

Drawn By Recording Requested By  
And When Recorded Mail To:  
Oppenheimer Wolff & Donnelly LLP  
45 South Seventh Street  
Plaza VII, Suite 3300  
Minneapolis, Minnesota 55402  
Attn: Duane L. Paulson  
FCL Loan No. 3481

Inst # 2001-45047

10/18/2001-45047  
08:17 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
012 CH 45.00

### MODIFICATION AGREEMENT

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

### RECITALS

- A. Loan Documents. On or about June 30, 1999, Lender made a loan ("Loan") to Borrower in the principal sum of Two Million One Hundred Seventy-Five Thousand and No/100 Dollars (\$2,175,000.00) evidenced by the following (together with the other documents governing the Loan, the "Loan Documents"):
1. Promissory Note dated June 30, 1999, ("Note") in the Loan amount.
  2. Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement (the "Mortgage") dated June 30, 1999, recorded on June 30, 1999, with Shelby County Judge of Probate Court as Instrument No. 1999-27498 encumbering the property ("Property") legally on the attached Exhibit A.
  3. Assignment of Rents and Leases (the "Assignment") dated June 30, 1999, recorded on June 30, 1999, with the Shelby County Judge of Probate Court as Instrument No. 1999-27499.
  4. An Indemnity regarding environmental matters dated June 30, 1999, executed by the Borrower and Guarantor.
  5. UCC Financing Statements filed with the Alabama Secretary of State and recorded in Shelby County ("Financing Statements").
  6. Unconditional Guaranty (the "Guaranty") by Guarantor dated June 30, 1999.
- B. Release of Cross Default. Requirements for release of the cross default provisions of the Loan Documents have been satisfied resulting in a modification of the Loan Documents as set forth in this Agreement.

THEREFORE, the parties agree as follows:

- a. Loan Modification. The Loan is modified as provided herein.
- b. Lender's Expenses. Borrower agrees to pay all of Lender's legal and administrative expenses in connection with this Agreement.
- c. Amendments to Note. Paragraph 15 of the Note entitled Cross-Default and Additional Collateral is deleted from the Note.
- d. Amendments to Mortgage. From and after the date of this Agreement, the Mortgage is amended to refer to the Note as amended as referred to above.
- e. Amendments to Assignment. From and after the date of this Agreement, the Assignment is amended to refer to the Note as amended as referred to above.
- f. Amendments to the Guaranty and Indemnity. From and after the date of this Agreement, the Guaranty and Indemnity are amended to refer to the Note as amended as referred to above.
- g. Consent, Affirmation, Acknowledgment and Ratification and Consent of Guarantor. The parties hereto, including the Guarantor, join in the execution of this Agreement for the additional purposes of consenting to the terms of this Agreement and acknowledging that they are fully familiar with the terms of the Loan Documents and that they express the entire understanding of the parties regarding the Loan, and affirming, acknowledging and ratifying them subject to the Amendments provided for herein.
- h. Effect of Modification. Except as amended by this Agreement, the Loan Documents shall continue in full force and effect in accordance with their terms as originally executed and the Mortgage, the Assignment and/or any other Loan Documents that refer to the Loan, the Note, the Mortgage, or the Assignment shall, from and after the date of this Agreement, refer to the Loan, the Note, the Mortgage, and the Assignment as amended by this Agreement.
- i. Attorneys' Fees. If any suit or action is brought by the Lender to enforce or interpret the terms of this Agreement, the Borrower shall pay the Lender's costs and expenses, including reasonable attorneys' fees, incurred in such suit or action. Such fees shall include, without limitation, attorneys' fees incurred at or in preparation for any trial, appeal or review or in any bankruptcy proceeding.
- j. Conditions. This Agreement shall be effective only when all of the following conditions have been satisfied:
  1. This Agreement has been duly executed by all parties in the manner indicated and filed with the Shelby County, Alabama, Judge of Probate Court.

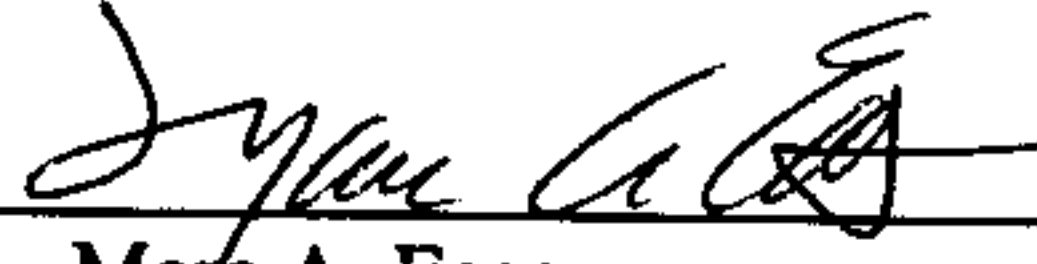
2. Borrower has paid all of Lender's expenses and fees arising out of this Agreement, including recording, attorney's fees, and other out-of-pocket costs of the Lender.

k. Miscellaneous.

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

IN WITNESS WHEREOF, the undersigned, being all the member of the Borrower, have executed this Modification Agreement as of the day and year first above written.

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

By:   
Marc A. Eason

Its: Member

By: ESTATE OF DAVID BUNKIN

By:   
Helen P. Bunkin

Its: Personal Representative

Its: Member

By:   
Charles H. Stephens

Its: Member

By:   
Marvin R. Engel

Its: Member



COUNTY OF Tellerson ) SS

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

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

## Notary Public

My Commission Expires 2/9/02

COUNTY OF Jefferson ) SS

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

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

**Notary Public**

My Commission Expires 2/9/02

STATE OF ALABAMA       )  
  (SS  
COUNTY OF JEFFERSON   )

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

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

Ben M. McNew  
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA       )  
  (SS  
COUNTY OF JEFFERSON   )

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

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

Ben M. McNew  
Notary Public

My Commission Expires: 2/9/02

FIRST COLONY LIFE INSURANCE  
COMPANY, a Virginia corporation

By: Pamela M. Ruliff

Its: AVP & Mortgage Investment Officer

STATE OF WA )  
COUNTY OF King ) ss

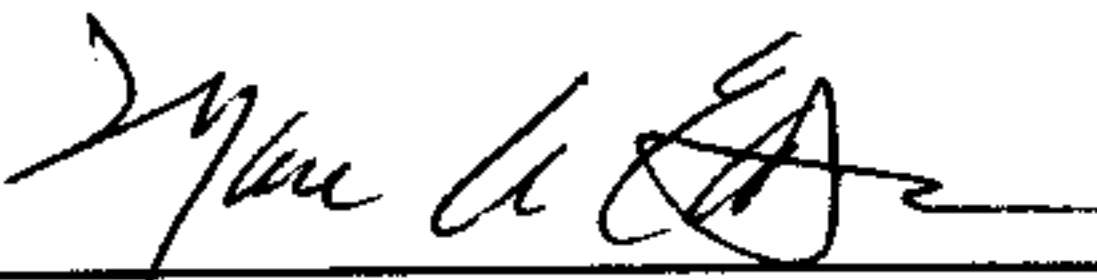
I, a Notary Public of the County and State aforesaid, certify that Pamela M Ruliff personally came before me this day and acknowledged that (s)he is the AVP & Mortgage Investment Officer of First Colony Life Insurance Company, a Virginia corporation, is signed to the foregoing instrument and who is known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

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

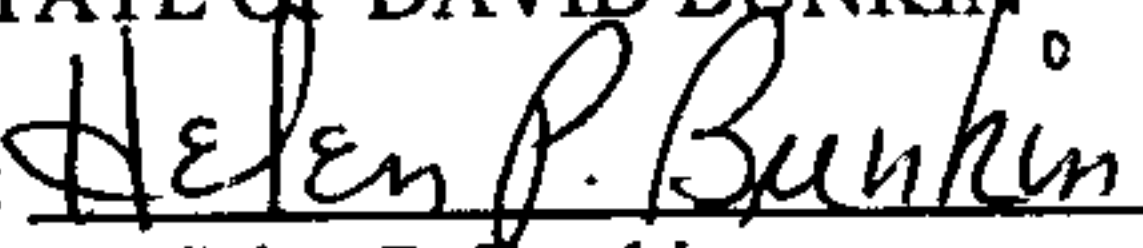


[Signature]  
Notary Public

My Commission Expires: 7/1/04

  
\_\_\_\_\_  
MARC A. EASON

By: ESTATE OF DAVID BUNKIN<sup>o</sup>

By:   
\_\_\_\_\_  
Helen P. Bunkin

Its: Personal Representative

Its: Member

  
\_\_\_\_\_  
CHARLES H. STEPHENS

  
\_\_\_\_\_  
MARVIN R. ENGEL



STATE OF ALABAMA       )  
COUNTY OF Jefferson       ) SS

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

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

Don St. Mynew  
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA       )  
COUNTY OF Jefferson       ) SS

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

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

Don St. Mynew  
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA       )  
  ) SS  
COUNTY OF Jefferson )

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

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

Ann H. McNew  
Notary Public

My Commission Expires: 2/9/02

STATE OF ALABAMA       )  
  ) SS  
COUNTY OF Jefferson )

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

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

Ann H. McNew  
Notary Public

My Commission Expires: 2/9/02

EXHIBIT A  
TO  
MODIFICATION AGREEMENT

LEGAL DESCRIPTION:

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

Lot 7, of Cahaba Valley Business Park, Resurvey Number 4, as recorded in Map Book 25 page 102 in the Probate Office of Shelby County, Alabama and being more particularly described as follows:

Part of Block 3 of Cahaba Valley Park North as recorded in Map Book 13 page 140, in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows: Commence at the NE corner of the NW 1/4 of the NE 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 03/02/ 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 NW 1/4 of the NE 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 deg. 39 min. 22 sec. 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 NW 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 Probate Judge 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 SW corner of said Lot 5, and the NW corner of Lot 6, Cahaba Valley Business Park, Resurvey No. 3, as recorded in Map Book 24 page 145 in the Judge of Probate of Shelby County; thence continue Southerly along the last stated course and along said right of way line and along the West line of said Lot 6 of Cahaba Valley Business Park for 295.46 feet to the SW corner of said Lot 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 deg. 40 min. 52 sec. 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 deg. 09 min. 26 sec. 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 deg. 51 min. 56 sec. 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 deg. 02 min. 00 sec. left and run Northwesterly along the Southwest line of said Drivers Mart Survey for 66.87 feet to an angle point; thence turn 69 deg. 43 min. 00 sec. right and run Northerly along the West line of said Drivers Mart Survey for 254.07 feet to the SE corner of said Lot 6 of Cahaba

Valley Business Park; thence turn 90 deg. 42 min. 38 sec. left and run Northwesterly along the South line of said Lot 6 of Cahaba Valley Business Park for 575.08 feet to the point of beginning; being situated in Shelby County, Alabama.

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