

## MORTGAGE ASSUMPTION AGREEMENT

THIS MORTGAGE ASSUMPTION AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, of \_\_\_\_\_, (hereinafter referred to as the "Lender") and \_\_\_\_\_, of \_\_\_\_\_ (hereinafter referred to as "Borrower").

### WITNESSETH:

WHEREAS, Lender is the holder and owner of the following documents (hereinafter sometimes collectively referred to as the "Loan Documents"):

1. Mortgage Note dated \_\_\_\_\_, in the original principal face amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) executed and delivered by \_\_\_\_\_ (hereinafter referred to as the "Original Borrower") in favor of Lender (hereinafter referred to as the "Note"); and,

2. Mortgage given by Original Borrower as "Mortgagor" to Lender as "Mortgagee" dated \_\_\_\_\_, which Mortgage is recorded on the Public Records of \_\_\_\_\_ County, \_\_\_\_\_ at O.R. Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter referred to as the "Mortgage"), and which Mortgage encumbers the real property as described therein; and,

WHEREAS, the Original Borrower is desirous of conveying the property encumbered by the Mortgage, (hereinafter referred to as the "Property") to Borrower; and,

WHEREAS, the Borrower desires to receive said Property and formally assume the Mortgage and perform all of the covenants and conditions contained in the Mortgage Note, the Mortgage and all other Loan Documents as partial consideration for its purchase of the Property and as consideration for the Lender's willingness to consent to the sale of the Property which is encumbered by the Loan Documents; and,

WHEREAS, the Mortgage expressly prohibits the conveyance of the Property without the express written consent of the Lender; and,

WHEREAS, the Lender is unwilling to give its consent to the transfer of the Property to the Borrower unless the Borrower shall assume all of the obligations heretofore imposed by the Loan Documents upon the Original Borrower;

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and in consideration of the Premises and of the mutual covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. Assumption. Borrower expressly assumes the Loan Documents and agrees to perform all covenants, conditions, duties and obligations contained therein and agrees to pay the Note and the obligations evidenced thereby in a prompt and timely manner in accordance with the terms thereof.

2. Consent to Conveyance. Lender hereby consents to the transfer of the Property to the Borrower, but the Lender expressly reserves the right to withhold its consent to any future sale or transfer of the Property, as provided for in the Mortgage.

3. Warranties and Representations. Borrower affirms, warrants, represents and covenants that Borrower has no defenses nor rights of set-off against Lender or against the payment, collection or enforcement of the indebtedness evidenced by the Note and secured by the Mortgage and owed to Lender. Borrower further warrants and represents as follows:

a. Borrower has done no acts nor omitted to do any act which might prevent Lender from, or limit Lender in, acting upon or under any of the provisions herein, in the Mortgage, in the Note or any other Loan Documents;

b. Borrower is not prohibited under any other agreement with any other person or any judgment or decree, from the execution and delivery of this Agreement, the performance of each and every covenant hereunder or under the Mortgage, Note or any other Loan Documents;

c. No action has been brought or threatened which would in any way interfere with the right of Borrower to execute this Agreement and perform all of Borrower's obligations contained herein, in the Note, in the Mortgage, or in any other Loan Document;

d. All financial statements of Borrower and Guarantors, if any, are true and correct in all respects, fairly present the respective financial conditions of the subjects thereof, as of the respective dates thereof and no material adverse change has occurred that would affect Borrower's or Guarantors', if any, ability to repay the indebtedness evidenced by the Note and secured by the Mortgage;

e. Borrower is duly formed, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has full power and authority to consummate the transactions contemplated under this Agreement.

4. Acknowledgements. Borrower acknowledges that:

a. The Loan Documents are in full force and effect; and,

b. The principal balance of the loan as represented by the aforesaid Note as of the date of this Agreement is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) and principal and interest are unconditionally due and owing to the Lender as provided in the Note.

5. Costs. Borrower shall pay all costs of the assumption made hereby, to include without limitation, attorneys' fees and recording costs, as well as the cost of an endorsement to Lender's title insurance policy insuring the lien of the Mortgage after the recording of this Agreement. Such costs shall be due at closing hereunder and the payment thereof shall be a condition precedent to Lender's consent to the transfer of the Property to Borrower. In the event that it is determined that additional costs relating to this transaction are due, Borrower agrees to pay such costs immediately upon demand.

6. No Novation. It is the intent of the parties that this instrument shall not constitute a novation and shall in no way adversely affect the lien priority of the Mortgage and other Loan Documents referred to above. In the event that this Agreement, or any part hereof, shall be construed by a court of competent jurisdiction as operating to affect the lien priority of said Mortgage or the other Loan Documents, or any of them, over the claims which would otherwise be subordinate thereto, then to the extent so ruled by such court, and to the extent that third parties acquiring an interest in such property as is encumbered by the respective Mortgage, the other Loan Documents between the time of execution of Mortgage, the other Loan Documents, and the execution hereof, are prejudiced thereby, this Agreement, or such portion thereof as shall be so construed, shall be void and of no force and effect and this Agreement shall constitute, as to that portion, subordinate lien on the collateral described therein, incorporating by reference the terms of the Mortgage and other Loan Documents, and which Mortgage and other Loan Documents then shall be enforced pursuant to the terms therein contained,

independent of this Agreement; provided, however, that notwithstanding the foregoing, the parties hereto, as between themselves, shall be bound by all terms and conditions hereof until all indebtedness owing from the Borrower to the Lender shall have been paid in full.

7. Assumption Fee. In consideration of Lender's consenting to the conveyance of the Property to the Borrower, Lender is entitled to, and has earned, an assumption fee in the amount of \_\_\_\_ percent (\_\_\_%) of the original principal face amount of the indebtedness evidenced by the Note. Said fee shall be due and payable upon the execution and delivery of this Agreement. Borrower hereby agrees and acknowledges that said fee is being charged solely for costs relating to the assumption of the Mortgage and not as interest for the forbearance or use of money.

8. Recordation. The recording of this Agreement on the Public Records shall evidence the closing of the transaction described herein.

9. Paragraph Headings. The paragraph headings used herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.

10. Governing Law. This Agreement shall be governed, interpreted and construed by, through and under the laws of the State of \_\_\_\_\_.

11. Time of the Essence. Time is of the essence of this Agreement.

12. Attorneys' Fees. All costs incurred by Lender in enforcing this Agreement and in collection of sums due Lender from Borrower, to include, without limitation, reasonable attorneys' fees through all trials, appeals, and proceedings, to include, without limitation, any proceedings pursuant to the bankruptcy laws of the United States and any arbitration proceedings, shall be paid by Borrower.

13. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as follows:

As to Lender this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

"LENDER"

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

As to Borrower this \_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

"BORROWER"

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

THE FOREGOING instrument was acknowledged before me this (28) day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

#### **NOTICE**

The information in this document is designed to provide an outline that you can follow when formulating business or personal plans. Due to the variances by many local, city, county and state laws, we recommend that you seek professional legal counseling before entering into any contract or agreement.