

STATE OF ALABAMA )  
COUNTY OF MARSHALL)

04/14/1999-15772  
09:44 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

004 CRH 16.00

**THIRD PARTY AND INTERIM LENDER AGREEMENT**

This THIRD PARTY LENDER AGREEMENT, dated the 8th day of April, 1999, by and between SOUTHTRUST BANK, N.A. (the "Third Party and Interim Lender") and ALABAMA COMMUNITY DEVELOPMENT CORPORATION, the Certified Development Company (the "CDC"), recites and provides:

**RECITALS**

WAINWRIGHT, INC. (the "Borrower") is the owner of the real estate described on the attached Exhibit "A" (the "Real Estate"). Third party and Interim Lender has made (3) loans to Borrower in the aggregate amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (the "Third Party, Interim Loan and Unsecured Loan").

The third loan is secured by a first mortgage dated April 22, 1998 and amended on December 15, 1998; Said mortgage recorded in Instrument **1998-14815** and amended in Instrument **1998-50321**; together with Assignment of Rents and Leases in Instrument **1998-14816**, and amended in Instrument **1998-50322** and UCC-Financing Statement recorded in Instrument **1998-14817** in the Probate Office of Shelby County, Alabama. The Interim Loan is secured by a second mortgage dated April 22, 1998 and amended on December 15, 1998; Said mortgage recorded in Instrument **1998-14818**, amended in Instrument **1998-50323**; together with Assignments of Rents and Leases in Instrument **1998-14819**, and amended in Instrument **1998-50324** and UCC Financing Statement recorded in Instrument **1998-14820** in the Probate Office of Shelby County, Alabama. The third loan is unsecured.

CDC has agreed to make a loan in the amount of Three Hundred Twenty Two Thousand and No/100 Dollars (\$322,000.00) (the "504 Loan") to Borrower. The 504 Loan will be secured by a mortgage (the "504 Mortgage"), Assignment of Rents and Leases and UCC Financing Statement to be recorded immediately prior hereto in the Office of the Judge of Probate in Shelby County, Alabama.

**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 Third Party and Interim Lender Loans. At the date hereof, the balance of the Third Party Lender Loan is Three Hundred Eighty Nine Thousand and No/100 Dollars (\$389,000.00) and the balance of the Interim Loan and unsecured loan (third loan) is Three Hundred Eleven Thousand and No/100 Dollars (\$311,000.00). All loan proceeds have been disbursed. Borrower is current on its payments on the loans and is not in default. Following the making of the 504 Loan, Interim Lender will receive Three Hundred Eleven Thousand and No/100 Dollars (\$311,000.00) from CDC. Interim Lender, upon receipt of accrued interest from

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Inst # 1999-15772

Borrower, will satisfy the Mortgage, Release the Interim Assignment of Rents and Leases and Interim Financing Statement (UCC-1) securing the Interim Loan. The lender will satisfy the unsecured loan as paid in full. Interim Lender will promptly prepare and properly record a satisfaction in the Office of the Judge of Probate of Shelby County. The 504 Loan and Mortgage, Assignment of Rents and Leases and UCC Financing Statement shall then be a second lien junior to the third party lender loan (\$389,000.00), secured by the Third Party Mortgage, Assignment of Rents and Leases and UCC-1 Financing Statement.

2. Subordination of Future Advances and Default Charges. Except for liens arising from reasonable advances under the Third Party and Interim Lender Mortgage intended to preserve the Real Estate and made pursuant to the Third Party and Interim Lender Mortgages, any lien securing any sum advanced to the Borrower by Third Party and Interim Lender after the date of this Agreement and any prepayment penalties, late fees, default interest or other default charges in connection with the Third Party and Interim Lender Loans 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 Third Party and Interim Lender Mortgage or any document evidencing the Third Party and Interim Lender Loan contains any provision prohibiting Borrower from further encumbering the Real Estate, Third Party and Interim Lender 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 Third Party Lender Loan. If a default occurs under the Third Party Lender Mortgage or any document evidencing the Third Party Lender Loan upon which Third Party Lender intends to take action, Third Party Lender will give CDC and the U.S. Small Business Administration (the SBA) written notice of the default within thirty (30) days after the occurrence of the default. After such a default, Third Party Lender 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, #3 Office Park Circle, Suite 300, Birmingham, Alabama 35223, Attention: Diane D. Roehrig, and to the SBA at Birmingham District Office, 2121 8<sup>th</sup> Avenue North, Birmingham, Alabama 35203-2398, Attn: 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.

WITNESS the following signatures:

SOUTHTRUST BANK, N.A.

By: \_\_\_\_\_

Stacey Cocoris

Its: Vice President

STATE OF ALABAMA  
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me in the above jurisdiction this 8<sup>th</sup> day of April, 1999, by Stacey Cocoris, as Vice President of SouthTrust Bank, N.A., on behalf of the bank.



NOTARY PUBLIC

My Commission Expires: 05/03/2002

[Notary Seal]

**EXHIBIT "A"**  
**TO**  
**THIRD PARTY AND INTERIM LENDER AGREEMENT**

**Lot 1, according to the subdivision of Tract 22 OP, Riverchase, as recorded in Map Book 23, Page 120, in the Office of the Judge of Probate of Shelby County, Alabama.**

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