

STATE OF ALABAMA
COUNTY OF SHELBY

ASSIGNMENT OF LEASE AND RENTS BY LESSOR

KNOW ALL MEN BY THESE PRESENTS that Guy J. Smith and Nell T. Smith (hereinafter called the Assignor), in consideration of ONE AND NO/100 DOLLAR (\$1.00) paid by COLONIAL BANK (hereinafter called Assignee) and to induce the Assignee to make a loan to Guy J. Smith (hereinafter "Borrower") does hereby assign unto the Assignee the following leases:

- (1) Lease dated April 20, 1994 (hereinafter "Lease Agreement") between Assignor as Lessor and PELHAM CAR WASH & LUBE, INC. as Lessee, on the property described on Exhibit "A" attached hereto and incorporated herein by this reference;
- (2) any and all other leases between Assignor as Lessor and any individual or entity as Lessee, on the property described on Exhibit "A" attached hereto and incorporated herein by this reference;

Together with any and all options to purchase, modifications, extensions, and renewals thereof and together with all rights to the possession thereof.

Also, together with any and all other leases now existing or hereafter made during the term of this Assignment for the whole or any part of the above-described leased premises, and any modification, extension or renewal thereof.

1. **RENTAL PAYMENTS.** It is expressly understood and agreed by the Assignor and the Assignee hereof that said Assignor reserves and is entitled to the possession of said leased premises and to retain, use, and enjoy the same unless and until the Borrower defaults in the performance of the terms and conditions of its agreements to the Assignee.

In the Event of Default by the Borrower in the performance of any of the terms and conditions of said Agreement with the Assignee, or this Assignment, the Assignor hereby authorizes the Assignee, at its option, to enter and take possession of the leased premises and to exercise all of the rights and privileges of the Assignor under the terms of the lease assigned. If the Assignee shall exercise such option and the Borrower shall thereafter remedy such default, of which fact judgment of the Assignee shall be conclusive, the Assignor and Assignee shall be restored to their respective rights and estates as if no default had occurred. Said option may be exercised by said Assignee as often as any such default occurs, and a failure to exercise said option shall not impair the future rights of the Assignee hereunder. Upon payment in full of all indebtedness secured hereby, as evidenced by the records of the Assignee, the

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assignment shall be null, void, and of no effect.

2. **WARRANTY.** Assignor warrants that title to all property subject to the Lease Agreement is in Assignor; that Assignor is the lawful owner of the entire Lessor's interest in the Lease Agreement that the Lease Agreement is genuine; that Lessee has full capacity to contract; that Assignor has the right to make this Assignment; that full title and right to receive all rents and other sums due or to become due under the Lease Agreements are vested in Assignee by this Assignment; and that the rental property and rental payments and other sums are free from liens, encumbrances, claims, and set-offs of every kind whatsoever; that no payments due under the Lease Agreement have been made or will be made in excess of thirty (30) days prior to the date such payment is due under the Lease Agreement; and that, as of the date of this Assignment, the lease is not in default.

3. **POWER OF ATTORNEY.** Assignor appoints Assignee its true, lawful, and irrevocable attorney to demand, receive, and enforce payment, to give receipts, releases, and satisfactions, and to sue, either in the name of Assignor or in the name of Assignee, for all rents and sums payable under the Lease Agreement.

4. **CONSENT.** Assignor consents that, without further notice and without releasing the liability of Assignor, Assignee may, at Assignee's discretion, give grace or indulgence in the collection of all rents and sums due or to become due under the Lease Agreement and grant extensions of time for the payment of the same before, at, or after maturity.

5. **OBLIGATIONS OF ASSIGNOR.** Assignee does not assume any of the Lessor's obligations under the Lease Agreement, and Assignor agrees: (a) to keep and perform all obligations of the Lessor under the Lease Agreement and to save Assignee harmless from the consequences of any failure to do so; and (b) to preserve the property subject to the Lease Agreement free and clear of liens and encumbrances, except to or with the consent of Assignee.

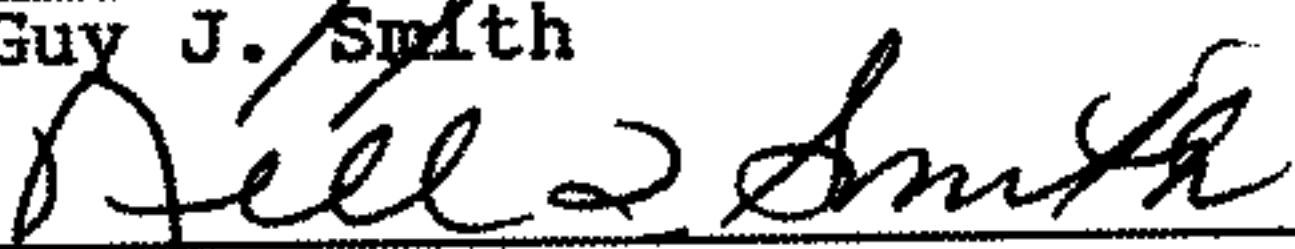
6. **NOTICE OF ASSIGNMENT.** Assignor agrees that Assignor will not assign any other interest in the Lease or Lease Agreement; that notice of this Assignment may be given to at any time at Assignee's option; and that, in the event any payment under the Lease Agreement is made to Assignor, Assignor will promptly transmit such payment to Assignee in the same form as it is received by Assignor except that Assignor will endorse instruments which are payable to Assignor.

7. **DURATION.** This Assignment is irrevocable and shall remain in full force and effect until and unless there is payment in full of all obligations owed by Borrower to Assignee or it is released by Assignee.

8. **WAIVERS BY NELL T. SMITH.** Nell T. Smith consents to and hereby waives any and all notice of the making of any modification, amendment, renewal or extension of any note or agreement evidencing the obligations of Borrower to Assignee, or any supplement thereto;

the making of any other agreement; the incurring of any other debts or obligations by the Borrower to Assignee or others and/or of the pledge, sale, transfer, and/or assignment thereof; the granting of security interests therein to Assignee; the granting to Borrower or to any obligor or debtor of any obligation or debts assigned to Assignee, of any extensions of time to make any payments to perform or discharge any obligations (or waive such performances and/or discharge); the compounding, compromising, and/or adjusting of any claim against the Borrower or any such obligor or debtor; the accepting or releasing of any security either of Borrower or of any third party; and all other notices which the Nell T. Smith is entitled. No act on Assignee's part and nothing other than the full payment, performances, and discharge of all obligations of Borrower to assignee shall operate to discharge or satisfy the liability of Nell T. Smith hereunder. The liability of the Nell T. Smith hereunder may be enforced without first resorting to any rights or remedies Assignee may have against Borrower, any other person, any other entity, or against any security. Nell T. Smith further agrees that this Assignment of Lease and Rents by Lessor, and all obligations secured hereby, shall remain in full force and effect and in its original tenor at all times hereinafter during the term hereof, notwithstanding i) the unenforceability, non-existence invalidity, or non-perfection of any of the obligations, or any instrument or agreement guaranteeing or securing the obligations, or of any lien, pledge, assignment, security interest or conveyance given as security for the obligations; ii) the failure of Assignee to pursue any collateral securing the obligations or the failure to file a claim against Borrower or any other guarantor of the obligation in any proceeding pertaining to the death, insolvency, or bankruptcy of such person or entity; or iii) any action or undertakings by, or against, Assignee or Borrower or concerning any collateral which is secured, pledged or assigned to the Assignee in connection with the obligation in any proceeding in the United States Bankruptcy Court; including without limitation, matters relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Assignee pursuant to any Chapter of the Bankruptcy Code, as may be applicable from time to time.

WITNESS its hand and seal this 4th day of May, 1994.


Guy J. Smith

Nell T. Smith

APPROVED AND AGREED TO:

PELHAM CAR WASH & LUBE, INC.

By: 
(Its President)

[ACKNOWLEDGEMENT ON NEXT PAGE]

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Guy J. Smith and Nell T. Smith, 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 this instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 4th day of May, 1994.


NOTARY PUBLIC
My Commission Expires: 6/7/95

THIS INSTRUMENT PREPARED BY:
William B. Hairston, III
ENGEL, HAIRSTON & JOHANSON, P.C.
P.O. Box 370027
Birmingham, Alabama 35237
(205)328-4600

EXHIBIT "A"
TO
MORTGAGE
SECURITY AGREEMENT
ASSIGNMENT OF LEASE
FINANCING STATEMENT (UCC-1)
CONSTRUCTION LOAN AGREEMENT
LANDLORD'S WAIVER AND CONSENT
AFFIDAVIT AND SUBORDINATION AGREEMENT
ASSIGNMENT OF LEASE AND RENTS BY LESSOR
CONTRACTOR'S CERTIFICATE ON HAZARDOUS SUBSTANCES
HAZARDOUS SUBSTANCES INDEMNIFICATION AND WARRANTY AGREEMENT

Borrower: Guy J. Smith (also known as Jerry Smith)

Lender: COLONIAL BANK

A parcel of land situated in the NE 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West in Shelby County, Alabama and being more particularly described as follows:

Commence at the NE corner of the South 1/2 of the NE 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West; thence North 82 deg. 58 min. 11 sec. West a distance of 1083.08 feet to the POINT OF BEGINNING; thence continue along the last described course a distance of 193.87 feet to a point on the Easterly right of way line of U.S. Highway No. 31; thence South 32 deg. 31 min. 16 sec. West along said right of way line a distance of 190.00 feet to a point on the Northerly right of way line of Canyon Park Drive; thence South 57 deg. 28 min. 44 min. East along said right of way line a distance of 175.00 feet; thence North 32 deg. 31 min. 16 sec. East a distance of 273.44 feet to the Point of Beginning; being situated in Shelby County, Alabama.

Said parcel also being described as Lot 11 of the proposed Canyon Park Subdivision.

SUBJECT TO: i) 1994 taxes a lien but not yet payable; ii) Transmission Line Permits to Alabama Power Company as shown by instruments recorded in Deed 223 page 80, Deed 102 page 397, Deed 127 page 597, Deed 134 page 37, Deed 102 page 396, Deed 170 page 282, and Deed 108 page 377 in the Probate Office of Shelby County, Alabama; and iii) Rights of Ways granted to Shelby County by instruments recorded in Deed 102 page 17, and Deed 76 page 259 in said Probate Office

ex.a 5/2/94 8:12am

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