

Return to  
**First National Financial**  
**Title Services, Inc.**  
 P.O. Box 956370  
 Duluth, GA 30095

**THIS INSTRUMENT PREPARED BY:**

Thomas A. Ansley, Esq.  
 Sirote & Permutt, P.C.  
 2311 Highland Avenue South  
 Birmingham, Alabama 35205

**ASSIGNMENT OF RENTS AND LEASES**

**THIS ASSIGNMENT OF RENTS AND LEASES** (this "Assignment") dated January 30, 2001, is between **P&N PELHAM, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is 420 Office Park Drive, Suite G-115, Birmingham, Alabama 35223, and **COMPASS BANK** (hereinafter called the "Lender"), Mortgagee, whose address is 15 20<sup>th</sup> Street South, Second Floor, Birmingham, Alabama 35233, Attention: Martin R. Brown.

**WITNESSETH**

**FOR VALUE RECEIVED**, Borrower hereby absolutely grants, transfers, and assigns to Lender and its successors and assigns all right, title and interest of Borrower in and to all those certain leases (the "Leases"), now or hereafter in effect with respect to the real property located in Pelham, Shelby County, Alabama, as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"), including the Leases described on Exhibit "B" attached hereto, together with (i) any extensions, modifications or renewals thereof and (ii) any guarantees of the lessees' obligations thereunder (all of said leases, together with all such guarantees, modifications, extensions or renewals thereof, being hereinafter collectively referred to as the "Leases"), and (iii) any and all security deposits received by Borrower or any agent of Borrower in connection therewith, for the purpose of securing (a) payment of all sums now or at any time hereafter due Lender and secured by a certain Mortgage with Assignment of Rents, Security Agreement and Fixture Filing (the "Mortgage") by Borrower for the benefit of Lender, dated as of even date herewith and recorded on or about the date hereof, all as recorded, or to be recorded, in the Office of the Judge of Probate of Shelby County, Alabama, together with any future advances made thereunder to the extent permitted under Alabama law, and (b) performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the Mortgage, the Building and Term Loan Agreement, dated as of even date herewith, between Borrower and Lender (as the same may be amended from time to time, the "Loan Agreement") or the Promissory Notes, in the maximum principal sum of \$1,926,648 secured thereby (hereinafter, as the same may be amended, renewed, extended or restated, referred to as the "Notes"; such Notes, together with the Mortgage, the Loan Agreement, this Assignment, and any other instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note are collectively referred to as the "Loan Documents"). This Assignment is intended to be an absolute, present assignment from Borrower to Lender. The rents, issues and profits of the Property are hereby assigned absolutely by Borrower to Lender, contingent only upon the occurrence of an Event of Default as defined hereinbelow.

**Inst # 2001-04983**

**02/12/2001-04983**

**02:42 PM CERTIFIED**  
**SHELBY COUNTY JUDGE OF PROBATE**

010 CJ1 38.00

**ARTICLE I**  
**WARRANTIES AND COVENANTS**

1.01 **Warranties of Borrower.** Borrower hereby warrants and represents to Lender that:

(a) Borrower is the sole owner of landlord's interest under the Leases, is entitled to receive the rents, issues, profits and security deposits under the Leases and from the Property, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred.

(b) Borrower has neither made nor permitted to be made any assignment of any of its rights under the Leases to any person or entity.

(c) Borrower has not done any act or omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.

(d) Borrower has not accepted rent under any of the Leases more than thirty (30) days in advance of its due date except for security deposits or otherwise as approved in writing by Lender.

(e) To the best knowledge of Borrower, there is no default by any of the lessees under the terms of any of the Leases.

(f) Borrower is not prohibited under any agreement with any other person or entity or under any judgment or decree from the execution and delivery of this Assignment or of the Leases, from the performance of each and every covenant of Borrower hereunder and under the Leases, or from the meeting of each and every condition contained herein or in the Leases.

(g) No action has been brought or threatened which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations herein contained.

1.02. **Covenants of Borrower.** Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every material condition and covenant of Borrower contained in the Leases consistent with prudent property management practices; (ii) at the sole cost and expense of Borrower and in accordance with prudent property management practices, diligently seek to enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the lessees thereunder; and (iii) appear in and defend any action growing out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower, as lessor thereunder, or of any of the lessees or guarantors thereunder.

(b) Borrower shall not without the prior written consent of Lender (i) modify the lease form approved by Lender; (ii) terminate the term or accept the surrender of any of the Leases, except in the ordinary course of Borrower's business (iii) waive, or release the lessees from, the performance or observance by the lessees of any obligation or condition of the Leases, except in the ordinary course of Borrower's business; (iv) permit the prepayment of any rents under any of the Leases for more than thirty (30) days prior to the accrual thereof; or (v) give any consent to any assignment by any of the lessees of



any of the Leases of any sublease of any part or portion of the Property, except in the ordinary course of Borrower's business.

(c) Upon the occurrence of an Event of Default hereunder, Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future tenant under the Leases to pay rental directly to Lender upon receipt of written demand from Lender to pay the same.

(d) Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to indemnify and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any of the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against it by reason of an act of Lender under this Assignment or under any of the Leases.

1.03 **Covenants of Lender.** Lender, by acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits of the Property, so long as there shall exist no Event of Default hereunder, Borrower shall have the right (i) to collect, but not more than thirty (30) days prior to accrual all such rents, issues and profits from the Property and to retain, use and enjoy the same, and (ii) to maintain the security deposits and any rents paid more than thirty (30) days in advance in an identifiable account in a bank in which funds are federally insured acceptable to Lender. Lender reserves the right to require Borrower to deposit any rents paid more than thirty (30) days in advance into an escrow account satisfactory to Lender.

(b) Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the recording of another mortgage in favor of Lender affecting the Property, this Assignment shall become and be void and of no further effect.

## **ARTICLE II** **DEFAULT**

2.01 **Event of Default.** The occurrence of any Event of Default under the Loan Agreement shall constitute an "Event of Default" hereunder:

2.02 **Remedies.** Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind (except as may be provided in any of the Loan Documents), exercise any or all of the following remedies:

(a) Declare any part or all of the indebtedness evidenced by the Loan Documents to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Property

on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the indebtedness secured by the Loan Documents, shall bear interest from the incurrence thereof at the default interest rate specified in the Notes, and shall be due and payable on demand;

(c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein; or

(d) Collect the rents, issues and profits and any other sums due under the Leases with respect to the Property, and apply the same in such order as Lender in its sole discretion may elect to pay (i) all costs and expenses, including reasonable attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all costs and expenses, including reasonable attorneys' fees, in the collection of any or all of the indebtedness secured by the Loan Documents, including all costs, expenses and reasonable attorneys' fees in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents; and (iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the indebtedness secured by the Loan Documents, then this Assignment and all rights of Lender hereunder shall cease and terminate.

Entry upon and taking possession of the Property and the collection of the rents and the application thereof as aforesaid, shall in no wise operate to cure or waive any default or Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Lender under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security. Lender shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have the full right to enter upon, take possession of, use and operate all or any portion of the Property which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any lessee under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Lender by Borrower.

### **ARTICLE III** **GENERAL PROVISIONS**

3.01 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.02 **Terminology and Capitalized Terms.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular



shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.03 **Severability**. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 **Applicable Law**. This Assignment shall be interpreted, construed and enforced according to the laws of the State of Alabama. Borrower consents that any legal action or proceeding arising hereunder, may be brought at the election of Lender, in the federal or state courts presiding in Shelby County, Alabama, and assents and submits to the personal jurisdiction of any such court in any such action or proceeding.

3.05 **No Third Party Beneficiaries**. This Assignment is made solely for the benefit of Lender and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.06 **No Oral Modifications**. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.07 **Cumulative Remedies**. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.08 **Cross-Default**. An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.

3.09 **Counterparts**. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

3.10 **Further Assurances**. At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed necessary by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary in order to effectuate,

complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues, profits and security deposits from the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.11 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made in accordance with the provisions relating to notice set forth in the Loan Agreement.

3.12 **Modifications, etc.** Borrower hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Loan Documents; extend or renew the Notes or any other of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Notes or any other of the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Notes, the Mortgage or any other of the Loan Documents; or take or fail to take any action of any type whatsoever, and no such action with Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.


3.13 **Waiver of Jury Trial.** **BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE Notes OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR**

**CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**IN WITNESS WHEREOF**, Borrower has caused this Assignment to be executed, as of the day and year first above written.

**P&N PELHAM, LLC**

By its sole members:

By   
Mark A. Peebles

AND

By   
Richard E. Dubose

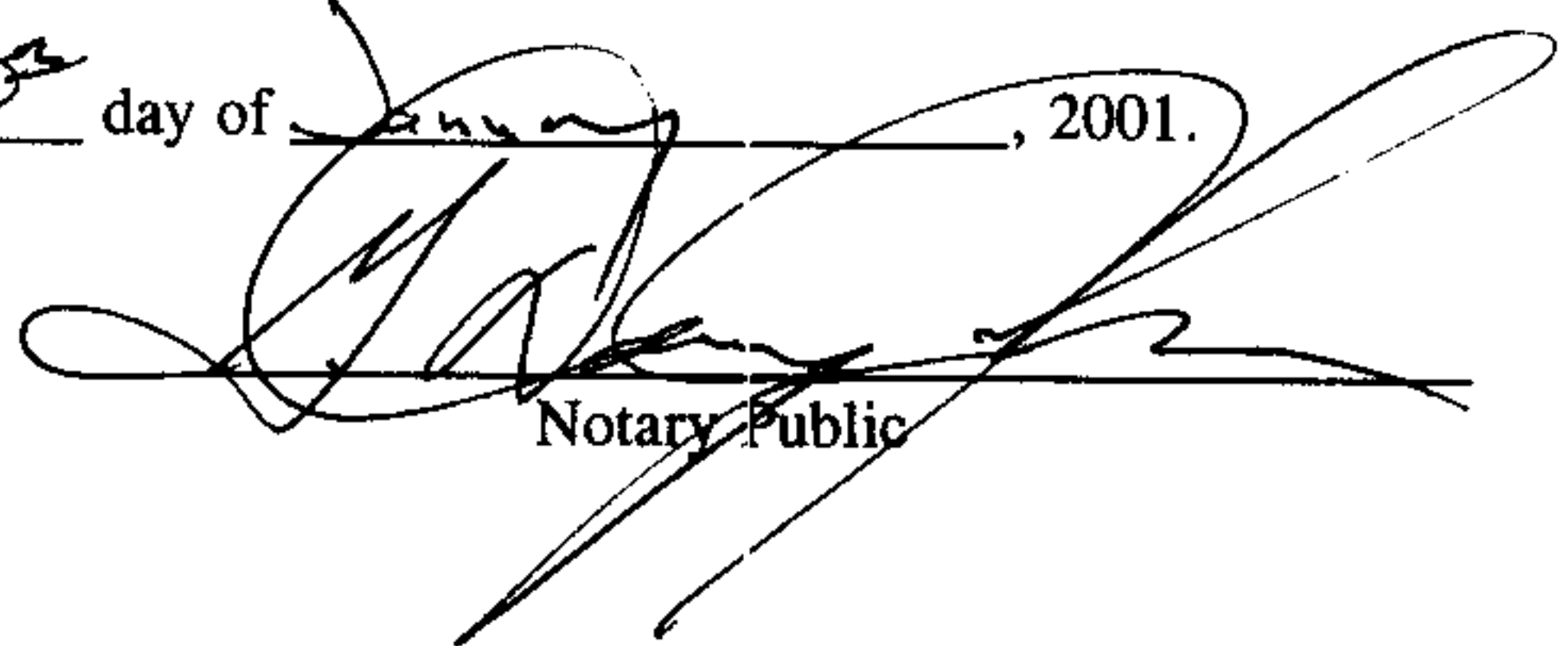


STATE OF ALABAMA )  
 :  
 JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Mark A. Peeples, whose name as a Member of P&N PELHAM, LLC, an Alabama limited liability company, 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 said instrument as such officer of the limited liability company, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 30<sup>th</sup> day of January, 2001.

[ NOTARIAL SEAL ]



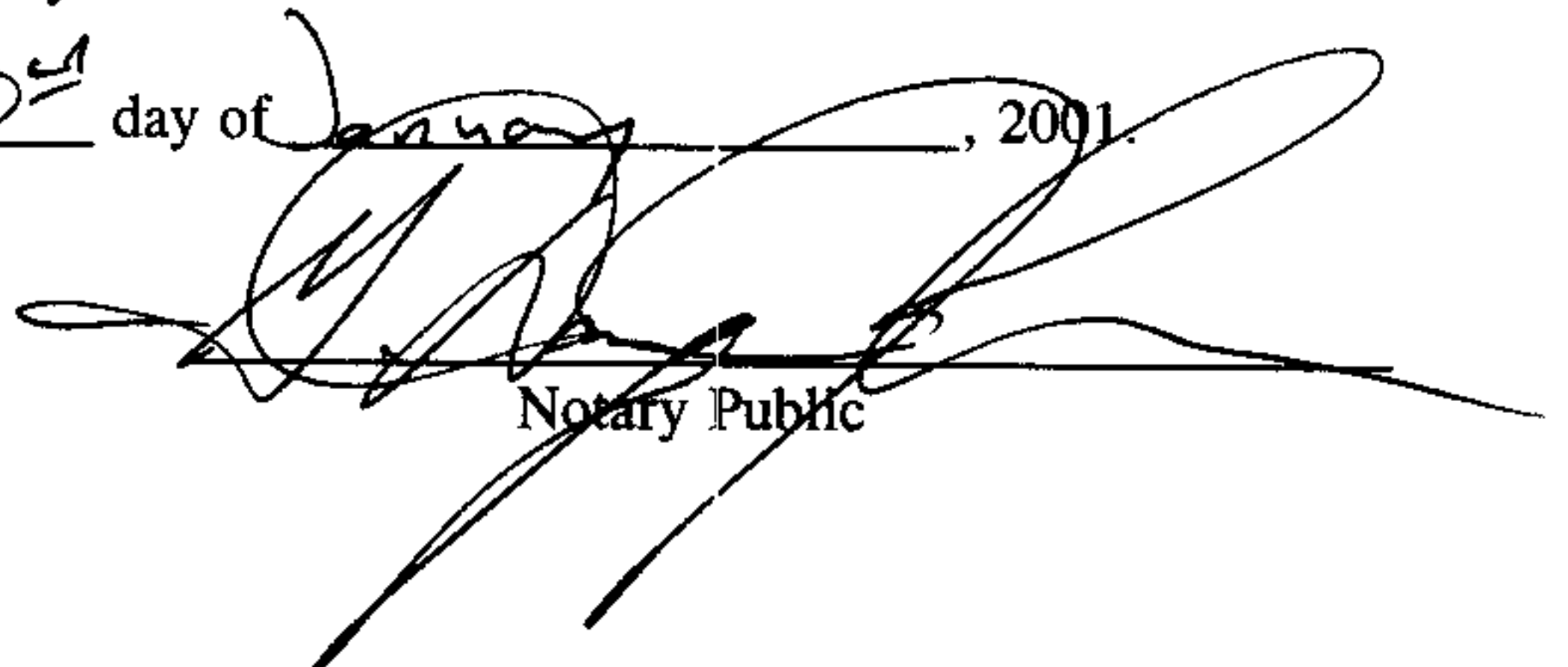
Notary Public

STATE OF ALABAMA )  
 :  
 JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Richard E. Dubose, whose name as a Member of P&N PELHAM, LLC, an Alabama limited liability company, 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 said instrument, he, as such officer of the limited liability company, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 30<sup>th</sup> day of January, 2001.

[ NOTARIAL SEAL ]



Notary Public



**EXHIBIT "A"**

**THE PROPERTY**

Lot 1, according to the Survey of The State Teacher's Retirement System of Ohio as recorded in Map Book 22, Page 130 in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama. Mineral and mining rights excepted.

**EXHIBIT "B"**

**LIST OF LEASES**

The following Leases are in effect as of the date of this Assignment (if none, state "none presently in effect"):

1. Lease dated November 20, 2000, between P&N PELHAM, LLC, an Alabama limited liability company, as Landlord, and HIBBETT SPORTING GOODS, INC., a Delaware corporation, as Tenant.
2. Lease dated January 25, 2001, between P&N PELHAM, LLC, an Alabama limited liability company, as Landlord, and STAPLES OFFICE SUPERSTORE EAST, INC., A Delaware corporation, as Tenant.
3. <sup>Sublease</sup> ~~Lease~~ dated December 11, 2000, between P&N PELHAM, LLC, an Alabama limited liability company, as Landlord, and Consolidated Stores, Inc., a(n) Ohio corporation, as Tenant.