

## PEAK, INC. LEASE AGREEMENT

THIS PEAK, INC. LEASE AGREEMENT (this "Lease") is made and entered into this 22<sup>nd</sup> day of December, 1989, by and between Valleydale Village Properties, an Alabama general partnership (herein "Landlord"), and Peak, Inc., an Alabama corporation (herein "Tenant"), Landlord and Tenant being sometimes collectively called "Parties", with any one of the parties sometimes called a "Party".

### W I T N E S S E T H:

WHEREAS, Landlord is the owner in fee simple of certain Property hereinafter more particularly described; and

WHEREAS, TENANT wishes to lease said Property from LANDLORD provided LANDLORD provides up to \$110,000.00 maximum as a construction allowance to allow TENANT to construct the Premises for an Express Oil Change business thereon;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, LANDLORD and TENANT hereby agrees as follows:

### - ARTICLE - DEFINITIONS

#### 1.01 Definitions:

The terms defined below shall have for the purposes of this Lease the meanings set forth in this Section 1.01. Other terms are defined throughout the Lease and have the meanings set out therein.

- (a) "Approved" and "Approval" shall have the meanings ascribed thereto in Section 9.11.
- (b) "Additional Rent" means any and all amounts, other than Base Rent, required to be paid by TENANT pursuant to this Lease.
- (c) "Base Rent" means the rent payable pursuant to Section 3.02.
- (d) "Commencement Date" means the earlier of (a) the date on which TENANT commences doing business in the Premises or (b) thirty (30) days after TENANT substantially completes construction as evidenced by issuance of a certificate of occupancy or other indication of governmental approval of completed construction, but in no event later than June 1, 1990. If a certificate of occupancy or other indication of governmental approval of completed construction is not available, a certificate of the architect or Contractor of TENANT shall be sufficient.
- (e) "Lease Year" means each twelve (12) month period during the Term starting with the twelve (12) month period beginning on the Commencement Date or, if same does not fall on the first (1st) day of a month, the first (1st) day of the first (1st) full month following the Commencement Date; provided, however, that the first (1st) Lease Year

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shall also include any period between the Commencement Date and the first (1st) day of the first (1st) full month thereafter if the Commencement Date does not fall on the first (1st) day of a month.

- (f) "Real Property Taxes" means all taxes and assessments whatsoever, whether municipal, state, federal or otherwise, levied, imposed, assessed or charged against the Premises or upon LANDLORD in connection therewith or from time to time levied, imposed, assessed or charged in the future in lieu thereof or in substitution thereof or in addition to or for which LANDLORD is liable in connection with the Premises, but excluding from the foregoing the income or profits taxes upon the income of LANDLORD to the extent that any such taxes are not levied or imposed in lieu of or in substitution of Real Property Taxes against the Premises. There shall be specifically included in the term "Real Property Taxes" any taxes now in existence or which may be enacted in the future on rents charged under this Lease.
- (g) "Rent" means the Base Rent and Additional Rent.
- (h) "Term" means the period commencing on the Commencement Date unless such date occurs on a day other than the first day of a calendar month. If the Commencement Date occurs on a day other than the first day of a calendar month, then the Term shall begin on the first day of the first full month of the first Lease year and end on the last day of the month in which occurs the fifteenth (15th) anniversary of the Commencement Date.

- ARTICLE II -  
LEASE OF DEMISED LANDS

2.01 DEMISE AND TERM:

- (a) In consideration of and subject to the rents herein reserved and the covenants and conditions herein contained on the part of TENANT to be paid, performed, observed and complied with, LANDLORD hereby lets, leases and demises unto TENANT and TENANT hereby lets, leases and takes from LANDLORD, the "Premises", being the tract or parcel of land more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the Premises may also be referred to as the "Property"), and including the Building, which is more particularly described in and to be constructed in accordance with the plan for development, construction and installation of the Building (the "Development Plan") to be prepared by TENANT and approved by LANDLORD in accordance with this Lease, to have and to hold the Premises during the Term, unless and until sooner terminated as may be provided herein.

- (b) LANDLORD and TENANT covenant and agree to perform, fulfill and observe the covenants, obligations and conditions herein contained.

2.02

RENEWAL OPTION:

- (a) TENANT shall have the right to renew this Lease for one (1) additional term of five (5) years commencing on the expiration of the Term of this Lease (hereinafter referred to as the "Renewal Lease Term". TENANT shall give LANDLORD notice of exercise of such renewal option at least one hundred eighty (180) days prior to the expiration of the immediately preceding lease term. TENANT'S right to exercise its option shall be null and void if TENANT is in default at the time for the exercise of the option. Time is of the essence of this provision and the exercise of this option.
- (b) All the terms, covenants and conditions of this Lease, including the obligation to pay Rent at the rate set forth herein, shall continue in full force and effect during the Renewal Lease Term, except that TENANT shall have no further renewal rights during the Renewal Lease Term except for its ability at the end of the Renewal Lease Term to have a right of first negotiation as set forth in Subparagraph (c) below.
- (c) Provided TENANT has exercised its right to the Renewal Lease Term, at the end thereof LANDLORD hereby grants to TENANT a first right to negotiate a Lease. This right shall mean that if LANDLORD intends at such time to relet or operate the Premises as an automotive service facility, it will first negotiate in good faith with the TENANT. If TENANT does not accept LANDLORD'S offer within fifteen (15) days, LANDLORD shall be free to offer such Lease to third parties. TENANT shall have the first right of refusal to accept an offer made to third parties during the six (6) month period following the termination of the Renewal Lease Term. TENANT shall remain in possession as a tenant from month to month at the then-existing Rent during the shorter of the negotiation period or until the date on which the TENANT refuses an offer under this Section 2.02 (c). In any event, this first right to negotiate and first right of refusal shall lapse six (6) months after the termination of the Lease Term.

2.03

SURRENDER:

- (a) At the expiration of the Term or the earlier termination of this Lease, TENANT agrees peaceably to surrender and deliver to LANDLORD the Premises in the state of repair required of TENANT pursuant to this Lease, except for loss or damage caused by fire or casualty and ordinary wear and tear, and depreciation and obsolescence. Ownership

and title to any improvements shall thereupon vest in LANDLORD free and clear of all encumbrances except the Permitted Encumbrances and such other encumbrances created or suffered to be created by LANDLORD, and thereupon the rights of TENANT under this Lease shall terminate.

- (b) Notwithstanding the foregoing, TENANT shall have the right upon the expiration of the Term to remove all or any Personalty from the Premises so long as any physical damage to the Premises occasioned by such removal is repaired by TENANT. For the provisions dealing with removal of Personalty, see Paragraph 5.03. The Term "Personalty" as used in this Lease shall mean all moveable trade fixtures, signs, and other personal property installed by TENANT at TENANT'S sole cost in or on the Property.

2.04 COVENANTS OF TITLE AND QUIET ENJOYMENT

- (a) LANDLORD warrants that it has fee simple title to the Premises and that the Premises shall be delivered to TENANT free and clear of all claims, obligations, mortgages, assessments, liens and encumbrances of any nature whatsoever except for those matters, if any, more particularly described on Exhibit "C" attached hereto and by this reference made a part hereof (the "Permitted Encumbrances").
- (b) LANDLORD covenants and agrees that TENANT, upon payment of the Rent hereby reserved, and performing and observing the covenants hereof to be kept and performed by TENANT, shall peaceably hold and enjoy the Premises with exclusive control and possession of the Premises for the Term, except as may be otherwise expressly stated herein.

2.05 OVERHOLDING: If LANDLORD permits TENANT to remain in possession of the Premises after the expiration of the Term and without an agreement concerning such overholding and accepts Rent in respect thereof, a tenancy from month to month shall be deemed to have been created. Such tenancy may be terminated at any time by either LANDLORD or TENANT by notice to the other with the termination date to be set out in the notice and to be at least thirty (30) days after delivery of the notice. Such tenancy, in the absence of written agreement to the contrary, shall be subject to all the terms of this Lease. In the event TENANT holds over at the end of the Lease term or Renewal Lease Term without LANDLORD'S consent, such tenancy shall be at will and may be terminated at any time by LANDLORD, and, until terminated, TENANT shall owe as rental therefor an amount equal to two times the rental being paid during the final month of the Lease term.

- ARTICLE III -  
RENT

3.01 COVENANT TO PAY: TENANT shall pay the Base Rent and Additional Rent as herein provided.

3.02 : **BASE RENT:** No rent shall be payable by TENANT prior to the Commencement Date.

- (a) TENANT shall pay to LANDLORD as Base Rent for that portion of the Term beginning on the Commencement Date and continuing thereafter for each Lease Year during the Term or any renewal thereof, the annual sum of:

|             |             |
|-------------|-------------|
| Ground Rent | \$18,000.00 |
|-------------|-------------|

Plus Estimated Net  
Construction Cost  
of \$110,000.00  
amortized over 180  
months at 12% interest= \$15,842.22

**Est. Annual Base Rent = \$33,842.22**

**Est. Monthly Base rent = \$ 2,820.19**

- (b) The Base Rent shall be payable in equal and consecutive monthly installments, in advance, on the first (1st) day of each calendar month. Base Rent shall be prorated should the Commencement date occur on a day other than the first day of the month based upon the number of days remaining in the month.

- (c) "Net Construction Cost" means the cost actually paid by LANDLORD, such amount not to exceed \$110,000.00, but does not include any amounts in excess of such amount which are to be paid by TENANT, for the permitting, construction and installation of the Building on the Premises in accordance with Article IV hereof. Net Construction Cost shall include the actual costs incurred by TENANT to pay for surveys, tests, architectural fees, engineering fees, professional fees or other fees, site plans, reports, fees, permits, contractors, subcontractors, laborers, materialmen, suppliers and vendees for services, equipment, and supplies utilized in the construction and installation of Building, including actual interim construction period interest costs incurred by Landlord in financing the payment of these costs, which interest costs shall be deemed to be paid first. Net Construction Cost shall not include taxes, accountant's fees, attorney's fees, salaries, compensation or income of any employees, representatives, agents or partners of TENANT, any operating or administrative overhead of TENANT, any costs or expenses of TENANT not directly related to the construction and installation of the Building. As soon as practicable after the completion of construction by TENANT, LANDLORD and TENANT shall mutually determine the Base Rent in accordance with the provisions of this Section and shall execute and deliver an "Actual Base Rent and Commencement Date Agreement" in the form attached as Exhibit "D" specifying the

actual Base Rent as so calculated. The first such monthly installment shall be due and payable on the Commencement Date. If the Commencement Date occurs on a date other than the first day of a month, the first installment of Base Rent shall be a prorated amount based upon the number of days remaining in such month. Notwithstanding anything herein contained to the contrary, LANDLORD and TENANT acknowledge and agree that the parties have entered into this Lease based upon a maximum expenditure allowance by LANDLORD of \$110,000.00. In the event the actual construction costs shall exceed \$110,000.00, such excess shall be paid solely by TENANT.

- (d) During the rental Term, and the Renewal Lease Term, every three (3) years beginning with the start of the fourth Lease Year and thereafter every third year, TENANT agrees to pay to LANDLORD as additional Base Rent, an amount equal to the product obtained by multiplying the actual Base Rent as calculated on Exhibit "D" by a fraction, the numerator of which is the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Urban Consumers (1967=100)," published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor Statistics of the United States Department of Labor ("CPI-U"), for the last calendar month of every third Lease Year, and the denominator of which is the CPI-U for the first full calendar month of the first Lease Year. Should this fraction be less than one (1), this paragraph shall be inapplicable for that specific adjustment and shall be recomputed on the next scheduled date.
- (e) In the event TENANT shall fail to pay Rent by the tenth (10th) day of any month, LANDLORD may impose a late charge in the amount of five percent (5%) per month for each month or part thereof that such Rent remains unpaid.

3.03 **PAYMENTS OF RENT:** All Rent shall be paid at the office of LANDLORD designated in Section 9.01 hereof, or at such other place in the United States of America designated by LANDLORD, in lawful money of the United States of America, without any prior demand therefor. TENANT covenants and agrees that the Rent to be paid hereunder shall be, except as otherwise expressly provided herein or permitted by law, paid without off-set or deduction.

3.04 **NET LEASE:** TENANT acknowledges and agrees that, from and after the Commencement Date, it is intended that this Lease is, except as otherwise expressly stated herein, a completely "net lease" to LANDLORD, and that LANDLORD is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or pertaining to the Premises, including, without limitation, the Building, or the use and occupancy thereof, or the contents thereof or the business carried on therein, except as may be otherwise expressly stated

herein: From and after the Commencement Date, TENANT shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises, except as herein expressly provided to the contrary. TENANT is responsible for all repairs and maintenance expressly including but not limited to the roof, structure, paving and landscaping.

3.05 TAXES, UTILITY, AND OTHER CHARGES: TENANT agrees to pay when due at TENANT'S sole expense and for its own account the following as "Additional Rent":

- (a) within fifteen (15) days following TENANT'S receipt from LANDLORD of a tax bill for the tax year in which the Commencement Date occurs, of the total Real Property Taxes on the Premises for the tax year in which the Commencement Date occurs, prorated from the Commencement Date to the end of such tax year, based on actual days elapsed;
- (b) from and after the first day of the next succeeding tax year following the Commencement Date until the end of the Term or earlier termination of this Lease, each and every installment of Real Property Taxes on the Premises or any part thereof, prorated, if applicable, for any partial tax year during the Term; and
- (c) TENANT shall pay for the fire dues assessed with respect to the Premises; and
- (d) from and after the Commencement Date and thereafter during the Term of this Lease, all utility charges and rates, including, without limitation, all charges for sewer usage or rental, refuse removal, gas, water, heat, electricity and/or telephone, and similar taxes, rates, charges and assessments, including payments in lieu thereof, which are properly charged, levied or assessed in connection with the Premises or any part thereof and which are properly levied or assessed against TENANT or which would, if unpaid, become a lien on the Premises or TENANT'S leasehold interest therein or where such lien will, at any time, affect the interest of LANDLORD; and
- (e) from and after the Commencement Date and thereafter during the Term of this Lease, any business taxes or license fees and similar taxes and any taxes imposed on the Rents which may be charged, levied or assessed in connection with the Premises or TENANT'S leasehold interest therein, which taxes or fees are properly levied or assessed against TENANT, the Premises or TENANT'S leasehold interest therein; and
- (f) all other charges and expenses which are the responsibility of TENANT pursuant to this Lease.

If the Premises are separately assessed, TENANT will pay the entire tax on the Premises. If it is not separately assessed, TENANT shall pay the tax attributable to the

improvements (building, paving and gutter) on the Premises and a pro rata portion of the tax attributable to the land based upon a fraction the numerator of which is the number of square feet in the TENANT'S Premises and the denominator of which is the total square feet in the assessed parcel. Payment of this additional rent shall be within fifteen (15) days after LANDLORD makes demand upon TENANT for such payments and provides evidence that the taxes have been paid.

3.06 LANDLORD MAY PAY ADDITIONAL RENT: If TENANT fails to pay when due any Additional Rent required to be paid by TENANT pursuant to this Lease, LANDLORD shall have the right to pay the same at the expense of TENANT after ten (10) days' prior written notice to TENANT thereof, and TENANT covenants to pay to LANDLORD as Rent any amounts so paid by LANDLORD with interest at two percentage points (2%) above the prime rate then charged by AmSouth Bank, N.A., Birmingham, Alabama.

3.07 CONTESTATION BY TENANT:

- (a) TENANT shall have the right, at TENANT'S expense, by appropriate proceedings conducted diligently and in good faith, to contest or apply for a reduction of the amount, legality or mode of payment of all utility charges, taxes, rates, duties, Real Property Taxes, charges, assessments or fees of any nature whatsoever payable by TENANT hereunder; so long as demand was first made on LANDLORD to contest such charges, taxes, or rates, and LANDLORD refused to contest any claim for lien levied or charged in respect of the Premises; and to contest any statute, law, ordinance, regulation or other rule affecting the Premises.
- (b) During the period of any contest, application or action made or taken in accordance with this Section, no default or Event of Default shall be deemed to have occurred in the performance of the covenant, obligation or agreement under this Lease which is the subject matter of such contest, application or action; provided, however, that during the period of any such contest, application or action there shall be no abatement of Rent by reason of this Section (except any payment to be made with respect to the item being contested).
- (c) No contestation by TENANT shall be conducted in such a manner as to cause the loss of the Premises through sale or forfeiture or imposition of a lien. If any such contestation could reasonably result in such loss, LANDLORD may require TENANT to post security (in the form of cash, a bond or a letter of credit, as LANDLORD may elect) in the full amount of the lien or claim being contested.
- (d) LANDLORD shall not unreasonably decline to assist TENANT, with respect to any action taken by TENANT pursuant to this Section, so long as TENANT reimburses LANDLORD for all costs reasonably incurred as a result thereof.

- ARTICLE IV -

USE OF PREMISES AND CONSTRUCTION OF IMPROVEMENTS

4.01 USE OF THE LEASED PREMISES: TENANT may use the Premises solely for conducting a fast-service, drive-in oil change business, including automobile maintenance; engine and tire servicing, and other miscellaneous automobile repairs. TENANT shall promptly open for business on the Commencement Date and shall operate continuously a fast-service, drive-in oil change business during the entire Term and any renewal or extensions of this Lease in 100% of the Premises with a full staff of employees and a full inventory of products and services for the conduct of business as described above, in accordance with the operating standards and practices then employed by others in the express oil change industry. In the event TENANT or its assignee shall cease to actively and continuously operate its business in and on the Premises and TENANT shall remain out of operation for a period of ninety (90) consecutive days, then LANDLORD, in addition to any other remedies as set forth in Paragraph 8.02 hereof, at any time thereafter, at LANDLORD'S option, shall have the right to recapture the Premises by giving written notice to TENANT and, on the effective date set forth in such written notice, which shall be at least sixty (60) but not more than one hundred twenty days (120) after the date of such notice, LANDLORD may regain possession of the Premises and terminate TENANT'S Lease.

4.02 PROHIBITED ACTIVITIES AND OBSERVANCE OF LAW: TENANT covenants and agrees that TENANT will not use or permit, or suffer the use of the Premises, or any part thereof, for any act or omission which constitutes waste upon or damage to the Premises. TENANT shall, at its sole cost and expense promptly observe and comply with all provisions of law and all requirements of all governmental authorities, including federal, state and municipal authorities, now or hereafter in force which pertain to or affect TENANT'S use of the Premises or the conduct of any business in the Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Premises.

4.03 INSPECTION: Prior to the execution of this Lease, a plot plan was provided to TENANT and TENANT has inspected the Premises. The Premises are acceptable to TENANT and have expressly been approved by TENANT.

4.04 AGREEMENT TO CONSTRUCT IMPROVEMENTS: TENANT agrees to improve the Premises by constructing and installing thereon, the Building, which shall be done in substantial conformity with the design and general building improvement plans, drawing specifications and criteria mutually agreed upon by the Parties, and, in substantial conformity with the Development Plan to be prepared by TENANT and Approved by LANDLORD in accordance with Section 4.05 below. Such construction by TENANT shall be performed by a contractor and architect Approved by LANDLORD. LANDLORD shall provide \$110,000.00 for Net Construction Costs. The use of this \$110,000.00 fund (the "Fund") shall be according to the following conditions. In order to receive disbursements from the Fund, TENANT or TENANT'S contractor must submit a disbursement request in a form acceptable to LANDLORD. Such requests shall not be made more frequently than once a month, unless LANDLORD agrees to more frequent disbursements. The request shall

be supported by data substantiating the TENANT'S and/or the contractor's right to payment as LANDLORD may require. Upon receipt of the request, LANDLORD may cause an inspection to be made of the progress of construction and may employ someone for such purpose. If LANDLORD is satisfied with the progress and the request, the disbursement shall be made directly to TENANT or TENANT'S contractor with the check made payable to TENANT and TENANT'S contractor, jointly. LANDLORD shall be entitled to withhold ten percent (10%) of the disbursements until the Building is occupied and TENANT has received a certificate of occupancy. LANDLORD may require, at its option, lien release provisions to be executed prior to any disbursements. The disbursements shall be made until TENANT reaches the \$110,000.00 ceiling. Once the entire \$110,000.00 Fund is disbursed, all additional costs incurred to complete the construction shall be born solely by TENANT. Prior to any disbursements, LANDLORD must receive the following:

- (1) Satisfactory proof that all required access routes, and curb-cuts are legally sufficient for access to the Premises, may be lawfully paved and constructed, are sufficient for utilities to be run and are approved by the LANDLORD or LANDLORD'S representative. This Approval by LANDLORD or LANDLORD'S representative shall not be unreasonably withheld and shall be predicated upon TENANT'S compliance with the Development Plan and the plans and specifications of the Premises' construction.
- (2) Complete set of plans and specifications certified by the architect and with his seal and anyone else whose prior approval may be legally required; and
- (3) Lien waivers for work performed or materials delivered to date; and
- (4) Copy of building permit.

No disbursements will be required if:

- (1) The Building is materially damaged by fire or other casualty and not repaired, unless the LANDLORD receives insurance proceeds or a cash deposit from TENANT sufficient, in LANDLORD'S judgment, to pay for the repairs in a timely manner; OR
- (2) TENANT is in default under this Lease Agreement.

4.05 DEVELOPMENT PLAN: Within fifteen (15) days of the execution of this Lease, TENANT and TENANT'S architect shall cause to be prepared and submitted to LANDLORD for LANDLORD'S Approval the Development Plan, which Development Plan will be generally based upon the Site Plan attached hereto as Exhibit "B" and by this reference made a part hereof. LANDLORD will then approve TENANT'S Development Plan. If LANDLORD fails to approve the Development Plan or TENANT'S selection of the architect or contractor within the time set forth below, TENANT shall, within fifteen (15) days select a new architect and/or contractor and submit a new Development Plan for LANDLORD'S Approval. If LANDLORD Approves the Development Plan, TENANT'S architect and contractor shall immediately begin construction in accordance with Section 4.07

hereof; If LANDLORD fails to Approve this second Development Plan or the selection of the architect or contractor within the allotted time frame, LANDLORD may either terminate this Lease or allow TENANT to submit another architect or Development Plan for approval according to the same terms as above. In order for TENANT to obtain the requisite information to prepare the Development Plan, TENANT shall have the right to enter upon the Property at any time after the full execution of this Lease and prior to the Commencement Date for the purposes of conducting site inspections and for having soil tests taken thereon by a soil testing laboratory without liability for payment of Rent or of any other charges required to be paid by TENANT hereunder, but otherwise subject to the terms and conditions of this Lease. The Development Plan which must be submitted to LANDLORD shall consist of detailed plans, specifications and working drawings which accurately reflect the building site location on the Property, the overall site plan, the exterior materials and appearance of the Building, complete parking layout and driveways, elevation drawings, all exterior lighting and all signs to be located upon the Premises, landscaping plans, ingress and egress designs, curb cuts, if any, traffic flow, sanitary and storm drainage systems, other utilities, curbing and gutters, trash areas and suitable screening thereof, and loading areas and docks. LANDLORD shall either give or withhold its Approval of the submitted Development Plan(s) within ten (10) days after the Development Plan of TENANT is received by LANDLORD. If LANDLORD and TENANT cannot agree on the final Development Plan within such time period, then LANDLORD may terminate this Lease.

**4.06 APPLICABLE ENVIRONMENTAL LAW PROTECTIONS:** The term "Applicable Environmental Law" shall be defined as any statutory law, rule, regulation, or case law pertaining to health or the environment or petroleum products or radon radiation or oil or hazardous substances or solid wastes, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as codified at 42 U.S.C. §9601 et seq. (1982) [and applicable state statutes]; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. TENANT represents and warrants that no activity will occur on the Premises that will subject the Premises, TENANT, LANDLORD or their successors or assigns to any existing, pending or threatened investigation or inquiry by any governmental authority that will result in any response costs or remedial obligations, or otherwise, under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises; that TENANT has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Premises by reason of any Applicable Environmental Law; that TENANT has taken all steps

necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of, located in, or otherwise released from the Premises; and that the use which TENANT has made, makes or intends to make of the Premises will not result in the location, disposal, or other release of any petroleum products, oil, hazardous substances, or solid wastes on or to the Premises. TENANT hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, and response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Premises. TENANT further agrees to indemnify and forever save LANDLORD harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, and attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the TENANT, the Premises, or LANDLORD; and this indemnity shall survive the Term of this Lease, and any Renewal Term hereof, or foreclosure of this Property or the taking of a deed in lieu of foreclosure. TENANT agrees to notify LANDLORD in the event that any governmental agency or other entity notifies TENANT that it may not be in compliance with any Applicable Environmental Law. TENANT agrees to permit LANDLORD to have access to the Premises at all reasonable times in order to conduct, at TENANT'S expense, any tests which LANDLORD deems are necessary to ensure that TENANT and the Premises are in compliance with all Applicable Environmental Laws.

4.07 CONSTRUCTION OF BUILDING: TENANT will begin construction of the Building within thirty (30) days from the date of Approval of the Development Plan subject to Section 9.12. TENANT shall use contractors and subcontractors Approved by LANDLORD and will thereafter diligently pursue completion of the construction.

4.08 PERFORMANCE OF WORK: In performing any work on the Premises, TENANT will proceed with the utmost due diligence to completion thereof and will do all acts and things reasonably required by, and perform such work in accordance with, this Lease and all applicable building and zoning ordinances and all applicable laws, orders, rules, regulations and requirements of all federal, state and municipal authorities. TENANT agrees to secure the personal guarantee of the general contractor, in a form satisfactory to LANDLORD, in lieu of a performance bond. TENANT further agrees to obtain insurance to cover any and all costs, liabilities, expenses or other claims which may be incident to or arise from the construction and to name LANDLORD as an additional insured.

4.09 EXTERIOR SIGNS: The Development Plan shall set forth in detail the exterior signs to be erected on the Premises. Such signage shall be subject to the written approval of LANDLORD. Notwithstanding any provision of the Lease to the contrary, upon the expiration or termination of the Lease, LANDLORD shall not have the right to use any signs or other goods or materials containing any trade names and/or trade marks owned by TENANT or its parent or subsidiary corporations, it being understood that the same shall have been purchased and erected by TENANT and shall remain its property and be subject to elimination of such identification or removal of such signs and other goods or materials upon termination of the Lease. Upon termination or expiration of the Lease, TENANT shall eliminate all such identification from the Premises. Such removal shall be accomplished in a workmanlike manner, and TENANT shall

make all repairs for damage resulting from such removal in order that the Premises shall be in the same condition as prior to removal.

4.10 ZONING, PERMITS, FRANCHISE RIGHTS, TITLE ETC.: Irrespective of any other provisions of this Lease, the obligations of TENANT under this Lease are conditioned upon TENANT'S sole satisfaction, within ten (10) days from the date of full execution of this Lease by all parties hereto (said period being herein called the "Feasibility Period"), of the following items: (i) the proper zoning and issuance of appropriate permits for the construction of a fast-service drive-in oil change business, (ii) the issuance of all permits, licenses and approvals by all public authorities which are required in order for TENANT to carry on its business upon the Premises, (iii) the soil and subsurface of the Premises conforming in their present condition to TENANT'S requirements for construction and maintenance of the contemplated improvements and the environmental state of the Premises, and (iv) the condition of LANDLORD'S title to the Premises. Unless TENANT notifies LANDLORD in writing within the Feasibility Period that TENANT is dissatisfied with the items set out above and the TENANT desires to cancel this Lease, the Lease shall automatically be effective.

-ARTICLE V-  
RIGHTS AND DUTIES OF THE PARTIES  
DURING THE TERM

5.01 ACTUAL BASE RENT AND COMMENCEMENT DATE AGREEMENT: Within thirty (30) days following the Commencement Date, LANDLORD and TENANT shall execute and deliver an "Actual Base Rent and Commencement Date Agreement." The Actual Base Rent and Commencement Date Agreement shall be in the form attached Exhibit "D" and by this reference made a part of this Lease, with the blanks appearing thereon completed, in accordance with the provisions hereof. As the Actual Base Rent and Commencement Date Agreement will not be executed for thirty (30) days following the Commencement Date, TENANT agrees to pay as Base Rent, the amount set forth in Section 3.02 for the first two (2) months, or fractions thereof, following the Commencement Date. For the third month, the Base Rent shall then begin to be the amount set forth in the Actual Base Rent and Commencement Date Agreement. If the Base Rent in the Actual Base Rent and Commencement Date Agreement exceeds the Base Rent in Section 3.02, the difference shall be paid with the third month's rent payment. If the Base Rent in the Actual Base Rent and Commencement Date Agreement is less than the Base Rent in Section 3.02, the excess paid by TENANT shall be offset against the third month's rent payment. Beginning with the fourth month, Base Rent should be paid in accordance with the Actual Base Rent and Commencement Date Agreement.

5.02 INDEMNITY: TENANT will indemnify and save LANDLORD harmless from any liability on account of any damage to persons or property arising out of any failure of TENANT to perform and comply, in any respect, with any of the requirements and provisions of this Lease or arising from TENANT'S use and occupancy of the Premises, including, but not limited to, environmental hazards and construction on the Premises.

5.03 ADDITIONS, ALTERATIONS OR REMODELING: TENANT shall have the right upon receiving the advance written approval of LANDLORD to remodel and make any additions, alterations, or extensions to the Premises or the Building to be erected on the Premises without the payment of any additional rentals. TENANT shall also have the right to erect, install, maintain and operate on the Premises such Personalty as TENANT may deem advisable; provided, however, all of the foregoing will be made without any expense to LANDLORD. TENANT will comply with all applicable laws with respect thereto, and TENANT will indemnify and save and hold LANDLORD harmless from any and all mechanics' liens that may be filed against it and will have such lien released without cost to LANDLORD, including the duty to post security required by LANDLORD. TENANT is hereby expressly given the right, at any time during the Term of this Lease, or any renewal or extension hereof, if TENANT is not in Default, and up to the termination of this Lease, or any renewal or extension hereof, to remove any such Personalty, but shall not be obliged to do so; provided, however, TENANT will make reasonable repairs to the Premises for any physical injury caused thereto by such removal, but without any liability for diminution in value of the Premises caused by the absence of the Personalty so removed and without any necessity for replacing same. In the event TENANT shall fail to remove all such Personalty, then TENANT shall be deemed to waive all rights to any such Personalty not so removed. Notwithstanding the above, LANDLORD may require TENANT to remove any such Personalty at the end of the Term, and if TENANT fails to do so within fifteen (15) days of demand, LANDLORD may do so and recover the reasonable cost of removal from TENANT together with interest at the rate of two points over the Prime rate as charged by AmSouth Bank, N.A., Birmingham, Alabama.

5.04 REPAIR OF PREMISES: TENANT, at all times hereunder, and at its sole cost, will keep and maintain the Premises, including, without limitation, the Building and the interior and exterior of the Building, and the driveway and parking areas on the Premises, in a good state of repair.

5.05 RIGHT TO ENCUMBER PERSONALTY: TENANT shall have the right to place liens upon or give security interests in any or all fixtures, equipment, materials, supplies, books, records or other personalty at any time located, erected or installed on the Premises by TENANT during the Term (the "Personalty"). Any such lien or security interest shall vest in the lien holder or secured party, a prior lien on or security in such Personalty. LANDLORD shall execute any reasonable instruments that the lien holders or secured parties may request or require from LANDLORD, with respect to acknowledging: (a) the right of TENANT to erect or install such Personalty, and that any Personalty shall not be deemed to be nor become part of the Premises, (b) the right of the lien holder or secured party to maintain a lien thereon or security interest therein superior to any claim and interest of LANDLORD, and (c) the right to remove any and all such Personalty in the event of default in the instrument creating the lien or security interest, subject to making reasonable repairs to the Premises for any physical injury caused thereto by such removal, but without any liability for diminution in value of the Premises caused by the absence of the Personalty so removed and without any necessity for replacing same.

5.06 ACCESS TO PREMISES: LANDLORD, and any agents, employees, officers and independent contractors of LANDLORD, will have access to the Premises at all reasonable times. If LANDLORD reasonably determines that TENANT is not maintaining the Premises, and if TENANT refuses to commence such maintenance or repairs as reasonably required by LANDLORD within ten (10) days after written notice from LANDLORD to TENANT, LANDLORD may proceed to cause such maintenance or repairs to be made and may charge the same against TENANT, such amount to be repayable immediately upon demand together with interest at the rate of two points over the prime rate as charged by AmSouth Bank, N.A., Birmingham, Alabama.

5.07 INSURANCE:

- (a) TENANT, at all times during the Term of this Lease from and after the Commencement Date, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force general public liability insurance for claims for personal injury, death, or property damage occurring in or about the Premises, with limits of not less than \$1,000,000.00<sup>4</sup> single coverage. LANDLORD may require these limits to be increased to reasonable amounts during the Term.
- (b) TENANT, at all times during the Term of this Lease from and after the Commencement Date, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, insurance as required in Section 7.01.
- (c) TENANT, at all times during the Term of this Lease from and after the Commencement Date, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, plate glass insurance.
- (d) TENANT, at all times during the Term of this Lease from and after the Commencement Date, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, fire, extended coverage, and vandalism and malicious mischief insurance on the Building, all other improvements to be constructed or installed on the Premises by LANDLORD, and the Personalty, for the full replacement cost thereof. If the parties cannot agree as to the full replacement cost value of the Building, such value shall be determined by the insurance company or companies issuing such policy or policies. In the event of any loss covered by such insurance, the proceeds therefrom (excluding that part of the proceeds, if any, attributable to TENANT'S Personalty erected or installed on the Premises) shall be payable to LANDLORD; however, at the request of LANDLORD, the policy or policies of insurance shall contain a loss payable clause in favor of LANDLORD'S mortgagee, if any.
- (e) Certificates of all such insurance will be delivered to LANDLORD and, with respect to the hazard insurance in subsection (d),

LANDLORD'S mortgagee, if any. Each insurance policy required under this Lease will name LANDLORD and Leitman - Perlman, Inc., as agent for LANDLORD, as an additional insured thereunder, will be issued by a financially responsible company or companies licensed in the state in which the Property is located, and will provide that such policy or policies will not be cancelled without the insurance company first giving LANDLORD written notice thereof, at least ten (10) days before any such cancellation shall become effective.

- (f) TENANT may at its option provide the insurance required under this Section in a blanket policy or policies of insurance and may at its option effect the insurance required to be maintained pursuant to Subsections (c) and (d) of this Section under a policy or policies in the amounts required less a reasonable deductible amount, the loss with respect to which would be required to be borne by TENANT.

5.08 WAIVER OF SUBROGATION: Notwithstanding anything set forth in this Lease to the contrary, the Parties, to the fullest extent permitted by law, do hereby waive any and all rights of recovery, claim, action or cause of action against each other and their respective officers, directors, partners, employees, agents, contractors, invitees and licensees for any loss or damage that may occur to the Premises or any additions thereto, or any contents therein (including the Personalty) by reason of fire or any of the other perils required to be insured hereunder, or for which LANDLORD or TENANT (as the case may be) may in fact be reimbursed as a result of insurance coverage effecting any loss suffered by either Party, regardless of cause or origin, including the negligence of LANDLORD or TENANT or their respective permittees. Each Party hereto shall be required to obtain such a waiver of subrogation in any policy or policies of insurance required to be maintained hereunder.

-ARTICLE VI-  
ASSIGNMENT AND SUBLETTING

6.01 ASSIGNMENT AND SUBLETTING: TENANT shall not, without the prior written consent of LANDLORD, such consent not to be unreasonably withheld, at any time during the Term of this Lease, or any renewal or extension hereof, have the right (i) to assign this Lease, or its rights hereunder, (ii) to sublet all or any part of the Premises, (iii) to change the ownership of and/or power to vote the majority of the outstanding capital stock of TENANT, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law, or otherwise because TENANT is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange). Notwithstanding the foregoing, TENANT'S franchisor shall have the right to receive an assignment of this Lease provided such franchisor assumes all of the duties of TENANT hereunder and provided further, that such assignment shall not release TENANT or any of the guarantors. TENANT will remain liable for the payment of all Rent required to be paid hereunder and for the performance of all of the

Oil Change, at 1725 27<sup>th</sup> Court South,  
Birmingham, Alabama 35209. If TENANT fails to cure  
within the applicable time period, TENANT'S Franchisor  
shall then have the opportunity, in its discretion, to  
cure during the same cure period. Should TENANT'S  
Franchisor cure TENANT'S Event of Default, TENANT'S  
franchisor may assume TENANT'S rights, duties, and  
obligations under this Lease under the same terms and  
conditions contained herein; and, thereafter, TENANT'S  
Franchisor shall be, for the remaining term of this Lease,  
subject to this Lease as TENANT.

8.03. LANDLORD'S REMEDIES: If an Event of Default  
occurs, then LANDLORD may exercise any and all remedies  
available at law or in equity, including, without  
limitation, any one or more of the following remedies,  
such remedies shall all include the costs for attorney's  
fees and other expenses whether or not suit is filed:

- (a) without terminating this Lease, re-enter the  
Premises (by legal action, if necessary) and  
proceed to relet all or any part of the  
Premises as LANDLORD in its discretion may  
deem reasonably necessary or appropriate,  
and on such terms, rentals and conditions as  
may be commercially reasonable; all rental  
received by LANDLORD from such reletting  
shall be applied: first, to LANDLORD'S  
expenses incurred in connection with any  
such re-entry and reletting, including  
without limitation, any and all reasonable  
costs and expense incurred in renovating or  
altering space in the Premises to make it  
suitable for reletting, brokerage  
commissions and fees incurred in connection  
therewith, and advertising costs and  
expense; second, to all Base Rent and  
Additional Rental, if any, due hereunder but  
not paid by TENANT; and third, all other  
damages and expenses suffered or incurred by  
LANDLORD as a result of TENANT'S breach  
hereof. Unless LANDLORD has expressly  
notified TENANT that it is exercising the  
right of termination contained in  
Subparagraph (b) of this Section, the  
actions described in this Subparagraph (a)  
shall not be deemed to terminate this Lease  
or constitute an acceptance of any attempted  
or purported surrender by TENANT of the  
Premises or any part hereof; or
- (b) by written notice to TENANT, terminate this  
Lease, which termination shall be effective  
fifteen (15) days after the date of such  
notice, and upon receipt of such notice,  
TENANT shall immediately vacate the  
Premises. LANDLORD may institute  
dispossessory proceedings. In addition to  
the foregoing, LANDLORD may, at any time  
within six (6) months after the date of the  
notice of termination, initiate an action  
against TENANT for the recovery of all Rent  
due hereunder through the date of the notice  
of termination, or the date TENANT vacates  
the Premises, whichever later occurs,  
together with reasonable attorney's fees  
actually incurred; or

terms, covenants and conditions herein undertaken by TENANT. In the event of an assignment or sublease by TENANT, any rental paid by the assignee or sublessee in excess of that payable by TENANT hereunder shall be the property of LANDLORD alone.

-ARTICLE VII-  
CASUALTY, CONDEMNATION AND ACCESS LIMITATION

7.01 FIRE AND CASUALTY: If the Building on the Premises shall be damaged or destroyed by fire or other casualty, LANDLORD may make any repairs it deems necessary or may be required by law, to the extent such damage is covered by insurance and to the extent the damage was caused by a casualty covered by the normal fire and casualty policy with extended coverage endorsement and the proceeds are not required by LANDLORD'S mortgage to be applied on the mortgage. TENANT shall maintain insurance on Rents, and Rent shall not abate while repairs are underway. In no event shall LANDLORD be required to rebuild if the fire or casualty occurs during the final three years of the Lease Term and TENANT does not exercise the existing option to extend for five (5) years. If LANDLORD elects not to rebuild or repair, the parties shall be relieved of any responsibilities under this Lease and the Lease shall be terminated effective as of the date of LANDLORD'S notice that it will not repair or rebuild. LANDLORD agrees to give TENANT notice that it will not repair or rebuild within ninety (90) days after LANDLORD has received written notification of the fire or casualty.

7.02 CONDEMNATION:

- (a) If the whole of the Premises shall be appropriated or condemned under power of eminent domain or by any competent authority for any public or quasi-public use or purpose during the Term of this Lease, or any renewal hereof, LANDLORD shall be entitled to the entire award for such appropriation and taking of, or the injury to, the Premises. In such event, this Lease shall terminate when TENANT can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur.
- (b) In the event that a part of the Premises shall be appropriated or condemned and (i) the part so taken shall include less than the entire Premises, but any part thereof in excess of 20% of this total area of the Premises, or (ii) the part so taken shall remove ten percent (10%) or more of the depth from the front of the Premises, or (iii) the part so taken shall consist of twenty-five percent (25%) or more of the total parking spaces on the Premises, or (iv) such partial taking shall result in cutting off direct access from the Premises to any adjacent or contiguous public street or highway, then and in any such event, TENANT at any time within a period of sixty (60) days after the date when possession of the part of the Premises so taken shall be required by the appropriating or condemning

authority, may elect to terminate this Lease. In the event TENANT shall fail to exercise such option to terminate this Lease, or in the event that a part of the Premises shall be taken or condemned under circumstances in which TENANT shall have no such option, then in either such event, LANDLORD, with reasonable promptness, shall make necessary repairs to and alternations of the improvements on the Premises for the purpose of restoring same to an economic architectural unit, susceptible to the same use as that which was in effect immediately prior to such taking and to the extent that may have been necessitated by such appropriation or condemnation. TENANT shall not be entitled to an abatement of all Rent herein required to be paid by TENANT during the period of such repairs and restoration unless the condemnation requires the business of TENANT to completely close due to the condemnation.

In the event that a part of the Premises shall be appropriated or condemned and if TENANT shall fail to exercise its option to terminate this Lease, or if TENANT shall have no option as above provided, then in either such event, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In such event the monthly installments of Base Rent required to be paid under this Lease shall be equitably reduced.

- ARTICLE VIII -  
DEFAULT AND REMEDIES

8.01 EVENTS OF DEFAULT: If TENANT fails to pay when due, any Rent due hereunder and which failure continues for a period of five (5) business days after notice of such failure to TENANT or TENANT fails to keep, perform or observe any of the other covenants to be kept, observed or performed by TENANT hereunder, which failure continues for a period fifteen (15) days after written notice of such failure to TENANT, unless such failure is of such a nature that it will require more than fifteen (15) days to cure, in which case such cure period shall be extended for so long as TENANT shall continuously and diligently prosecute the cure, of such failure and shall continue to perform all of its monetary obligations hereunder, then, in either of such events, an "Event of Default" shall exist hereunder, but the total cure period shall not exceed thirty (30) days in total. Additional Events of Default shall include:

- (a) removal by TENANT from the Premises of any goods or supplies except in the ordinary course of business;
- (b) filing a petition in bankruptcy, appointment of a receiver or trustee, or the declaration of insolvency of the TENANT;
- (c) assignment by the TENANT for the benefit of any creditor; or
- (d) abandonment of the Premises by TENANT.

8.02 FRANCHISOR'S REMEDIES: If TENANT commits an Event of Default hereunder, LANDLORD shall give the same fifteen (15) day notice to TENANT'S Franchisor, Express

- (c) accelerate all Rent due under this Lease for prompt payment within fifteen (15) days of an Event of Default.
- (d) keep and claim as the true owner, any supplies, goods, equipment or other items on the Premises, subject to any existing liens, upon the re-entry by LANDLORD. LANDLORD may also, at its option, remove any of the above-described items at the sole cost and expense of TENANT which TENANT agrees to pay within thirty (30) days of notice to TENANT of such removal.

- ARTICLE IX -  
ADDITIONAL PROVISIONS

9.01 ADDRESSES-NOTICES: Except for legal process which may also be served as by law provided, all notices required or desired to be given with respect to this Lease shall be in writing and shall be deemed have been given when hand delivered or when deposited, postage prepaid, with the United States Postal Service (or its official successor), certified, return receipt requested, properly addressed as follows:

(i) To TENANT:

Peak, Inc.  
502 Cahaba Park Circle  
Birmingham, Alabama 35242  
Attention: Mark W. Bond or  
John T. Harkins

With Copy To:  
Mark W. Bond  
10 Inverness Center Parkway  
Suite 350  
Birmingham, Alabama 35242

(ii) To LANDLORD:

Valleydale Village Properties  
c/o Leitman - Perlman, Inc.  
Suite 900, Bank for Savings Building  
Birmingham, Alabama 35203  
Attn: Ben Perlman

With copy to:  
Leitman, Siegal, Payne & Campbell, P.C.  
600 North 20th Street, Suite 400  
Birmingham, Alabama 35203  
Attn: Eddie Leitman

The period in which a response to any such notice must be given or taken, however, shall run from the date of personal delivery or the date of actual receipt as evidenced on the return receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt.

All payments of Rent and all other sums payable to LANDLORD hereunder shall be paid to LANDLORD at the following address:

Leitman - Perlman, Inc.  
Suite 900, Bank for Savings Building  
Birmingham, Alabama 35203  
Attn: Ben Perlman

Such addresses may be changed from time to time by either Party by notice to the other.

9.02 WAIVER OF RIGHTS; ENTIRE AGREEMENT: No failure or delay by LANDLORD or TENANT to exercise any right or power given it or to insist upon strict compliance by the other with any obligation imposed on it, and no custom or practice of either Party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by LANDLORD or TENANT or any right either has herein to demand strict compliance with the terms hereof by the other. This Lease (including all exhibits and addendums attached hereto) contains the sole and entire agreement of LANDLORD and TENANT and no prior or contemporaneous oral or written representation or agreement between the Parties and affecting the Premises shall have legal affect.

9.03 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT: TENANT does hereby subordinate this Lease to any mortgage which is now existing or hereafter affects the Premises, and to any renewal, modification or extension thereof, subject to the following conditions and only if such conditions have been met. TENANT upon request, but at LANDLORD'S expense, if any, will execute and deliver any instruments required to subordinate this Lease to any such mortgage, provided, LANDLORD shall simultaneously deliver or cause to be delivered to TENANT an agreement in writing in form reasonably acceptable to TENANT executed by such mortgagee, providing that so long as TENANT shall faithfully discharge its obligations under this Lease, its tenancy shall not be disturbed nor this Lease affected by any default under such mortgage, and in the event of a foreclosure sale of the Premises pursuant to such mortgage, or any sale, transfer, conveyance or other proceeding in lieu thereof, that same will be sold, transferred or conveyed subject to this Lease, the terms of which, specifically including, without limitation, any first refusal and/or purchase options provided TENANT hereunder, shall be binding upon the mortgagee or other purchaser at foreclosure or other procedure or sale in lieu thereof and their heirs, successors and assigns. TENANT agrees that in the event of a foreclosure or sale in lieu of foreclosure, it will attorn to the mortgagee or purchaser at such foreclosure sale. The obligations of TENANT hereunder and the subordination hereunder are contingent upon LANDLORD'S mortgagee granting to TENANT a non-disturbance provision whereby LANDLORD'S mortgagee assures TENANT that if it complies with the terms of this Lease, then its rights under the Lease shall not be disturbed by a foreclosure or sale in lieu of foreclosure.

9.04 SEVERABILITY: If any clause or provision of this Lease or the application thereof to any person, entity or circumstance is or becomes illegal, invalid, or unenforceable because of present or future, laws of any rule or regulation of any governmental body or entity, effective during its Term, the intention of the Parties hereto is that the remaining parts of this Lease and the application of such clause or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each such clause or provisions shall be valid and enforceable to the fullest extent permitted by law.

9.05 CAPTIONS: The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof. The use of the terms "hereof", "hereunder" and "herein" shall refer to the Lease as a whole except where noted otherwise. The necessary grammatical changes required to express singular, plural, male, female or neuter as applicable shall be assumed in each case to be fully expressed.

9.06 SUCCESSORS AND ASSIGNS: The provisions of this Lease inure to the benefit of and be binding upon LANDLORD and TENANT, and their respective successors, heirs, legal representatives and assigns, subject, however, in the case of TENANT, to the provisions of Article VI.

9.07 GOVERNING LAW: The laws of the State of Alabama in which the Property is located shall govern the interpretation, validity, performance and enforcement of this Lease.

9.08 ESTOPPEL CERTIFICATE: At any time and from time to time, TENANT or LANDLORD, on or before the date specified in a request therefor made by the other, which date shall not be earlier than ten (10) days from the making of such request, shall execute, acknowledge and deliver to the requesting Party a certificate evidencing (i) whether or not this Lease is in full force and effect, (ii) whether or not this Lease has been amended in any way, (iii) whether or not there are any existing defaults on the part of the Party requesting the certificate hereunder to the knowledge of the certifying Party and specifying the nature of such defaults, if any, and (iv) the date to which Rent, and other amounts due hereunder, if any, have been paid. Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee of LANDLORD'S or TENANT'S interest hereunder or of any part of LANDLORD'S or TENANT'S property or by any holder or prospective holder of a first mortgage of LANDLORD. The requesting Party shall pay all expenses connected with such certificate reasonably incurred by the Party giving such certificate.

9.09 TIME IS OF THE ESSENCE: Except as otherwise specifically provided herein, TIME IS OF THE ESSENCE OF THIS LEASE.

9.10 BROKERAGE COMMISSIONS: Except with respect to Leitman-Perlman, Inc. (whose commission LANDLORD shall pay), TENANT and LANDLORD each represents and warrants to the other that no broker, agent, commission salesman or other person has represented the warranting Party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any such person or entity. Each Party further warrants that any compensation arrangement with the Party or Parties excepted from the foregoing warranty has been reduced to writing in its entirety in a separate agreement signed simultaneously with or before this Lease by the Party against whom the commission or compensation is charged.

9.11 APPROVALS: Where by a provision of this Lease an approval, consent or agreement of a Party (hereinafter

individually or collectively referred to as "Approved" or an "Approval") is required, unless the contrary is expressly provided in this Lease:

- (a) the Party whose Approval is required will, within ten (10) days after receipt of a request for Approval, accompanied in all cases by reasonable detail if the circumstances require, given notice to the requesting Party either that it gives its Approval, or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding Approval; and
- (b) if the notification referred to in Subsection (a) is not given within the applicable period of time, the Party whose Approval is requested will be deemed conclusively to have given its Approval in writing.
- (c) Any Party acting hereunder with respecting to giving or withholding an Approval shall at all time act reasonably.

9.12 FORCE MAJEURE: Except as may be otherwise expressly stated or limited herein, LANDLORD and TENANT each shall be excused from the performance of any of its obligations for the period of any delay resulting from any cause beyond its control, including, without limitation, all labor disputes, governmental regulations or controls, fires or other casualties, inability to obtain any material or services, or acts of God. However, this clause shall expressly not apply to any performance which is not done due to financial distress or inability of either Party to pay.

9.13 RELATIONSHIP OF LANDLORD AND TENANT: This Lease shall be treated in all respects as an estate for years and not a usufruct. Express provision in this Lease for any rights or duties which are imposed by law or statute with respect to estates for years shall in no way be deemed or construed as an indication or implication that any relationship other than Lessor and Lessee has been created or the TENANT has anything less than an estate for years by virtue of this Lease.

9.14 EXECUTION: This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts. This Lease must be executed on behalf of TENANT by TENANT'S president or vice president and attested with the corporate seal by TENANT'S secretary or assistant secretary, as the case may be. The persons executing this Lease on behalf of the corporate TENANT hereby covenants, warrants and represents that (a) TENANT is a duly constituted corporation qualified to do business in the state in which the Property is located, (b) execution of this Lease has been duly authorized by TENANT and (c) execution of this Lease and performance by TENANT of its obligations hereunder do not violate any provision of the corporate charter or by laws of TENANT or any outstanding agreement of TENANT with any other party or entity. This Lease must be executed by an authorized partner or partners of LANDLORD as necessary to bind the partnership.

9.15 LANDLORD LIABILITY: LANDLORD and TENANT agree that LANDLORD shall have no personal liability with respect to any of the covenants, conditions or provisions

of this Lease. In the event of a breach or default by LANDLORD of any of its obligations under this Lease or any other obligation owed by LANDLORD to TENANT, TENANT shall look solely to the equity of LANDLORD in the Property for satisfaction of TENANT'S remedies.

**9.16 RIGHT OF FIRST REFUSAL TO PURCHASE PREMISES:** TENANT acknowledges that LANDLORD owns property which is adjacent to the Premises. TENANT further acknowledges that "Premises", as referred to in this Lease and this paragraph specifically, shall only include the Property described in Exhibit "A" attached hereto and incorporated herein by reference. In the event LANDLORD should sell or propose to sell the Premises together with all or any portion of its adjacent property, the terms of this Paragraph shall be inapplicable and TENANT shall have no right to purchase the Premises and upon the closing of such a sale, this Paragraph shall be null and void. However, if LANDLORD proposes to sell the Premises alone, as a separate parcel, the following shall apply. In the event LANDLORD decides to accept an offer by a third party (the "Offer") to purchase the Premises, as a separate parcel, LANDLORD shall first offer to sell the Premises to TENANT on identical terms to the Offer from the third party. TENANT shall have fifteen (15) days to make the identical Offer. Should TENANT fail to make the Offer timely, decline to make the Offer, or alter any term of the Offer, the opportunity or right of first refusal granted to TENANT shall lapse and shall never revive. This right of first refusal does not survive the termination of this Lease.

This right granted herein shall apply to this TENANT and TENANT'S successors or assigns, if any. Should TENANT make the identical Offer timely, TENANT or its successors or assigns must then, within fifteen (15) days, show to LANDLORD that, in LANDLORD'S discretion, TENANT, or its successors or assigns, is financially able to comply with the Offer.

**9.17 RIGHT OF ACCESS THROUGH PREMISES:** TENANT shall be allowed access to the Premises through the parking area for Valleydale Village Shopping Center and the reasonable joint use of Shopping Center parking space. The access granted to TENANT herein shall allow TENANT, TENANT'S customers, invitees and licensees access to the Premises through the currently existing entrances for ingress and egress from and to Valleydale Village Shopping Center, as they currently exist or as they may be changed or altered in the future. TENANT'S right of ingress and egress through these entrances to Valleydale Village Shopping Center shall expire on the first to occur of (i) the expiration of the Lease Term and any Renewal Lease Term, or (ii) the sooner termination of this Lease for any reason. TENANT shall be allowed to transfer its rights under this Paragraph 9.17 only in the event of a complete transfer and assignment of this Lease. In the event TENANT validly exercises its right of first refusal to purchase the Premises in accordance with the terms of this Lease, TENANT shall continue to have the access and parking rights set out in this paragraph. TENANT is prohibited from transferring in any way other than as stated above, any of the rights granted in this Paragraph 9.17.

IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease to be executed under seal as of the day, month and year first above written.

Signed, sealed and delivered  
in the presence of:

Harold R. Hooker  
Unofficial Witness  
Ben N. Perlman  
NOTARY PUBLIC

My Commission Expires: 7/24/90  
(NOTARIAL SEAL)

LANDLORD:

VALLEYDALE VILLAGE  
PROPERTIES

By: [Signature]  
Its: Partner

Signed, sealed and delivered  
in the presence of:

Harold R. Hooker  
Unofficial Witness  
Ben N. Perlman  
NOTARY PUBLIC

My Commission Expires: 7/24/90  
(NOTARIAL SEAL)

TENANT: Peak, Inc.

[Signature]  
By: Mark W. Bond  
Title: President

Attest: [Signature]  
Title: Treas

[CORPORATE SEAL]

EXHIBIT "A"

Legal Description of Property

Commence at the Northeast Corner of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West; Thence run Westerly along the North line of same, a distance of 26.25 feet to the point of beginning of the property described herein; Thence continue along the last named course a distance of 311.75 feet; Thence turn Left 126°-47'-50" and run Southeasterly a distance of 200.05 feet to the Northwesternly right-of-way line of Valleydale Road; Thence turn Left 93°-03'-10" and run Northeasterly along said right-of-way a distance of 250.0 feet to the point of beginning. Contains 0.57 acres, more or less (24,969.62 square feet).

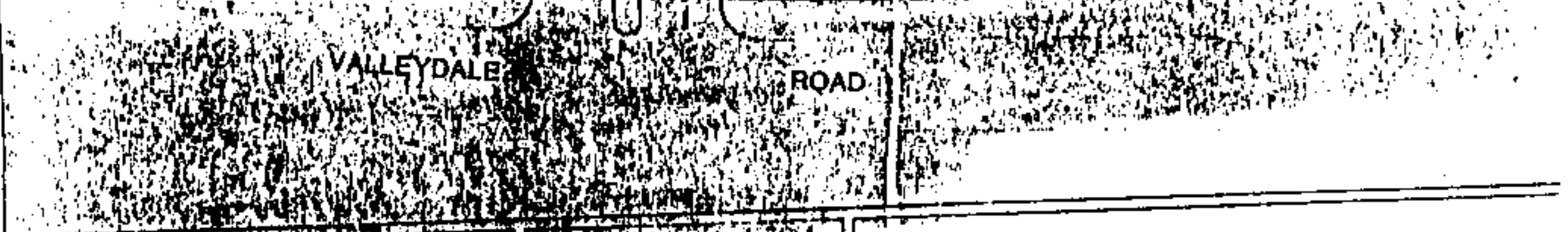


EXHIBIT "C"

Permitted Encumbrances

1. Any taxes which may be due.
2. Coal, oil, gas and other mineral interests in, or to or under the land.
3. Easement, as recorded in Volume 330, Page 491 in the Probate Office of Shelby County, Alabama.
4. Right-of-way to South Central Bell, as recorded in Volume 327, Page 451, in said Probate Office.
5. Unrecorded easements, if any, on, above or below the surface; and any discrepancies or conflicts in boundary lines or shortages in area or encroachments, which a correct survey and inspection of the Premises would disclose.
6. Mortgage from Valleydale Village, Inc. to Birmingham Trust National Bank as recorded in Volume 396, Page 912, and modified by Amendment recorded in Misc. Volume 38, Page 904, and assigned to Protective Life Insurance Company filed for record January 5, 1981 at 1:15 p.m. and recorded in Volume 38, Page 910, in said Probate Office, and further modified by Modification Agreement recorded in Mortgage Book 413, Page 749 filed for record July 1, 1981 in said Probate Office.
7. Modification Agreement recorded in Misc. Volume 53, Page 325, filed for record October 24, 1983 at 9:34 a.m. in said Probate Office.
8. Assignment of rents and leases recorded in Misc. Volume 32, Page 994 and modified in Misc. 38, Page 904 in said Probate Office.
9. Mortgage from Valleydale Village, Inc. to Vera J. Anderson, dated 7/17/79, recorded in Volume 393, Page 911 and subordinated by Misc. Volume 33, Page 1, and Amendments recorded in Misc. Volume 38, Page 902 in the Probate Office of Shelby County, Alabama, and Partial Release Subordination Agreement recorded in Misc. Volume 53, Page 333 in said Probate Office.
10. Mortgage and Assignment of Leases dated October 18, 1983 by and between Valleydale Village Properties, an Alabama general partnership and Protective Life Insurance filed for record October 24, 1983 at 9:34 a.m. and recorded in Misc. Volume 53, Page 333 in the Probate Office of Shelby County, Alabama.
11. Fire dues if any due North Shelby County Fire District.
12. Declaration of Restrictions and Grant of Easements recorded in Misc. Book 53, Page 310, filed for record October 24, 1983, at 9:29 a.m. and recorded in the Probate Office of Shelby County, Alabama.

13. Right-of-way granted to Alabama Power Company by instrument recorded in Volume 179, Page 331 and Volume 327, Page 457 in the Probate Office of Shelby County, Alabama.
14. Mineral and mining rights and rights incident thereto recorded in Volume 323, Page 832 in the Probate Office of Shelby County, Alabama.
15. Grant of easements recorded in Real 63, Page 26 and Real 63, Page 23 in the Probate Office of Shelby County, Alabama.
16. Any other matters of record.

**EXHIBIT "D"**

**Actual Base Rent and Commencement Date Agreement**

Agreement made this 12th day of June,  
19 90, between Valleydale Village Prop. (hereinafter  
referred to as "Landlord") and Peak, Inc.  
(hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that  
certain Lease Agreement dated December 22, 19 89  
(hereinafter referred to as the "Lease"), for certain  
Premises more particularly described therein );

NOW, THEREFORE, pursuant to the provisions of  
Section 5.01 of the Lease, Landlord and Tenant mutually  
agree as follows:

1. Tenant is in possession of, and has  
accepted, the Premises demised by the Lease. Tenant  
further certified that, all conditions of the Lease  
required of Landlord as of this date have been fulfilled  
and there are no defense or offsets against the  
enforcement of the Lease by Landlord.

2. The Commencement Date of the Lease term  
is May 21, 19 90, and the Term of the Lease shall  
expire on May 31, 2005.

|                                       |                      |
|---------------------------------------|----------------------|
| 3. Ground rent                        | <u>\$18,000.00</u>   |
| Plus Actual Net Construction          |                      |
| Cost of <u>\$110,000.00</u> amortized |                      |
| over 180 months at 12% interest       | = <u>\$15,842.22</u> |
| Actual Annual Base Rent is            | = <u>\$33,842.22</u> |
| Actual Monthly Base Rent is           | = <u>\$ 2,820.19</u> |

4. Terms used herein are defined in the Lease.

IN WITNESS WHEREOF, the parties hereto have  
signed and sealed this Agreement, the 12th day  
of June, 19 90.

LANDLORD: Valleydale  
Village Properties  
BY: Ben N. Periman  
Its: Partner

TENANT: Peak, Inc.  
Mal W. Brown, Pres.  
By: John N. [Signature]  
Attest: TAEN  
Title:

[CORPORATE SEAL]

**Leitman-Perlman, Inc.**

July 31, 1998

Mr. Mark W. Bond, President  
Peak, Inc.  
5310 Mountain Park Drive  
Indian Springs, AL 35124

Dear Mark,

I am very pleased to enclose your letter agreement of July 22, 1998, which changes your option to renew for one additional term of five years to one additional term of fifteen years.

We sincerely thank you for remaining with us as a most valued and treasured tenant.

It would be my pleasure to have you for lunch one day, and perhaps when you are next in this area, give me a call. Likewise, if I plan to be in your area I will give you a call.

Warm Regards,



Ben N. Perlman  
Enclosure

BNP:nc

2204 Lakeshore Drive, Suite 304 / Birmingham, Alabama 35209  
Telephone: (205) 803-3000 / Fax: (205) 803-3030

Commercial and Industrial Real Estate Services  Sales • Leasing • Management • Development • Investment

**PEAK, INC. aka EXPRESS OR CHANGE**3310 MOUNTAIN PARK DRIVE  
Indian Springs, AL 35134Phone 982-1144  
Fax 733-0591

July 22, 1998

MR. BEN PERLMAN  
LEITMAN-PERLMAN, INC.  
2204 LAKESHORE DRIVE, SUITE 304  
BIRMINGHAM, AL 35209

Dear Ben,

This letter will confirm your agreement to amend that certain Peak, Inc. Lease Agreement dated December 22, 1989. The first sentence of Paragraph 2.02 (a) shall now read as follows: "TENANT shall have the right to renew this Lease for one (1) additional term of fifteen (15) years commencing on the expiration of the Term of this Lease (hereinafter referred to as the "Renewal Lease Term")." All other terms and conditions of the Peak, Inc. Lease Agreement shall remain the same including the provisions of Paragraph 3.02(d) regarding the CPI adjustment during the Term and the Renewal Lease Term. Please acknowledge your consent to the foregoing provisions by signing below and faxing me a copy and mailing the original.

Sincerely,  
Peak Inc.  
Mark W. Bond, PresidentAGREED:  
Valleydale Village PropertiesBY: ITS: Subscribed and sworn before me, Vicki Rogers a notary public  
this 3<sup>rd</sup> day of July, 1998.  
NOTARY PUBLICMy commission expires: 3/24/01



Leitman-Perlman, Inc.  
2204 Lakeshore Drive  
Suite 304  
Birmingham, AL 35209

# FAX

To: Mark Bond

From: Ben Perlman

Fax Number: 733-0991

Date: June 26, 1998

Number of Pages (including cover sheet): 2

Phone: 205-803-3000

Fax: 205-803-3030

Leitman-Perlman@juno.com

Remarks:

Dear Mark,

Your proposed new building is approved by the Shopping Center owners (Valleydale Village Properties) as per your sketch, which I have initialled and approved; provided that the use will be the same as is contained in your lease language for the original building.

We are assuming that this new building will pretty well mirror your existing facility.

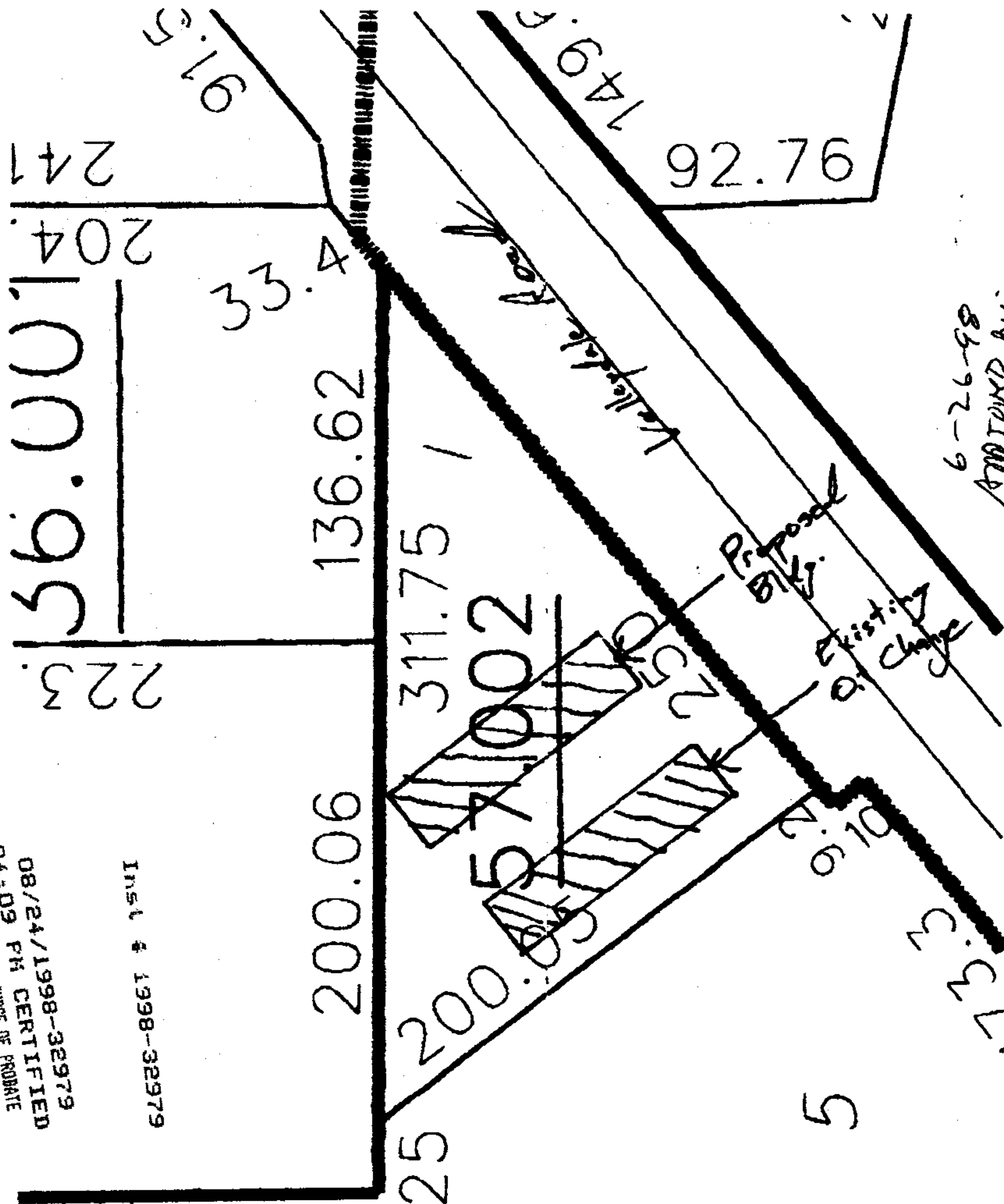
I have polled the owners, and they would prefer not to finance this addition for you, as they still have a considerable balance due on their indebtedness on the Center.

We wish you continued success in your operation.

We have forwarded you a copy of your lease agreement.

Warm Regards,





6-2688  
by: J. J. J. J.

Valleydale Village Properties,  
By: Ben Perlman, Partner, & Attorney at Law

08/24/1998-32979  
04:09 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
034 CRH 419.50

Inst # 1398-32979