

## PRIOR LIENHOLDER'S AGREEMENT

This PRIOR LIENHOLDER'S AGREEMENT is by and between NEWCOURT COMMERCIAL FINANCE CORPORATION (formerly known as AT&T COMMERCIAL FINANCE CORPORATION) (the "Prior Lienholder") and ALABAMA COMMUNITY DEVELOPMENT CORPORATION (hereinafter along with its successors and assigns, the "CDC").

### RECITALS

**WHEREAS**, CONSENSUS CORP. (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 \$1,232,500.00 (the "Prior Loan"). The Prior Loan is secured by a Mortgage dated July 8, 1998 and recorded as Instrument No. 1998-25870, by an Assignment of Leases and Rents dated July 8, 1998 and recorded in Instrument No. 1998-25871, by a UCC Financing Statement recorded as Instrument 1998-25872, by a Mortgage dated July 8, 1998 and recorded as Instrument 1998-25873, by an Assignment of Leases and Rents dated July 8, 1998 and recorded as Instrument 1998-25874, and by a UCC Financing Statement recorded as Instrument 1998-25875, all in the Office of the Judge of Probate of Shelby County, Alabama (all collectively the "Prior Mortgage"). The Prior Loan is further secured by a security interest in the equipment, machinery, furniture and fixtures (the "Equipment") owned by Borrower (the "Security Interest").

**WHEREAS**, CDC has agreed to make a loan in the amount of \$525,000.00 (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 \$507,500.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$507,500.00 will reduce the note secured by the Prior Mortgage, and the principal balance of the Prior Loan will upon such reduction be no more than \$725,000.00, and will be the only obligation superior to Borrower's obligation to CDC which are secured by the Mortgage, and the Security Interest.

2. Subordination of Future Advances, Prepayment Fees, Late Fees, and Increased Post-Default Interest Fees. 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, any prepayment fees, any late fees, and any increased post-default interest fees will be subordinate to the lien created by the 504 Mortgage

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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, ALABAMA COMMUNITY DEVELOPMENT CORPORATION at Suite 300, #3 Office Park Circle, Birmingham, Alabama, 35223, 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 \_\_\_\_ day of February, 1999.

NEWCOURT COMMERCIAL FINANCE  
CORPORATION (formerly known as AT&T  
COMMERCIAL FINANCE CORPORATION)

By

(Its

BRENDAN ECCLESTON  
VICE PRESIDENT

NEW JERSEY  
STATE OF ~~ALABAMA~~  
JEFFERSON COUNTY )

MORRIS

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that BRENDAN ECCLESTON, whose name as VICE PRESIDENT of NEWCOURT COMMERCIAL FINANCE CORPORATION (formerly known as AT&T COMMERCIAL FINANCE CORPORATION), 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 \_\_\_\_ day of February, 1999.

Russell E. Handy Jr.  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

RUSSELL E. HANDY JR.  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires September 28, 1999

ACKNOWLEDGED AND CONSENTED TO:

CONSENSUS CORP.

By: 

Michael Wayne McCormick (Its President)

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 INDEMNITY  
PRIOR LIENHOLDER'S AGREEMENT  
SURVEY AFFIDAVIT AND CERTIFICATION  
HAZARDOUS SUBSTANCE INDEMNIFICATION AND WARRANTY AGREEMENT**

**BORROWER:** CONSENSUS CORP.  
**LENDER:** ALABAMA COMMUNITY DEVELOPMENT CORPORATION

Lot 1, according to the Survey of Sonny's Bar-B-Q, as recorded in Map Book 23, Page 123, in the Probate Office of Shelby County, Alabama, also described as follows:

A parcel of land located in the North Half of the Southwest Quarter of Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 31; thence in an Easterly direction a distance of 452.73 feet; thence 86 degrees, 31 minutes, 40 seconds right, in a Southerly direction, a distance of 1321.78 feet; thence 47 degrees, 06 minutes right in a Southwesterly direction a distance of 250.20 feet to a point, said point being in the approximate center line of an existing road; thence 79 degrees, 55 minutes, 15 seconds right in a Northwesterly direction along said approximate center line, a distance of 149.66 feet to the beginning of a curve to the left, having a radius of 113.67 feet and a central angle of 66 degrees, 50 minutes; thence Southwesterly along said curve and approximate center line, a distance of 132.59 feet to end of said curve; thence in a Southwesterly direction along a line tangent to said curve, a distance of 85.50 feet to a point on the Easterly R/W line of now existing Highway 31 South, said point being on a curve having a radius of 2010.08 feet and subtended by a chord length of 868.19 feet, and from last described course, turn an angle of 67 degrees, 46 minutes, 46 seconds left to said chord; thence in a Southerly direction along said curve and R/W line, a distance of 875.07 feet to the point of Spiral to Curve of said R/W; thence from last described chord, turn 15 degrees, 07 minutes, 04 seconds right to chord of said Spiral; thence in a Southerly direction along said Spiral and R/W line a distance of 257.84 feet to the Point of Beginning; thence continue along the last described course and said road right of way for 49.81 feet; thence turn 1 degree, 31 minutes, 12 seconds right for the chord of said curve and run Southwesterly for 143.58 feet; thence turn 90 degrees 00 minutes 00 seconds left and run Southeasterly for 46.10 feet; thence turn 41 degrees 55 minutes 00 seconds left and run Northeasterly 345.85 feet; thence 81 degrees 56 minutes 01 seconds left and run Northwesterly for 176.47 feet; thence turn 98 degrees, 03 minutes, 56 seconds left and run Southwesterly for 275.74 feet to the Point of Beginning.

Ex.a 2/18/99 10:33am

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