

## PRIOR LIENHOLDER'S AGREEMENT

This PRIOR LIENHOLDER'S AGREEMENT is by and between COMPASS BANK (the "Prior Lienholder") and BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (hereinafter along with its successors and assigns, the "CDC").

### RECITALS

WHEREAS, CHARTER CREMATION SOCIETY, INCORPORATED (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made a loan in the original principal amount of \$586,600.20 (the "Prior Loan"). The Prior Loan is secured by a first Mortgage dated July 30, 1996 and recorded as Instrument No. 1996-24593 in the Office of the Judge of Probate of Shelby County, Alabama (the "Prior Mortgage"). The Prior Loan is further secured by an assignment of Rents and Leases (the "Assignment") and a security interest in the equipment and machinery (the "Equipment") owned by Borrower (the "Security Interest").

WHEREAS, Prior Lienholder has also made a SBA 7(a) loan in the amount of \$147,165.40 to Borrower (the "7(a) Loan"), which is secured by a security interest in the Equipment.

WHEREAS, CDC has agreed to make a loan in the amount of \$271,000.00 (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, and a security interest in the Equipment.

### 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 Loan. Following the funding of the 504 Loan, Prior Lienholder will receive \$260,711.20 from CDC in accordance with instruction given to CDC by Borrower. Such \$260,711.20 will reduce the note secured by the Prior Mortgage, and Security Interest, and the principal balance of the Prior Loan will upon such reduction be no more than \$325,889.00, and will be the only obligation superior to Borrower's obligations to CDC which are secured by the Mortgage and the Assignment, and along with the 7(a) Loan will be the only obligation superior to Borrower's obligations to CDC which are secured by the Security Interest.

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2. Subordination of Future Advances. Except for liens arising from advances under the Prior Mortgage or Security Interest intended to preserve the Real Estate or Equipment and made pursuant to the Prior Mortgage or Security Interest, 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 and the security interest in favor of CDC in the Equipment.

3. Waiver of Enforcement of Covenant Not to Encumber the Real Estate. If the Prior Mortgage or any document evidencing the Prior Loan 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 Mortgage or any document evidencing the Prior Loan, 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, BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY at 110 12th Street North, Birmingham, Alabama, 35203, 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 27 day of July, 1997.

COMPASS BANK  
By [Signature]  
(Its Vice President)

ACKNOWLEDGED AND CONSENTED TO:

CHARTER CREMATION SOCIETY, INCORPORATED


By: [Signature]  
William D. Grant (Its President)

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert Rabbs, whose name as Vice President of COMPASS BANK, 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/she, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal, this the 27 day of July, 1997.

  
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NOTARY PUBLIC  
My Commission Expires: 6/17/99

**THIS INSTRUMENT PREPARED BY:**

William B. Hairston III

**ENGEL HAIRSTON & JOHANSON, P.C.**

4th Floor 109 North 20th Street

P.O. Box 370027

Birmingham, Alabama, 35237-0027

(205) 328-4600



**EXHIBIT "A"**

**TO**

**MORTGAGE  
AFFIDAVIT AND AGREEMENT  
PRIOR LIENHOLDER'S AGREEMENT  
HAZARDOUS SUBSTANCE INDEMNIFICATION AND WARRANTY AGREEMENT**

**BORROWER: CHARTER CREMATION SOCIETY, INCORPORATED**

**LENDER: BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY**

Part of the N $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 28, Township 21 South, Range 2 West from the SE corner of the N $\frac{1}{2}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of said Section 28, run in a westerly direction along the south line of said N $\frac{1}{2}$  of NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and its westerly extension thereof, for a distance of 1814.43 feet to an existing iron rebar set by Lawrence D. Weygand, being the point of beginning; thence continue in a westerly direction along last mentioned course for a distance of 751.33 feet to an existing iron rebar being on the northeast right of way line of U. S. Highway #31; thence turn an angle to the right (64 degrees, 26 minutes, 55 seconds to the chord) and run in a northwesterly direction along the northeasterly right of way line of said U. S. Highway #31, being on a curve and being concave in a southwesterly direction and having a central angle of 2 degrees, 26 minutes, 10 seconds, and a radius of 3528.12 feet and run for a distance of 150.0 feet to an existing iron rebar set by Lawrence D. Weygand, and being on the northeast right of way line of said U. S. Highway #31; thence turn an angle to the right (84 degrees, 45 minutes, 47 seconds from the chord of the last mentioned curve) and run in a northeasterly direction for a distance of 631.75 feet to an existing iron rebar that was set by Lawrence D. Weygand; thence turn an angle to the right of 90 degrees and run in a southeasterly direction for a distance of 533.95 feet more or less to the point of beginning.

08/04/1997-24404  
12:17 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

004 MCD 16.00

Inst # 1997-24404