

AGREEMENT

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Shelby Cnty Judge of Probate, AL
01/20/1981 12:00:00 AM FILED/CERT

This Agreement is entered into on the 2nd day of Oct, 1980 by and among National Bank of Commerce of Birmingham, a national banking association (the "Bank"), the Omelet Shoppe, Inc., an alt. corporation ("Omelet Shoppe"), William R. Ingram ("Ingram"), Jimmie Sue Walker ("Walker") and Chester Ingram ("Chester Ingram"), and the respective spouses of Ingram, Walker and Chester Ingram.

Recitals

A. The Bank has heretofore extended credit to Power Vending Machine Company, Ltd. in the principal amount of \$300,000, as evidenced by that certain promissory note dated December 28, 1978 (the "Note").

B. Ingram has unconditionally guaranteed to the Bank, its successors and assigns, the due and punctual payment of the Note, interest thereon and all other sums payable with respect thereto (the "Loan"), as evidenced by guaranty agreements executed by Ingram in favor of the Bank dated June 25, 1978 and December 28, 1978 (hereinafter collectively referred to as the "Guaranties").

C. Ingram has executed a mortgage in favor of the Bank dated December 28, 1978, as security for the Guaranties (the "Mortgage"). The Mortgage is recorded in Book 386, page 975 in the Probate Office of Shelby County, Alabama and conveys to the Bank the following described real property (the "Real Property"):

Lot 8, in Block 2, according to the Survey of Indian Forest Estates, as recorded in Map Book 5, page 134, in the Probate Office of Shelby County, Alabama.

D. Omelet Shoppe has obtained a judgment against Ingram in the amount of \$125,797.44 that is recorded in Judgment Volume P, page 294 in the Probate Office of Shelby County, Alabama.

E. Prior to the date on which said judgment was recorded, Ingram conveyed the Real Property to Walker and Chester Ingram. Omelet Shoppe has sought to have said conveyance set aside as a fraudulent conveyance and has recorded a lis pendens in the Probate Office of Shelby County, Alabama pending a ruling by the court in that suit (the above-described judgment and said lis pendens being hereinafter collectively called the "Judgment").

F. Robert Saunders has offered to purchase the Real Property from Walker, Ingram and Chester Ingram, provided that the Real Property can be sold free and clear of the Mortgage, the Judgment and certain other mortgages and lis pendens encumbering the Real Property.

G. Ingram, Walker and Chester Ingram have requested the Bank and Omelet Shoppe to release the Real Property from the Mortgage and the Judgment so that the Real Property can be conveyed to Saunders as aforesaid, and the Bank and Omelet Shoppe are willing to release the Real Property from the Mortgage and the Judgment on the terms and conditions hereinafter set forth.

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Agreement

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties herein contained, the parties hereto hereby agree as follows:

1. Walker, Chester Ingram and Ingram and their respective spouses hereby agree that the Real Property shall be sold to Saunders in accordance with the terms and conditions of that certain Real Estate Sales Contract attached hereto as Exhibit A and made a part hereof by this reference thereto, which contract provides, among other things, for the payment of a total Purchase Price for the Real Property of \$170,500. The proceeds of such sale, after deducting reasonable closing costs, shall be used to satisfy that certain mortgage to Southern National Bank recorded in Mortgage Book 355, page 620 in the Probate Office of Shelby County, Alabama (having an outstanding principal balance of approximately \$ 63,579.30), and to satisfy that certain mortgage to Jefferson Federal Savings & Loan Association of Birmingham recorded in Mortgage Book 338, page 398 in said Probate Office (having an approximate principal balance of \$50,556.30) and the balance of such proceeds shall be delivered to the Bank for investment in a non-negotiable certificate of deposit issued by the Bank in the name of Ingram, Walker and Chester Ingram (the "Certificate of Deposit"). The Certificate of Deposit shall be pledged by Ingram, Walker and Chester Ingram to the Bank as security for the Guaranties in substitution for the Mortgage.

2. Subject to the terms and conditions of this agreement, Omelet Shoppe and the Bank hereby agree, for the purpose of conveying clear title to the Real Property to Robert Saunders, to execute and deliver at the closing appropriate releases of the Real Property from the Mortgage and the Judgment in accordance with Commonwealth Land Title Insurance Company Commitment No. 801-721993, File No. 0680-15781, as set forth in Schedule B-1 thereof.

3. Ingram, Walker and Chester Ingram agree to deliver possession of the Certificate of Deposit to the Bank and to execute a pledge and security agreement granting to the Bank a first security interest in the Certificate of Deposit as security for the Guaranties (the "Bank Security Agreement"). Ingram, Walker and Chester Ingram further agree to execute a pledge and security agreement (the "Omelet Shoppe Security Agreement") in favor of Omelet Shoppe granting to Omelet Shoppe a second security interest in the Certificate of Deposit, junior and subordinate to the security interest of the Bank in the Certificate of Deposit, as security for all sums owed by Ingram to Omelet Shoppe which are secured by the Judgment.

4. Omelet Shoppe hereby agrees that the Judgment and the lien thereof, the Omelet Shoppe Security Agreement and all other rights, interests and claims of Omelet Shoppe in and to the proceeds of the sale of the Real Property and the Certificate of Deposit (and the proceeds thereof) are junior and subordinate and are made subject to the Mortgage and the Bank Security Agreement; and Omelet Shoppe waives and relinquishes any and all rights and claims to assert that it has any interest in the Real Property or the Certificate of Deposit (and the proceeds thereof) that is equal, prior or superior to the Mortgage and the Bank Security Agreement.



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5. The Bank agrees that if Power Vending defaults in the payment of the Loan, the Bank will use its best efforts to satisfy the balance of the Loan from other collateral (but not including guarantors) securing the Loan other than the Certificate of Deposit; and the Bank agrees to apply the Certificate of Deposit against the balance of the Loan only if such efforts to satisfy the Loan from such other collateral are not successful. Omelet Shoppe hereby agrees that the Bank may apply the Certificate of Deposit against the unpaid balance of the Loan in the event that the Bank reasonably determines, in its sole discretion, that, despite such efforts, the Loan cannot be satisfied from such other collateral as aforesaid.

6. The Bank agrees that it will not release any collateral securing the Loan (including the Certificate of Deposit) without the prior consent of Omelet Shoppe; provided, however, if the Bank shall give Omelet Shoppe written notice that collateral for the Loan is to be released, and Omelet Shoppe shall not object thereto in writing within 30 days thereof, Omelet Shoppe shall be deemed to have given its consent, and the Bank may release such collateral.

7. The Bank hereby agrees that if the Loan is paid in full or satisfied after default from the proceeds of such collateral or by application of less than the full amount of proceeds of the Certificate of Deposit against the Loan, subject to the provisions of paragraph 9 hereof, the Bank will deliver the Certificate of Deposit (or any proceeds thereof not applied against the Loan if some portion of the proceeds of the Certificate of Deposit has been applied against the Loan) to Omelet Shoppe.

8. The parties hereto hereby agree that, subject to the terms hereof, the Certificate of Deposit shall be held by the Bank jointly for the benefit of the Bank and Omelet Shoppe and that Omelet Shoppe's security interest in the Certificate of Deposit shall be deemed perfected (but junior and subordinate to the Bank Security Agreement as aforesaid) by possession of the Certificate of Deposit by the Bank for itself and as the agent of Omelet Shoppe; provided, however, the duties of the Bank as agent for Omelet Shoppe shall be limited to the express requirements, conditions and agreements contained in this agreement and Omelet Shoppe hereby indemnifies and agrees to hold the Bank harmless from and against any loss or claim arising or resulting from the Bank's agreement to hold the Certificate of Deposit as the agent of Omelet Shoppe as aforesaid.

9. It is the intention of the parties that the Omelet Shoppe Security Interest secure the indebtedness of Ingram to Omelet Shoppe only to the extent such indebtedness is secured by a valid judgment lien on the Real Estate. Omelet Shoppe's judgment is now on appeal to the Supreme Court of Alabama. Omelet Shoppe hereby agrees that should said judgment be set aside or invalidated in a final determination by a court having ultimate jurisdiction of the matter (or by a lower court from which no timely appeal is taken), whether on appeal or upon remand, the Omelet Shoppe Security Interest shall then be released and terminated, and if the Bank receives written notice of the setting aside or invalidation of said judgment, the Bank shall, upon payment in full or satisfaction of the Loan, deliver any portion of the Certificate of Deposit not applied against the Loan to Ingram, Walker and Chester Ingram. In the event that the amount of Omelet Shoppe's judgment should be reduced in a final determination by a court having ultimate jurisdiction



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of the matter (or by a lower court from which no timely appeal is taken), whether on appeal or upon remand, the Omelet Shoppe Security Interest shall likewise be reduced pro rata in proportion to the reduction in said judgment.

10. Omelet Shoppe hereby agrees that it will deliver any proceeds of the Certificate of Deposit remaining after the Loan and any debt secured by the Judgment have been paid in full to Ingram, Walker and Chester Ingram.

IN WITNESS WHEREOF, the undersigned have executed or caused this agreement to be executed as of the day and year first above written.

NATIONAL BANK OF COMMERCE
OF BIRMINGHAM

By [Signature]
Its [Signature]

OMELET SHOPPE, INC.

By [Signature]
Its [Signature]

only as amended

[Signature]
William R. Ingram

[Signature]
Ingram

[Signature]
Jimmie Sue Walker

[Signature]
Walker

[Signature]
Chester Ingram

[Signature]
Ingram

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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Laura B. Callen, a Notary Public in and for said county in said state, hereby certify that [Signature], whose name as [Signature] of the National Bank of Commerce of Birmingham, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said National Bank of Commerce of Birmingham on the day the same bears date.

Given under my hand and official seal of office, this 9 day of October, 1980.

[Signature]
NOTARY PUBLIC

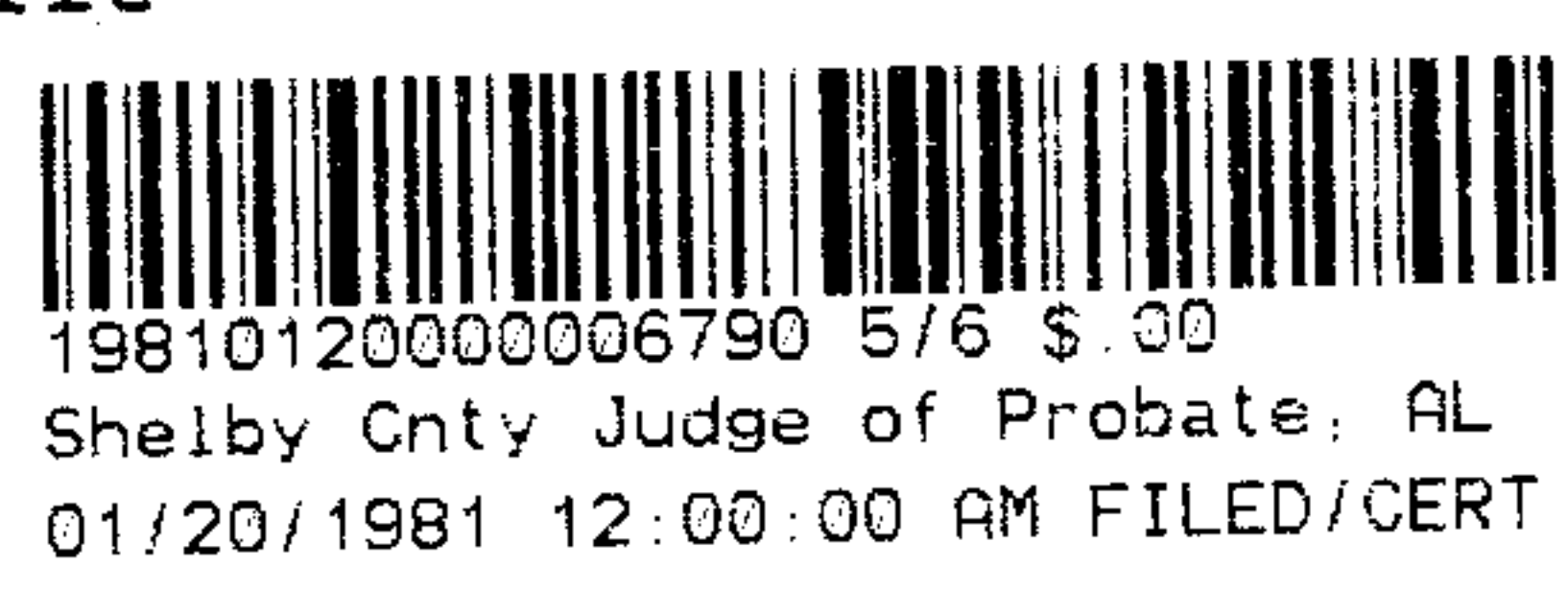
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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Charles Bentley, whose name as Attorney of the Omelet Shoppe, Inc., is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, he/she, in his/her capacity as such Attorney, and with full authority, executed the same voluntarily for and as the act of said Omelet Shoppe, Inc., on the day the same bears date.

Given under my hand and official seal of office, this 2 day of Oct, 1980.

[Signature]
Notary Public



STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Charles H. Gorman, a Notary Public in and for said county in said state, hereby certify that William R. Ingram, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Charles H. Gorman
Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Charles H. Gorman, a Notary Public in and for said county in said state, hereby certify that Jimmie Sue Walker, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Charles H. Gorman
Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Charles H. Gorman, a Notary Public in and for said county in said state, hereby certify that Jimmie Sue Walker, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Charles H. Gorman

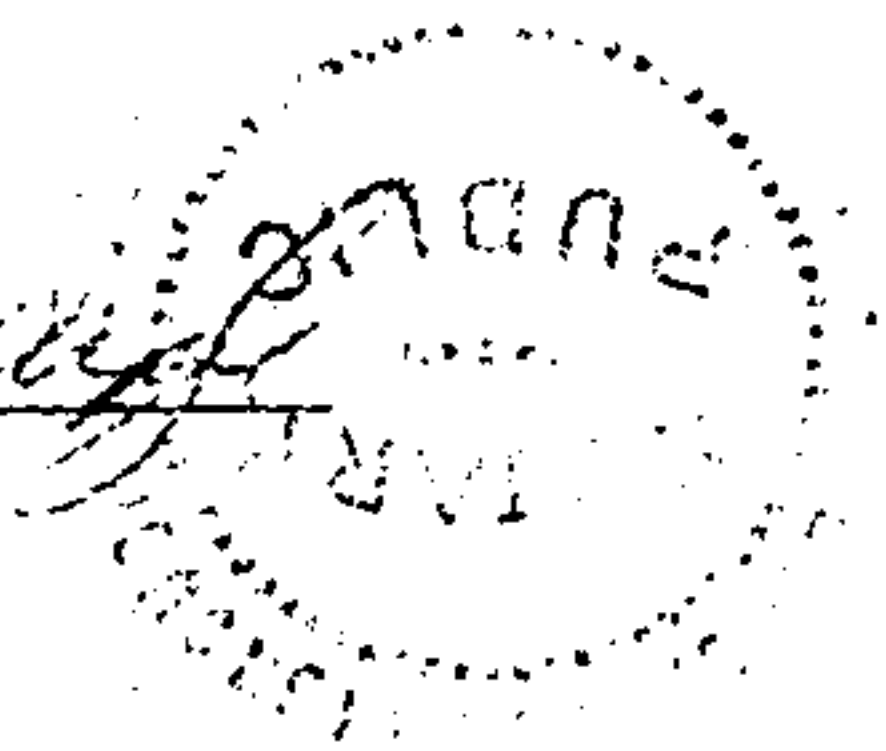
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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Linda H. Yarbrough, a Notary Public in and for said county in said state, hereby certify that Doris C. Pugh, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Linda H. Yarbrough
Notary Public

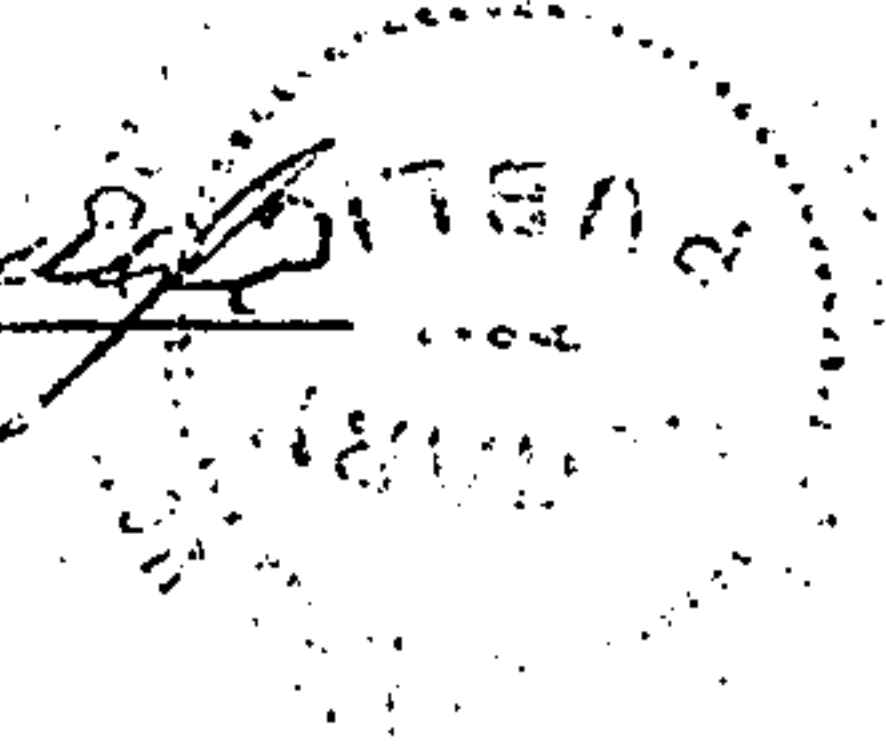


STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Linda H. Yarbrough, a Notary Public in and for said county in said state, hereby certify that Chester Ingram, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Linda H. Yarbrough
Notary Public

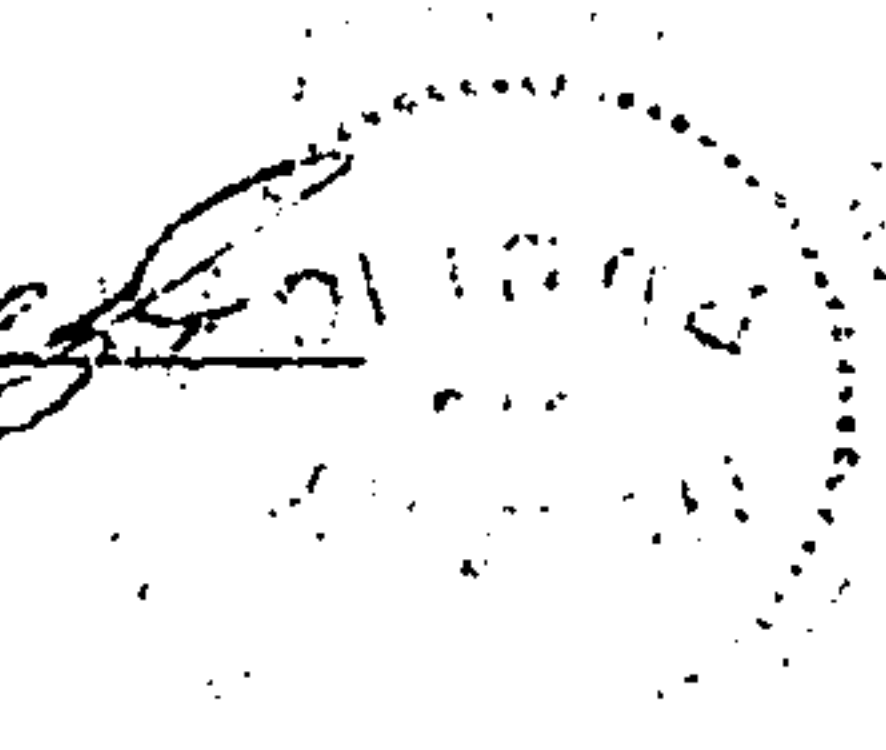


STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Linda H. Yarbrough, a Notary Public in and for said county in said state, hereby certify that Donna Ingram, whose name is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 1st day of September, 1980.

Linda H. Yarbrough
Notary Public



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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
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