

Drawn by, Recording Requested By
And When Recorded Mail To:
Oppenheimer Wolff & Donnelly LLP
45 South Seventh Street
Plaza VII, Suite 3300
Minneapolis, Minnesota 55402
Attn: Duane L. Paulson
FCL Loan No. 2901

Inst # 2001-45048

10/18/2001-45048
08:17 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
014 CH 51.00

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "Agreement") is dated as of the ____ day of September, 2001, and is made by FIRST COLONY LIFE INSURANCE COMPANY, a Virginia corporation ("Lender"); PELHAM INDUSTRIAL ENTERPRISES, LLC, an Alabama limited liability company and PELHAM INDUSTRIAL ENTERPRISES VII, LLC, an Alabama limited liability company (collectively, "Borrower") and MARC A. EASON, ESTATE OF DAVID BUNKIN, CHARLES STEPHENS and MARVIN R. ENGEL (collectively, the Guarantor).

RECITALS

- A. Loan Documents. On or about December 16, 1997, Lender made loans (collectively, the "Loan") to Borrower, in the principal amount of Fourteen Million and No/100 Dollars (\$14,000,000.00) and Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) evidenced by Promissory Notes dated December 16, 1997 (collectively, the "Note") being, in the aggregate, secured by that certain real property (the "Realty") described in Exhibit A attached hereto, such Loan and security being evidenced by the following (together with this Agreement and any other documents executed in connection with the Loan or with this Agreement, the "Loan Documents"):
1. Mortgage, Assignment of Rents and Leases and Leases, Security Agreement and Fixture Financing Statement ("Mortgage") dated December 16, 1997, recorded with the Shelby County Judge of Probate Court on December 19, 1997, as Instrument 1997-41256.
 2. Assignment of Rents and Leases (the "Assignment") dated December 16, 1997, recorded with the Shelby County Judge of Probate Court on December 19, 1997, as Instrument 1997-41257.
 3. Indemnity regarding environmental matters dated December 16, 1997, executed by the Borrower and Guarantor.
 4. UCC Financing Statements filed in the offices of the Alabama Secretary of State and recorded in Shelby County.
 5. Unconditional Guaranty by Guarantors dated December 16, 1997.

Alabama Title

6. Amendment to Promissory Note, Mortgage, Assignment of Rents and Leases and Security Agreement and to Assignment of Rents and Leases ("Amendment") dated June 30, 1999, recorded with the Shelby County Judge of Probate Court on June 30, 1999, as Instrument 1999-27501.
- B. Release of Cross Default. Requirements for release of the cross default provisions of the Loan Documents have been satisfied resulting in a modification of the Loan Documents as set forth in this Agreement.

THEREFORE, the parties agree as follows:

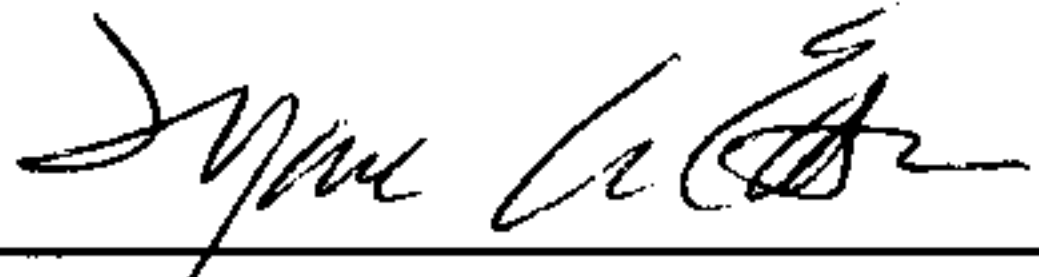
- a. Loan Modification. The Loan Documents are modified to remove the Amendment from the Loan Documents governing the Loan.
- b. Lender's Expenses. Borrower agrees to pay all of Lender's legal and administrative expenses in connection with this Agreement.
- c. Consent, Affirmation, Acknowledgment and Ratification and Consent of Guarantor. The parties hereto, including the Guarantor, join in the execution of this Agreement for the additional purposes of consenting to the terms of this Agreement and acknowledging that they are fully familiar with the terms of the Loan Documents and that they express the entire understanding of the parties regarding the Loan, and affirming, acknowledging and ratifying them subject to the Amendments provided for herein.
- d. Effect of Modification. Except as amended by this Agreement, the Loan Documents shall continue in full force and effect in accordance with their terms as originally executed and the Mortgage, the Assignment and/or any other Loan Documents that refer to the Loan, the Note, the Mortgage, or the Assignment shall, from and after the date of this Agreement, refer to the Loan, the Note, the Mortgage, and the Assignment as amended by this Agreement.
- e. Attorneys' Fees. If any suit or action is brought by the Lender to enforce or interpret the terms of this Agreement, the Trustor and Borrower shall pay the Lender's costs and expenses, including reasonable attorneys' fees, incurred in such suit or action. Such fees shall include, without limitation, attorneys' fees incurred at or in preparation for any trial, appeal or review or in any bankruptcy proceeding.
- f. Conditions. This Agreement shall be effective only when all of the following conditions have been satisfied:
 1. This Agreement has been duly executed by all parties in the manner indicated and filed with the Shelby County Judge of Probate Court.
 2. Borrower has paid all of Lender's expenses and fees arising out of this Agreement, including recording, attorney's fees, and other out-of-pocket costs of the Lender.

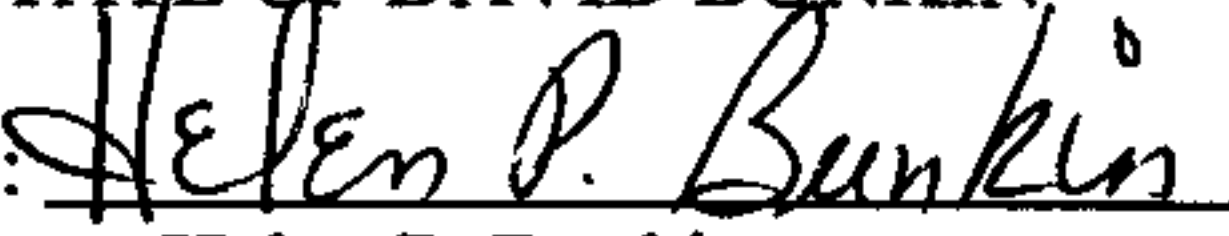
g. Miscellaneous.

1. The entities constituting the Borrower represent and warrant to Lender that they have no defenses or claims of offset to payment of the Loan or enforcement of the Loan Documents, as applicable, or any other defenses or offsets with respect of Lender's lending of funds to Borrower. As further consideration for this Agreement, Trustor and Borrower release Lender from any and all liability, known or unknown, arising out of any act or circumstance to date with respect to the Loan or any collateral for repayment of the Loan.
2. Each person included within Borrower warrants to Lender that they have full right, power and authority to enter into this Agreement and to perform all its obligations, and that all information and materials submitted to Lender in connection with the request for this modification contain no material misstatement or misrepresentation nor omit to state any material fact or circumstance.
3. This document constitutes the entire agreement among the parties with respect to the amendment to the Loan and shall not be amended, modified or terminated except by a writing signed by the party to be charged therewith.
4. Except as provided in this Agreement, the terms of the Loan Documents remain in full effect and are ratified. This Agreement is not intended to and shall not be construed to impair the validity, priority or enforceability of the Mortgage, the Assignment or the other Loan Documents.
5. This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.
6. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument.
7. This Agreement shall be governed by and construed in accordance with the laws of the Alabama.


IN WITNESS WHEREOF, the undersigned, being all of the members of Pelham Industrial Enterprises, LLC and Pelham Industrial Enterprises VII, LLC, have executed this Modification Agreement as of the day and year first above written.

PELHAM INDUSTRIAL ENTERPRISES, LLC,
an Alabama limited liability company

By: 
Marc A. Eason
Its: Member

By: ESTATE OF DAVID BUNKIN
By: 
Helen P. Bunkin
Its: Personal Representative
Its: Member

By: 
Charles H. Stephens
Its: Member

By: 
Marvin R. Engel
Its: Member

STATE OF ALABAMA)
(SS
COUNTY OF JEFFERSON)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marc A. Eason, whose name as Member of Pelham Industrial Enterprises, LLC, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Member acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such Member of Pelham Industrial Enterprises, LLC, on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann M. McNew
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA)
(SS
COUNTY OF JEFFERSON)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Helen P. Bunkin, whose name as Personal Representative of Estate of David Bunkin, a member of Pelham Industrial Enterprises, L.L.C., an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Personal Representative acknowledged that she, being informed of the contents of the instrument, executed the same voluntarily as such Personal Representative on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ben H. Myer
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA)
 (SS
COUNTY OF JEFFERSON)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Charles H. Stephens, whose name as Member of Pelham Industrial Enterprises, LLC, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Member acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such Member of Pelham Industrial Enterprises, LLC, on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann H. Myer
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA)
 (SS
COUNTY OF JEFFERSON)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marvin R. Engel, whose name as Member of Pelham Industrial Enterprises, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Member acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such Member of Pelham Industrial Enterprises, LLC, on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann H. Myer
Notary Public

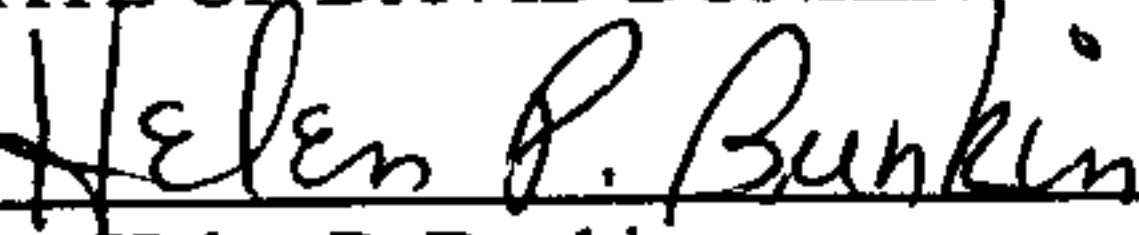
My Commission Expires: 2/9/02

PELHAM INDUSTRIAL ENTERPRISES VII,
LLC, an Alabama limited liability company

By: 
Marc A. Eason

Its: Member

By: ESTATE OF DAVID BUNKIN

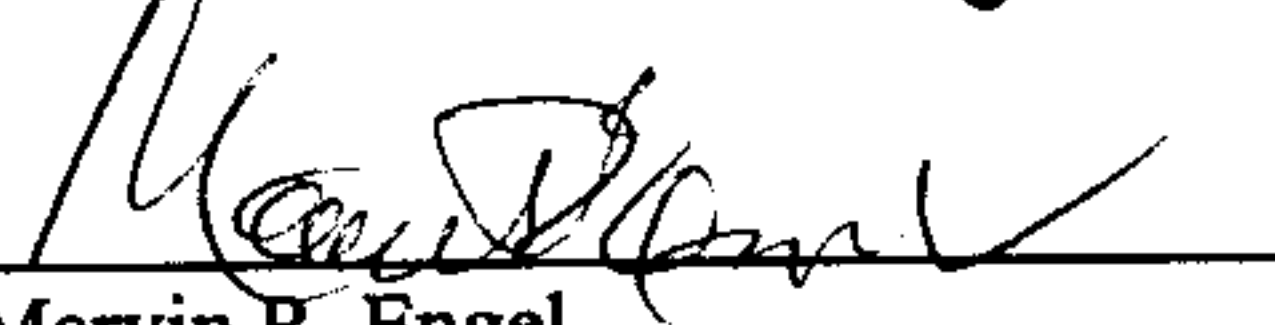
By: 
Helen P. Bunkin

Its: Personal Representative

Its: Member

By: 
Charles H. Stephens

Its: Member

By: 
Marvin R. Engel

Its: Member

STATE OF ALABAMA)
COUNTY OF Jefferson) SS

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marc A. Eason, whose name as Member of Pelham Industrial Enterprises VII, LLC, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Member acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such Member of Pelham Industrial Enterprises VII, LLC, on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann M. Myler
Notary Public

My Commission Expires 2/9/02

STATE OF ALABAMA)
COUNTY OF JEFFERSON) (SS

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Helen P. Bunkin, whose name as Personal Representative of Estate of David Bunkin, a member of Pelham Industrial Enterprises VII, LLC, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Personal Representative acknowledged that she, being informed of the contents of the instrument, executed the same voluntarily as such Personal Representative on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann M. Myler
Notary Public

My Commission Expires: 2/9/02

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Given under my hand and official seal this 5th day of October, 2001.

My Commission Expires: 2/9/02

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marvin R. Engel, whose name as Member of Pelham Industrial Enterprises VII, LLC, an Alabama limited liability company, is signed to the Modification Agreement and who is known to me to be such Member acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily as such Member of Pelham Industrial Enterprises VII, LLC, on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

My Commission Expires: 2/9/02

FIRST COLONY LIFE INSURANCE
COMPANY, a Virginia corporation

By: Pamela M. Prellt

Its: AVP & Mortgage Investment Officer

STATE OF WA
COUNTY OF King } ss

I, a Notary Public of the County and State aforesaid, certify that Pamela M. Prellt personally came before me this day and acknowledged that (s)he is the AVP & Mortgage Investment Officer of First Colony Life Insurance Company, a Virginia corporation, is signed to the foregoing instrument and who is known to me to be such AVP & Mortgage Investment Officer acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such AVP & Mortgage Investment Officer of First Colony Life Insurance Company on the day the same bears date.

Given under my hand and official seal this 11th day of October, 2001.



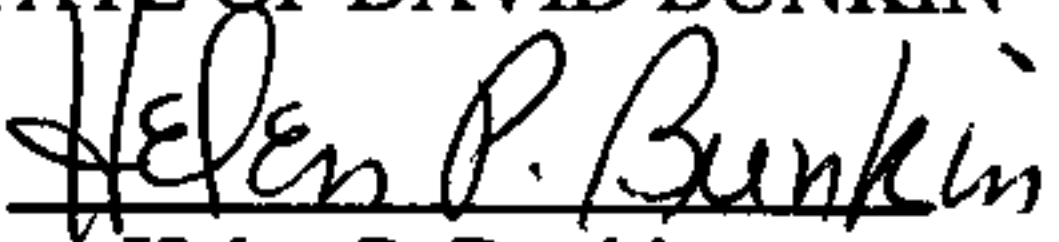
[Signature]
Notary Public

My Commission Expires 7/1/04



MARC A. EASON

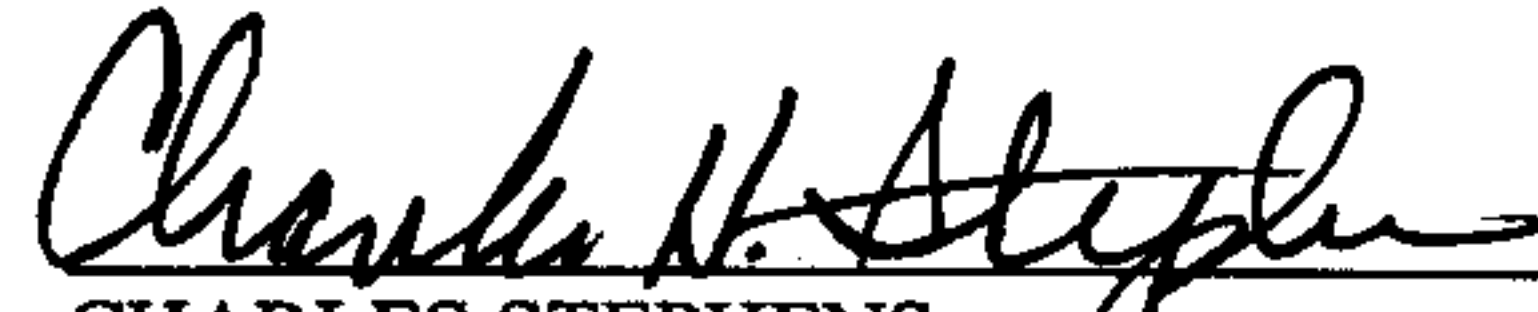
By: ESTATE OF DAVID BUNKIN

By: 

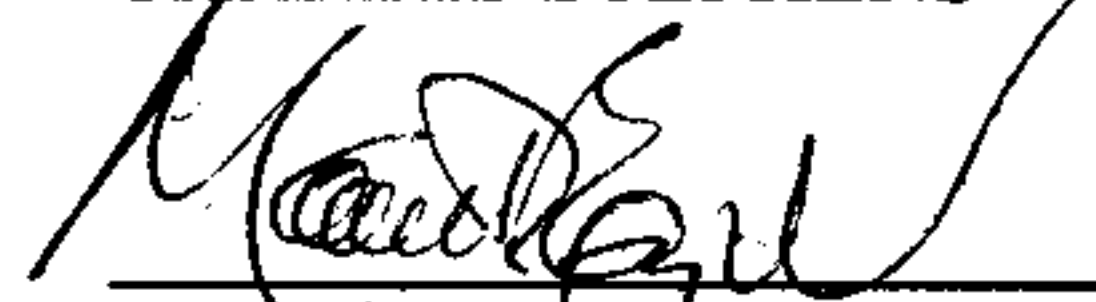
Helen P. Bunkin

Its: Personal Representative

Its: Member



CHARLES STEPHENS



MARVIN R. ENGEL

STATE OF ALABAMA)
COUNTY OF Jefferson) SS

I, the undersigned Notary Public in and for County in said State, hereby certify that Marc A. Eason, whose name is signed to the foregoing instrument and who is known to me to be such person acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann M. McNew
Notary Public

My Commission Expires 2/9/02

STATE OF ALABAMA)
COUNTY OF Jefferson) SS

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Helen P. Bunkin, whose name as Personal Representative of Estate of David Bunkin, is signed to the foregoing instrument and who is known to me to be such Personal Representative acknowledged that she, being informed of the contents of the instrument, executed the same voluntarily as such Personal Representative on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann M. McNew
Notary Public

My Commission Expires 2/9/02

STATE OF ALABAMA)
) SS
COUNTY OF Jefferson)

I, the undersigned Notary Public in and for County in said State, hereby certify that Charles Stephens, whose name is signed to the foregoing instrument and who is known to me to be such person acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann H. McNew
Notary Public

My Commission Expires 2/9/02

STATE OF ALABAMA)
) SS
COUNTY OF Jefferson)

I, the undersigned Notary Public in and for County in said State, hereby certify that Marvin R. Engel, whose name is signed to the foregoing instrument and who is known to me to be such person acknowledged that he, being informed of the contents of the instrument, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of October, 2001.

Ann H. McNew
Notary Public

My Commission Expires 2/9/02

**EXHIBIT A
TO
MODIFICATION AGREEMENT**

LEGAL DESCRIPTION:

The property which is the subject of this Mortgage is situated in the County of Shelby, State of Alabama, and is legally described as follows:

Parcel I

Lot D, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel II

Lots 3 and 4, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel III

Lot 5, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel IV

Lot O-14B, according to the Resurvey of Cahaba Valley Business Park, as recorded in Map Book 17 page 73 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel V

Lot OW-4A, according to the Resurvey of Cahaba Valley Business Park, as recorded in Map Book 17 page 73 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel VI

Lot 1, according to the survey of Valley Business Center Resurvey as recorded in Map Book 18 page 89 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

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