

# ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT (hereinafter "Assumption Agreement") is by and between **SPIRITED INVESTMENTS, LLC** (hereinafter "Assumptor") and **FIRST FEDERAL OF THE SOUTH** (formerly known as FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHILTON COUNTY) (hereinafter "Lender").

**WHEREAS**, on March 26, 1997, Lender made a loan to **Sid Clayton and Renee Clayton** (hereinafter jointly, severally and collectively "Original Borrower"), which was and is secured in part by the following:

the property described in a Real Estate Mortgage dated March 26, 1997, from Original Borrower to Lender, and which is recorded as Instrument 1997-10131 in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter the "Mortgage").

**WHEREAS**, Assumptor desires to acquire the property described in the Mortgage and in connection therewith assume the Loan made by Lender to Original Borrower.

**WHEREAS**, Lender and Assumptor are agreeable to this assumption, provided Assumptor assumes the Loan, and Assumptor and Lender enter into this Assumption Agreement.

**NOW THEREFORE**, in consideration of the premises, to induce Lender to consent to Assumptor assumption of the Loan, to induce Assumptor to assume the Loan, and for \$10.00 and other good and valuable consideration it is agreed as follows:

1. **DEFINITIONS:** As used herein the following terms shall have the following definitions:

1.1. "Assumption Agreement" shall mean this Assumption Agreement by and between Assumptor and Lender and all amendments thereto.

1.2. "Assumptor" shall mean SPIRITED INVESTMENTS, LLC, a limited liability company, organized and existing under the laws of the State of Alabama.

1.3. "Collateral" shall mean the personal and real property in which Lender has been given a security interest or mortgage interest in accordance with the terms of the Loan Documents.

1.4. "Original Borrower" shall mean Sid Clayton and Renee Clayton.

1.5. "Lender" shall mean FIRST FEDERAL OF THE SOUTH, formerly known as FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHILTON COUNTY, having a place of business in Sylacauga, Alabama.

1.6. "Loan" shall mean the Loan evidenced by the Note being assumed by Assumptor in accordance with the terms hereof.

1.7. "Loan Documents" shall mean the Note, the Mortgage, and all other agreements executed in connection therewith or pertaining to the Loan.

1.8. "Mortgage" shall mean the Mortgage dated March 26, 1997, from Original Borrower to Lender, and which is recorded as Instrument 1997-10131 in the Office of the Judge of Probate of Shelby County, Alabama, along with all amendments thereto as set forth in this Assumption Agreement.

1.9. "Note" shall mean that promissory note in the principal amount of \$600,000.00 executed by Original Borrower and delivered to Lender on March 26, 1997, and all renewals and extensions thereof.

2. **ASSUMPTION OF THE LOAN:** Assumptor hereby assumes the obligation to pay the Loan in accordance with the terms of the Note. Assumptor further assumes and agrees to pay the indebtedness and perform every act and obligations of Original Borrower under the terms of the Loan Documents in the same manner and with the same effect as though they had originally joined in the execution thereof. Lender consents to such assumption based on the terms contained herein and in the Note.

3. **NO RELEASE OF ORIGINAL BORROWER:** Nothing contained herein shall be construed in any way as releasing the Original Borrowers from their obligations on the Loan and the Loan Documents.

4. **WAIVER OF PRIOR DEFAULTS:** As of this date, Lender waives any and all defaults that have occurred under the Loan Documents, and confirms, represents and warrants, to Assumptor that as of this date and assuming that the representations contained herein are true and correct, (i) there exist no unwaived and no unreleased claims, demands and defaults whatsoever that would be exercisable against Assumptor or under the terms of the Loan Documents; and (ii) to the best of Lender's knowledge, there exist no state of facts or events which, with the passage of time or the giving of notice, might become a default (which has not been waived and released by Lender) exercisable against Assumptor or under such documents.

5. **REPRESENTATIONS, COVENANTS, AND WARRANTIES:**

5.1. Assumptor will pay all taxes, assessments, or governmental charges levied, assessed, or imposed against Assumptor or Assumptor's properties or arising out of Assumptor's operations promptly as they become due and payable, provided, however, that if Assumptor shall have set aside on Assumptor's books reserves deemed adequate therefor, Assumptor shall have the right to contest in good faith, by appropriate proceedings, any such taxes, assessments or governmental charges or levies, and pending such contest may delay or defer the payment thereof unless thereby the property in which Lender has a mortgage or security interest will be in danger of being forfeited or lost.

5.2. To induce Lender to make advances to Assumptor and as part of consideration therefor Assumptor represents and warrants that as of this date and as long as there is an obligation due from Assumptor to Lender, that:

5.2.1. Assumptor is a limited liability company duly organized under the laws of the State of Alabama, and validly existing and in good standing under the laws of the State of Alabama;

5.2.2. Assumptor has all the necessary power and authority to own and conduct Assumptor's business and is qualified or registered to do business in every other jurisdiction wherein Assumptor's ownership or leasing of assets or the conduct of Assumptor's business makes such qualification or registration necessary;

5.2.3. The execution and delivery and performance of this Assumption Agreement, the agreements referred to herein, and the borrowings hereunder have been duly authorized by all requisite action;

5.2.4. Assumptor has heretofore furnished to Lender financial information of Assumptor, and such financial information presents fairly the financial position therein reflected for the respective period covered thereby, in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved;

5.2.5. There has been no material adverse change in the condition of the parties for whom financial information has been furnished since the date or dates of such financial information, and there will be no material adverse change in such conditions at any time Lender make an advance hereunder of which Lender will not have written notice;

5.2.6. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to Assumptor's knowledge threatened or in prospect against or affecting Assumptor, or any property or rights of Assumptor, which, if adversely determined, would materially impair Assumptor's ability to carry on Assumptor's business in accord with the projections furnished Lender or would materially and adversely affect Assumptor's financial condition;

5.2.7. Assumptor is not now in default, in any material respect under any judgment, order, injunction, rule, ruling or regulation of any court or governmental commission, agency or instrumentality;

5.2.8. Neither the execution and delivery of this Assumption Agreement, any supplement thereto, the assignments nor the consummation of the transactions contemplated hereby and thereby, nor compliance with the terms and provisions

hereof and thereof, will conflict with, violate or result in a breach of or default under, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on any of the assets of Assumptor pursuant to the terms of any provision of any permit, franchise, contract or agreement, any charter, or other restrictions, any law, ordinance or rule or any order, certificate, license, regulation or decree of the United States or any state, territory or political subdivision thereof, or any court, agency or other tribunal under which Assumptor or any of Assumptor's assets are subject;

5.2.9. Assumptor has good and marketable title to all of Assumptor's assets, subject to no lien, mortgage, pledge, encumbrance, or charges of any kind not previously disclosed in writing to Lender or as are herein set out, except inchoate liens arising by operation of law for obligations which are not yet due, and obligations which are fully subordinated to the Loan or to Lender;

5.2.10. Assumptor will maintain insurance with insurance companies satisfactory to Lender on the Collateral, and Assumptor's other properties, in such amounts and against such risks as Lender customarily requires, and, within 10 days after notice in writing from Lender shall obtain such additional insurance as Lender may reasonably request to protect Lender's security interest. Assumptor will cause all such insurance policies on the Collateral to be endorsed to show Lender as loss payee and mortgagee thereon under a standard New York (long form) loss payee and mortgagee clause; and

5.2.11. Assumptor will duly and punctually pay the principal and interest on the obligations evidenced by the Note in accordance with the terms thereof and of this Assumption Agreement and pay other indebtedness reflected on Assumptor's financial statements delivered to Lender and referred to herein and other indebtedness incurred after the date hereof in accordance with the terms of such indebtedness.

5.3. So long as there shall be an outstanding Obligation to Lender, Assumptor warrants and agrees that without Lender's written consent, which shall not be unreasonably withheld, that:

5.3.1. Assumptor will not make a material change in the manner in which Assumptor conducts their business;

5.3.2. Assumptor will not change Assumptor's business or organizational structure in any manner which would materially and adversely affect Lender, the Collateral, or Lender's security interest or mortgage interest in the Collateral; and

5.3.3. Assumptor will not merge with any entity nor sell assets (including inventory) in bulk or any manner other than in the regular course of Assumptor's business.

5.4. Prior to the Lender's acceptance of this Assumption Agreement, or prior to an advance of any amounts as herein provided, and prior to any subsequent advance of any amounts as herein provided, Lender shall have received:

5.4.1. Certified copies of resolution of Assumptor's members or managers authorizing the execution, delivery and performance of this Assumption Agreement, all other agreements referred to herein and executed and delivered simultaneously herewith, and the securing and the obligations and borrowing hereunder and thereunder;

5.4.2. Policies of Flood, Fire, and Extended Coverage Insurance insuring the Collateral in an amount in excess of the amount due on the Loan, with long form loss-payable endorsements showing Lender as loss payee or mortgagee, as the case may be, under a Standard New York (long form) loss payable/mortgagee clause;

5.4.3. All financing statements required to perfect Lender's security interest in the Collateral as Lender shall determine to be necessary or desirable;

5.4.4. Certified copies of the recorded organizational documents of Assumptor along with all amendments thereto;

5.4.5. Evidence satisfactory to Lender and its counsel that Assumptor has acquired the Collateral; and

5.4.6. An estoppel and subordination certificate from all tenant's claiming an interest in the Collateral, acknowledging Lender's interest in the Collateral, and agreeing that Lender's interest in the Collateral is superior to such tenant's interest in the Collateral.

6. **INCORPORATION OF LOAN DOCUMENTS:** Assumptor acknowledges receipt of a copy of all the Loan Documents, and agrees to be bound under the terms of each and every Loan Document (as modified herein), just as if Assumptor executed each Loan Document. Assumptor will comply with each and every term, condition, agreement, representation, and covenant in the Loan Documents, just as if Assumptor executed the same.

7. **COST AND EXPENSES:** Assumptor agrees to pay all recording fees, reasonable fees, (including a reasonable fee of the attorneys retained by the Lender to prepare or review the instruments for this obligation) and all other reasonable expenses and costs of every kind which may be incurred by the Lender in the making of this assumption, and in maintaining unimpaired its security and lien, or otherwise connected with or growing out of this transaction.

8. **HEADINGS, WAIVERS, SURVIVAL OF COVENANTS, MISCELLANEOUS:**

8.1. The headings of the articles, sections, paragraphs, and subdivision of this

Assumption Agreement are for convenience or reference only, and are not to be considered a part hereof, and shall not limit or affect any of the terms hereof.

8.2. All covenants, agreements, representations, and warranties made herein and in certificates or reports delivered pursuant hereto shall be deemed to be material and relied on by Lender, notwithstanding any investigation made by or on behalf of Lender, and shall survive the execution and delivery to Lender of this Assumption Agreement, or any agreement referred to herein.

8.3. Lender's books and records showing the account between us shall be admissible in evidence in any action or proceeding, and shall constitute prima facie proof thereof.

8.4. No delay or failure on Lender's part in exercising any right, privilege, or option hereunder or under any other written agreement to which Assumptor is a party, shall operate as a waiver of such right, privilege, or option and no waiver whatsoever shall be valid unless in writing signed by Lender and then only to the extent therein set forth.

8.5. This Assumption Agreement, and the Loan Documents shall continue in full force and effect until terminated by full payment of all of Assumptor's Obligations to Lender.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 1st day of ~~May~~, 2000.

*June*

Assumptor:

**SPIRITED INVESTMENTS, LLC**

By: *Renee L. Clayton*  
Renee L. Clayton (Its Member)

Lender:

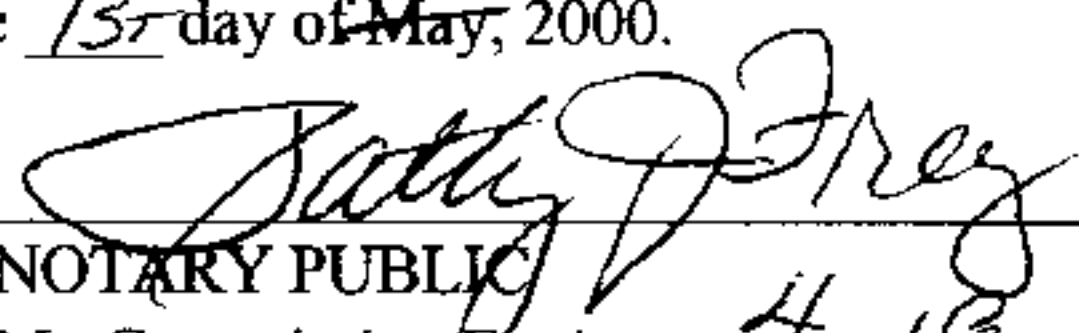
**FIRST FEDERAL OF THE SOUTH (formerly known as FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHILTON COUNTY)**

By: *Anna R. Zier*  
(Its AUP)

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Renee L. Clayton, whose name as member of SPIRITED INVESTMENTS, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer or agent, and with full authority, executed the same voluntarily, as an act of said company, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 15<sup>th</sup> day of <sup>June</sup>~~May~~, 2000.

  
NOTARY PUBLIC

My Commission Expires: 4-19-2003

DEED \_\_\_\_\_  
MORTG \_\_\_\_\_  
REC. 22.00  
INDEX 5.00  
D.P. FEE 2.00

Inst # 2000-19311

06/09/2000-19311

7 10:16 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

007 HHS

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