

## PRIOR LIENHOLDER'S AGREEMENT

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

### RECITALS

WHEREAS, A. C. Legg Packing Company, Inc. (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made a loan to Borrower in the original principal amount of \$2,100,000.00 (the "Prior Loan"). The Prior Loan is secured by a first Mortgage and Security Agreement dated November 1, 2001 and recorded as Instrument 2001-47272 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 certain personal property and fixtures (the "Personalty") owned by Borrower (the "Security Interest").

WHEREAS, CDC has agreed to make a loan in the amount of \$1,000,000.00 (the "504 Loan") to Borrower. The 504 Loan will be secured by a mortgage (the "504 Mortgage") to be recorded\* against the Real Estate in the Office of the Judge of Probate of Shelby County, Alabama, contemporaneously with this agreement, and a security interest in the Personalty.

\* Recorded as Instrument  
# 2001-47277

### 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. Subordination; Balance of the Prior Loan. The 504 Mortgage is subordinate to the Prior Mortgage to the extent of the amount of the Prior Loan plus any advances made under the Prior Mortgage intended to preserve the Real Estate and made pursuant to the Prior Mortgage (hereinafter "Prior Loan and Permitted Advances"). The principal balance of the Prior Loan is no more than \$2,100,000.00, and will be the only obligation superior to Borrower's obligations to CDC which are secured by the Prior 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 Real Estate, the Prior Mortgage and/or the 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 initial advance of the entire proceeds of the Prior Loan, 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 \$2,100,000.00 (subject to increase for protective advances described in Section 2 above), (b) have no open-ended features and allow only future advances for the

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reasonable costs of collection, maintenance and protection of the Prior Lienholder's security thereunder, (c) are not and will not be cross-collateralized with any other financing now or hereafter to be provided by Prior Lienholder to Borrower, (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 from the date hereof, (g) provide for an interest rate of no more than 6.89 % per annum, and (h) do not establish a preference in favor of the Prior Lienholder as compared to CDC or SBA (hereinafter defined) 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 only.

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, BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY at 110 North 12<sup>th</sup> Street, Birmingham, Alabama, 35203, and to the SBA at its Birmingham District Office, Suite 201, 801 Tom Martin Drive, Birmingham, Alabama 35211, Attention: District Counsel.

6. Prior Lienholder's Rights to Insurance Proceeds, Taking Proceeds and Rents: The 504 Mortgage is subordinate to the Prior Mortgage to the extent of the amount of the Prior Loan plus any advances made under the Prior Mortgage intended to preserve the Real Estate and made pursuant to the Prior Mortgage (hereinafter "Prior Loan and Permitted Advances"), and in that regard Prior Lienholder is entitled to the following:

i) all insurance proceeds of all policies of insurance covering the Real Estate, to the extent of the amount of the Prior Loan and Permitted Advances;

ii) all taking proceeds or other awards or other compensation made for the taking of all or any part of the Real Estate to the extent of the Prior Loan and Permitted Advances; and

iii) all rents and profits generated by the Real Estate or leases thereof (even if



collected by a receiver or holder of the 504 Loan) to the extent of the Prior Loan and Permitted Advances.

7. Notice of Default Under the 504 Loan. If an event of material default which CDC is classifying as a default occurs under the 504 Mortgage or any document evidencing the 504 Loan, CDC will give Prior Lienholder written notice of the event of default within thirty (30) days after the occurrence of the event of default. After an event of default, CDC will not sell all or any portion of the Real Estate without giving Prior Lienholder 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, to Prior Lienholder at PROTECTIVE LIFE INSURANCE COMPANY, P.O. Box 2606, Birmingham, Alabama, 35202, Attention Investment Department.

8. 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 1 day of October, 2001.

PROTECTIVE LIFE INSURANCE COMPANY,  
a Tennessee corporation

By see attached  
(Its \_\_\_\_\_)

BIRMINGHAM CITY WIDE LOCAL  
DEVELOPMENT COMPANY, an Alabama  
corporation

By: S. E. Neuhaus  
(Its President)

ACKNOWLEDGED AND CONSENTED TO:

A. C. Legg Packing Company, Inc.

By: James E. Purvis  
James Edward Purvis (Its President)


collected by a receiver or holder of the 504 Loan) to the extent of the Prior Loan and Permitted Advances.

7. Notice of Default Under the 504 Loan. If an event of material default which CDC is classifying as a default occurs under the 504 Mortgage or any document evidencing the 504 Loan, CDC will give Prior Lienholder written notice of the event of default within thirty (30) days after the occurrence of the event of default. After an event of default, CDC will not sell all or any portion of the Real Estate without giving Prior Lienholder 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, to Prior Lienholder at PROTECTIVE LIFE INSURANCE COMPANY, P.O. Box 2606, Birmingham, Alabama, 35202, Attention Investment Department.

8. 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 1 day of October, 2001.

**PROTECTIVE LIFE INSURANCE COMPANY,**  
a Tennessee corporation

By   
(Its VICE PRESIDENT)

**BIRMINGHAM CITY WIDE LOCAL  
DEVELOPMENT COMPANY, an Alabama  
corporation**

By: \_\_\_\_\_  
S. E. Neuhaus (Its President)

ACKNOWLEDGED AND CONSENTED TO:

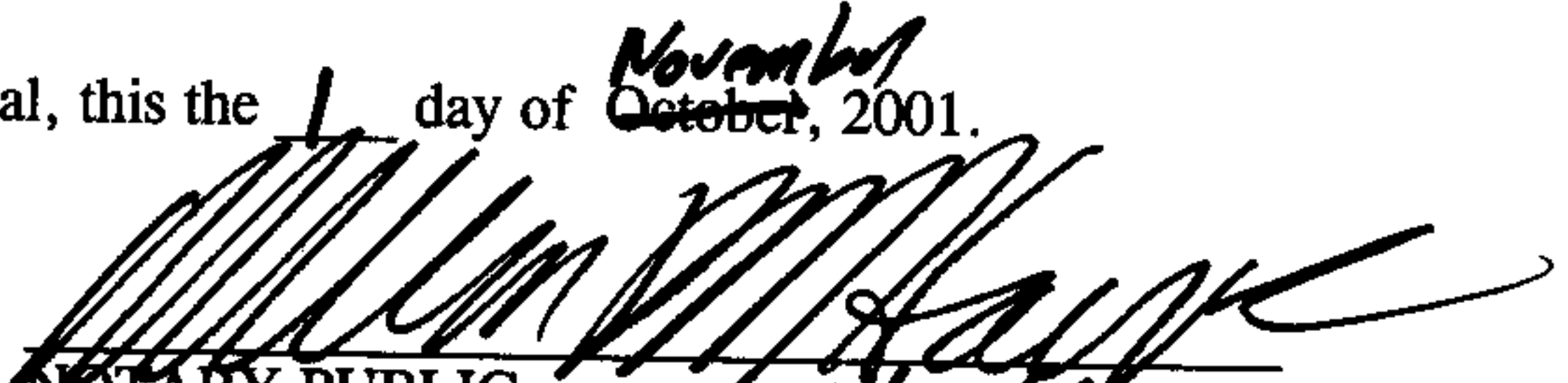
**A. C. Legg Packing Company, Inc.**

By:   
James Edward Purvis (Its President)

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that S. E. Neuhaus, whose name as President of BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY, 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 her capacity as aforesaid.

Given under my hand and official seal, this the 1 day of ~~October~~<sup>November</sup>, 2001.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 6/7/03

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of PROTECTIVE LIFE INSURANCE COMPANY, 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 October, 2001.

See Attached  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

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

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that S. E. Neuhaus, whose name as President of BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY, 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 her capacity as aforesaid.

Given under my hand and official seal, this the \_\_\_\_ day of October, 2001.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles M. Prior, whose name as VICE President of PROTECTIVE LIFE INSURANCE COMPANY, 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 7<sup>th</sup> day of ~~October~~<sup>November</sup>, 2001.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 8/16/04

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**

**PRIOR LIENHOLDER'S AGREEMENT**

**BORROWER:** A. C. Legg Packing Company, Inc.  
**LENDER:** BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY

A parcel of land being located in the N ½ of Section 9, Township 22 South, Range 2 West, Shelby County, Alabama being more particularly described as follows:

Commence at a 2 inch capped pipe found at the NE corner of Section 9, Township 22 South, Range 2 West, Shelby County, Alabama; thence run an assumed bearing of South 89 degrees 48 minutes 14 seconds West a distance of 3154.34 feet to a ½ inch rebar found; thence run South 2 degrees 44 minutes 11 seconds East a distance of 237.16 feet; thence run South 87 degrees 38 minutes 27 seconds East a distance of 1028.08 feet to the West right of way line of U.S. Highway No. 31; thence run South 04 degrees 29 minutes 56 seconds West along said right of way a distance of 2299.14 feet to the point of beginning; thence continue South 04 degrees 29 minutes 56 seconds West along said right of way a distance of 777.25 feet to a point being 20.22 feet, North 04 degrees 29 minutes 56 seconds East from a concrete monument found at Station 230 + 85 of the Highway 31 right of way map; thence South 89 degrees 15 minutes 00 seconds West 709.34 feet to the Easterly right of way of CSX Railroad being 50 feet East of the centerline of the South bound (West) railtrack; thence North 09 degrees 10 minutes 54 seconds West a distance of 782.95 feet along the East right of way line; thence North 55 degrees 12 minutes 05 seconds East 128.53 feet; thence South 85 degrees 30 minutes 04 seconds East a distance of 792.07 feet to the point of beginning; being situated in Shelby County, Alabama.

**SUBJECT TO:** i) taxes and assessments for the year 2002; ii) right of way granted to Alabama Power Company by Instrument 2001-18555; iii) transmission line permit to Alabama Power Company recorded in Deed Book 103, page 156; iv) mineral and mining rights and rights incident thereto recorded in Instrument 1995-36729; v) Release of Damages as recorded in Instrument 1995-36729; vi) 25 foot non-exclusive easement for railroad spur line as set out in that certain deed recorded in Instrument 1995-33095; and vii) release and declaration of covenants as set out in Instrument 1995-36730.

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