



LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS AGREEMENT, this day made and entered into by, between and among Elmer D. McNairy, Jr. and Amy M. McNairy (hereinafter "Sellers", whether one or more).

Joseph D. McDevitt and Pamela K. McDevitt (hereinafter "Purchasers", whether one or more).

and Southtrust Bank, N.A. (hereinafter "the Lender"), WITNESSETH AS FOLLOWS:

RECITALS

A. The Lender did heretofore loan to Elmer D. McNairy, Jr. and Amy M. McNairy in the principal sum of \$ 50,900.00 which is evidenced by their promissory note, dated July 11, 19 80 (hereinafter "the Note"), under the terms of which Note they promised to repay said sum to the Lender, or order with interest from date at ten and seven-eighths percent (10 7/8 %) per annum, in monthly installments of \$ 479.94 and the payment of which Note they secured by their mortgage to the Lender,

dated July 11, 19 80 and recorded at Volume 404 at Page 01 in the office of the Judge of Probate of Shelby County, Alabama (hereinafter the "Mortgage"). The present, unpaid principal balance of the Note, as of the date hereof, is \$ 49,868.93 with interest paid to May 1, 19 84. Sellers either were the original makers of the Note, or, if not, have heretofore expressly assumed the payment thereof and are the present, primary obligors thereunder.

B. Sellers have now sold to Purchasers their interest in the property covered by the Mortgage, and Purchasers desire to assume and agree to pay the Note and to perform all of the obligations contained in the Note and Mortgage, with Sellers thereupon being released from any further personal obligation or liability to pay the Note or perform the obligations contained on the Note.

C. The Lender is willing to accept and consent to such assumption, provided that, as conditions precedent thereto, Purchasers shall have (i) submitted credit information and had their credit approved by the Lender, (ii) expressly assumed and agreed to pay the Note and perform the obligations contained in the Note, and (iii) agreed to increase in the interest rate on the unpaid balance of the Note to rate of interest set forth below.

D. Upon compliance by Purchasers with the aforesaid requirements and its acceptance of such assumption, the Lender is also willing to release Sellers from any further personal obligation or liability to pay the Note and perform the obligations contained on the Note, but with the Mortgage securing the same to be and remain unchanged and in full force and effect.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements of the parties hereinafter contained, it is agreed by, between and among Sellers, Purchasers and the Lender as follows:

1. Commencing on May 1, 19 84, the principal balance of the Note shall bear interest at the rate of thirteen and two-tenths percent (13.2 %) per annum, and thereafter said principal and interest shall be due and payable to the Lender, or order, in consecutive monthly installments of principal and interest of \$ 566.41 each, commencing on June 1, 19 84, and payable on the 1st day of each consecutive month thereafter, with each such installment to be credited first to accrued interest and the balance thereof to principal then remaining unpaid and outstanding until all of said principal and interest is fully paid. In addition to such monthly installments of principal and interest, escrow payments for taxes and insurance shall continue to the extent required by the Mortgage.

2. Purchasers, jointly and severally, hereby accept and agree to the aforesaid modifications of the Note and assume and agree to pay the Note, as modified, and further agree to keep, fully perform, carry out and abide by the terms and provisions of the Note and the Mortgage securing same, as herein modified.

3. Sellers, Purchasers and the Lender, jointly and severally, hereby agree that the terms and provisions of the Note and Mortgage are hereby amended and modified as herein set out, and that the same (as herein modified) shall be and remain in full force and effect, as if the present principal balance of the Note had been the original amount evidenced and secured thereby, and as if the original interest rate and installment payments had been those herein agreed upon by the parties hereto. Each of said parties further agree that nothing contained herein shall in anywise alter, affect or impair any of the rights, powers or remedies granted to the Lender under the terms and provisions of the Note and Mortgage.

4. Sellers hereby warrant to the Lender that they have heretofore duly executed, delivered and filed for record a good and valid deed conveying to the Purchasers the property covered by the Mortgage, and Sellers hereby further transfer, assign, set over and deliver unto Purchasers all of their right, title and interest in and to any and all escrow deposits presently held by the Lender in connection with said loan.

5. Subject to the provisions in this paragraph, the Lender hereby releases Sellers, jointly and severally, from any further personal obligation or liability to pay the Note and any other charges or amounts required by either the Note or Mortgage; provided, however, that:

- (i) Neither this release nor anything else herein contained shall be deemed to release, alter or affect, in any way, the Mortgage, which shall be and remain in full force and effect;
- (ii) Neither this release nor anything else herein contained shall be deemed to release Sellers from any covenants, expressed, or implied, of seisin, warranty of title or against encumbrances;
- (iii) In the event there is any mortgage, judgment lien, encumbrance or lien, of any kind (except taxes or special assessments not yet due), right, title or interest in the property covered by the Mortgage in favor of any party or parties not a party to this Agreement, as of the date of the execution of this Agreement by the Lender, or in the event that the property has not been validly conveyed by Sellers to Purchasers and unless and until any and all parties claiming any right, title, interest, lien or encumbrance in on or to the property described in the Mortgage shall have duly consented to, and joined in, this Agreement, the aforesaid release of Sellers by the Lender shall have no force or effect, and
- (iv) The aforesaid release of Sellers by the Lender shall be effective only from and after the date of execution of this Agreement by the Lender.

6. The obligations of Purchasers under the Note, Mortgage and this Agreement are joint and several, and this Agreement and all provisions contained herein, shall be binding upon, and inure to the benefit of, the respective heirs, devisees, personal representatives, successors and assigns of both Sellers and Purchasers and the successors and assigns of the Lender.

IN WITNESS WHEREOF, Sellers, Purchasers and the Lender have executed this instrument, in triplicate, on this 6th day of April, 19 84.

Elmer D. McNairy, Jr. (SEAL)
Amy M. McNairy (SEAL)
Elmer D. McNairy, Jr. (SEAL)
Amy M. McNairy (SEAL)
Sellers

Joseph D. McDevitt (SEAL)
Pamela K. McDevitt (SEAL)
Joseph D. McDevitt (SEAL)
Pamela K. McDevitt (SEAL)
Purchasers

INSTRUMENT PREPARED BY

Deane Spears
ENGEL MORTGAGE CO.,
P. O. BOX 847
BIRMINGHAM, ALABAMA 35201

Lender: Southtrust Bank, National Association
By Suzy E. McCallum
Its Auth. Signature

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1984 MAY 18 AM 9:48

Thomas A. Sumner, Jr.
JUDGE OF PROBATE

BOOK 50 PAGE 681