

This instrument prepared by:
John E. Hagefstration, Jr.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203-2736

Inst # 1999-21088

05/19/1999-21088
11:56 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
007 SNA 23.50

NONENCUMBRANCE AGREEMENT

THIS NONENCUMBRANCE AGREEMENT (this "Agreement") is being entered into as of the 5th day of March, 1999, by **PELHAM INDUSTRIAL ENTERPRISES NINE, L.L.C.**, an Alabama limited liability company ("Borrower") in favor of **FIRST COMMERCIAL BANK**, an Alabama banking corporation ("Lender").

RECITALS:

A. Lender has agreed to make available to Borrower a construction loan in an amount of up to \$1,000,000.00 (the "Loan"), pursuant to the terms of a certain Construction Loan Agreement of even date herewith by and between Lender and Borrower.

B. In order to induce Lender to make the Loan available to Borrower, Borrower has agreed to enter into this Agreement with respect to certain property owned by Borrower located in Shelby County, Alabama and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Loan to Borrower, Borrower, intending to be legally bound hereby, agrees as follows:

1. **Representations and Warranties of Borrower.** To induce Lender to make the Loan to Borrower, Borrower represents and warrants to Lender that:

a. Borrower is a limited liability company, duly organized and validly existing under the laws of the State of Alabama;

b. Borrower has the lawful power to own its properties, including the Property, and to engage in the business it conducts, and Borrower is duly qualified and in good standing as a foreign corporation in each jurisdiction wherein the nature of the business transacted by it or property owned by it make such qualification necessary;

c. The execution and performance of this Agreement will not, immediately, with the passage of time, the giving of notice, or both, violate any provision of the articles of organization or the operating agreement of Borrower, or violate any laws or result in a default under any contract, agreement, or instrument to which Borrower is a party or by which Borrower or any of its properties are bound;

d. Borrower has the power and authority to enter into and perform this Agreement, and to incur the obligations herein, and has taken all limited liability company action necessary to authorize the execution, delivery, and performance of this Agreement;

e. This Agreement, when delivered, will be valid, binding, and enforceable in accordance with its terms;

f. There is no pending order, notice, claim, litigation, proceeding or investigation against or affecting Borrower or the Property, whether or not covered by insurance, that would involve the payment of \$25,000 or more if adversely determined;

g. Borrower has good and marketable fee simple title to the Property and all of its other assets, subject only to the items listed on Exhibit B attached hereto and made a part hereof;

h. No representation or warranty by Borrower contained herein, or in any document furnished by Borrower in connection herewith, contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made;

i. To Borrower's best knowledge and belief, no "hazardous substance" (as that term is defined in Section 1.01 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) has been released, discharged, or stored on the Property by Borrower, by any third party, or by any predecessor in interest or title to Borrower; and

j. The Property is otherwise in compliance with all applicable local, state and federal environmental laws and regulations.

2. **Negative Pledge.** Until the Loan has been repaid in full, Borrower shall not sell, assign, mortgage, encumber, or otherwise convey the Property, or any portion thereof or interest therein, without obtaining the prior written consent of Bank, which consent may be withheld by Lender in its sole and absolute discretion. A conveyance of the Property under this Section 2 shall include the voluntary or involuntary sale of member interests (or other ownership interests) of Borrower (or the stock or other ownership interest of any entity directly or indirectly controlling Borrower by operation of law or otherwise) or the creation or issuance of new member interests (or other ownership interests) by which an aggregate of more than fifteen percent (15%) of the member interests (or other ownership interests) of Borrower shall be vested in a party or parties who are not now members of Borrower. There is excluded from this paragraph any transfer of member interests among the members or the admission of a new member or members as a result of inheritance.

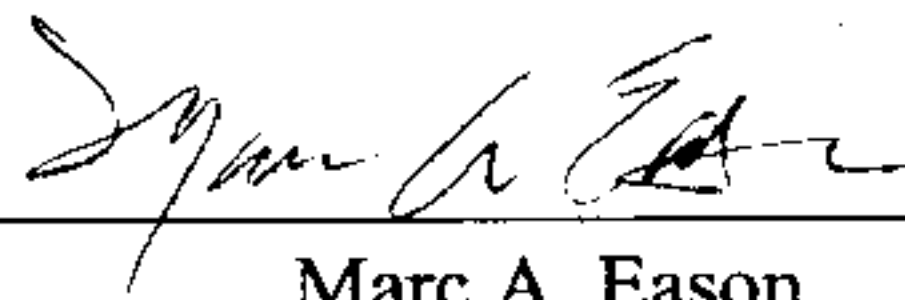
3. **Acceleration.** If Borrower should sell, assign, mortgage, encumber or convey all, or any part of, the Property without the consent of the Lender, then, in such event, the Loan, and any and all indebtedness owing by Borrower to Bank, shall become immediately due and payable, without notice to Borrower, which notice Borrower hereby expressly waives.


4. **Recordation.** Borrower acknowledges and agrees that Lender intends to record this Agreement in the Office of the Judge of Probate of the county in which the Property is located. Borrower agrees to pay all costs and expenses incurred by Lender in recording this agreement.


5. **Release.** Upon payment in full of the Loan, Lender agrees, upon request and at the expense of Borrower, to execute an instrument in recordable form canceling this Agreement.

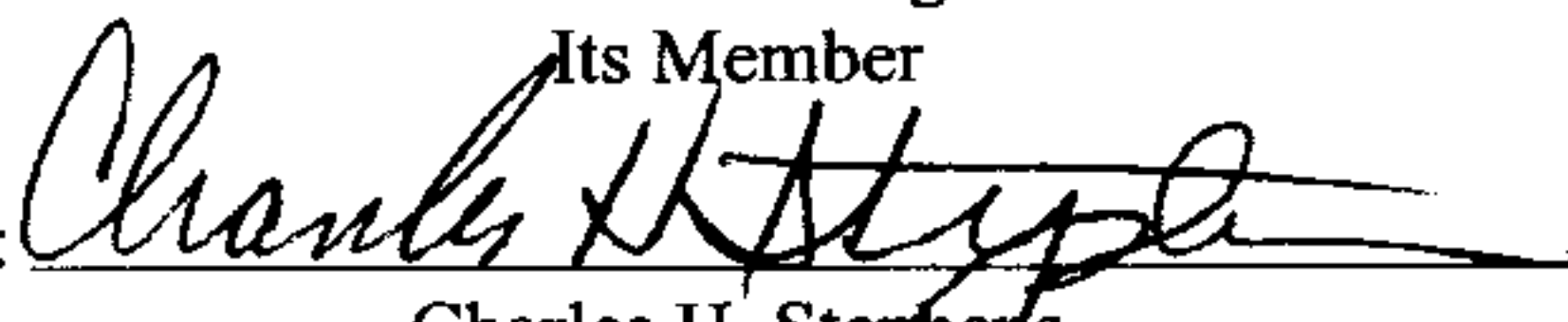
IN WITNESS WHEREOF, Borrower has caused this Agreement to be executed by its duly authorized member on the date first above written.

**PELHAM INDUSTRIAL ENTERPRISES
NINE, L.L.C.**

By: 
Marc A. Eason
Its Member

By: 
Helen Bunkin, not Individually but
as Executor of the Estate of David Bunkin
Its Member

By: 
Marvin R. Engel
Its Member

By: 
Charles H. Stephens
Its Member

STATE OF ALABAMA

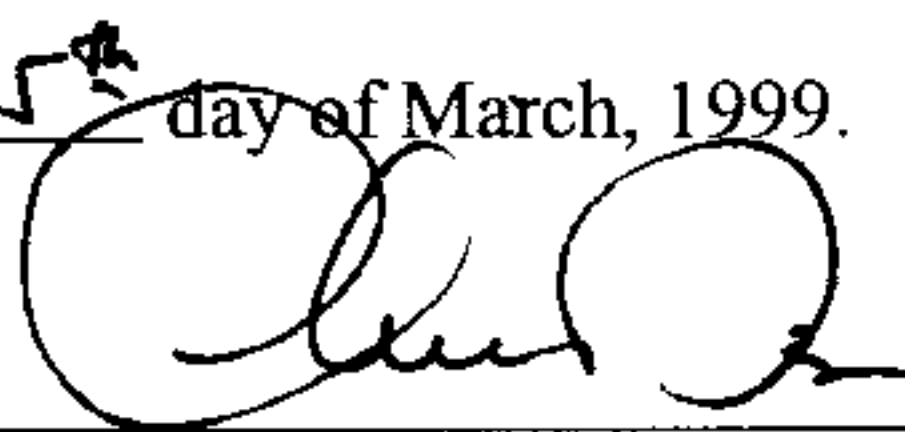
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JEFFERSON COUNTY

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I, the undersigned, a notary public in and for said county in said state, hereby certify that Marc A. Eason, whose name as a member of Pelham Industrial Enterprises Nine, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 5th day of March, 1999.



Notary Public

[NOTARIAL SEAL]

My commission expires: 4-19-2000

STATE OF ALABAMA

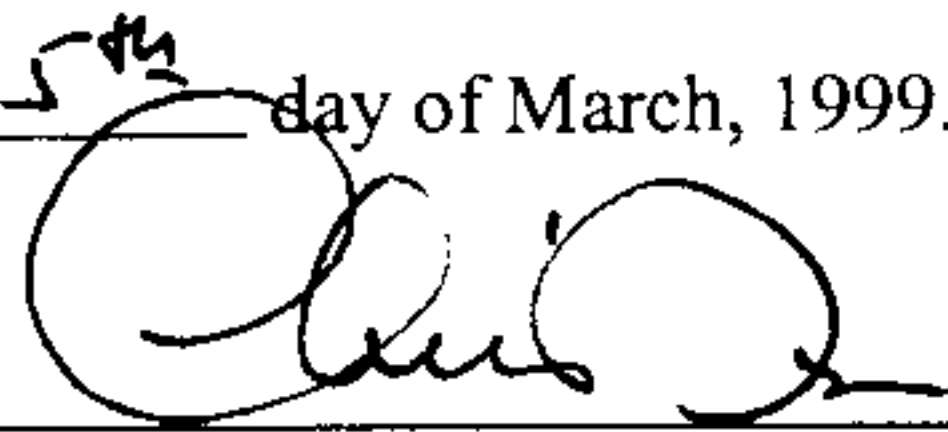
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JEFFERSON COUNTY

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I, the undersigned, a notary public in and for said county in said state, hereby certify that Helen Bunkin, whose name as Executor of the Estate of David Bunkin, as a member of Pelham Industrial Enterprises Nine, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, in her capacity as such Executor, executed the same voluntarily as such member for and as the act of said limited liability company.

Given under my hand and official seal this 5th day of March, 1999.



Notary Public

[NOTARIAL SEAL]

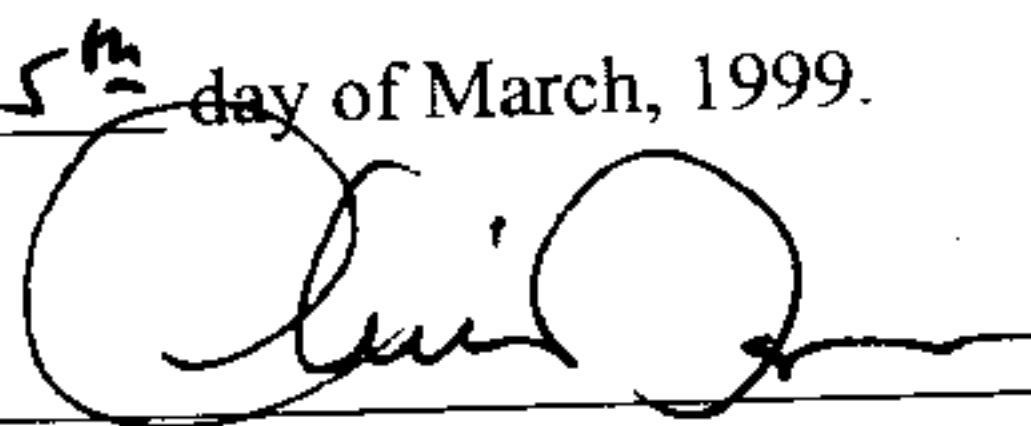
My commission expires: 4-19-2000

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Marvin R. Engel, whose name as a member of Pelham Industrial Enterprises Nine, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 5th day of March, 1999.



Notary Public

[NOTARIAL SEAL]

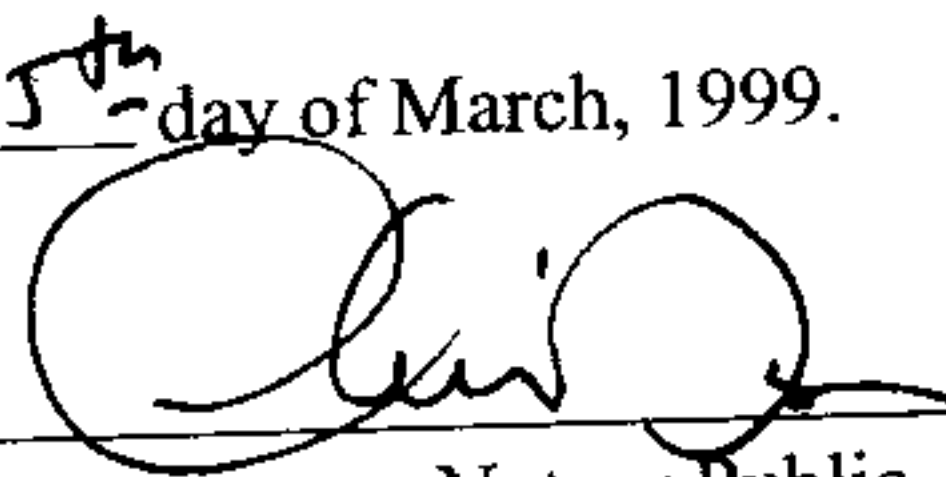
My commission expires: 4-19-2000

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Charles H. Stephens, whose name as a member of Pelham Industrial Enterprises Nine, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 5th day of March, 1999.



Notary Public

[NOTARIAL SEAL]

My commission expires: 4-19-2000

EXHIBIT "A"

Part of Block 3 of Cahaba Valley Park North as recorded in Map Book 13, Page 140, in the Probate Office of Shelby County, Alabama, being more particularly described as follows: Commence at the northeast corner of the N.W. 1/4 of the N.E. 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, said 1/4 1/4 Section corner being 1,331.88 feet measured (1,331.96 feet record) West of the northeast corner of Section 31, Township 19 South, Range 2 West, said point being the northeast corner of said Block 3 of Cahaba Valley Park North and the northeast corner of the Survey of the Alagasco Site by Joseph A. Miller, Jr., dated 3-2-95, and the northwest corner of the Survey of the Drivers Mart Site by Joseph A. Miller, Jr., dated 12-18-96; thence run West along the North line of said N.W. 1/4 of the N.E. 1/4 of said Section 31 and along the North line of said Block 3 and the North line of said Alagasco Site for 588.83 feet to a point on the east right of way line of Cahaba Valley Parkway North, said point being 60.08 feet East of the northwest corner of said Block 3; thence 92 degrees 39 minutes 22 seconds left and run southerly along the East right of way line of said Cahaba Valley Parkway North and along the West property line of the Alagasco Site for 427.54 feet to the N.W. corner of Lot 5 of Cahaba Valley Business Park Resurvey No. 2, as recorded in Map Book 23, Page 42, in the Office of the Judge of Probate of Shelby County, Alabama; thence continue southerly along the last stated course, and along the East right of way line of said Cahaba Valley Parkway North, and along the West line of said Lot 5 for 365.33 feet to the S.W. corner of said Lot 5, and the N.W. corner of Cahaba Valley Business Park Phase 6; thence continue Southerly along the last stated course and along said right of way line and along the West line of said Phase 6 of Cahaba Valley Business Park for 295.46 feet to the S.W. corner of said Phase 6, said point being the POINT OF BEGINNING of the parcel herein described; thence continue southerly along the last stated course and along said right of way line for 9.48 feet to the beginning of a curve to the left, said curve subtending a central angle of 14 degrees 40 minutes 52 seconds and having a radius of 1,359.64 feet; thence run southerly along the arc of said curve and along said right of way line for 348.38 feet; thence from tangent of said curve turn 89 degrees 09 minutes 26 seconds left and run northeasterly for 30.55 feet to the beginning of a curve to the right, said curve subtending a central angle of 07 degrees 51 minutes 56 seconds and having a radius of 1,070.97 feet; thence run northeasterly along the arc of said curve for 147.02 feet to the end of said curve; thence at tangent to said curve run northeasterly for 417.85 feet to a point on the southwest line of said Drivers Mart Survey; thence 153 degrees 02 minutes 00 seconds left and run northwesterly along the Southwest line of said Drivers Mart Survey for 66.87 feet to an angle point; thence 69 degrees 43 minutes 00 seconds right and run northerly along the West line of said Drivers Mart Survey for 254.07 feet to the S.E. corner of said Phase 6 of Cahaba Valley Business Park; thence 90 degrees 42 minutes 38 seconds left and run Northwesterly along the South line of said Phase 6 of Cahaba Valley Business Park for 575.08 feet to the POINT OF BEGINNING, said parcel contains 177,514 square feet, more or less or 4.075 acres, more or less.

EXHIBIT "B"

1. Transmission Line Permit(s) to Alabama Power Company as shown by instruments recorded in Deed Book 101, Page 520; Deed Book 145, Page 378 and Deed Book 113, Page 281 in the Office of the Judge of Probate of Shelby County, Alabama.
2. Easement(s) to Alabama Power Company as shown by instrument recorded in Real 292, Page 618 in the Office of the Judge of Probate of Shelby County, Alabama.
3. Declaration of Protective Covenants for Cahaba Valley Park North as set out in Real 268, Page 140 in the Office of the Judge of Probate of Shelby County, Alabama and which have been amended from time to time as parcels are sold, the same being amended by:
 - (i) Declaration of Restrictive Covenants in connection with sale to Taco Bell recorded in Real 325, Page 929.
 - (ii) Restrictive Covenants in connection with sale to Camps, Inc., as recorded in Real 290, Page 386.
 - (iii) Restrictive Covenants in connection with sale to Pelham Motel Investments, Inc., as recorded in Instrument #1992-15856.
 - (iv) Restrictive Covenants in connection with sale to the Baptist Medical Centers as recorded in Instrument #1993-25691.
4. A 40 foot ingress and egress easement along the Southerly boundary of the land as shown on the survey by Miller, Triplett and Miller Engineers, Inc. dated 12/14/98.

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