

State of Alabama
Shelby County

MORTGAGE SUBORDINATION AGREEMENT

THIS AGREEMENT is effective this 30th day of December, 1996, (hereinafter the "Agreement") and is by and among Southern Development Council, Inc., 4101-C Wall Street, Montgomery, Alabama, 36106, (hereinafter "Lender"), U.S. Small Business Administration, 2121 8th Avenue North, Suite 200, Birmingham, Alabama, 35203-2398, (hereinafter "Assignee"), and McCullough Snappy Service Oil Co., Inc., (hereinafter "McCullough").

WHEREAS, Robert L. Kirkland, and his wife, Janet A. Kirkland, (hereinafter "Borrower") are currently the owners of the property described in Exhibit "A" attached hereto and incorporated herein by this reference, (hereinafter "Property").

WHEREAS, Borrower has executed a promissory note to McCullough, in the original principal amount of \$100.00, dated December 30, 1996, and said note is secured by a mortgage of even date recorded as Instrument # 1996-42671, in the Probate Office of Shelby County, Alabama, (hereinafter "McCullough Mortgage").

WHEREAS, Borrower has applied to Lender and Assignee for a loan in the amount of \$486,000.00, and Lender and Assignee will not extend said loan unless Lender is given a second priority mortgage on the Property from Borrower, said mortgage to be recorded simultaneously with this subordination agreement (hereinafter "Lender's Mortgage").

WHEREAS, McCullough and Borrower agree to subordinate the McCullough Mortgage to Lender's Mortgage, and agree to execute this agreement.

NOW THEREFORE, in consideration of \$10.00, Lender making a loan to Borrower, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Lien Priority:** From and after the date hereof: (a) the Lender's Mortgage which is recorded herewith shall have priority over the McCullough Mortgage; and (b) the McCullough Mortgage shall be and at all times remain, subject, inferior, and subordinate to the Lender's Mortgage.

The subordination of the mortgage created hereby shall have the same force and effect as

Inst # 1997-14403

though the mortgages had been executed, delivered, and recorded in the following order: Lender's Mortgage followed by the McCullough Mortgage.

The priorities of the mortgages established, altered, or specified hereinabove shall be applicable, irrespective of the time or order of attachment, perfection, or recordation thereof, the method of perfection, the time or order of filing of mortgages or taking of possession, or the giving of or failure to give notice; provided, however, that the subordinations and relative priorities set forth herein are expressly conditioned upon the due and proper perfection, recordation, and the nonavoidability by a bankruptcy trustee, of any mortgage interest which has been accorded priority pursuant hereto; and provided, further, however, that if any mortgage interest to which any other interest has been subordinated pursuant hereto is not now perfected or recorded, or hereafter ceases to be perfected or recorded, or is avoidable by a bankruptcy trustee for any reason, then, the subordination specified herein with respect to such interests shall, to the extent not perfected, recorded, or avoidable, as the case may be, not be effective.

The relative priorities of any interests which are not established, altered, or specified herein shall exist and continue in accordance with the applicable provisions of law.

2. Contesting Liens or Security Interest: Neither Lender nor McCullough shall contest the validity, perfection, priority or enforceability of any lien or mortgage granted to the other.

3. Modification of Loans: Lender or McCullough at any time and from time to time, may enter into such agreement or agreements with Borrower as they may deem proper, extending the time of payment of, or renewing or otherwise altering the terms of all or any of Borrower's obligations or debts to Lender or McCullough or affecting the security or property underlying any or all of such obligations or debt, or may exchange, sell, release, surrender or otherwise deal with any such security or property, without in any way impairing or affecting this Agreement thereby; provided, however that Lender may not increase (in excess of \$486,000.00) the amount secured by Lender's Mortgage, without the prior written consent of McCullough.

4. Foreclose: In any foreclosure proceedings brought by any party, or by any successors or assigns of any party, against the Property, the foreclosure sale in connection with the proceedings shall not discharge the lien of any mortgage to which the foreclosed mortgage had been subordinated to. The foreclosure proceedings shall be specifically advertised as being under and subject to the lien and payment of all mortgages that the mortgage being foreclosed had been subordinated to.

5. Duration: This Agreement shall remain in full force and effect until (i) the Lender's

Mortgage has been paid and satisfied in full and Lender, or Assignee, has terminated and satisfied their mortgage, or (ii) upon the mutual agreement in writing of all parties hereto, whichever is the first to occur.

6. **Choice of Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

IN WITNESS THEREOF, Lender and McCullough have executed this Agreement effective as of the date first above written.

Lender:

Southern Development Council, Inc.

By: [Signature]
Its: President

Assignee:

U.S. Small Business Administration

By: Jack E. Wright
Its assist District Director
for Economic Development

McCullough:

McCullough Snappy Service Oil Co., Inc.

By: D. Gloyd Bowers
Its President

[ACCEPTANCE AND ACKNOWLEDGEMENTS]

BORROWER'S ACCEPTANCE

Borrower hereby acknowledges receipt of, notice of, consents to, and agrees to be bound by the terms and provisions of the within and foregoing Agreement as they relate to the relative rights and priorities of Lender, Assignee and McCullough; provided, however, that nothing in the foregoing Agreement shall amend, modify, change or supersede the respective terms of the documentation and agreements between Borrower and Lender, Assignee, and McCullough.

BORROWER:

Robert L. Kirkland
Robert L. Kirkland



Janet A. Kirkland

Acknowledgement of Lender:

STATE OF ALABAMA)
Montgomery COUNTY)

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, She, as such officer, and with full authority, executed the same voluntarily, as an act of said Corporation, acting in her capacity as aforesaid.

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

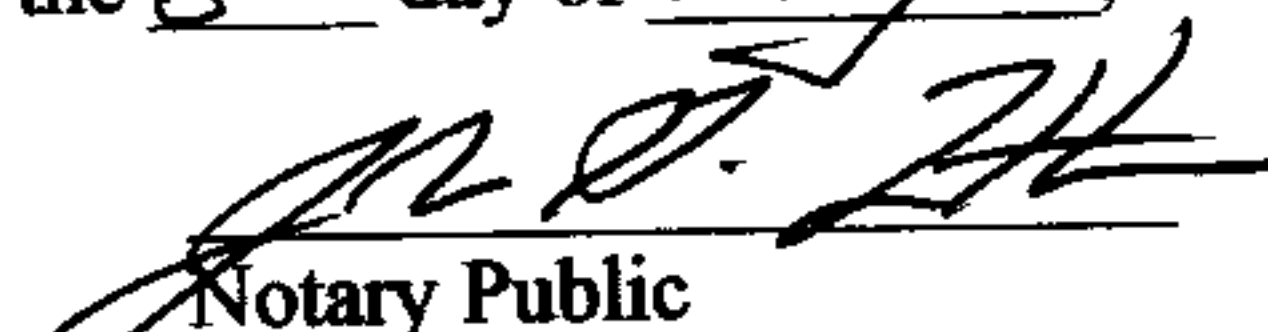

Notary Public
My Commission Expires: 2-26-2001

Acknowledgement of Assignee:

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jack E. Wright, whose name as Asst. District Director of U.S. Small Business Administration, 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 representative, and with full authority, executed the same voluntarily, as an act of said Agency, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 6 day of May, 1997.

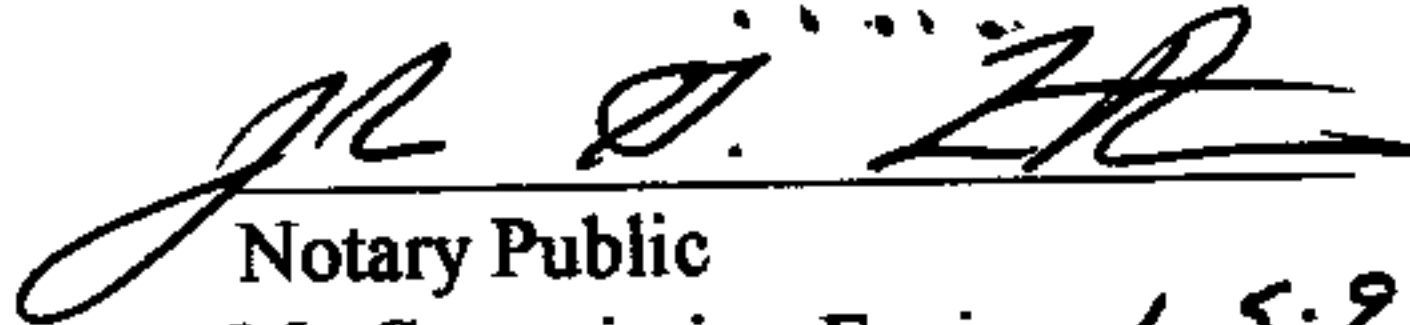

Notary Public
My Commission Expires: 1-5-99

Acknowledgement of McCullough:

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that D. Lloyd Bowers, whose name as President of McCullough Snappy Service Oil Co., 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 said 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 and official seal on this the 30th day of December, 1996.



Notary Public
My Commission Expires: 1.5.99

Acknowledgement of Borrower:

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert L. Kirkland, and his wife, Janet A. Kirkland, 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 said instrument, they, executed the same voluntarily.

Given under my hand and official seal this the 30 day of December, 1996.


Notary Public
My Commission Expires: 1.5.99

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

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

EXHIBIT A
LEGAL DESCRIPTION



A parcel of land situated in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the SE corner of Section 24, Township 20 South, Range 3 West; thence North 2 degrees 28 minutes 59 seconds West for a distance of 1639.63 feet to the point of beginning; thence North 2 degrees 28 minutes 10 seconds West for a distance of 364.29 feet, to the southwesterly line of a State of Alabama right of way (R.O.W. varies); thence North 61 degrees 32 minutes 32 seconds West along said right of way for a distance of 312.05 feet, to a point on the southeasterly right of way of McCain Parkway (60 foot right of way); thence South 16 degrees 16 minutes 03 seconds West along said right of way for a distance of 372.23 feet, to a point on a curve to the left having a central angle of 9 degrees 54 minutes 44 seconds and a radius of 1011.24 feet; thence along the arc of said curve and along said right of way for a distance of 174.95 feet, said curve is subtended by a chord bearing South 11 degrees 18 minutes 41 seconds West and a chord distance of 174.73 feet; thence North 87 degrees 51 minutes 37 seconds East and leaving said right of way for a distance of 428.89 feet, to the point of beginning. Situated in Shelby County, Alabama.

J.L.B.

Inst # 1997-14403

05/08/1997-14403
10:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 HCD 21.00