

**This Instrument Prepared By:**  
John G. Lowther, P.C.  
Attorney at Law  
3500 Independence Drive  
Birmingham, AL 35209

**STATE OF ALABAMA  
COUNTY OF SHELBY**

**THIRD PARTY LENDER AGREEMENT**

This THIRD PARTY LENDER AGREEMENT, dated the 9 day of November, 2001, by and between The Bank, whose address is 17 North 20<sup>th</sup> Street, Birmingham, AL 35203 (the "Third Party Lender") and Southern Development Council, Inc., whose address is 8132 Old Federal Road, Montgomery, AL 36117, (the "CDC"), recites and provides:

**RECITALS**

Gannaway Properties, LLC, (the "Borrower") is the owner of the real estate located at 5235 Highway 280 South, Birmingham, Alabama 35242, and described as follows:

**Lot 1D, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, Page 99, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama,**

(the "Real Estate"), and Third Party Lender has made two loans, both of which have been fully advanced, one in the amount of One Million, Three Hundred Seventy-seven Thousand, Two Hundred and No/100 Dollars (\$1,377,200.00), (the "Term Third Party Lender Loan"), and a second in the amount of Seven Hundred Twenty-seven Thousand, and No/100 Dollars (\$727,000.00) (the "Interim Third Party Lender Loan"), and the Term Third Party Lender Loan is secured, among other things, by a first priority mortgage dated October 31, 2000, and recorded October 31, 2000, as Instrument 2000-37789, in the Office of the Judge of Probate of Shelby County, Alabama (the "Term Third Party Lender Mortgage"), and an Assignment of Rents and Leases dated October 31, 2000, and recorded October 31, 2000, as Instrument 2000-37791, in the Office of the Judge of Probate of Shelby County, Alabama (the "Third Party Lender Assignment of Rents and Leases") and the Interim Third Party Lender Loan is secured, among other things, by a second priority mortgage dated October 31, 2000, and recorded October 31, 2000, as Instrument 2000-37790, in the Office of the Judge of Probate of Shelby County, Alabama (the "Interim Third Party Lender Mortgage"), and by the Third Party Lender Assignment of Rents and Leases.

The CDC has agreed to make a loan in the amount of Seven Hundred Fifty Thousand and

Inst. # 2001-48796

11/09/2001-48796  
03:08 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 CH 26.00

No/100 Dollars (\$750,000.00) (the "504 Loan") to Borrower and to Pro Golf of Birmingham, Inc., (the "Co-Borrower") and the 504 Loan will be secured, among other things, by a mortgage on the Real Estate (the "504 Mortgage") and an Assignment of Rents and Leases (the "504 Assignment of Rents and Leases") to be recorded in the Office of the Judge of Probate of Shelby County, Alabama, contemporaneously with this agreement.

## **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. Payoff of Interim Third Party Lender Loan.** Following the funding of the 504 Loan, Third Party Lender will receive Seven Hundred Twenty-seven Thousand, and No/100 Dollars (\$727,000.00) from CDC, which the Third Party Lender will apply to pay off the principal balance of the Interim Third Party Lender Loan and, upon payment of any accrued, but unpaid interest on the Interim Third Party Lender Loan, the Third Party Lender shall release the Interim Third Party Lender Mortgage and release, cancel or mark as paid all other liens and documents securing the Interim Third Party Lender Loan.
- 2. Subordination of Future Advances and Default Charges.** Except for advances made for reasonable costs of collection, maintenance and protection of the Third Party Lender's lien made pursuant to the Term Third Party Lender Mortgage, and Third Party Lender Assignment of Rents and Leases, the Third Party Lender hereby subordinates to the 504 Loan and the lien of the 504 Mortgage and 504 Assignment of Rents and Leases (a) any sum advanced to the Borrower by the Third Party Lender after the date of this Agreement, and (b) any prepayment penalties, late fees, and increase default interest in connection with the Term Third Party Lender Loan or the Interim Third Party Lender Loan.
- 3. Compliance with 504 Loan Program Requirements.** The Third Party Lender confirms that the note and all other documents executed in connection with the Term Third Party Lender Loan (a) evidence a loan that does not exceed the principal amount permitted by the Authorization for Debenture Guarantee (SBA 504 Loan) identified as SBA Loan Number CDC 3939464000 BIR, 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 Third Party Lender's lien thereunder, (c) are not cross-collateralized with any other financing now or hereafter to be provided by the Third Party Lender, (d) have no early call features, (e) are not payable on demand unless the Term Third Party Lender 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 Third Party Lender as compared to CDC or SBA other than the Third Party Lender's senior lien position. The Third Party Lender agrees



that if any provision in the note or any other document executed in connection with the Term Third Party Lender Loan does not comply with these requirements, then the Third Party Lender waives its rights to enforce any such provision.

**4. Waiver of Enforcement of Covenant Not to Encumber the Real Estate.** If the Term Third Party Lender Mortgage or any document executed in connection with the Term Third Party Lender Loan, or the Interim Third Party Lender Mortgage or any document executed in connection with the Interim Third Party Lender Loan, contains any provision prohibiting Borrower from further encumbering the Real Estate, Third Party Lender waives its right to enforce any such provision as it might apply to the lien arising from the 504 Mortgage and 504 Assignment of Rents and Leases securing or any document securing or evidencing the 504 Loan.


**5. Notice of Default Under the Third Party Lender Loan.** If any default, event of default or delinquency, upon which the Third Party Lender intends to take action, occurs (a) under the Term Third Party Lender Mortgage or any document executed in connection with the Term Third Party Lender Loan or (b) under the Interim Third Party Lender Mortgage or any document executed in connection with the Interim Third Party Lender Loan, then the Third Party Lender agrees to give 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 Third Party Lender note(s) and the Term Third Party Lender Mortgage and/or the Interim Third Party Lender Mortgage prior to foreclosure. Such notice must be given within thirty (30) days after the default, event of default or delinquency upon which the Third Party Lender intends to take action and at least sixty (60) days prior to date of any proposed sale and the Third Party Lender will not sell all or any portion of the Real Estate 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 CDC, at, 8132 Old Federal Road, Montgomery, AL 36117, Attention: Servicing, and to the SBA at Alabama District Office, Suite 201, 801 Tom Martin Drive, 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.

Third Party Lender:

The Bank  
By:   
Paul Z. Rogers, Vice President

CDC:

Southern Development Council, Inc.  
By:   
Its: Vice President

ACKNOWLEDGED AND CONSENTED TO:

BORROWER:

Gannaway Properties, LLC,

By:   
Sandra L. Gannaway, Member

Co-BORROWER:

Pro Golf of Birmingham, Inc.

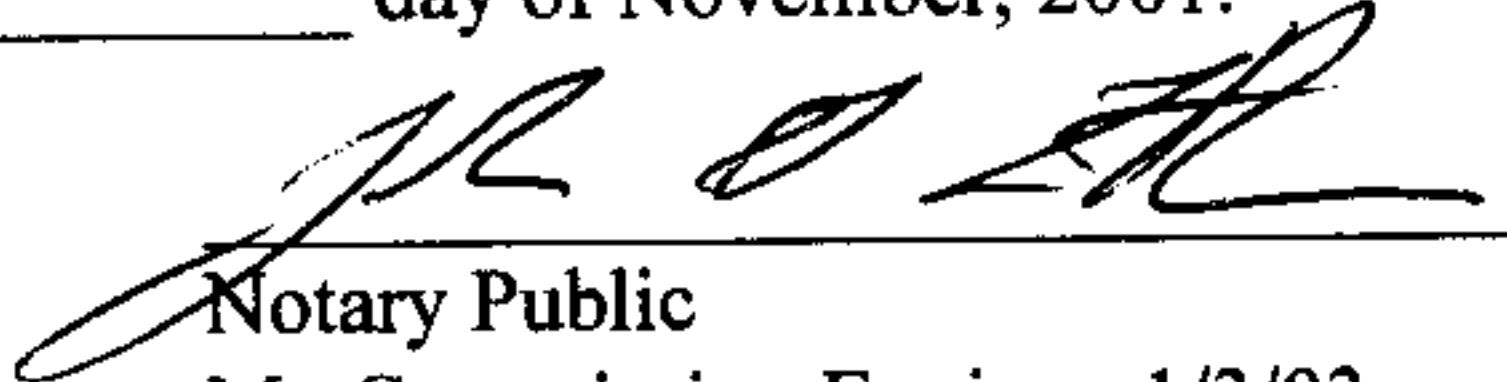
By:   
Samuel W. Gannaway, President

STATE OF ALABAMA  
JEFFERSON COUNTY

Acknowledgment of The Bank

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Paul Z. Rogers, whose name as Vice President of The Bank, 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 and for the act of said Bank, acting in his capacity as aforesaid.

Given under my hand and official seal this the 9 day of November, 2001.

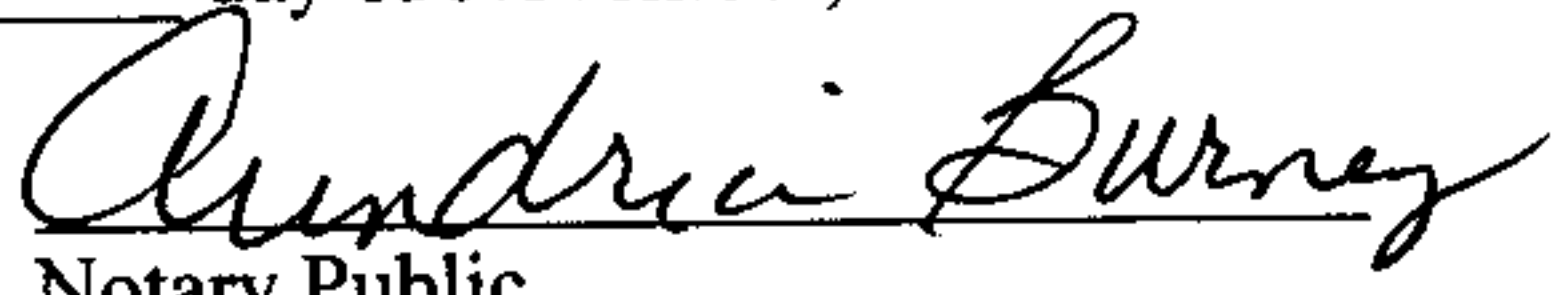
  
Notary Public  
My Commission Expires: 1/3/03

STATE OF ALABAMA  
MONTGOMERY COUNTY

Acknowledgment of CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Barry, whose name as Vice 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, he/she, as such officer, and with full authority, executed the same voluntarily, as and for the act of said Corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal this the 6<sup>th</sup> day of November, 2001.

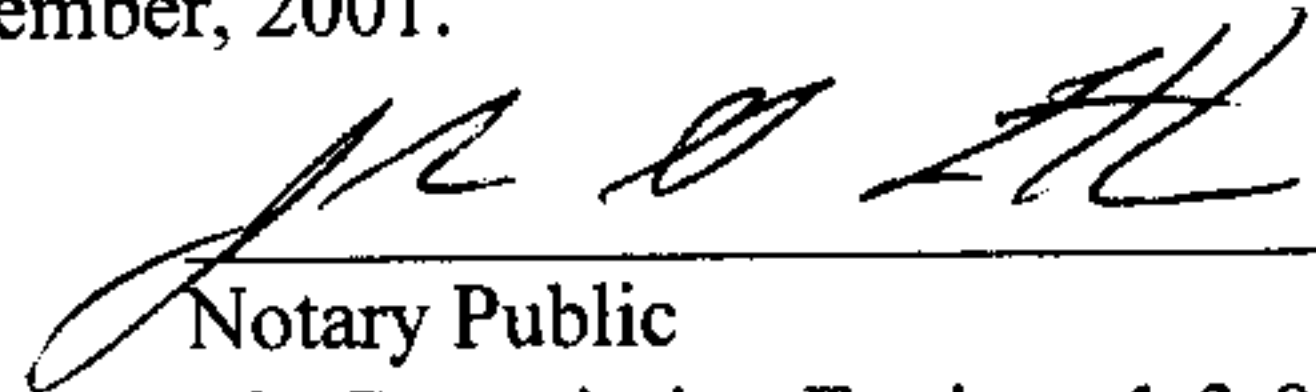
  
Notary Public  
My Commission Expires: 2/26/05

STATE OF ALABAMA  
COUNTY OF JEFFERSON

Acknowledgment of Borrower

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Sandra L. Gannaway, whose name as Sole Member of Gannaway Properties, LLC, 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 the instrument, she, as such member, and with full authority, executed the same voluntarily, as and for the act of said limited liability company, acting in her capacity as aforesaid.

Given under my hand this 9 day of November, 2001.

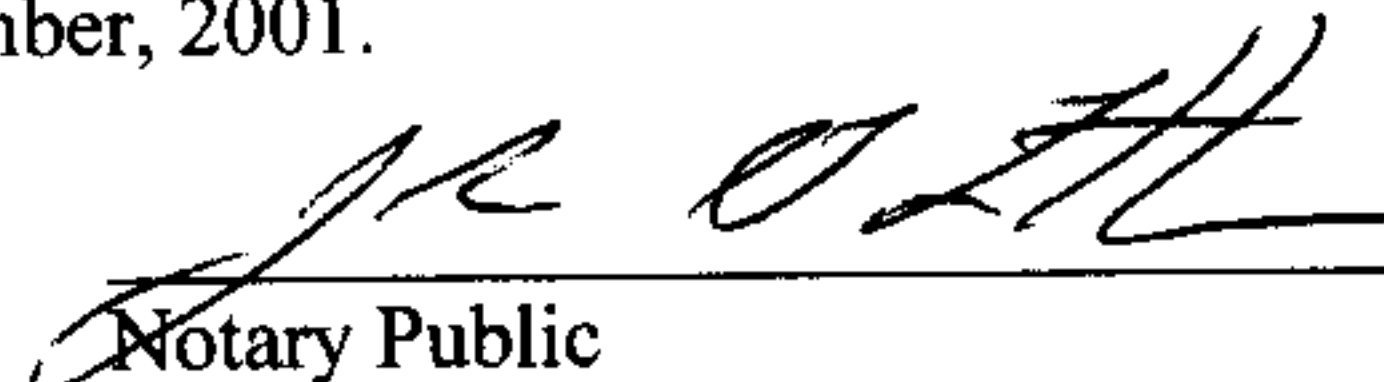
  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 1-3-03

STATE OF ALABAMA  
COUNTY OF JEFFERSON

Acknowledgment of Co-Borrower

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Samuel W. Gannaway, whose name as President of Pro Golf of Birmingham, 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 the instrument, he, as such officer, and with full authority, executed the same voluntarily, as and for the act of said corporation, acting in his capacity as aforesaid.

Given under my hand this 9 day of November, 2001.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 1-3-03

**ASSIGNMENT TO SBA:**

CDC assigns this Third Party Lender Agreement to SBA.

**CDC:**

Southern Development Council, Inc.

By: William P. Barry  
Its: Vice President

STATE OF ALABAMA  
MONTGOMERY COUNTY

Acknowledgment of CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Barry, whose name as Vice 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, he/she, as such officer, and with full authority, executed the same voluntarily, as and for the act of said Corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal this the 6<sup>th</sup> day of November, 2001.

Andria Burney  
Notary Public  
My Commission Expires: 2/26/05

Inst # 2001-48796