

## PRIOR LIENHOLDER'S AGREEMENT

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

### RECITALS

**WHEREAS, SMITH MTN., 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 (or loans) in the original aggregate principal amount of \$871,857.00, as evidenced by promissory notes in the amounts of \$484,365.00 and \$387,492.00 (hereinafter collectively the "Prior Loan"). The Prior Loan is secured by a Mortgage and other documents recorded in Instrument 20051021000547750 in the Office of the Judge of Probate of Shelby County, Alabama (the "Prior Mortgage").

**WHEREAS, CDC** has agreed to make a loan in the amount of \$401,000.00 (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.

### 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 \$387,492.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$387,492.00 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 \$484,365.00, and will be the only obligation superior to Borrower's obligations to CDC, which are secured by the Prior Mortgage.

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 11th day of October 2006.

ALIAN BANK

By

(Its

PRESIDENT





20061113000555040 3/4 \$20.00  
Shelby Cnty Judge of Probate, AL  
11/13/2006 02:28:29PM FILED/CERT

ACKNOWLEDGED AND CONSENTED TO:

SMITH MTN., INC.

By: William S. Farrington  
William S. Farrington (Its President)

STATE OF ALABAMA )  
SHELBY COUNTY )

ACKNOWLEDGMENT OF PRIOR LIENHOLDER

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Phil Blasingame, whose name as President of ALIANT 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/~~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 11 day of October 2006.

William C. Brown  
NOTARY PUBLIC  
My Commission Expires: 12/14/2008

THIS INSTRUMENT PREPARED BY:

William C. Brown  
ENGEL HAIRSTON & JOHANSON, P.C.  
4th Floor 109 North 20th Street  
P.O. Box 11405  
Birmingham, Alabama, 35202  
(205) 328-4600

**EXHIBIT "A"**

  
20061113000555040 4/4 \$20.00  
Shelby Cnty Judge of Probate, AL  
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BORROWER: SMITH MTN., INC.  
LENDER: SOUTHERN DEVELOPMENT COUNCIL, INC.

A parcel of land situated in the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 21, Township 20 South, Range 3 West, Shelby County, Alabama; being more particularly described as follows:

Commence at the Northeast corner of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section, thence South 58 degrees 50 minutes 25 seconds West a distance of 417.59 feet deed; thence South 65 degrees 45 minutes 55 seconds West a distance of 100.79 feet deed, to a point lying on the Northerly right of way of County Highway #91 point also being the Point of Beginning; thence North 24 degrees 29 minutes 35 seconds West and leaving said Right of Way a distance of 500.00 feet; thence South 76 degrees 33 minutes 09 seconds West a distance of 193.58 feet meas. (192.49 feet deed); thence South 24 degrees 29 minutes 35 seconds East a distance of 506.17 feet meas. (500.00 deed) to a point lying on the Northerly Right of Way of above said County Highway; thence North 74 degrees 44 minutes 55 seconds East a distance of 192.49 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

**SUBJECT TO:** i) taxes for the year 2007, constituting a lien but which is not yet due and payable; ii) permits to Alabama Power Company, recorded in Deed Book 130, page 166; Deed Book 133, page 55 and Deed Book 138, page 217, in the Probate Office of Shelby County, Alabama; iii) Right of way to Shelby County, recorded in Deed Book 155, page 122, in the Probate Office of Shelby County, Alabama; and iv) coal, oil, gas, and other mineral and mining rights not owned by Mortgagor/Borrower.