

Inst # 1999-10692

03/15/1999-10692
08:46 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
142.05

LOAN MODIFICATION AGREEMENT

(Providing for Adjustable Interest Rate)

This Loan Modification Agreement ("Agreement") made this 4th day of FEBRUARY, 1999 between **ROBERT SAMUELS AND WIFE, BEVERLY SAMUELS** ("Borrower") and **NEW SOUTH FEDERAL SAVINGS BANK** ("Lender"), amends and supplements (1) the Mortgage, Deed of Trust or Deed to Secure Debt (the "Security Instrument"), dated July 7, 1998, in the original principal sum of SEVENTY-FIVE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$75,700.00) and recorded in Instrument #1998-27747 in the Office of the Judge of Probate of Shelby County, Alabama, and (2) the Note bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and Lot 7-A, Meadow Brook Road, Birmingham, AL. 35242, the real property described being set forth as follows:

Lot 7-A, according to a Resubdivision of Lots 7, 8 and 9, Meadow Brook, 10th Sector, as recorded in Map Book 21, Page 126, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

The Adjustable Rate Note attached hereto as Exhibit "A", is incorporated into this modification as though written herein.

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. As of February 4, 1999, the amount payable under the Note and Security Instrument (the "Unpaid Principal Balance") is U.S. \$75,700.00 consisting of the amount(s) loaned to the Borrower by the Lender and any interest capitalized to date. The beginning payment date on the Note shall be amended to read SEPTEMBER 1, 1999, with a new maturity date on the Note and Security Instrument to read AUGUST 1, 2029.
2. It is hereby understood that the Note attached hereto as Exhibit "A" and made a part hereof sets out the new beginning payment date, the new maturity date, the new interest rate change dates and the number of months for completion of construction. All other terms remain the same.
3. It is hereby understood that the Construction Loan Agreement, which was incorporated into the security instrument by reference in the Security Rider, is hereby amended as follows: The date for completion of construction is hereby extended to July 31, 1999, called the conversion date.
4. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in the Borrower is sold or transferred and the Borrower is not a natural person) without the Lender's prior written consent, the Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument.

If the Lender exercises this option, the Lender shall give the Borrower notice of acceleration. The notice shall provide a period of not less than 30 day from the date the notice is delivered or mailed within which the Borrower must pay all sums secured by the Security

Instrument. If the Borrower fails to pay these sums prior to the expiration of this period, the Lender may invoke any remedies permitted by the Security Instrument without further notice or demand to the Borrower.

5. The Borrower also will comply with all other covenants, agreements, and requirements of the Security Instrument, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under Security Instrument.

(a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing or relating to, any change or adjustment in the rate of interest payable under the Note; and

(b) all terms and provisions of any adjustable rate rider or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.

6. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument. Except as otherwise specifically provided in this Agreement, the Note and Security Instrument will remain unchanged, and the Borrower and Lender will be bound, by and comply with, all of the terms and provisions thereof, as amended by this Agreement.

Witness: _____

Robert Samuels (Seal)
ROBERT SAMUELS

Witness: _____

Beverly Samuels (Seal)
BEVERLY SAMUELS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that ROBERT SAMUELS AND BEVERLY SAMUELS, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day, that being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 4th day of February, 1999.

[Signature]
Notary Public

My Commission Expires: 5-29-99

NEW SOUTH FEDERAL SAVINGS BANK

Witness: _____

By: MARY GUINED *Mary Guined*
Its: ASSISTANT VICE PRESIDENT

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that MARY GUINED, whose name as ASSISTANT VICE PRESIDENT of New South Federal Savings Bank, 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 the instrument, _____ as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 22ND day of FEBRUARY, 1999.

My Commission expires: 02/26/00

[Signature]
Notary Public

samuels.adjmod

EXHIBIT "A"

ADJUSTABLE RATE NOTE

Loan Number : 257923 (1 Year Treasury Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

February 4, 1999

[date]

BIRMINGHAM

[city]

ALABAMA

[state]

MEADOW BROOK RD., BIRMINGHAM, AL 35242
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 75,700.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is New South Federal Savings Bank

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.000 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on September 1, 1999. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on August 1, 2029, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at 1900 Crestwood Boulevard
Birmingham, Alabama 35283-0180

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 555.46

.This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The interest rate I will pay may change on the first day of August, 2003, and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before the Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Change

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Three And Three-Eighths** percentage points (**3.375 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Change

The interest rate I am required to pay at the first Change Date will not be greater than **9.000 %** or less than **7.000 %**. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point (1.0%) from the rate of interest I have been paying for the preceding twelve months. My interest rate will never be greater than **13.000 %**.

(E) Effective Date of Change

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000 %** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines the Lender's security will not be impaired by the loan assumption and that the risk of

a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Robert Samuels (Seal)
ROBERT SAMUELS
-Borrower

Beverly Samuels (Seal)
BEVERLY SAMUELS
-Borrower

Beverly Samuels (Seal)
-Borrower

(Seal)
-Borrower

(Sign Original Only)

NOTE RIDER

(Construction/Permanent Loan)
(Fixed Rate Mortgage)

The Note Rider is hereby incorporated into and made a part of the certain "Note" of even date herewith executed by the undersigned, as "Borrower" in favor of NEW SOUTH FEDERAL SAVINGS BANK (the "Lender"). Unless modified by this Note Rider, the remaining terms and conditions of the Note are ratified, confirmed and renewed in all respects. Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Construction/Permanent Loan Agreement, and any Addendum attached thereto (the "Loan Agreement"). In further consideration for the indebtedness evidenced by the Note, Borrower hereby acknowledges and agrees as follows, ANYTHING CONTAINED IN THE NOTE, SECURITY INSTRUMENT OR ANY OTHER DOCUMENT OR AGREEMENT TO THE CONTRARY NOTWITHSTANDING:

1. CONSTRUCTION PHASE INTEREST RATE

The construction phase of this Note will be for a period of time not less than **SIX** Months, beginning on the date of disbursement by the closing agent of funds, whether Loan Funds or Borrower's funds, in accordance with the HUD-1 Settlement Statement (the "Disbursement Date"), and ending on the last day of the month which is **SIX** (6) months from the Disbursement Date. During the construction phase of this Note, interest shall accrue on the unpaid principal balance advanced by Lender to Borrower, from time to time, according to the terms and conditions of the Loan Agreement and this Note, at the highest prime rate, as established each day in *The Wall Street Journal*, and shall change each time the highest prime rate, as established each day in *The Wall Street Journal*, changes, on the date on which the change occurs.

The permanent phase of this Note commences on the day following the maturity of the construction phase. During the permanent phase of this Note, interest shall accrue on the unpaid principal balance at the rate set forth in the Note to which this Note Rider is attached.

2. INTEREST ONLY PAYMENTS DURING CONSTRUCTION PHASE

During the construction phase the Borrower shall pay to the Lender all interest accruing on the unpaid principal balance advanced by Lender to Borrower, from time to time, pursuant to the Note and in accordance with the Loan Agreement on the fifteenth day of the month following the first advance of principal under this Note, and on the fifteenth day of each month thereafter until maturity of the construction phase. If Lender has not received the full amount of any interest only payment before 15 calendar days after the date it is due, the Borrower will pay a late charge equal to the late charge percentage described in the Note for the overdue interest only payment.

All interest only payments during the construction phase shall be made at P. O. Box 830672, Birmingham, AL 35283-0672 or at such other place as Lender may designate in writing.

3. COMMENCEMENT OF PRINCIPAL AND INTEREST PAYMENTS

On the first day of the month as described in the Note, and thereafter, on the first day of each succeeding month until the maturity date set forth in the Note, the Borrower shall pay to the Lender the amortized payments of principal and interest prescribed in and in accordance with the Note, together with sums for escrow items, as described in the Security Instrument.

The amortized payments of principal and interest shall be based upon the total principal called for in the Note regardless of (i) any principal that may be held in escrow by the Lender following the maturity of the construction phase, as described in the Loan Agreement or (ii) the progress of construction of the improvements to the New Residence, as described and defined in the Loan Agreement.

4. DEFAULT

Contemporaneously herewith, and in addition to the Security Instrument, the Borrower has executed with the Lender the Loan Agreement and various other agreements pertaining to the Note and Loan Agreement (collectively, the "Loan Documents"). A default in the Security Instrument, the Loan Agreement or any Loan Document, which remains uncured after the expiration of any applicable cure periods, shall constitute a default of this Note, and Lender, at its sole option, shall have the right to declare the entire indebtedness due under this Note to be at once due and payable in full, without notice, time being of the essence. Upon such acceleration, the Lender shall be entitled to exercise all remedies available to the Lender under the Loan Documents, the Note and the Security Instrument, without notice, including but not limited to, the right to apply any Funds (as defined in the Loan Agreement) to the indebtedness evidenced by this Note.

5. PREPAYMENT PREMIUM

During the construction phase and for a period of ninety (90) days following the completion of the improvements as determined by a satisfactory final inspection, the Borrower may prepay the indebtedness in whole, or in part, upon the payment of a prepayment premium of 2.5% of the amount so prepaid. Thereafter, the Note may be prepaid without premium, in the manner described in the Note.

6. ADDENDUMS TO NOTE RIDER

If marked, the attached addendum is made a part of the Note Rider hereof:

(XX) Permanent Phase Interest Rate Modification Option

THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT I/WE HAVE READ THE ABOVE FOREGOING NOTE RIDER IN ITS ENTIRETY AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

BORROWER

ROBERT SAMUELS

DATE:

February 4, 1999

BORROWER

BEVERLY SAMUELS

DATE:

February 4, 1999

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Construction/Permanent
Fixed Rate Note Rider - MultiState 5/97

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