

LEASE AND/OR SUB-LEASE AGREEMENT  
FOR INDEPENDENT DEALER

20030829000578060 Pg 1/8 32.00  
Shelby Cnty Judge of Probate, AL  
08/29/2003 15:03:00 FILED/CERTIFIED

STATE OF ALABAMA  
COUNTY OF SHELBY

STATION # Smoke Shop

THIS LEASE AGREEMENT is made and entered into on this the 1<sup>st</sup>  
day of August, 1991, between CRYSTAL PETROLEUM COMPANY, INC., here-  
inafter called Lessor-Distributor, and WILBERT W. GRAHAM  
hereinafter called Lessee-Independent Dealer.

W I T N E S S E T H :

Lessor-Distributor does hereby lease and/or sub-lease unto the  
Lessee-Independent Dealer that certain property located in the County  
and/or Parish of SHELBY, State of ALABAMA with the  
improvements thereon for and during the term of TEN (10) years  
commencing on the 1<sup>st</sup> day of August, 1991, and ending on the 31  
day of July, 2001, or such earlier date as this lease and/or sub-  
lease may terminate as hereinafter provided, except that, if such date  
falls on a Sunday or legal holiday then this lease and/or sub-lease shall  
end on the business day next preceding the aforementioned date. The ~~annual~~  
rental of \$849 per month (\$10,188 <sup>ANNUAL</sup>) Dollars shall be  
payable in 12 equal monthly installments, with the first installment being  
due and payable on the 1<sup>st</sup> day of August, 1991, and a like pay-  
ment on the 1<sup>st</sup> day of each successive month thereafter for and during  
the term of this lease and/or sub-lease agreement.

The parties to this lease and/or sub-lease agreement further covenant  
and agree and such covenants and agreements shall be and are a part of  
this lease and/or sub-lease agreement and specifically speak to the pro-  
visions hereinabove set out, in that, the term of this lease and/or sub-  
lease agreement may terminate at a date earlier than the term herein pro-  
vided should the Lessor-Distributor and/or Lessee-Independent Dealer  
violate the terms, conditions, covenants, provisions and agreements herin  
contained as follows:

I.

Lessor-Distributor has this day sold to Lessee-Independent Dealer  
the following items of inventory presently situated and located at the  
above demise premises and Lessee-Independent Dealer does hereby acknow-  
ledge receipt of same, as follows:

_____ gallons of Premium	\$ _____
_____ gallons of Regular	\$ _____
_____ gallons of Unleaded	\$ _____
_____ gallons of #2 Diesel	\$ _____
_____ cases of soft drinks	\$ _____
_____ cartons of cigarettes	\$ _____
_____ cases of oil	\$ _____
_____ other merchandise	\$ _____

NO GAS

A Real Estate  
Lease -

TOTAL INVENTORY INVESTMENT \$ - 0 -

Distributor - Name Change to Southeastern Realty & Mortgage  
effective 1-1-95

The above goods and merchandise are priced at wholesale and whole-sale tankwagon price in effect at the date of the execution of this agreement. Lessee-Independent Dealer has in conjunction with the execution of this instrument either paid Lessor-Distributor in cash and/or executed a Promissory Note of even date for the payment thereof.

Any further products and/or goods purchased by Lessee-Independent Dealer from Lessor-Distributor shall be at the prevailing wholesale tankwagon price in effect at time of delivery of product and the prevailing wholesale price of other goods, merchandise, and supplies in effect at the time of delivery.

The Lessor-Distributor further covenants and agrees to purchase from Lessee-Independent Dealer at the termination of this agreement such inventory on hand for the prevailing wholesale price at the time of termination, it being understood between the parties that this re-purchase agreement only applies to the goods, merchandise and products that Lessor-Distributor has sold at wholesale to Lessee-Independent Dealer.

## II.

Lessor-Distributor shall have a lien on all merchandise, goods, products, inventory, fixtures, equipment and other personal property of Lessee-Independent Dealer located and situated on the above leased premises for and during such period as Lessee-Independent Dealer shall be indebted to Lessor-Distributor for any goods, products, and merchandise delivered to Lessee-Independent Dealer on open account and for and during such period as Lessee-Independent Dealer shall be in default of rentals on lease and/or sub-lease of property. Further, should Lessee-Independent Dealer be indebted to Lessor-Distributor in any amount, Lessor-Distributor shall be permitted, by any of its authorized representatives, to inventory and inspect any and all products, goods, and merchandise sold to Lessee-Independent Dealer by Lessor-Distributor.

## III.

Lessee-Independent Dealer further covenants and agrees to purchase all petroleum products, including but not limited to, gasoline, oil, grease, and diesel sold and merchandised at the above referenced leased location, on the terms and conditions herein set out, from Lessor-Distributor and failure on part of Lessee-Independent Dealer to do so violates this agreement on a material point and is sufficient reason for the cancellation on the terms and conditions herein set out. Nothing herein shall prohibit the Lessee-Independent Dealer from owning, merchandising, offering for sale tires, batteries, fan belts, spark plugs, ignition parts, groceries, and any and all other things that are lawful and reasonably suited for the leased premises so long as same does not unreasonably interfere with the sale, promotion and merchandising of the petroleum products sold to Lessee-Independent Dealer by Lessor-Distributor.



#### IV.

Lessee-Independent Dealer has examined and knows the condition of said premises and equipment and acknowledges that he/she has received same in good order and repair, and that no representation as to the condition or state of repair thereof has been made by Lessor-Distributor; Lessee-Independent Dealer expressly assumes the risk of all apparent or latent defect; Lessee-Independent Dealer agrees to repair, restore or replace, to the satisfaction of Lessor-Distributor, any fixtures, equipment, machinery, or other items included in this agreement which may hereafter be found injured, defective, damaged, or missing. Lessee-Independent Dealer further agrees that he/she will maintain the premises in a safe, neat, clean, and orderly condition and will keep in good repair all of the buildings, structures, equipment, appliances, and other personal property on the premises; that he/she will not make any additions or alterations to the buildings without the written permission of Lessor-Distributor; and that upon expiration or termination of this agreement for any cause, Lessee-Independent Dealer will return the property to Lessor-Distributor in the same condition as of the date hereof, ordinary wear and tear excepted.

#### V.

Lessee-Independent Dealer shall observe and comply with all Federal, State and Municipal Laws, ordinances, regulations, orders, licenses, and permits relating to the premises, and Lessee-Independent Dealer shall pay all charges incident to Lessee-Independent Dealer's use of the premises and the business conducted thereon, including all licenses, permits, occupation and inspection taxes and fees, all water, gas, electricity, telephone and other utility charges, and all taxes on Lessee-Independent Dealer's property on the premises. If Lessee-Independent Dealer fails to pay such charges Lessor-Distributor may elect to pay same and charge same to Lessee-Independent Dealer, in which case said amount so charged shall be immediately due and payable.

#### VI.

Lessee-Independent Dealer shall protect and indemnify Lessor-Distributor against any and all liability for loss, damage, injury, or liability of any nature to Lessee-Independent Dealer or to any personal property resulting directly or indirectly from the use of leased or subleased premises or equipment or from the storing of petroleum products in, or withdrawing it from storage, or from its use in any manner, whether such loss, damage, injury or other liability arises from negligence, or otherwise, and whether due to the imperfection of said premises or equipment or any part thereof, whether latent or patent, or to

any fault in the installation thereof, or cause from leakage, fire, or explosion, or any cause whatsoever, it being recognized by the parties that the Lessee-Independent Dealer is in no wise an agent, servant, or employee of Lessor-Distributor, but that the service station and related business to be conducted on the leased premises is solely that of Lessee-Independent Dealer. Additionally, Lessee-Independent Dealer agrees to provide for the defense of any claim made against Lessor-Distributor for any act or lack of action resulting in loss or injury of any nature, including attorney's fees and other reasonable costs incurred therein, and Lessee-Independent Dealer agrees to pay on behalf of Lessor-Distributor any judgement rendered as a result of the above.

#### VII.

Lessee-Independent Dealer agrees to keep in full force and effect insurance policies acceptable in form to Lessor-Distributor covering workmen's compensation on all employees and helpers, a garage liability policy, and a comprehensive general liability policy. Each of said policies shall have limits in the amounts acceptable to Lessor-Distributor, and each policy shall have a certificate of insurance to Lessor-Distributor. Lessee-Independent Dealer agrees to perform with all of the provisions of the "Fair Labor Standards Act" in relation to employees and helpers, and Lessee-Independent Dealer agrees to maintain as amended, a copy of the wage and hour publication 1308.

#### VIII.

Lessee-Independent Dealer agrees to honor credit cards acceptable by Lessor-Distributor at Lessee-Independent Dealer's place of business and Lessee-Independent Dealer shall be fully responsible to Lessor-Distributor and shall repay or reimburse Lessor-Distributor for illegal or bad credit sales. All sales in excess of \$15.00 shall be cleared through issuing bank or agency listed on credit card.

#### IX.

If Lessee-Independent Dealer shall be in default in any of the covenants, conditions or stipulations of this agreement or if Lessee-Independent Dealer shall be adjudicated or bankrupt or make an assignment for the benefit of creditors, or if the interest of Lessee-Independent Dealer under this agreement shall be levied upon and sold upon execution or shall by operation of law become vested in another person, firm, or corporation, or if a receiver shall be appointed for Lessee-Independent Dealer or for any interest of Lessee-Independent Dealer under this agree-



ment or if appropriation of eminent domain proceedings are instituted against the premises, then, and in such event, Lessor-Distributor at any time thereafter shall have the right to terminate this agreement and thereupon to enter and take possession of the demised premises; and the Lessor-Distributor may, in addition thereto, sue for and recover all damages accrued under this agreement or arising out of any violation thereof; and Lessor-Distributor may pursue any other remedies for the violation of this agreement or any of its covenants as may be provided or authorized by law. Additionally, in case of any default by Lessee-Independent Dealer hereunder, Lessee-Independent Dealer shall not remove any of the property from the premises until such default has been fully satisfied, and this lien may be enforced by the taking and sale of said property by Lessor-Distributor in public or private sale, and the proceeds, after the expense of the sale, including a reasonable attorney's fee, shall be applied to the satisfaction of the obligations so in default. Lessee-Independent Dealer further covenants and agrees to pay Lessor-Distributor within seven (7) days from date of delivery for all products, goods, and merchandise sold by Lessor-Distributor to Lessee-Independent Dealer and failure of Lessee-Independent Dealer to so pay is a material breach of this agreement and subjects same to immediate cancellation by Lessor-Distributor. Lessee-Independent Dealer does as to the obligation of this agreement waive all rights to exemptions under the constitutional laws of this state and does promise to pay all costs of collection or enforcement including a reasonable attorney's fee.

X.

Lessee-Independent Dealer agrees that any proceeds from any eminent domain proceedings are the property of and shall be for the benefit of the Lessor-Distributor.

XI.

If, as set forth in the special provision section below, Lessor-Distributor agrees to furnish utility or pay taxes for any purpose, of it without mention in the special provisions paragraph there is an increase in taxes or utilities of any sort resulting in an expense on the part of Lessor-Distributor, Lessee-Independent Dealer agrees to immediately pay Lessor-Distributor the increased cost or expense required to Lessor-Distributor therein.

XII.

Lessor-Distributor shall not be responsible for any of the furniture, goods, fixtures and chattels of Lessee-Independent Dealer which may be brought onto or put on premises.

XIII.

Lessee-Independent Dealer covenants and agrees that he/she and/or it will not permit any nuisance to be created, maintained, or carried on upon the leased and/or sub-leased premises.

XIV.

All notices, payments and demands shall be made and addressed to the appropriate party at the following respective addresses:

LESSOR-DISTRIBUTOR:

CRYSTAL PETROLEUM COMPANY, INC.

P. O. Box ~~9112~~ 19723

Birmingham, Al. 35219

Telephone: (205) ~~870-8710~~ 823-4748

LESSEE-INDEPENDENT DEALER:

W. W. GRAHAM

Name

SS# \_\_\_\_\_

c/o The Smoke Shop.

Name

SS# \_\_\_\_\_

1908 Hwy 31, South.

Street

pelham ALA 35244

City

State

Zip

Telephone: (205) 988-4662

or at such other address as one party shall give notice to the other party by registered mail.

XV.

This lease and/or sub-lease agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto and it may be modified only by an agreement in writing, signed and sealed by Lessor-Distributor and Lessee-Independent Dealer.

XVI.

Lessee-Independent Dealer will provide Lessor-Distributor with his Federal Employer's Identification Number within 30 days from the execution of this agreement.

XVII.

No waiver by Lessor-Distributor or Lessee-Independent Dealer of any default of the other under this agreement shall operate as a waiver of any future default, whether of a like or a different character.

XVIII.

If either party is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonable within its control to perform or comply with any obligation or condition of this agreement, upon giving notice and reasonably full particulars to the other party, such obligations or conditions shall be suspended during the continuance of the inability so caused and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period; provided obligations to make payments then due hereunder shall not be suspended and the cause of suspension (other than strikes or differences with workmen) shall be remedied so far as possible with reasonable dispatch. Settlement of strikes and differences with workmen shall be wholly within the discretion of the party having the difficulty. The term "force majeure" shall include, without limitation by the following enumeration, acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes, and any other industrial, civil or public disturbance inability to obtain water, fuel, power, permits or labor, and any laws, orders, rules, regulations, acts or restraints of any governmental body or authority, civil or military.

XIX.

Lessor-Distributor's interest in the premises is, or may be, a leasehold estate derived from a third party whose interest in the premises may or may not be of record. This agreement is subordinate to all the terms and conditions of any lease now in effect, or hereafter entered into, with such third party evidencing such leasehold estate of Lessor-Distributor. This agreement, at Lessor-Distributor's option, shall terminate if said lease with such third party is terminated in any manner or by either party thereto and Lessor-Distributor shall in no way be liable to Lessee-Independent Dealer for such termination, whether voluntary or involuntary. Lessee-Independent Dealer hereby agrees that it will not, by act or omission, breach any of the terms and conditions of Lessor-Distributor's lease with the third party of which Lessee-Independent Dealer has notice.



XX.  
(SPECIAL PROVISIONS)

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Per previous Agreements, Lessee-INDEPENDENT DEALER  
will pay ALL Real estate taxes IN NAME  
OF Distributor.

IN WITNESS WHEREOF, this lease and/or sub-lease agreement is executed in duplicate originals as of the date first above mentioned and both parties acknowledge receipt of one of the originals thereof.

WITNESS AS TO  
LESSOR-DISTRIBUTOR:

James M. Garner

CRYSTAL PETROLEUM COMPANY, INC.

an Alabama Corporation

By

Joseph R. Stinson, Pres.

LESSOR-DISTRIBUTOR

WITNESS AS TO

LESSEE-INDEPENDENT DEALER:

Joseph R. Stinson  
James M. Garner

Wilbert W. Stinson

LESSEE-INDEPENDENT DEALER

LESSEE-INDEPENDENT DEALER