

STATE OF ALABAMA)
JEFFERSON COUNTY)

1398

ASSUMPTION OF NOTE AND MORTGAGE

THIS AGREEMENT made this 7th day of October, 1988, by and between Robert W. O'Connor, Jr. (hereinafter referred to as "Assumptor") and Central Bank of the South, an Alabama State Banking Corporation (hereinafter referred to as "Central Bank").

WHEREAS, on or about the 21st day of August, 1986, Raymond R. Riha (hereinafter referred to as "Riha") executed a Note in the original principal amount of Forty Two Thousand Four Hundred Dollars (\$42,400.00) payable to Central Bank; and

WHEREAS, in order to secure said indebtedness Riha granted to Central Bank a Mortgage on the following described property along with an Assignment of Rents and Leases:

Lot 4, Block 4, according to the Resurvey of Breckenridge Park, as recorded in Map Book 9, Page 150, of the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.

and

WHEREAS, said Mortgage is recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Real Volume 88, Page 137, and said Assignment of Rents and Leases is recorded in Real Volume 88, Page 143, in said Probate Office; and

WHEREAS, on June 6, 1988, Riha filed a petition under

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Chapter 11 of the Bankruptcy Code in the Northern District of Alabama, Case No. 88-5369, in which case James G. Henderson (hereinafter sometimes referred to as "Henderson") was appointed as Trustee of the Debtor's Estate of Raymond R. Riha; and

WHEREAS, Henderson, in his capacity as Trustee of the Debtor's Estate of Raymond R. Riha, applied for and received permission from the Bankruptcy Court to sell the above-described property to Assumptor under the terms and conditions that Assumptor would pay the sum of \$2,000.00 cash to Henderson as Trustee of the Debtor's Estate of Raymond R. Riha, and would assume the indebtedness due Central Bank; and

WHEREAS, the parties hereto acknowledge that as partial consideration for the conveyance of the property referred to hereinabove to Assumptor, that Assumptor did agree to assume and pay the indebtedness due Central Bank and as secured by the Mortgage and Assignment of Rents and Leases referred to hereinabove; and

WHEREAS, the parties hereto acknowledge and agree that the indebtedness due Central Bank and which is secured by the Mortgage and Assignment of Rents and Leases as of the date of this Agreement is Forty Four Thousand Four Hundred Dollars and 20/100 (\$44,400.20).

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, and upon the express condition that the lien of the aforesaid Mortgage held by Central Bank is a valid, first and subsisting lien on said

real property and that the execution of this Agreement will not impair the lien of said Mortgage or the Assignment of Rents and Leases, it is hereby agreed as follows:

1. Assumptor hereby acknowledges that he has purchased the real property described above from James G. Henderson, Trustee of the Debtor's Estate of Raymond R. Riha, as evidenced by that certain Deed from James G. Henderson, Trustee to Assumptor, as recorded in Real Volume 210, Page 12, in the Office of the Judge of Probate of Shelby County, Alabama.

2. Assumptor hereby acknowledges that pursuant to said Deed, that as partial consideration for the conveyance of said property to Assumptor, that Assumptor assumed and agreed to pay, and does hereby assume and agree to pay the indebtedness due Central Bank as secured by the above-referenced Mortgage and Assignment of Rents and Leases and, further agrees that said sum is due without setoff.

3. Assumptor hereby acknowledges that the Note, Mortgage and Assignment of Rents and Leases are all valid and enforceable under the laws of the State of Alabama and in accordance with their respective terms.

4. Assumptor hereby covenants, promises and agrees (a) to pay said Note at the times, in the manner and in all respects as therein provided, (b) to perform each and all of the covenants, agreements and obligations in said Mortgage to be performed by the Mortgagor therein, at the time, and in the manner and in all respects as therein provided, and (c)

to perform each and all of the covenants, agreements and obligations in said Assignment of Rents and Leases to be performed by the Assignor therein, at the time, and in the manner and in all respects as therein provided, and (d) to be bound by each and all of the terms and provisions of said Note, Mortgage and Assignment of Rents and Leases as though the said Note, Mortgage and Assignment of Rents and Leases had originally been made, executed and delivered by Assumptor.

5. That all of the real property described in said Mortgage shall remain in all respects subject to the lien, charge or encumbrance of said Mortgage and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by said Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances, or, to release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of said Note and/or Mortgage; nor shall anything herein contained or done in pursuance hereof affect or be construed to affect the Assignment of Rents and Leases or any other security or instrument, if any, held by Central Bank as security for or evidence of the aforesaid indebtedness.

6. This Agreement shall be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first above written.

Robert W. O'Connor, Jr.
Assumptor

Assumptor's Address:

P. O. Box 1224
Columbiana, AL 35051

CENTRAL BANK OF THE SOUTH

By Ed H. Thompson
Its Real Estate Officer

STATE OF ALABAMA)
JEFFERSON COUNTY)

ACKNOWLEDGMENT

I, Janice Danna Penn, hereby certify that Robert W. O'Connor, Jr., whose name is signed to the foregoing Assumption of Note and Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Assumption of Note and Mortgage, he executed the same voluntarily on the day the same bears date.

Given under my hand this 7th day of October, 1988.

Janice Danna Penn
Notary Public

MY COMMISSION EXPIRES MARCH 24, 1992

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STATE OF ALABAMA)
JEFFERSON COUNTY)

ACKNOWLEDGMENT

I, Janice Dawn Penn, a Notary Public in and for said County in said State, hereby certify that Earl Tharp, whose name as Real Estate Officer of Central Bank of the South, an Alabama State Banking Corporation, is signed to the foregoing Assumption of Note and Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Assumption of Note and Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 7th day of October, 1988.

Janice Dawn Penn
Notary Public

MY COMMISSION EXPIRES MARCH 24, 1992

BOOK 210 PAGE 37

STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED

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T. R. A. Shouder, Jr.
JUDGE OF PROBATE

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TOTAL		<u>16.00</u>