

AFTER RECORDING MAIL TO:

MORTGAGEAMERICA, INC  
P O BOX 43500  
BIRMINGHAM, AL 35243-0500

Inst # 1998-47557

LOAN NO. 521599

12/01/1998-47557

[Space Above This Line For Recording Data]  
12/21/98 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

005 SNA 160.40

ALABAMA

VA Form 28-6300 (Home Loan)  
Revised March 1978. Use  
Optional Section 1810, Title 38  
U.S.C. Acceptable to Federal  
National Mortgage Association.

## MORTGAGE

# NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPART- MENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

(SEPARATE RIDER GIVES ADDITIONAL MORTGAGE ASSUMPTION INFORMATION/  
REQUIREMENTS.)

THE STATE OF ALABAMA,

SHELBY

COUNTY. }

KNOW ALL MEN BY THESE PRESENTS:

That whereas the undersigned JAMES R SMITH, JR and LOIS E SMITH, Husband and Wife

of the city of ALABASTER  
and State of Alabama

, county of SHELBY

, party of the first part (hereinafter called the Mortgagor), has become

justly indebted unto MORTGAGEAMERICA, INC

a corporation organized and existing under the laws of DELAWARE, party of the  
second part (hereinafter called the Mortgagee), in the full sum of Ninety Four Thousand Five  
Hundred Thirty Dollars and no/100

Dollars (\$94,530.00), money lent and advanced, with interest at the rate of Six and One / Half  
per centum ( 6.5000 %) per annum until paid, for which amount the Mortgagor has signed and delivered unto  
the said Mortgagee a certain promissory note bearing even date with these presents, the said principal and interest to  
be payable at the office of MORTGAGEAMERICA, INC  
in BIRMINGHAM, AL, or at such other place as the holder may designate in writing delivered

or mailed to the Mortgagor in monthly installments of Five Hundred Ninety Seven Dollars and  
50/100

Dollars (\$ 597.50), commencing on the first day of January, 1999, and continuing on the first day  
of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and  
interest, if not sooner paid, shall be due and payable on the first day of December, 2028.

WHEREAS the said Mortgagor is desirous of securing the prompt payment of said note and the several  
installments of principal, interest, and monthly payments hereinafter provided for, and any additional indebtedness  
accruing to the Mortgagee on account of any future payments, advances, or expenditures made by the Mortgagee as  
hereinafter provided:

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1) to the undersigned  
Mortgagor, JAMES R SMITH, JR and LOIS E SMITH

in hand paid by the Mortgagee, the receipt whereof is hereby acknowledged, and for the purpose of securing the  
prompt payment of said indebtedness as it becomes due MONTHLY the said  
JAMES R SMITH, JR and LOIS E SMITH

do hereby grant, bargain, sell, assign, and convey unto the said Mortgagee the following-described real property  
situated in SHELBY County, Alabama, to wit:

Lot 6, according to the survey of Navajo Hills, Fifth Sector, as recorded in  
Map Book 5 page 128, in the Office of the Judge of Probate of Shelby County,  
Alabama; being situated in Shelby County, Alabama.

together with the hereditaments and appurtenances thereunto belonging, and the rents, issues, and profits of the  
above-described property (provided, however, that the Mortgagor shall be entitled to collect and retain the said rents,  
issues, and profits, until default hereunder), and all fixtures now or hereafter attached to or used in connection with the  
premises herein described and in addition thereto the following described household appliances, which are, and shall  
be deemed to be, fixtures and a part of the realty, and are a portion of the security for the indebtedness herein  
mentioned:

Should the Department of Veterans Affairs fail or refuse to issue its guaranty of the loan secured by this instrument under the provisions of the Servicemen's Readjustment Act of 1944, as amended, within sixty (60) days from the date the loan would normally become eligible for such guaranty, the Mortgagee may, at its option, declare all sums secured hereby immediately due and payable.

The Mortgagor covenants and agrees that so long as this Mortgage and the said Note secured hereby are guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as amended, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Upon any violation of this undertaking, the Mortgagee may, at its option, declare the unpaid balance of the debt secured hereby immediately due and payable.

TO HAVE AND TO HOLD the same with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining unto the said Mortgagee and assigns of the Mortgagee forever.

And the Mortgagor hereby covenants that they are seized of said real property in fee simple, and have a good right to sell and convey the same; that the property is free from all encumbrances and that the Mortgagor, and Mortgagor's heirs, executors, administrators, next-of-kin, and assigns will forever defend the same unto the Mortgagee and assigns against the claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions, and agreements, that is to say:

1. That the Mortgagor will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the manner therein provided. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100) whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

2. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

3. The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give the Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's discretion.

Upon payment in full of all sums secured by this Security Instrument Lender shall promptly refund to Borrower any Funds held by Lender. If, under Paragraph 11, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

4. If the Mortgagee shall be made a party to any condemnation proceedings or to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if the Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to the lien of this mortgage in any respect, or if this mortgage be foreclosed in Chancery or under the power of sale hereinafter provided for, or if an action be brought for breach of any obligation hereunder, the Mortgagor will pay, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by the Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby and shall bear interest from the date it is paid or incurred and shall be at once due and payable. Any proceeds from Condemnation awards shall be applied to reduce the amount of the principal debt at the option of Mortgagee.

*Handwritten signatures and initials.*

5. So long as any of the indebtedness secured hereby shall remain unpaid, in whole or in part, the Mortgagor agrees to keep said premises and the improvements thereon in good condition, and to pay all taxes and assessments that may be levied or accrue upon said property, and all other charges that may become liens upon said premises, and not to permit any lien, which might take precedence over the lien of this mortgage, to accrue and remain on said premises, or any part thereof, or on the improvements thereon.

6. Mortgagor will continuously maintain hazard insurance, of such type or types and amounts as Mortgagee may from time to time require, on the improvements now or hereafter on said premises, and except when payment for all such premiums has heretofore been made under (a) of paragraph 2 hereof, he will pay promptly when due any premiums therefor. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by the Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this mortgage or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

7. If the Mortgagor fails to insure said property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued, or assessed upon or against said property, or fails to pay immediately and discharge any and all liens, debts, and charges which might become liens superior to the lien of this mortgage, the Mortgagee may, at its option, insure said property and pay said taxes, assessments, debts, liens, and charges, and any money which the Mortgagee shall have so paid or become obligated to pay shall constitute a debt to the Mortgagee additional to the debt hereby specially secured, shall be secured by this mortgage, shall bear interest at the rate provided for in the principal indebtedness from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

8. That upon the request of the Mortgagee the Mortgagor shall execute and deliver a supplemental note or notes for the sum or sums advanced by the Mortgagee for the alteration, modernization, improvement, maintenance, or repair of said premises, for taxes or assessments against the same and for any other purpose authorized hereunder. Said note or notes shall be secured hereby on a parity with and as fully as if the advance evidenced thereby were included in the note first described above. Said supplemental note or notes shall bear interest at the rate provided for in the principal indebtedness and shall be payable in approximately equal monthly payments for such period as may be agreed upon by the creditor and debtor. Failing to agree on the maturity, the sum or sums so advanced shall be due and payable 30 days after demand by the creditor. In no event shall the maturity extend beyond the ultimate maturity of the note first described above.

9. No failure of the Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past or present default on the part of the Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by the Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagor to procure such insurance or to pay such taxes, debts, liens, or charges; and the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof secured hereby.

10. If the Mortgagor shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall do and perform all acts and agreements to be done and performed by the Mortgagor under the terms and provisions of this mortgage, then this conveyance shall be and become null and void.

11. If the Mortgagor shall fail to pay, or cause to be paid, as it matures, the indebtedness hereby secured or any part thereof, according to the terms thereof, or if the Mortgagor shall fail to do or perform any other act or thing herein required or agreed to be done or performed, or if the interest of the Mortgagee in said property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon, then, in any such event, the whole indebtedness hereby secured shall, at the option of the Mortgagee, and without notice, become immediately due and payable and this mortgage subject to foreclosure; and in such event the Mortgagee shall have the right and is hereby authorized to enter upon and take possession of said property, and, after or without taking possession, to sell the same before the Courthouse door in the city of Pell City, County of SHELBY, Alabama, at public outcry, for cash, first giving notice of the time, place, and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized to execute to the purchaser at said sale a deed to the property so purchased, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. The Mortgagee may bid at the sale and purchase said property, if the highest bidder therefor.

12. The proceeds of a foreclosure sale, judicial or otherwise, shall be applied: First, to the expenses of advertising and selling, including the attorney's fees, provided for in paragraph 4 hereof; second, to the repayment of any money, with interest thereon, which the Mortgagee may have paid or become liable to pay or which it may then be necessary to pay for taxes, assessments, insurance and other charges, liens, or debts hereinabove provided; third, to the payment and satisfaction of the indebtedness hereby specially secured with interest, but interest to date of sale only shall be charged; fourth, to reimbursement of the Department of Veterans Affairs for any sums paid by it on account of the guaranty or insurance of the indebtedness evidenced by the note secured hereby; fifth, the balance, if any, shall be paid to the Mortgagor.

13. As long as any of the indebtedness hereby secured shall remain unpaid the Mortgagor will neither commit nor permit waste on the premises hereby conveyed; and upon the commission of any waste thereon the Mortgagee may, at its option, declare the entire indebtedness hereby secured to be at once due and payable. Nor will the Mortgagor remove any of the fixtures on the premises hereby conveyed so long as any of the indebtedness hereby secured shall remain unpaid.

14. If the Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, the Mortgagee may proceed to collect the rent, income, and profits from the premises, either with or without the appointment of a receiver. Any rents, income, and profits collected by the Mortgagee prior to foreclosure of this indebtedness, less the cost of collecting the same, including any real

estate commission or attorney's fee incurred, shall be credited first, on the advances with interest thereon, then upon the interest, and the remainder, if any, upon the principal debt hereby secured.

15. Any promise made by the Mortgagor herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to such debts the Mortgagor waives all right of exemption under the law.

16. The indebtedness evidenced by the note first described above and by this mortgage represents the unpaid balance of the purchase price due by the Mortgagor to the Mortgagee for the purchase price of the property herein conveyed, and this is a purchase money mortgage.

17. If the indebtedness secured hereby be guaranteed or insured under Title 38 United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of the parties hereto, and any provisions of this or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations are hereby amended to conform thereto.

18. The covenants, conditions, and agreements herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns, of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders, and the term, "Mortgagee," shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

Given under their hands and seals this the 24th day of November, 1998.

James R. Smith Jr (SEAL)  
JAMES R SMITH, JR

Lois E Smith (SEAL)  
LOIS E SMITH

\_\_\_\_ (SEAL)

\_\_\_\_ (SEAL)

**STATE OF ALABAMA,**

Shelby

**County ss:**

On this 24th day of November, 1998, I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that JAMES R SMITH, JR and LOIS E SMITH

whose name(s) are signed to the foregoing conveyance, and who are known to me, acknowledged before me that, being informed of the contents of the conveyance, they executed the same voluntarily and as their act on the day the same bears date.

Given under my hand and seal of office this 24th day of November, 1998

My Commission expires: 10/3/2001

Mark L. Rowe  
Notary Public

This instrument was prepared by  
Courtney Mason & Associates, P.C.  
1904 Indian Lake Drive, Suite 100  
Birmingham, Alabama 35244

MARK L. ROWE  
MY COMMISSION EXPIRES  
10/03/2001



DVA LOAN NO.	LENDERS LOAN NO.
22-6-0524730	521599

## DEPARTMENT OF VETERANS AFFAIRS HOME LOAN ASSUMPTION RIDER TO DEED OF TRUST/MORTGAGE

This Department of Veterans Affairs Home Loan Assumption Rider is made this 24th day of November, 1998, and amends the provisions of the Deed of Trust/Mortgage, (the "Security Instrument") of the same date, by and between JAMES R SMITH, JR and LOIS E SMITH, Husband and Wife

the Trutors/Mortgagors, and MORTGAGEAMERICA, INC, the Beneficiary/Mortgagee, as follows:

Adds the following provisions:

### NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to section 3714 of Chapter 37, Title 38, United States Code.

- A. **Funding Fee.** A fee equal to one-half of 1 percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729 (b).
- B. **Processing Charge.** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which section 3714 of Chapter 37, Title 38, United States Code applies.
- C. **Indemnity Liability.** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the loan, including the obligation of the veteran to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Trustor/Mortgagor has executed this Department of Veterans Affairs Home Loan Assumption Rider.

Signature of Trustor(s)/Mortgagor(s)

\_\_\_\_\_

*James R Smith Jr*  
\_\_\_\_\_  
JAMES R SMITH, JR

\_\_\_\_\_

*Lois E Smith*  
\_\_\_\_\_  
LOIS E SMITH

Inst # 1998-47557

ISC/VASSUMRID\*\*//0891-L

12/01/1998-47557  
11:24 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 SNA 160.40