bounded and described as follows:

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THE FIRST THEREOF: BEGINNING at a post on the Township Road leading from Grampian to Lumber City corner of lot now or formerly of James Cleaver, Jr.; thence by same South 30 degrees West 32.06 perches to a wild cherry; thence South 45 1/4 degrees East 14.32 perches; thence South 41 3/4 degrees West 11.01 [perches] to a hemlock; thence 45 1/2 degrees East 40.8 perches to a post; thence North 54 1/2 degrees East 43.03 perches to a post; thence North 42 1/4 degrees East 15.6 perches to a post; thence North 45 1/2 degrees East 66 perches to a post and Township road; thence North 19 1/2 degrees West 40.4 perches to a post; thence North 54 1/2 degrees East 30.24 perches to a post; thence North 34 1/2 degrees West 25 perches to a post; thence South 55 degrees West 56.17 perches to a post; thence North 49 1/4 degrees West 24 perches to a post; thence North 26 1/2 degrees East 30.8 perches to a post on Spring Run; thence North 58 1/2 degrees West 23.8 perches to an apple tree; thence North 49 3/4 degrees West 21 perches to a hemlock; thence South 32 1/2 degrees West 23 perches to a chestnut; thence North 64 degrees West 5.8 to a red oak; thence South 30 degrees West 43.5 perches to a post; thence diagonally across public road South 22 1/2 degrees East 12.6 perches to a post and place of beginning. Containing seventy-five (75) acres, more or less.

EXCEPTING AND RESERVING, however, all the coal and fire clay or other minerals of any kind, upon or under all of the above-described tract of land with the rights of ingress, egress and regress over said land for the purpose of mining and removing same with the usual privileges to mine and remove same without liability for damage that may be done to the surface or any water or waters thereupon or thereunder by the removal of the said coal or fire clay, or other minerals including ribs and pillars or that may be done by stripping and also excepting and reserving out of the said premises, two acres conveyed to Jas L. Cleaver by John F. Cleaver during his lifetime and adjoining the original Ed Widemire residence.

THE SECOND THEREOF: BEGINNING at a post on line of lands now or formerly of Hardman Heitsenreither; thence along said land South sixty-eight (68) degrees West one hundred seventy-one and eight-tenths (171.8) perches to post; thence North twenty-three (23) degrees West eighty-two (82) perches to a post on line of lands now or formerly of Samuel Widemire Estate; thence North fifty-two (52) degrees East ninety-three (93) perches to a post on line of lands now or formerly of T. J. Widemire; thence South twenty-two (22) degrees East twenty-five and five-tenths (25.5) perches to post; thence South seventy-two (72) degrees East thirty-five and two-tenths (35.2) perches to a post; thence South sixty-three and three-fourths (63 3/4) degrees East eighty-two (82) perches to a post and place of beginning. Containing seventy-two (72) acres.

ALSO EXCEPTING AND RESERVING from the above-described parcel that one vein of coal as described in the deed of LeRoy H. Widemire to Harbison-Walker Company, by deed dated November 12, 1901, and

recorded in Deed Book 119, Page 493.

THE THIRD THEREOF: BEGINNING at a post in center of road leading from Grampian to Lumber City and corner of land formerly of J. F. Cleaver; thence South thirty degrees West (S 30° W) along said land thirty-two and seventy-six one-hundredths perches (32.76 P) to a post; thence North forty-five degrees West (N 45° W) nine and seventy-six hundredths perches (9.76 P) to an iron post; thence North sixty-one degrees West (N 61° W) ten perches (10 P) to a post corner of land formerly of Wilmot Wall; thence in a northeasterly direction along same lands forty perches (40 P) more or less to center of above-mentioned road; thence along same road south forty-one degrees East (S 41° E) ten and six-tenths perches (10.6 P) to a post; thence along said road South forty-five degrees East (S 45° E) nine and seventy-six hundredths perches (9.76 P) to post and place of beginning. Containing four (4) acres, more or less.

RESERVING AND EXCEPTING, however, all minerals of whatsoever kind being in, under or upon the above land with the usual mining privileges, as reserved and excepted in deed from Oscar L. Bloom and Maud, his wife, dated April 17, 1924, and recorded in the Office of Recorder of Deeds in Clearfield, Pennsylvania, in Vol. 268, Page 135, to Clarence E. Havens and Louella Havens, former Grantors.

ALSO EXCEPTING AND RESERVING from the above described parcel 1.64 acres as having been heretofore conveyed to J. W. Lentz, Jr. and which deed appears of record in Deed Book 414, Page 370.

THE FOURTH THEREOF: ALL the coal within or underlying on that certain piece, parcel or lot of land situate in Penn Township, Clearfield County, Pennsylvania: Bounded on the North by lands now or formerly of Jeff Widemire; on the South by Township Road; on the East by Township Road and on the West by lands now or formerly of Oscar Anderson.

EXCEPTING AND RESERVING from the above parcels the following conveyances:

1. Conveyance of 1.15 acre parcel to Clair V. Mills, et ux, by deed dated June 5, 1962, and recorded in Clearfield County Deed Book 496 at Page 83.

2. Conveyance of 4.63 acre parcel to Ronald L. Butler, et ux., by deed dated October 17, 1972, and recorded in Clearfield County Deed Book 612 at Page 296.

3. Conveyance of 1.49 acre parcel to Edward E. Richards, et ux., by deed dated October \_\_, 1972, and recorded in Clearfield County Deed Book 613 at Page 14.

4. Conveyance of 0.974 of an acre to Harold D. Shaw and Janet L. Shaw, et ux., by deed dated October 11, 1978, and recorded in Clearfield County Deed Book Volume 770 at Page 552.

5. Conveyance of 5.12 acres to Stephen J. Leonard and Janice E. Leonard by deed dated August 20, 1973, and recorded in Clearfield County Deed Book Volume 656 at Page 75.

6. Conveyance of 1.15434 acres to Esther M. Shaw, a widow, and Carol A. Shaw, single, by deed dated January 26, 1996, and recorded in Clearfield Deeds and Records Book Volume 1733 at Page 236.

7. Conveyance of 14 acres to Esther M. Shaw, a widow, by deed dated January 26, 1996, and recorded in Clearfield County Deeds and Records Book Volume 1733 at Page 241.

ALSO EXCEPTING AND RESERVING unto the Grantor all the gas and oil under the above-described premises, together with the right to enter onto Grantees' land to drill for said gas and oil.

BEING the same premises granted and conveyed unto Harold D. Shaw and Janet L. Shaw, husband and wife, by deed dated January 29, 1996, and recorded in the Clearfield County Recorder's Office in Deeds and Records Book Volume 1733 at Page 460.

ALL that certain piece or parcel of land situate in Penn Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the North right-of-way of Pennsylvania State Highway Route No. 857, said corner being South  $42^{\circ} 08'$  East a distance of 212.19 feet from the projected line of the South side of the residence or house of Harold P. Shaw, a said line would be run along the right-of-way of the State highway above mentioned, and being southeasterly a distance of approximately 928 feet from the corner of land of Harold P. Shaw the tract of which the land herein described is a part and the land of John W. Lentz; thence through the land of Harold P. Shaw for a new line North  $48^{\circ} 00'$  East for a distance of 142.6 feet to an iron pin; thence still through the land of said Shaw for a new line South  $41^{\circ} 57'$  East for a distance of 327.3 feet to an iron pin; thence still by said Shaw South  $54^{\circ} 53'$  West for a distance of 102.7 feet to an iron pin on the right of way of Pennsylvania State Highway Route No. 857 aforementioned; thence by the right-of-way of said State Highway North  $59^{\circ} 41'$  West for a distance of 97.9 feet; thence North  $47^{\circ} 11'$  West for a distance of 105.9 feet; thence North  $42^{\circ} 30'$  West for a distance of 116.2 feet to an iron pin and the place of beginning. Containing in all 0.974 acres.

BEING the same premises granted and conveyed unto Harold D. Shaw and Janet L. Shaw, husband and wife, by Deed of Harold P. Shaw and Esther M. Shaw, husband and wife, dated October 11, 1978, and recorded in the Clearfield County Recorder's Office in Deed Book Volume 770 at Page 552. This is a third lien on this property subordinate to liens of Integra Bank recorded in Deeds and Records Book Volume 1552, Page 473, and FMHA recorded in Deeds and Records

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



*Karen L. Starck*

Karen L. Starck  
Recorder of Deeds

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 1:45 4-4-96  
BY Barb Schickling  
FEES 31.50  
Karen L. Starck, Recorder

Entered of Record

4-4-1996; 1:45 Karen L. Starck, Recorder

## **EXHIBIT “C”**

"Business Loans," for purposes of the Act, shall mean extensions of credit where the funds are to be utilized in a business enterprise and where (1) the borrower(s) exercises actual control over the managerial decisions of the enterprise in which the funds are to be utilized, and (2) the borrower(s) signs an affidavit under penalty of perjury setting forth the intended use of proceeds.

AFFIDAVIT OF BUSINESS LOAN

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )

SS:

Harold D. Shaw and Janet L. Shaw, being duly sworn according to law, deposes and says that they are the OWNER / OPERATORS of a Dairy Farm ("Business"), that they exercises actual control over the managerial decisions of the Business and is authorized to make this affidavit on its behalf, and that the loan or extension of credit from INTEGRA BANK evidenced by an instrument dated April 4, 1996 1996 is to be used solely in connection with the Business and for the business purpose(s) of rebuilding barn and refiance.

I (We) hereby verify that the facts contained herein are true and correct to the best of my (our) knowledge, information and belief. I (We) understand that false statements herein are made subject to the penalties of perjury under 18 Pa. C.S.A. { 4904.

WITNESS:

*Mike Parhart*

*Harold D. Shaw*  
(Individual) Harold D. Shaw

*as to both*

*Janet L. Shaw*  
(Individual) Janet L. Shaw

Sworn to and subscribed before me this 4th day of April 1996.

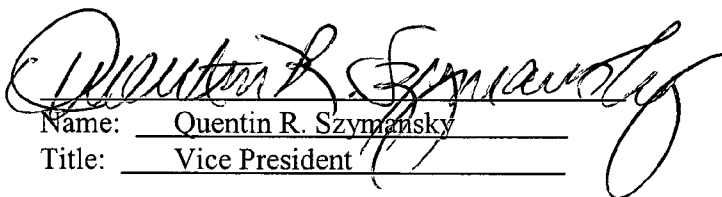
*Dawn R. Brewer*  
Notary Public

Notarial Seal  
Dawn R. Brewer, Notary Public  
Lawrence Twp., Clearfield County  
My Commission Expires Dec. 30, 1996  
Member, Pennsylvania Association of Notaries

My Commission Expires:

### VERIFICATION

I, Quentin R. Szymansky, verify that I am the Vice President and duly authorized representative of National City Bank of Pennsylvania, that the facts set forth in the foregoing document are based upon fact of which I have personal knowledge; that the language of the document is that of counsel and not my own; that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief; and that I am authorized to execute this Verification on behalf of National City Bank of Pennsylvania. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

  
Name: Quentin R. Szymansky  
Title: Vice President

FILED REC 5K#  
M/3:00 PM  
JUN 24 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

NATIONAL CITY BANK OF PENNSYLVANIA

VS.

Sheriff Docket # 15859

04-969-CD

SHAW, HAROLD D. & JANET L. SHAW a/k/a JANET L. McKEOWN

COMPLAINT IN MORTGAGE FORECLOSURE

**SHERIFF RETURNS**

NOW JUNE28, 2004 AT 11:28 AM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON JANET L. SHAW a/k/a JANET L. McKEOWN, DEFENDANT AT RESIDENCE, RE#2 BOX 113, CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JANET L. McKEOWN A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: DAVIS

NOW JUNE 28, 2004 AT 11:28 AM SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON HAROLD D. SHAW, DEFENDANT AT RESIDENCE, RD#2 BOX 113, CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO HAROLD D. SHAW A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN MORTGAGE FORECLOSURE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS

**Return Costs**

Cost	Description
33.37	SHERIFF HAWKINS PAID BY: ATTY CK# 89743
20.00	SURCHARGE PAID BY: ATTY CK# 89744

Sworn to Before Me This

14 Day Of July 2004  
*William A. Shaw*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins*  
*by Marilyn Harris*  
Chester A. Hawkins

Sheriff

**FILED**

07/35/04  
JUL 14 2004  
*ES*

William A. Shaw  
Prothonotary