

## PRIOR LIENHOLDER'S AGREEMENT

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

### RECITALS

WHEREAS, KHALED AHMED KHALIDI (also known as Khaled A. Khalidi) individually and doing business as THE PURPLE ONION RESTAURANT (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 \$752,400.00 (the "Prior Loan"). The Prior Loan is secured by a first Mortgage dated December 27, 2000 and recorded in Instrument No. 2000-45532 in the Office of the Judge of Probate of Shelby County, Alabama (the "Prior Mortgage"). The Prior Loan is further secured by a security interest in the equipment and machinery (the "Equipment") owned by Borrower (the "Security Interest").

WHEREAS, CDC has agreed to make a loan in the amount of \$347,000.00 (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 Jefferson and 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 \$334,400.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$334,400.00 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 \$418,000.00, and will be the only obligation superior to Borrower's obligations 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 advances made for reasonable costs of collection, maintenance and protection of the Prior Mortgage or Security Interest, the Prior Lienholder hereby subordinates to the 504 Loan and the lien(s) securing the 504 Loan (a) any sum advanced to the Borrower by the Prior Lienholder after the date of this Agreement and (b) any prepayment penalties, late fees, and increased default interest in connection with the Prior Loan.
3. Compliance with 504 Loan Program Requirements. Prior Lienholder confirms that the note and all other documents executed in connection with the Prior Loan (a) evidence a loan that does not exceed the principal amount permitted by the Authorization for Debenture

Guarantee (SBA 504 Loan) issued by the U.S. Small Business Administration ("SBA") to CDC to assist Borrower, (b) have no open-ended features and allow only future advances for the reasonable costs of collection, maintenance and protection of the Prior Lienholder's lien thereunder, (c) are not cross-collateralized with any other financing now or hereafter to be provided by Prior Lienholder, (d) have no early call features, (e) are not payable on demand unless the Prior Loan is in default, (f) have a term of at least, and do not require a balloon payment prior to, ten years for a 20-year 504 loan or seven years for a 10-year 504 loan, (g) have a reasonable interest rate that does not, and will not, exceed the maximum interest rate for a third party loan as published by SBA, and (h) do not establish a preference in favor of the Prior Lienholder as compared to CDC or SBA other than the Prior Lienholder's senior lien position. The Prior Lienholder agrees that if any provision in the note or any other document executed in connection with the Prior Loan does not comply with these requirements, then the Prior Lienholder waives its right to enforce any such provision.

4. 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.

5. Notice of Default Under the Prior Loan. If any default, event of default or delinquency, upon which the Prior Lienholder intends to take action, occurs under the Prior Mortgage or Security Interest or any document executed in connection with the Prior Loan, then the Prior Lienholder agrees to give the CDC and the U.S. Small Business Administration (the "SBA") written notice of such default, event of default or delinquency and the opportunity to cure or to purchase the note evidencing the Prior Loan and the Prior Mortgage prior to foreclosure. Such notice must be given within thirty (30) days after the default, event of default or delinquency upon which the Prior Lienholder intends to take action and at least sixty (60) days prior to the date of any proposed sale and the Prior Lienholder will not sell all or any portion of its collateral without giving the CDC and the SBA such notice. Notice under this Agreement shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to the CDC SOUTHERN DEVELOPMENT COUNCIL, INC. at 8132 Old Federal Road, Montgomery, Alabama, 36117, and to the SBA at its Birmingham District Office, 801 Tom Martin Drive, Suite 201, Birmingham, Alabama 35211, Attention: District Counsel.

6. 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 June, 2001.

AMSOUTH BANK

By

  
(Its Vice President)

ACKNOWLEDGED AND CONSENTED TO:

Khaled Khalidi L.S.  
Khaled Ahmed Khalidi (also known as Khaled A.  
Khalidi) individually and doing business as  
THE PURPLE ONION RESTAURANT

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mike Thomas, whose name as Vice President of AMSOUTH 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, 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 28 day of June, 2001.

William B. Hairston III  
NOTARY PUBLIC  
My Commission Expires: 6/7/03

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:** KHALED AHMED KHALIDI (also known as Khaled A. Khalidi)  
individually and doing business as THE PURPLE ONION  
RESTAURANT  
**LENDER:** SOUTHERN DEVELOPMENT COUNCIL, INC.

A parcel of land located in the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 31, Township 19 South, Range 2 West and the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 6, Township 20 South, Range 2 West, more particularly described as follows:

Commence at the Northwest corner of said SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 31; thence in an Easterly direction along the Northerly line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section, a distance of 1228.08 feet to the intersection with the Westerly right of way line of U.S. Highway 31 South; thence 95 degrees 55 minutes 44 seconds right, in a Southerly direction along said right of way line, a distance of 1307.99 feet to the point of beginning; thence continue along last described course, a distance of 200.00 feet; thence 90 degrees right, in a Northwesterly direction, a distance of 200.00 feet; thence 90 degrees right, in a Northeasterly direction, a distance of 200.00 feet; thence 90 degrees right, in a Southeasterly direction, a distance of 200.00 feet to the point of beginning.

**WHICH IS ALSO KNOWN AS**

**Lot 5, Oak Mountain Commerce Place as recorded in the Probate Office of  
Shelby County, Alabama in Map Book 18, page 58**

TOGETHER with a perpetual, non-exclusive easement for ingress and egress over and across a certain parcel of land located between the property described above and U.S. Highway 31, which parcel is more particularly described as follows:

A parcel of land located in the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 31, Township 19 South, Range 2 West and the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 6, Township 20 South, Range 2 West, more particularly described as follows:

Commence at the Northwest corner of said SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 31; thence in an Easterly direction along the Northerly line of said  $\frac{1}{4}$   $\frac{1}{4}$  Section, a distance of 1228.08 feet to the intersection with the Westerly right of way line of U.S. Highway 31 South; thence 95 degrees 55 minutes 44 seconds right in a Southerly direction along said right of way line, a distance of 1118.99 feet to the point of beginning of a proposed access easement; thence continue along last

described course a distance of 50.00 feet; thence 90 degrees right in a Northwesterly direction of 20.00 feet; thence 90 degrees left in a southerly direction, a distance of 139.00 feet; thence 90 degrees right in a Northwesterly direction, a distance of 24.00 feet; thence 90 degrees right in a Northeasterly direction, a distance of 189.00 feet; thence 90 degrees right in a Southeasterly direction, a distance of 44.00 feet to the point of beginning.

All Situated in Shelby County, Alabama.

**SUBJECT TO:** i) taxes and assessments for 2001, a lien but not yet payable; ii) transmission line permits to Alabama Power Company as recorded in Deed Book 194, page 63, Deed Book 112, page 258, and Deed Book 181, page 228; iii) right of way to State Highway Department recorded in Deed Book 111, page 397; iv) rights acquired by Alabama Power Company through case set out in Lis Pendens Book 6, page 279; v) right of way granted to Alabama Power Company by instrument no. 1994-34819; vi) easement for Alabama Power Company recorded in Instrument No. 1994-17629.

**Inst # 2001-30766**

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Ex.a 6/27/01 2:15PM

**07/25/2001-30766**  
**08:38 AM CERTIFIED**  
**SHELBY COUNTY JUDGE OF PROBATE**  
**005 CH 23.00**