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MICHELLE UTSLET  
RECORDER  
MADISON COUNTY, IOWA

Preparer: Robert J. Douglas, Jr., Davis Law Firm, The Financial Center, 666 Walnut Street, Suite 2500  
Des Moines, IA 50309 Ph: (515) 288-2500

FIRST MORTGAGE AND FINANCING STATEMENT

THIS FIRST MORTGAGE AND FINANCING STATEMENT ("Mortgage") is made as of March 10, 1997, by and between Rolling Hills Fuel 24, L.L.C., with its principal business office at 1701 Towanda Ave., P. O. Box 2500, Bloomington, IL 61702-2500 ("Borrower"), and FS FARMCO, Inc., with its principal business office at 1701 Towanda Avenue, P. O. Box 2500, Bloomington, Illinois 61702-2500 ("Lender").

WITNESSETH:

That for good and valuable consideration, and to secure the payment of one Promissory Note of even date herewith, in the principal amount of Six Hundred Sixty-five Thousand Five Hundred and no/100 Dollars (\$665,500.00), payable with interest no later than October 20, 2005, the "Note," together with interest thereon as provided in the Note, and to secure any other indebtedness owed by Borrower to Lender, now or hereafter arising under the terms hereof or in any other instrument constituting additional security for the Note, and all other sums of money secured hereby as hereinafter provided, Borrower does grant, bargain, sell, assign, demise, release and convey unto Lender, the real estate described in Exhibit "A" attached hereto and made a part hereof, which, together with the following described property is referred to herein as the "Property":

- (1) All buildings and improvements, now or hereafter located thereon, all privileges and other rights now or hereafter made appurtenant thereto including, without limitation, all right, title and interest of Borrower now or hereafter acquired in and to all land lying within the right-of-way of any streets, roads and public places, opened or proposed, adjoining the Property and any and all sidewalks, alleys, strips and gores, all easements and rights of way, public or private, including but not limited to those for parking and ingress and egress by pedestrian and vehicular traffic, now or hereafter used in connection with the Property; and
- (2) All of the inventory and stock in trade of the Borrower, consisting of petroleum products, feed, seed, fertilizer, machinery and all farm supplies, merchandise, and commodities and all other products offered for sale by the Borrower in its feed mill, petroleum, and farm supply business, whether or not in the possession of the Borrower;
- (3) All personal property of the Borrower used or useful by the Borrower in the operation of its feed mill, petroleum, and farm supply business, including but not limited to grinding, weighing, handling, batching, spreading, conveying, drying, augering, treating, cleaning, shelling, hoisting, testing, mixing, storing, and pumping equipment and all office equipment;
- (4) All accounts receivable, contract rights, chattel paper, documents, instruments, and general intangibles of the Borrower;
- (5) All shares of stock, investments, and other instruments now or hereafter in the possession or control of the Borrower;

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(6) All trucks, automobiles, and other self-propelled vehicles; which are now owned or which may be hereafter acquired by the Borrower and any and all replacements of or similar additions to said property during the time this Agreement is in force, and the proceeds thereof; and

(7) All proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims.

The items set forth in paragraphs (2) through (7) are sometimes hereinafter separately referred to as "Collateral"; and to the extent that the Collateral are goods which are, or are to become fixtures, this Mortgage is recorded as a fixture filing, with the Borrower as the Debtor, and the Lender as the Secured Party.

It is specifically understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property herein above described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

It is further specifically understood and agreed that all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Property, hereafter acquired by or released to Borrower, or constructed, assembled or placed by Borrower on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembly, placement or conversion, as the case may be, and in each such case, without any further grant, encumbrance, conveyance, assignment or other act by Borrower, shall become subject to the lien of this Mortgage as fully and completely and with the same effect as though now owned by Borrower and specifically described herein, but at any and all times Borrower will execute and deliver to Lender any and all such further assurances, deeds, conveyances, or assignments thereof or security interests therein as Lender may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

**TO HAVE AND TO HOLD IN TRUST NEVERTHELESS**, that in case of default in the payment of said Notes, or any part thereof, or in the payment of the interest thereon, according to the tenor and effect of said Notes or in the payment of any prior encumbrance, principal or interest, if any, or in case default shall be made or in case of violation or breach of any of the terms, conditions, covenants or agreements herein contained or contained in any other instrument now or hereafter securing said Notes, the Lender or the legal holder of the indebtedness secured hereby may declare a violation of any of the covenants herein contained and elect to foreclose this Mortgage.

## ARTICLE I

## Covenants

Borrower covenants and agrees with Lender as follows:

1.1 Title.

(a) Borrower warrants that it has good and marketable title to an indefeasible fee simple estate in the Property, and further warrants that it has good right and lawful authority to grant, bargain, sell and convey the Property in the manner and form herein provided; that Borrower has full power and authority to convey the Property in the manner and form herein done or intended hereafter to be done; thereby fully and absolutely waiving and releasing all rights and claims it may have in or to said lands, tenements and property as a Homestead Exemption, or other exemption, under and by virtue of any act of the State Legislature of the State of Iowa now existing or which may hereafter be passed in relation thereto; that this Mortgage is and shall remain a valid and enforceable first lien on the Property; that Borrower and its successors and assigns shall warrant and defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(b) Borrower has and shall maintain title to the Collateral including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the security interest hereunder and other than as disclosed to and accepted by Lender in writing, and has good right to subject the Collateral to the security interest hereunder.

(c) Borrower shall, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances as Lender shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby conveyed or assigned or intended now or hereafter to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention of facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Collateral.

(d) Borrower forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Collateral and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Lender in, the Property.

(e) Borrower shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust supplemental hereto, any security instrument with respect to the collateral, and any instrument 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 the Notes, this Mortgage, any deed of trust supplemental hereto, any security instrument with respect to the Collateral or any instrument of further assurance.

(f) Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a legal entity under the laws of the state of its formation and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Borrower or to the Property or any part thereof.

**1.2 Payment of Notes and Reserves.**

(a) Borrower shall promptly and punctually pay all principal and interest, and all other sums to become due in respect to the Notes, according to the true intent and meaning thereof.

**1.3 Maintenance and Repair.** Borrower shall keep the Property in first class operating order, repair and condition and shall not commit or permit any waste thereof. Borrower shall make all repairs, replacements, renewals, additions and improvements and complete and restore promptly and in good workmanlike manner any building or improvements which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Borrower shall not remove from the Property or demolish any of the improvements or the Collateral conveyed hereby, nor demolish or materially alter such Property without prior written consent of Lender. Borrower shall permit Lender or its agents the opportunity to inspect the Property, including the interior of any structures, at any reasonable times.

**1.4 Compliance With Laws/Maintenance of Permits.** Borrower shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said Property or the operation thereof, and shall pay all fees or charges of any kind in connection therewith. Borrower shall obtain, keep and constantly maintain in full force and effect during the entire term of this Mortgage, all certificates, licenses and permits necessary to keep the Property operating and, except as specifically provided for in this Mortgage, Borrower shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Lender.

**1.5 Insurance and Bonds.**

(a) Borrower shall keep all buildings and improvements now or hereafter situated on said Property insured against loss or damage by fire and other hazards. Borrower shall also provide public liability insurance with such limits for personal injury and death and property damage as Lender may require. Furthermore, Borrower shall acquire applicable fidelity bond coverages.

(b) All policies of insurance and bond coverage to be furnished hereunder shall be in forms, companies and amounts satisfactory to Lender, all policies of insurance shall have standard mortgagee clauses or Lender's Loss Payable Clause attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Lender. Borrower shall deliver all insurance policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten days prior to their respective dates of expiration.

(c) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon under a standard mortgagee clause or lender's loss payable clause acceptable to Lender. Borrower shall immediately notify Lender whenever any such separate insurance is taken out and shall promptly deliver to Lender the policy or policies of such insurance. In the event of a foreclosure or other transfer of title to the Property in lieu of foreclosure, or by purchase at the foreclosure sale, all interest in any insurance policies in force shall pass to Lender, transferee or purchaser as the case may be.

**1.6 Casualty.**

(a) Borrower shall promptly notify Lender of any loss whether covered by insurance or not. In case of loss or damage by fire or other casualty, Lender, or after foreclosure, the holder of the certificate or certificates of purchase, is authorized (i) to settle and adjust any claim under insurance policies which insure against such risks, or (ii) to allow Borrower to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Lender is authorized to collect and receipt for any such insurance money.

(b) Lender will release the insurance proceeds as restoration progresses in payment of restoration costs, subject to the following conditions: (1) there shall be no outstanding Event of Default and no event shall have occurred and be continuing which, but for the giving of notice and passage of time, or both, would constitute an Event of Default; (2) Lender shall approve the plans and specifications; (3) there shall be sufficient funds upon deposit at all times with Lender to complete the restoration, as certified by an architect approved by Lender; (4) the insurer shall not have asserted any defense against Borrower or any tenant pursuant to the insurance policy covering the improvements; and (5) such other conditions as would customarily be required by a local construction lender, or are otherwise reasonable.

Lender may apply any insurance proceeds remaining after completion of restoration to the indebtedness, or if the above conditions are not met, Lender may apply all insurance proceeds to the indebtedness.

In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be used to pay the amount due the Lender and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same. In case of a judicial foreclosure of this Mortgage, the Court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

**1.7 Condemnation.** Borrower, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property or any portion thereof, shall notify Lender of the pendency thereof. Borrower hereby assigns, transfers and sets over unto Lender all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including attorneys fees, Lender may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or hold said proceeds without any allowance of interest and make available for restoration or rebuilding of the Property. In the event that Lender elects to make said proceeds available to reimburse Borrower for the cost of the rebuilding or restoration of the buildings or improvements on said Property, such proceeds shall be made available in the manner and under the same conditions that Lender may require in the manner provided under Section 1.6 above. If the proceeds are made available by Lender to reimburse Borrower for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Lender be applied on account of the indebtedness secured hereby or be paid to Borrower. Borrower agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Lender may require.

**1.8 Liens and Encumbrances.** Except as provided in Section 1.11, Borrower shall not, without Lender's express written consent, permit the creation of any liens or encumbrances on the Property other than the lien of this Mortgage and any lien for real property taxes so long as they are not yet delinquent, and shall pay when due all obligations, lawful claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Property or on the rents, issues, income and profits arising therefrom, whether such lien would be senior or subordinate hereto, including, but without limiting the generality of the foregoing, all claims of mechanics, materialmen, laborers, and others for work or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Property, and Borrower will do or cause to be done everything necessary so that the priority of the lien of this Mortgage shall be fully preserved, at the cost of Borrower, without expense to Lender. Any lien or encumbrance on the Property

allowed by Lender and created hereafter shall contain, or shall by virtue hereof be deemed to contain, a provision subordinating such lien or encumbrance to all leases then or in the future affecting the Property.

**1.9 Taxes and Assessments.** Borrower shall pay in full when due, and in any event before any penalty or interest attaches, all general taxes and assessments, special taxes, special assessments, water charges, sewer service charges and all other charges against the Property and shall furnish to Lender official receipts evidencing the payment thereof. To prevent default hereunder, Borrower shall pay in full under protest, in the manner provided by statute, any tax or assessment which Borrower may desire to contest.

**1.10 Indemnification.** Borrower shall appear in and defend any suit, action or proceeding that might in any way and in the sole judgment of Lender affect the value of the Property, the priority of this Mortgage or the rights and powers of Lender under this Mortgage. Borrower shall, at all times, indemnify, defend, hold harmless and on demand, reimburse Lender for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest at the rate provided in the Notes secured hereby and shall be due and payable on demand. Borrower shall pay the cost of suit, cost of evidence of title and reasonable attorneys' fees in any proceeding, suit, and foreclosure proceedings through the court brought by the Lender to foreclose this Mortgage.

**1.11 Transfer of Title or Further Encumbrances.**

(a) In order to induce Lender to make the loan evidenced by the Notes, Borrower agrees that if title to the Property or any part thereof or interest therein is sold, leased, pledged, assigned, transferred, conveyed, further mortgaged, encumbered, or otherwise changed (including any such changes as security for additional financing), whether voluntarily or involuntarily or by operation of law, in either or any case without the prior written consent of Lender, Lender, at its option, may declare the Notes secured hereby and all other obligations hereunder to be forthwith due and payable.

(b) Any change in the legal or equitable title of the Property or in the beneficial ownership of the Property whether or not of record and whether or not for consideration or change of any ownership interests in Borrower or in any legal entity of Borrower or in any legal entities comprising Borrower shall be deemed a transfer of title to the Property.

(c) In the event ownership of the Property, or any part thereof, becomes vested in any person or entity other than Borrower, without the prior written approval of Lender, Lender may, without notice to Borrower, waive such default and deal with such successor or successors in interest with reference to this Mortgage, and the Notes in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower hereunder, or for the Mortgage indebtedness hereby secured. No sale of the Property, no forbearance on the part of Lender, no extension of the time for the payment of the Mortgage indebtedness or any change in the terms thereof consented to by Lender shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Borrower herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Any deed conveying the Property, or any part thereof, shall provide that the grantee thereunder assume all of the grantor's obligations under this Mortgage, the Notes and all other instruments or agreements evidencing or securing the repayment of the Mortgage indebtedness. In the event such deed shall not contain such assumption, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Property or such portion thereof subject to this Mortgage.

(d) Borrower shall not voluntarily, involuntarily or by operation of law, sell, assign, pledge, transfer or otherwise encumber or dispose of the Collateral or any interest therein and shall not otherwise do or permit anything to be done or occur that may impair the Collateral as security hereunder. Borrower shall be permitted to sell or otherwise dispose of the Collateral when absolutely worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property in the conduct of the business of Borrower, upon replacing the same or substituting for the same other collateral at least equal in value to the initial value of that disposed of and in such a manner so that said collateral shall be subject to the security interest created hereby and so that the security

interest of Lender hereunder shall be the first priority security interest in said collateral. In the event the Collateral is sold in connection with the sale of the Property, Borrower shall require, as a condition of the sale, that the buyer specifically agree to assume Borrower's obligations as to the security interest herein granted and to execute whatever agreements and filings deemed necessary by Lender to maintain its perfected security interest in the Collateral.

**1.12 Advances.** If Borrower shall fail to perform any of the covenants herein contained or contained in any instrument constituting additional security for the Notes, Lender may, but without obligation to do so, make advances to perform same in its behalf, and all sums so advanced shall be a lien upon the Property and shall be secured by this Mortgage. Nothing herein contained shall prevent any such failure to perform on the part of Borrower from constituting an Event of Default as defined below.

**1.13 Financial Statements/Records.** Borrower shall deliver to Lender, within 30 days after the end of each month, financial reports with respect to the operation of the Property, all in such form and containing such information as Lender shall require, and said reports shall be certified as complete and correct by Borrower. Borrower agrees to keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied and shall permit Lender, and its agents, accountants and attorneys, to visit and inspect the Property and examine its books and records of account, and to discuss its affairs, finances and accounts with Borrower, at such reasonable times as Lender may request.

In addition, within 90 days from Borrower's year end, Borrower shall complete an annual audit of its books and records of account. Said annual audit shall be undertaken by auditors approved by Lender and completed in a form satisfactory to Lender. Upon completion of each annual audit, Borrower shall deliver to Lender a certified copy of said annual audit and hereby authorizes Lender to request and receive any of the financial or audit information which was considered in the completion of said audit.

Within thirty (30) days following Borrower's fiscal year end, Borrower shall provide Lender, in form and detail satisfactory to Lender, annual operating and capital expenditure budgets for the immediately preceding fiscal year for Lender's approval. Borrower shall also, at least annually, complete and provide Lender with a full physical inventory of all its collateral.

Borrower shall maintain working capital at each of its fiscal year-ends of at least One Hundred Fifty Thousand Dollars (\$150,000.00) and maintain its net worth at each of its fiscal year-ends of at least Zero Dollars (\$000.00).

**1.14 Stock.** Borrower shall not declare or pay dividends in cash or otherwise, on its preferred stock in excess of its net income unless prior written approval of Lender be first obtained. Borrower will not declare or pay patronage dividends, other than in stock or equity paper, and other than those paid in cash to patrons (currently 20%) in order to deduct such refunds for federal income tax purposes, without the prior written approval of Lender.

Furthermore, Borrower shall not retire, without the prior written approval of Lender, more than \$-0- of stock or other equity paper in any fiscal year.

**1.15 Time.** Borrower agrees that time is of the essence hereof in connection with all obligations of Borrower herein or in said Notes or any other instruments constituting additional security for said Notes.

**1.16 Estoppel Certificates.** Borrower within ten days after written request shall furnish a duly acknowledged written statement setting forth the amount secured by this Mortgage, and stating either that no setoffs or defenses exist against the Mortgage or, if such setoffs or defenses are alleged to exist, the nature thereof.

**1.17 Obligations as Lessor.** Borrower agrees to perform every obligation of Borrower as lessor and enforce every obligation of Borrower in any and every lease or other occupancy agreement or affecting the Property or any part thereof, and not to modify, alter, waive, or cancel any lease or any part thereof, except as approved by Lender.

**1.18 Environmental Compliance.**

(a) As used herein, the following terms shall have the following meanings:

(i) "Hazardous materials" means any asbestos, PCB's, formaldehyde, hydrocarbons or other petroleum products or by-products, flammable explosives, radioactive materials, or materials defined under federal, state or local laws and regulations as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants" or "contaminants."

(ii) "Applicable environmental law(s)" shall mean all statutes, laws, ordinances, acts, rules, regulations, decrees, and rulings of all governmental authorities which relate or pertain to health, the environment or hazardous materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. Sec. 9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. Sec. 6901 *et seq.*; the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. Sec. 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C.A. Sec. 1801 *et seq.*; the Toxic Substances Control Act, 15 U.S.C.A. Sec. 2601 *et seq.*; the Clean Air Act, 42 U.S.C.A. Sec. 7401 *et seq.*; the Clean Water Act, 33 U.S.C.A. Sec. 1251 *et seq.*; and the environmental control laws of the State of Iowa, all as amended from time to time.

(iii) "Disposal," "release" and "threatened release" shall have the definitions assigned thereto by CERCLA.

(b) Borrower hereby represents and warrants that (i) the Property does not contain or incorporate and are not threatened with contamination from hazardous materials; (ii) to the best of Borrower's knowledge, the Property has never been used in connection with the handling, storage, or disposal of hazardous materials; (iii) there have been no releases and there are no threatened releases of hazardous materials on, onto, from, or under the Property; (iv) all current, and to the best of Borrower's knowledge, all past uses of the Property complies with all applicable environmental law; (v) Borrower has never received notice of a violation of any applicable environmental law, and no action has been commenced or threatened for non-compliance with such laws; (vi) Borrower has not obtained and is not required by any applicable environmental law to obtain any permit or license to construct or use the Property; (vii) no event has occurred which requires or required the owner of the Property to give any public entity notice of any spill, release, threatened release, disposal, or existence of hazardous materials on the Property; and (viii) there has been no litigation brought or threatened against Borrower or to Borrower's knowledge any prior owner of the Property, nor have any settlements been reached by or with Borrower or to Borrower's knowledge any other party alleging the presence, disposal, release, or threatened release of any hazardous materials on, onto, from, or under the Property.

(c) Borrower shall not use or permit the use (by lease or otherwise) of the Property for the generation, transportation, treatment, handling, storage, or disposal of hazardous materials.

(d) Borrower shall keep and maintain the Property in compliance with all applicable environmental laws.

(e) Borrower shall clean up all hazardous materials promptly upon discovery thereof.

(f) Borrower shall provide Lender with immediate written notice: (i) of Borrower's obtaining knowledge of any potential or known release or threatened release of hazardous materials on, onto, from or under the Property, whether from a federal, state or other governmental authority, or otherwise; or (ii) of all claims made or threatened by any third party relating to any loss or injury from hazardous materials in, on, from, or under the Property.

(g) Borrower shall report any release of hazardous materials in accordance with applicable environmental laws.



(h) Borrower shall promptly deliver copies of any documents relating to any governmental proceeding relating to hazardous materials and all engineering reports, test reports and laboratory analyses concerning the hazardous materials affecting the Property to Lender.

(i) If any governmental entity requires the investigation of the Property and/or groundwater for the existence of hazardous materials, or Lender reasonably suspects or believes that there exists the threat of or there has been hazardous materials contamination of the Property and/or groundwater, Borrower, at its expense, shall promptly and thoroughly investigate the Property and/or groundwater for hazardous materials contamination. The professionals retained by Borrower and the scope of any such investigation shall be subject to Lender's reasonable approval. In the event Borrower fails to complete an investigation for hazardous materials when required by this section, or if an Event of Default (or an event which but for the passage of time or giving of notice would constitute an "Event of Default") occurs, Lender may, in its sole and absolute discretion, enter the Property and conduct the investigation at the expense of Borrower, after giving five days written notice to Borrower. Such investigation may include obtaining one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert evaluating or confirming (i) whether any hazardous materials are present in, on, under or adjacent to the Property and (ii) whether the use and operation of the Property comply with applicable environmental laws. Environmental assessments may include detailed visual inspections of the Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and groundwater samples, as well as such other investigations or analysis as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all applicable environmental laws.

(j) In the event of any change in the laws governing the assessment, existence, release or removal of hazardous materials, such as but not limited to the identification of a new hazardous substance to be included in the definition of hazardous materials, which change would lead a prudent lender to require additional testing to avail itself of any statutory insurance or limited liability, Borrower shall take all such action (including, without limitation, the conducting of engineering tests at the sole expense of Borrower) to confirm that no hazardous materials are present on the Property.

(k) Borrower shall permit Lender or its agents to inspect the Property at any reasonable time upon five days' written notice.

(l) Borrower hereby agrees unconditionally and absolutely to defend, indemnify and hold harmless Lender and its directors, officers, employees, and agents from and against any and all damages, diminution in value, penalties, fines, losses, liabilities, causes of actions, suits, claims, demands, costs, investigatory costs, expert witness fees and costs, and expenses (including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel and the costs and related expense of any clean-up) of any nature, directly or indirectly arising out of or in connection with: (a) the inaccuracy or incompleteness of any representation or warranty provided in this section 1.17; (b) the existence, use, generation, migration, storage, release, threatened release, or disposal of hazardous materials on, onto, from or under the Property; and (c) any failure by Borrower to comply with the terms of any order of any federal, state or local authority having regulatory authority over environmental matters. Borrower's obligations under this section shall survive the closing, disbursement of the funds evidenced by the Notes, payment of the Notes, any discharge or foreclosure of this Mortgage, conveyance by deed in lieu of foreclosure, and any subsequent conveyance of the Property.

**1.19 Maintenance; Prohibition Against Alteration.** Borrower shall not alter, erect, build or construct upon any portion of the Property, any building or structure of any kind whatsoever, the erection, building or construction of which has not been previously approved by Lender in writing, which approval shall not be unreasonably withheld.

**1.20 Alteration, Removal and Change in Use of Property Prohibited.** Borrower agrees not to permit or suffer any of the following without the prior written consent of Lender:

(a) The purchase, lease, or other acquisition or sale or disposal of, any capital asset or the undertaking of any major capital repairs in excess of the approved capital budget, except that in any fiscal year of Borrower, capital assets not included in the approved budget may be purchased or disposed of up to an aggregate of \$25,000 without the prior written consent of Lender.

## ARTICLE II

### Default and Remedies

2.1 **Events of Default.** Each of the following shall be deemed to be an Event of Default hereunder:

(a) Failure to make any payment within five days of the date when the same is due in accordance with the terms of the Notes secured hereby or this Mortgage.

(b) Failure to perform any of the other terms, covenants and conditions of the Notes secured hereby, this Mortgage, or any other instrument now or hereafter constituting additional security for the indebtedness secured hereby, provided that such default shall have continued for a period of 30 days after written notice of such default from Lender, or, to the extent such performance cannot reasonably be completed within 30 days, for a period reasonably necessary to complete such performance not exceeding 90 days.

(c) Transfer of title to the Property or encumbrance without the prior written consent of Lender, as governed by the provisions of section 1.11.

(d) Breach of any warranties or representations contained herein, in the Notes or any other instrument relating to the subject matter hereof.

(e) Any false representation heretofore or hereafter made by or on behalf of Borrower with respect to any material term of this Loan.

(f) An Event of Default under, or institution of foreclosure or other proceedings to enforce any second deed of trust or junior security interest, lien or encumbrance of any kind upon the Property or any portion thereof.

(g) Should Borrower, or any successors and assigns thereof, including, without limitation, the then current owners of any interest in the Property:

(i) File a petition under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding"); or

(ii) File any answer admitting insolvency or inability to pay its debts; or

(iii) Fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within 60 days, as hereinafter provided; or

(iv) Be the subject of an order for relief against it in any Bankruptcy Proceeding; or

(v) Have a custodian or trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation if such trustee or receiver shall not be discharged or if such jurisdiction shall not be relinquished, vacated or stayed on appeal or otherwise within 60 days; or

(vi) Make an assignment for the benefit of its creditors; or

- (vii) Admit its inability to pay its debts generally as they become due; or
- (viii) Consent to an appointment of a custodian, receiver or trustee of all of its property, or the major part thereof; or
- (ix) Borrower or any guarantor of the Notes shall take action to authorize any corporate actions set forth in the foregoing subparagraphs.

## 2.2 Remedies

(a) Upon and after any such Event of Default, Lender, without notice, may declare the entire principal of the Notes then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, all premiums payable thereunder and all other obligations of Borrower hereunder to be due and payable immediately, and upon any such declaration the principal of the Notes and said accrued and unpaid interest shall become due and payable, anything in the Notes or in this Mortgage to the contrary notwithstanding.

(b) Upon and after any such Event of Default, Lender shall have all of the remedies of a Secured Party under the Uniform Commercial Code and that certain Loan Agreement dated December 27, 1994, executed simultaneously herewith and by and between Borrower and Lender, including, without limitation, the right and power to sell, or otherwise dispose of, the Collateral, or any part thereof, and for that purpose may take with or without judicial process, enter upon any of the Property on which the Collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option, Borrower shall assemble the Collateral and make it available to Lender at the place and at the time designated in the demand. Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale. Lender without removal may render the Collateral unusable and dispose of the Collateral on the Property. To the extent permitted by law, Borrower expressly waives any notice of sale or other disposition of the Collateral and any other right or remedy of Lender existing after default hereunder, and to the extent any such notice is required and cannot be waived, Borrower agrees that as it relates to this paragraph (b) only if such notice is marked, postage prepaid, to Borrower at the above address at least five days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

(c) Upon and after any such Event of Default, Lender, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

- (i) Institute proceedings for the complete foreclosure of this Mortgage; or
- (ii) Apply to any court of competent jurisdiction for the appointment of a receiver or receivers for the Property and of all the earnings, revenues, rents, issues, profits and income thereof, upon ex parte application and without notice, all notice hereby being expressly waived; or
- (iii) Take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Notes or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Lender shall elect.

(d) In the event of any sale whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the entire principal of, and interest on, the Notes, if not previously due and payable, and all other sums required to be paid by Borrower pursuant to this Mortgage, immediately thereupon shall, anything in the Notes or in this Mortgage to the contrary notwithstanding, become due and payable.

## ARTICLE III

### Miscellaneous

3.1 **Taxation of Notes and Mortgage.** If at any time before the debt hereby secured is fully paid, any law be enacted, deducting from the value of said real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of deeds of trust or bonds, or the debts secured hereby, for state or local purposes, or the manner of collection of such taxes, so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then this Mortgage and the Notes hereby secured shall at the option of said Lender without notice to any party, become immediately due and payable. If any such law should be enacted and to the extent permitted by such law, Borrower shall have the opportunity of paying to Lender the amount of any additional cost or taxes to Lender from such law. The Borrower, upon demand by the Lender, shall pay such taxes or assessments, or reimburse the Lender therefor; provided, however, that if in the opinion of counsel for the Lender (a) it might be unlawful to require Borrower to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Lender may elect, by notice in writing given to the Borrower, to declare all of the indebtedness secured hereby to be and become due and payable 60 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Borrower shall not be obligated to pay any portion of Lender's state and/or federal income tax.

3.2 **Marshaling of Assets.** Borrower on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshaling of assets by Lender or to require Lender, upon a foreclosure, to first resort to the sale of any portion of the Property that might have been retained by Borrower before foreclosing upon and selling any other portion as may be conveyed by Borrower subject to this Mortgage.

3.3 **Partial Release.** Without affecting the liability of any other person for the payment of any indebtedness herein mentioned (including Borrower should it convey the Property) and without affecting the priority of the lien hereof upon any property not released, Lender may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Property described herein, take or release any other security or make compositions or the arrangements with debtors. Lender may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise release thereon either before, concurrently with, or after sale hereunder.

#### 3.4 **Non-Waiver.**

(a) By accepting payment of any sum secured hereby after its due date or altered performance of any obligation secured hereby, Lender shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any indebtedness hereby secured, either to require prompt payment when due of all other sums so secured or to take remedy for failure to make such prompt payment or full performance. No exercise of any right or remedy by Borrower or Lender hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

(b) No delay or omission of Borrower or Lender in the exercise or any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

(c) Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Mortgage and any disposition of the same by Trustee or Lender shall not constitute a waiver of the right of foreclosure by Trustee or Lender in the event of default or failure of performance by Borrower of any covenant or agreement contained herein or in any Notes secured hereby.

3.5 **Protection of Security.** Should Borrower fail to make any payment or to perform any covenant as herein provided, Lender (but without obligation so to do and without notice to or demand upon Borrower and

without releasing Borrower from any obligation hereof) may: (a) make or do the same in the manner and to such extent as Lender may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the reasonable judgment of Lender is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its reasonable discretion may deem necessary therefor, including cost of evidence of title and reasonable counsel fees. Any expenditures in connection herewith shall constitute an advance hereunder and shall be repaid in accordance with section 1.12.

**3.6 Future Advances Secured.** Any advances or disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property, with interest on such disbursements as provided herein, shall be added to the principal balance of the Notes and collected as a part thereof. To the extent that this Mortgage may secure more than one Notes, a default in the payment of any such Notes shall constitute a default in the payment of all such Notes.

**3.7 Rule of Construction.** When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural. The headings of each paragraph are for information and convenience only and do not limit or construe the contents of any provision hereof. The language in all parts of this Mortgage shall be in all cases construed simply, according to its fair meaning and not for or against Borrower or Lender, regardless of which party drafted the particular language which is being construed, both parties having been represented by adequate counsel.

**3.8 Severability.** If any term of this Mortgage or the application thereof to any person or circumstances, shall to any extent, be invalid or unenforceable, the remainder of this Mortgage or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

**3.9 Successors In Interest.** This Mortgage applies to, inures to the benefit of, and is binding not only on the parties hereto, but also on their heirs, executors, administrators, successors and assigns. All obligations of Borrower hereunder are joint and several. The term "Lender" shall mean the holder and owner, including pledgees, of the Notes secured hereby, whether or not named as Lender herein.

**3.10 Notices.** All notices to be given by Lender to Borrower or by Borrower to Lender pursuant to this Mortgage shall be sufficient if mailed either (a) by postage prepaid, U.S. certified or registered mail, return receipt requested, or (b) by delivery to a nationally recognized overnight delivery service, to the following described addresses of the parties hereto, or to such other address as a party may request in writing:

**If to Borrower:**

Rolling Hills FS Fuel 24, L.L.C.  
1701 Towanda Ave.  
P. O. Box 2500  
Bloomington, IL 61702-2500

**If to Lender:**

FS FARMCO, Inc.  
1701 Towanda Avenue  
P. O. Box 2500  
Bloomington, Illinois 61702-2500

Any time period provided in the giving of any notice hereunder shall commence two days after the date such notice is deposited in the mail or upon the date delivered to said overnight delivery service, as the case may be.

3.11 **Modifications.** This Mortgage may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

3.12 **Governing Law.** This Mortgage shall be construed according to and governed by the laws of the State of Iowa.

3.13 **Rights and Remedies of Lender Cumulative.** The rights and remedies of Lender arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

3.14 **Captions.** The captions set forth at the beginning of the various sections of this Mortgage are for convenience only and shall not be used to interpret or construe the provisions of this Mortgage.

IN WITNESS WHEREOF, Borrower has caused this instrument to be signed [and sealed] as of the date first written above.

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

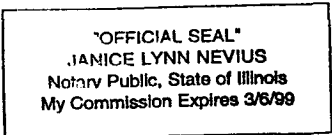
ROLLING HILLS FUEL 24, L.L.C.

By: George Pederson  
George Pederson, Its President

By: James C. Franks  
James C. Franks, Its Treasurer

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF McLEAN )

On this 25 day of ~~May~~ <sup>June</sup>, 1997, before me, the undersigned, a Notary Public, personally appeared George Pederson and James C. Franks, to me personally known, who, being by me duly sworn, did say that they are the President and Treasurer of Rolling Hills Fuel 24, L.L.C., the corporation executing the foregoing instrument, that (no seal has been procured) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed on behalf of the corporation by authority of the corporation's Board of Directors; and that they as such officers acknowledged execution of the instrument to be the voluntary act and deed of the corporation by it and by them voluntarily executed.



Janice Lynn Nevius  
Notary Public in and for said State

EXHIBIT "A"

Lots one (1) and Lot Two (2) except the West Sixty-One (61) feet of Lot two (2) in Block One (1) of the Original Town of Truro, (Formerly Ego), Madison County, Iowa.