

The maximum principal indebtedness for recording tax purposes is - 0 - .

THIS INSTRUMENT PREPARED BY:  
CHERNAU, CHAFFIN AND BURNSED  
SUNTRUST CENTER  
SUITE 1750  
424 CHURCH STREET  
Nashville, Tennessee 37219

Inst # 1997-16330

**ASSIGNMENT OF LEASES**

THIS ASSIGNMENT OF LEASES, is by and between PELHAM PROPERTIES, LLC, a Tennessee limited liability company, Assignor, (hereinafter collectively referred to as "Grantor") and the Assignee, SouthTrust Bank of Tennessee, N.A. - Nashville (hereinafter referred to as "Lender"), on this 24th day of April, 1997.

**Witnesseth:**

WHEREAS, the Grantor has simultaneously herewith received from the Lender a loan in the original amount of \$650,000.00 evidenced by a promissory note of even date ("Note"), secured by, among other things, an Alabama mortgage ("Mortgage") on certain real property described in EXHIBIT A, attached hereto (herein the "Premises"), together with any extensions, modifications or renewals of the aforesaid subject indebtedness (herein the "Secured Indebtedness");

WHEREAS, as a condition precedent to the granting of the subject loan, Lender has required that Grantor irrevocably assign to it all existing and future leases of the Premises, such assignment to remain in effect until the payment in full of the Secured Indebtedness and the release of this Assignment of Leases contemporaneously therewith;

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by each party hereto, and in consideration of Lender's agreement to advance to Grantor the credit evidenced by the Note, Grantor agrees as follows:

1. Assignment of Leases. To secure the payment of the Secured Indebtedness, Grantor hereby grants, transfers and assigns to Lender all of the right, title and interest of Grantor in and to any and all present and future leases and licenses of the Premises, including, but not limited to, that certain lease of the Premises between Assignor and Kenny Pipe & Supply, Inc. dated effective May 1, 1997 (collectively the "Leases"), together with all renewals, modifications or extensions thereof; together with all rents, income and profits arising therefrom; together with all options or other rights pertaining thereto; and together with all present or future policies of lease insurance and guarantees, if any, of the obligations of the lessee or licensee under any Lease. This assignment does not impair any restriction on leasing, licensing or sale of the Premises provided elsewhere herein or in the Mortgage. Additionally, this assignment shall not be construed as subordinating Lender's rights hereunder to any Lease.

2. Covenants Regarding Leases. Grantor covenants with Lender as follows:

(a) Faithful and Diligent Lessor. Grantor will observe and perform all of its obligations under the Leases, and will not cause or allow a default on its part thereunder, and shall diligently enforce or secure the performance of all obligations of the lessees under each Lease (the "Lessees").

(b) No Further Assignment. The Grantor has not previously executed in favor of any third party any assignment of Leases, nor any right to collect Lease payments, except as made in connection with any mortgage or deed of trust which shall be paid in full and released concurrently with the execution of this Assignment of Leases, the result of which shall be the extinguishment of such

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*Kawyer Title*

assignments and collection rights. Grantor will not further assign any of the Leases, or any interest therein, without the prior written approval of Lender. Any attempted assignment without such approval shall be void.

(c) Collection of Rent. Without consent of Lender, Grantor will not collect any of the rent or other amounts arising under any Lease more than one month in advance.

On default by Borrower Lender may elect at any time to have Lessees make payments under the Leases directly to Lender for application to the Secured Indebtedness; in such event, Lender is authorized to contact any Lessee for the purpose of demanding that all Lease payments be made directly to Lender and Grantor agrees to cooperate fully in causing such payments to be so made; at Lender's request, Grantor agrees to execute a written document demanding that all Lessees comply with the instructions of Lender as to such payments. Except as provided herein, and until such time as Lender may direct that payments under the Leases be made directly to Lender, Grantor is hereby granted a license to collect all rents due under the Leases.

(d) No Amendment or Waiver. Grantor will not engage in any formal or informal agreement with any Lessee and will not engage in any course of dealing with Lessee with regard to the Lease as to impair the enforceability of any of Lessee's obligations as set forth therein.

(e) No Alterations. Grantor will not allow any Lessee to materially alter the Premises, without the prior written consent of Lender.

(f) No Merger. Grantor agrees that, if by some means a Lessee acquires fee simple title to the Premises, the Lease shall not be extinguished by merger into the fee, and the Lease shall remain in full effect to secure the Secured Indebtedness.

(g) No Assumption by Lender. Grantor acknowledges and agrees that neither the execution of this Instrument nor the exercise of any remedies hereunder by Lender shall be deemed an undertaking by Lender to assume liability for the performance of any of Grantor's obligations under the Lease.

(h) Information Regarding Leases. Upon reasonable request by Lender, shall deliver to Beneficiary (i) executed counterpart originals of all Leases then in effect, (ii) estoppel letters from all Lessees in such form as Lender may require, (iii) a statement certified by Grantor (or by an executive officer or general partner of Grantor, if Grantor is a corporation or partnership) disclosing the income and expenses of Grantor's conduct of any business on the Premises, the operation of the Premises, or the leasing of the Premises for the last twelve (12) month calendar period prior to the giving of such notice.

(i) Subordination and Attornment. Upon request by Lender, Grantor shall deliver to Lender subordination and attornment agreements from all Lessees, in form and substance acceptable to Lender.

(j) Notification of Claim by Lessee. Grantor will promptly notify Lender of any notice, demand, or other action by any lessee or tenant in which the said lessee shall make any claim of Grantor's default. Further, Grantor will promptly notify Lender of any default by any lessee or tenant of the terms and conditions of the leases.

3. Termination of License to Collect. In the event that Lender shall elect to terminate the license granted in paragraph (2) above for the Grantor to collect rents, Lender shall give Grantor notice of the same, by hand delivery or by mailing such

notice to Grantor's address as stated in the Mortgage. Grantor shall immediately comply with Lender's notice to cease collection of rents and shall cooperate with Lender in the collection of Leases by Lender as stated herein.

4. Power of Attorney. Lender is appointed Grantor's ATTORNEY-IN-FACT for the purpose of collecting any sums due from any Lessee or tenant pursuant to this Assignment of Leases. Any sums so collected by the Lender shall be applied in the order provided for application of monies received as stated in the Note and/or Mortgage. This power of attorney is coupled with an interest and is irrevocable and shall not be affected by the death, disability, or incapacity of Grantor. Additionally, this power of attorney is granted with full power of substitution.

5. Miscellaneous. Without limiting the foregoing, Grantor agrees:

(a) Subordination of Lender's Rights. Lender, at Lender's sole option, may subordinate the rights of Lender to the rights of the Lessees or tenants of the Leases. Grantor further authorizes Lender and each Lessee or tenant under the Leases to execute and deliver any subordination or attornment agreements which Lender in its discretion may determine to be desirable in order to establish the priority of rights of the respective parties.

(b) Rejection of Lease. Grantor agrees in the event any of the Leases is rejected by reason of any proceeding under any federal or state insolvency or bankruptcy statute permitting the termination or rejection of any of the Leases, no settlement will be made without the prior written consent of the Lender; and any payment of damages for rejection of any Lease will be paid to the Lender for application to the indebtedness secured by this Assignment of Leases as the Lender may elect.

(c) Lender Not Liable. Lender shall not be obligated for or responsible for any obligation, past, present or future of the Grantor, by reason of any action taken or right granted through this Assignment of Leases. Grantor agrees to indemnify and hold harmless Lender from any liability, loss, or damage incurred and from all claims and demands whatsoever which might be asserted by any Lessee, tenant, or person or entity claiming to hold rights under such Lessee or tenant, except that such indemnity shall not be applicable to any liability, loss or damage incurred or claims and demands arising as a result of actions which may have been taken by the Lender and resulting from such action.

(d) No "Lender in Possession" Created. Lender shall not be deemed to be a "lender in possession" for purposes of being required to appear in or defend any action brought by any tenant or Lessee or any person or entity claiming to hold rights thereunder, or on account of the leased property or any action taken by the Lender pursuant hereto.

(e) Time of Essence. Time is of the essence of this Instrument.

(f) Governing Law. The validity, construction, and enforcement of this Instrument shall be governed by the laws of the State of Tennessee applicable to contracts executed and performed entirely within that state.

(g) Captions Not Controlling. Captions to the paragraphs of this Instrument have been included for convenience only and do not limit or control the contents of the respective paragraphs.

(h) Notices. Any communications concerning this Instrument shall be addressed to the address stated in the Mortgage, unless Grantor or Lender shall give written notice, one

to the other, of a different address to which communications are to be addressed. Communications to be given to Lender shall only be effective when set forth in writing and actually received by an officer of Lender at the address indicated above (or such different address as Lender may in writing require communications to be addressed). Communications to be given to Grantor shall be effective when actually or constructively received by Grantor or any agent of Grantor or when set forth in writing and mailed (postage prepaid) or delivered to Grantor's address stated above. Any party may change its address for receipt of notices by submitting the change in writing to the other party or parties. Third parties making inquiries with respect to this Instrument may do so by contacting Grantor and Lender at the above addresses.

Executed the date first written above.

Pelham Properties, LLC

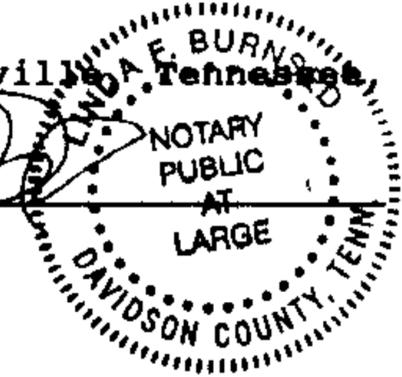
By: William H. Kenny, Jr.

Title: Chief Manager

STATE OF TENNESSEE)  
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, a notary public in and for said County and State, William H. Kenny, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of Pelham Properties, LLC, a limited liability company, the within named bargainor, and who acknowledged that he did execute the foregoing instrument for the purpose therein contained, by signing the name of the joint venture by himself as Chief Manager.

Witness my hand and official seal in Nashville, Tennessee, this 24th day of April, 1997.

[Signature]  
Notary Public  


My Commission Expires: 3-21-98

STATE OF TENNESSEE)  
COUNTY OF DAVIDSON)

~~Before me, the undersigned, a notary public in and for said County and State, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged \_\_\_\_\_ self to be the \_\_\_\_\_ (officer) of SouthTrust Bank of Tennessee, N.A. - Nashville, the within named bargainor, a corporation, and that as such \_\_\_\_\_ (officer) being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by \_\_\_\_\_ self as \_\_\_\_\_.~~

~~Witness my hand and official seal in Nashville, Tennessee, this \_\_\_\_\_ day of April, 1997.~~

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

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

ACKNOWLEDGEMENT FOR COMPANY

STATE OF TENNESSEE)  
COUNTY OF DAVIDSON)

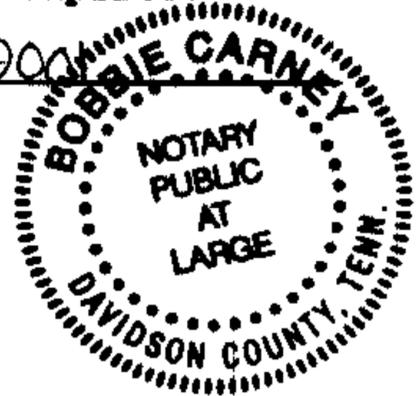
I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that William H. Kenny, Jr., whose name as Chief Manager of Pelham Properties, LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Chief Manager with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 24th day of April, 1997.

Bobbie Carney  
Notary Public

My Commission expires:

3/24/2000



**EXHIBIT "A"**

**Parcel 1:**

A Part of Section 13, Township 20 South, Range 3 West, situated in Shelby County, Alabama, more particularly described as follows:

Commence at the southwest corner of the NW 1/4 of the SE 1/4 of Section 13, Township 20 South, Range 3 West, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 424.47 feet to a point; thence turn 63 degrees 45 minutes 08 seconds left and run North 27 degrees 36 minutes 44 seconds East a distance of 644.22 feet to a steel pin corner marking the northeast corner of Lot 16 of Valley Commercial Park and the point of beginning of the property being described; thence run North 62 degrees 08 minutes 55 seconds West 133.93 feet to a point; thence run South 27 degrees 52 minutes 49 seconds West 198.00 feet to a point; thence run North 62 degrees 07 minutes 11 seconds West 141.73 feet to a point on the easterly margin of Shelby County Highway No. 33; thence run South 24 degrees 10 minutes 16 seconds West along said margin of said Highway 195.96 feet to the P.C. of a curve to the left marking the northerly margin of Commerce Drive, said curve having a central angle of 42 degrees 26 minutes 01 seconds and a radius of 153.06 feet; thence run easterly along the arc of said curve an arc distance of 129.38 feet to the P.T. of said curve; thence run North 85 degrees 18 minutes 41 seconds East 166.24 feet to a point; thence run North 27 degrees 36 minutes 44 seconds 285.90 feet to the point of beginning.

**Parcel 2:**

A Part of Section 13, Township 20 South, Range 3 West, situated in Shelby County, Alabama, more particularly described as follows:

Commence at the southwest corner of the NW 1/4 of the SE 1/4 of Section 13, Township 20 South, Range 3 West, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 424.47 feet to a point; thence turn 63 degrees 45 minutes 08 seconds left and run north 27 degrees 36 minutes 44 seconds East a distance of 644.22 feet to a steel pin corner marking the northeast corner of Lot 16 of Valley Commercial Park; thence run North 62 degrees 08 minutes 55 seconds west 133.93 feet to the point of beginning of the property being described; thence continue last described course 140.27 feet to a point on the easterly margin of Shelby County Highway No. 33; thence run South 28 degrees 18 minutes 13 seconds West along said margin of said highway 197.92 feet to a point; thence run South 62 degrees 07 minutes 11 seconds East 141.73 feet to a point; thence run North 27 degrees 52 minutes 49 seconds 198.00 feet to the point of beginning.

Being the same property conveyed to Pelham Properties, LLC, by deed from Kenny Pipe & Supply, Inc. dated September 26, 1995 and recorded September 28, 1995 of record in instrument 1995-27281, Shelby County, Alabama Judge of Probate's Office.

The above two parcels being the same property described in the survey by Joseph E. Conn, Jr., Alabama Registered Land Surveyor, No. 9049, dated April 25, 1997, as follows:

Commence at the southwest corner of the NW 1/4 of the SE 1/4 of Section 13, Township 20 south, range 3 west, Pelham, Shelby County, Alabama and run thence easterly along the south line of said quarter-quarter section a distance of 424.47' to a point; Thence run North 27 degrees 36 minutes 44 seconds East a distance of 358.32' to a steel rebar corner and the point of beginning of the

property being described; Thence continue North 27 degrees 36 minutes 44 seconds East a distance of 285.90' to a steel rebar corner; Thence run North 62 degrees 08 minutes 55 seconds West a distance of 274.20' to a steel rebar corner on the easterly right of way line of Shelby County Highway No.33; Thence run South 28 degrees 18 minutes 13 seconds West along said highway right of way a distance of 197.92' to a steel rebar corner; Thence run South 24 degrees 10 minutes 16 seconds West along said Highway right of way a distance of 195.95' to a steel rebar corner at the P.C. of a curve to the left having a central angle of 48 degrees 26 minutes 01 second and a radius of 153.06'; Thence run along the arc of just described curve an arc distance of 129.38' to a steel rebar corner at the P.T. (End) of said curve; Thence run North 85 degrees 18 minutes 41 seconds East along the northerly margin of Commerce Drive a distance of 166.24' to the point of beginning, containing 2.24 acres. Property is subject to any and all agreements, easements, rights of way, restrictions, regulation and/or limitations of probated record and/or applicable law.

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Inst # 1997-16330

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