

**STATE OF ALABAMA
COUNTY OF JEFFERSON**

PRIOR LIENHOLDER'S AGREEMENT

This PRIOR LIENHOLDER'S AGREEMENT is by and between ALIANT BANK (hereinafter the "Prior Lienholder") and SOUTHERN DEVELOPMENT COUNCIL, INC. (hereinafter along with its successors and assigns, the "CDC").

RECITALS

WHEREAS, The Mount Properties, L.L.C. (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made loans in the original principal amounts of \$668,243.00 (the "\$668,243.00 Prior Loan"), and \$534,594.00 (the "\$534,594.00 Prior Loan"), (collectively the "Prior Loans"). The Prior Loans are secured by Mortgages, and Assignments of Rents and Leases, dated September 5, 1996, and recorded, respectively, as Instrument # 1996-29423, and as Instrument # 1996-29424, both as modified on December 18, 1996, and recorded as Instrument # 1996-41747, (the "Prior First Mortgage and Assignment of Rents and Leases"), and as Instrument # 1996-29425, and as Instrument # 1996-29426, as modified on December 18, 1996, as Instrument # 1996-41748, (the "Prior Second Mortgage and Assignment of Rents and Leases"), in the Office of the Judge of Probate of Shelby County, Alabama.

WHEREAS, CDC has agreed to make a loan in the amount of \$553,000.00 (the "504 Loan") to Borrower. The 504 Loan will be secured by a mortgage (the "504 Mortgage") to be recorded in the Office of the Judge of Probate of Shelby County, Alabama, contemporaneously with this agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Balance of the Prior Loans.** Following the funding of the 504 Loan, Prior Lienholder will receive \$534,594.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$534,594.00 will reduce the \$534,594.00 Prior Loan secured by the Prior Second Mortgage and Assignment of Rents and Leases, and the principal balance of the Prior Loans will upon such reduction be no more than \$668,243.00, and will be the only obligation superior to Borrower's obligations to CDC which are secured by the 504 Mortgage.

2. **Subordination of Future Advances.** Except for liens arising from advances under the Prior First Mortgage and Assignment of Rents and Leases, the Prior Second Mortgage and

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Assignment of Rents and Leases, intended to preserve the Real Estate and made pursuant to the Prior First Mortgage and Assignment of Rents and Leases or Prior Second Mortgage and Assignment of Rents and Leases, any lien securing any sum advanced to Borrower by Prior Lienholder after the date of this Agreement will be subordinate to the lien created by the 504 Mortgage.

3. Waiver of Enforcement of Covenant Not to Encumber the Real Estate. If the Prior First Mortgage and Assignment of Rents and Leases or the Prior Second Mortgage and Assignment of Rents and Leases or any document evidencing the Prior Loans contains any provision prohibiting Borrower from further encumbering the Real Estate, Prior Lienholder waives its right to enforce any such provision as it might apply to the lien arising from the 504 Mortgage securing or any document evidencing the 504 Loan.

4. Notice of Default Under the Prior Loan. If an event of default occurs under the Prior First Mortgage and Assignment of Rents and Leases, the Prior Second Mortgage and Assignment of Rents and Leases, or any document evidencing the Prior Loans, Prior Lienholder will give CDC and the U.S. Small Business Administration (the SBA) written notice of the event of default within thirty (30) days after the occurrence of the event of default. After an event of default, Prior Lienholder will not sell all or any portion of the Real Estate without giving CDC and the SBA at least sixty (60) days' prior written notice of its intent to sell the Real Estate or any portion thereof. Notice under this Section shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to CDC, SOUTHERN DEVELOPMENT COUNCIL, INC. at 4101-C Wall Street, Montgomery, Alabama, 36106, and to the SBA at its Birmingham District Office, Suite 200, 2121 Eighth Avenue North, Birmingham, Alabama 35203-2398, Attention: District Counsel.

5. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their successors and assigns.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 29 day of April, 1997.

PRIOR LIENHOLDER:

Aliant Bank

By: 
Steven D. Erickson, President

CDC:

Southern Development Council, Inc.

By: 
Its: M. M. Bedford, President

ACKNOWLEDGED AND CONSENTED TO:

BORROWER:

The Mount Properties, L.L.C.

By: Mark W. DiGiorgio
Mark W. DiGiorgio, Manager

Anchor, L.L.C.

By: Erick F. Gamble
Erick F. Gamble, Manager

GUARANTORS:

Ladco, Inc.

By: George R. DiGiorgio
President

Goodwin Development Properties,
Inc.

By: Ronald L. Goodwin
President

Erick F. Gamble
Erick F. Gamble

Rebecca R. Gamble
Rebecca R. Gamble

George R. DiGiorgio
George R. DiGiorgio

Mark W. DiGiorgio
Mark W. DiGiorgio

William R. DiGiorgio
William R. DiGiorgio

Ronald L. Goodwin
Ronald L. Goodwin


Ronald D. Goodwin
Ronald D. Goodwin

STATE OF ALABAMA
JEFFERSON COUNTY

Acknowledgment of Aliant Bank

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Steven D. Erickson, whose name as President of Aliant Bank, 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 officer, and with full authority, executed the same voluntarily, as an act of said Bank, acting in his capacity as aforesaid.

Given under my hand and official seal this the 29 day of April, 1997.

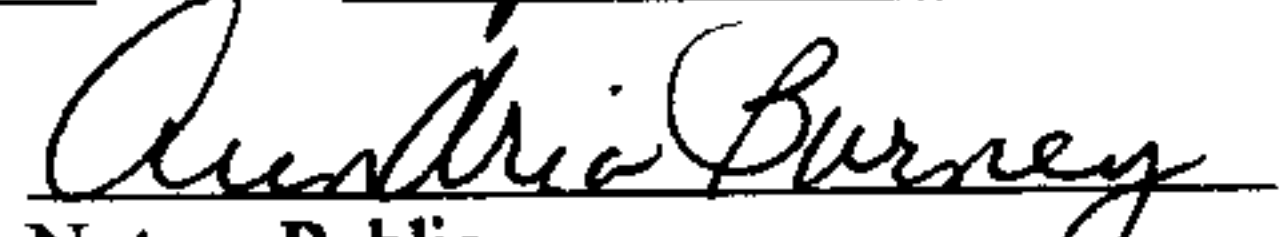

Notary Public
My Commission Expires: 1-5-99

STATE OF ALABAMA
JEFFERSON COUNTY

Acknowledgment of CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that M. M. Bedford, whose name as President of Southern Development Council, Inc., 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 officer, and with full authority, executed the same voluntarily, as an act of said Corporation, acting in his capacity as aforesaid.

Given under my hand and official seal this the 16th day of April, 1997.

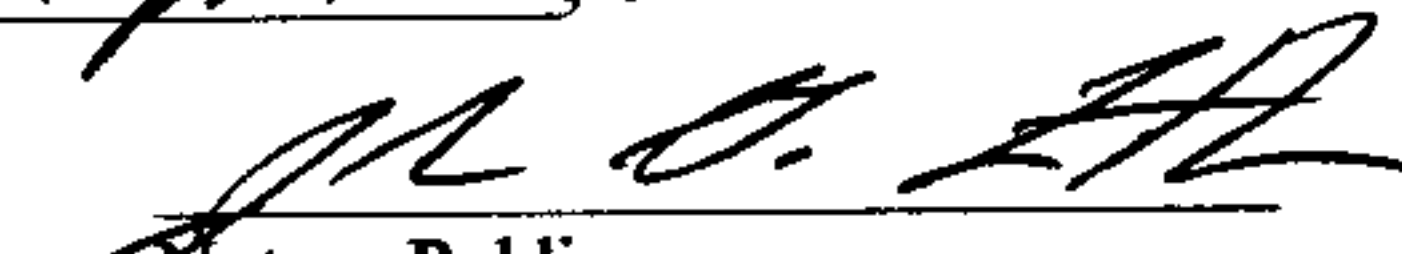

Notary Public
My Commission Expires: 2-26-2001

STATE OF ALABAMA
COUNTY OF JEFFERSON

Acknowledgement of The Mount Properties, L.L.C.

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Mark W. DiGiorgio**, whose name as **Manager of The Mount Properties, L.L.C.**, 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 the instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 29 day of April, 1997.

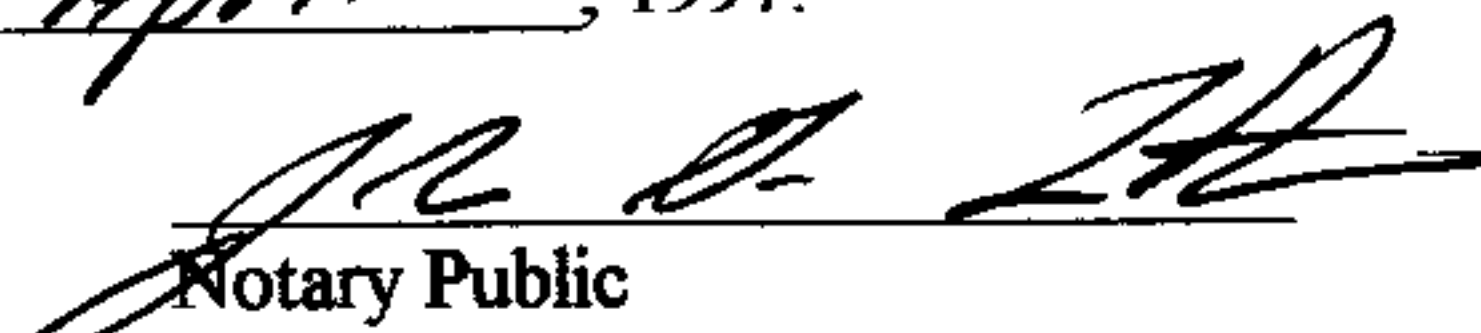

Notary Public
My Commission Expires: 1-5-99

STATE OF ALABAMA
COUNTY OF JEFFERSON

Acknowledgement of Anchor, L.L.C.

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Erick F. Gamble**, whose name as Manager of **Anchor, L.L.C.**, 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 the instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 29 day of April, 1997.


Notary Public
My Commission Expires: 1-5-99

STATE OF ALABAMA
COUNTY OF JEFFERSON

Acknowledgement of Ladco, Inc.

I, the undersigned, a Notary Public in and for said County in said State hereby certify that **George R. DiGiorgio**, whose name as President of **Ladco, Inc.**, a corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

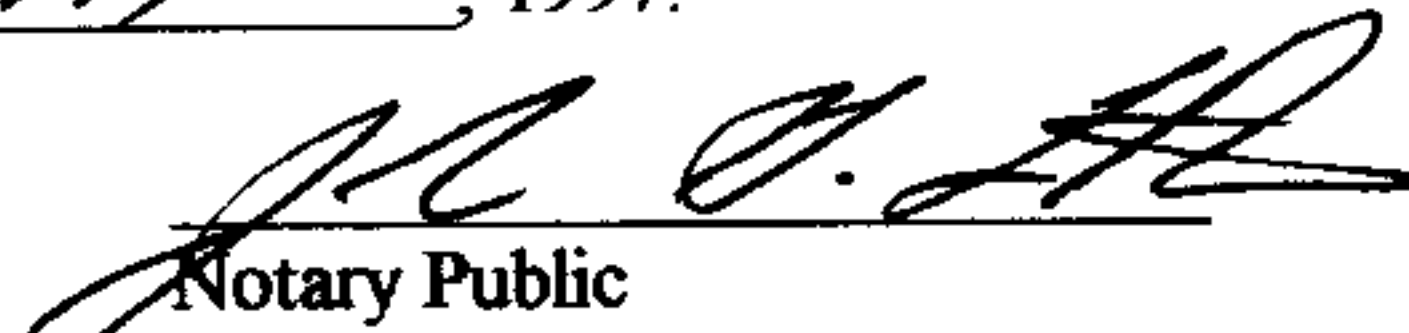
Given under my hand this 29 day of April, 1997.


Notary Public
My Commission Expires: 1-5-99

STATE OF ALABAMA
COUNTY OF JEFFERSON Acknowledgement of Goodwin Development Properties, Inc.

I, the undersigned, a Notary Public in and for said County in said State hereby certify that **Ronald L. Goodwin**, whose name as President of **Goodwin Development Properties, Inc.**, a corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 29 day of April, 1997.

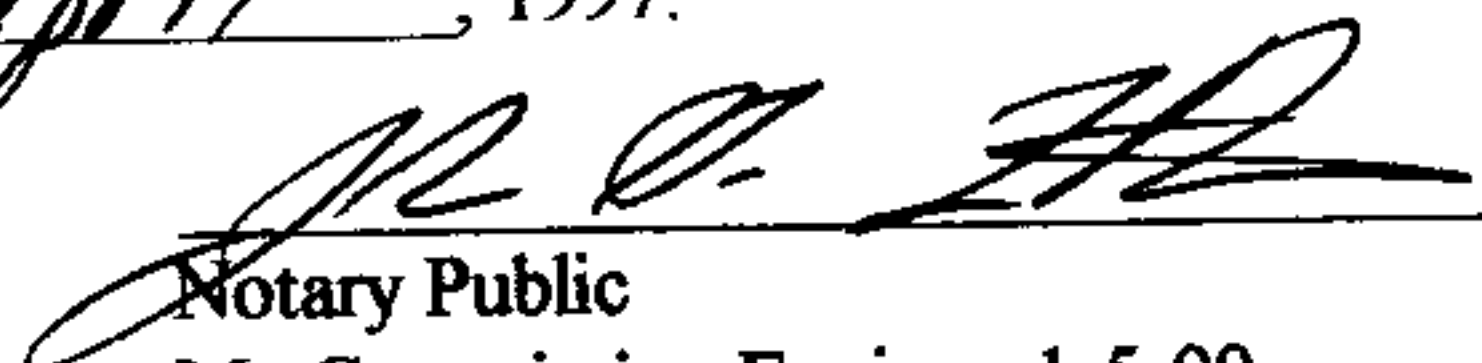

Notary Public
My Commission Expires: 1-5-99

STATE OF ALABAMA
COUNTY OF JEFFERSON

Acknowledgement of Individuals

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Erick F. Gamble, Rebecca R. Gamble, George R. DiGiorgio, Mark W. DiGiorgio, William R. DiGiorgio, Ronald L. Goodwin, and Ronald D. Goodwin**, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily.

Given under my hand this 29 day of April, 1997.


Notary Public
My Commission Expires: 1-5-99

THIS INSTRUMENT PREPARED BY:

John G. Lowther
John G. Lowther, P.C.
3500 Independence Drive
Birmingham, Alabama 35209
(205) 879-9595

EXHIBIT "A"

TO

MORTGAGE
LIEN AFFIDAVIT
FINANCING STATEMENT (UCC-1)
PRIOR LIENHOLDER'S AGREEMENT
ENVIRONMENTAL INDEMNITY AGREEMENT
ASSIGNMENT OF RENTS AND LEASES

MORTGAGOR/
OWNER:

The Mount Properties, L.L.C.

BORROWER:

The Mount Properties, L.L.C. and Anchor, L.L.C., d/b/a Pelham Dairy Queen

LENDER:

SOUTHERN DEVELOPMENT COUNCIL, INC.

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LEGAL DESCRIPTION:

A parcel of land located in the W 1/2 of the SE 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:
Commence at the NE corner of the SW 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the Northern line of said 1/4 Section for a distance of 301.28 feet; thence turn an angle to the left of 51 deg. 49 min. 38 sec. and run in a Southwesterly direction for a distance of 524.90 feet; thence turn an angle to the right of 15 deg. 42 min. 53 sec. and run in a Southwesterly direction for a distance of 15.00 feet; thence turn an angle to the left of 102 deg. 10 min. 58 sec. and run in a Southeasterly direction for a distance of 195.60 feet; thence turn an angle to the right of 13 deg. 53 min. 06 sec. and run in a Southeasterly direction for a distance of 185.50 feet; thence turn an angle to the right of 03 deg. 06 min. 00 sec. and run in a Southeasterly direction for a distance of 201.40 feet; thence turn an angle to the right of 03 deg. 14 min. 59 sec. and run in a Southeasterly direction for a distance of 894.19 feet to the Northwestern right of way line of Alabama Highway No. 119; thence turn an angle to the left of 93 deg. 41 min. 50 sec. and run in a Northeasterly direction along said right of way for a distance of 218.07 feet; thence turn an angle to the left of 30 deg. 20 min. 28 sec. and run in a Northeasterly direction for a distance of 115.40 feet; thence turn an angle to the right of 30 deg. 28 min. 26 sec. and run in a Northeasterly direction for a distance of 159.41 feet to the point of beginning, from the point of beginning thus obtained; thence continue the course last described for a distance of 193.52 feet; thence turn an angle to the left of 90 deg. 00 min. 00 sec. and run in a Northwesterly direction for a distance of 249.86 feet; thence turn an angle to the left of 90 deg. 00 min. 00 sec. and run in a Southwesterly direction for a distance of 185.25 feet; thence turn an angle to the left of 88 deg. 06 min. 12 sec. and run in a Southeasterly direction for a distance of 250.00 feet to the point of beginning; being situated in Shelby County, Alabama.

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