

## PRIOR LIENHOLDER'S AGREEMENT

This PRIOR LIENHOLDER'S AGREEMENT is by and between RED MOUNTAIN BANK, N.A. (the "Prior Lienholder") and BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (hereinafter along with its successors and assigns, the "CDC").

### RECITALS

**WHEREAS, DocDBM LLC An Alabama Limited Liability Company** (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made a loan(s) in the original aggregate principal amount of \$666,000.00, as evidenced by promissory notes of even date herewith in the amounts of \$370,000.00 and \$296,000.00 (hereinafter collectively the "Prior Loan"). The Prior Loan is secured by a Mortgage and other documents recorded in Instrument 20070223000084710 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 \$307,000.00 (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 \$296,000.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$296,000.00 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 \$370,000.00, 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, 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 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 12th Street North, Birmingham, Alabama 35203, 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 18th day of January, 2007.

RED MOUNTAIN BANK, N.A.

By Ernest Brown II

(Its AVP)

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 Ernest Brown II, whose name as Asst. Vice President of RED MOUNTAIN BANK, N.A., 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 18th day of January, 2007.

Ernest Brown  
NOTARY PUBLIC

My Commission Expires: 12/14/2008

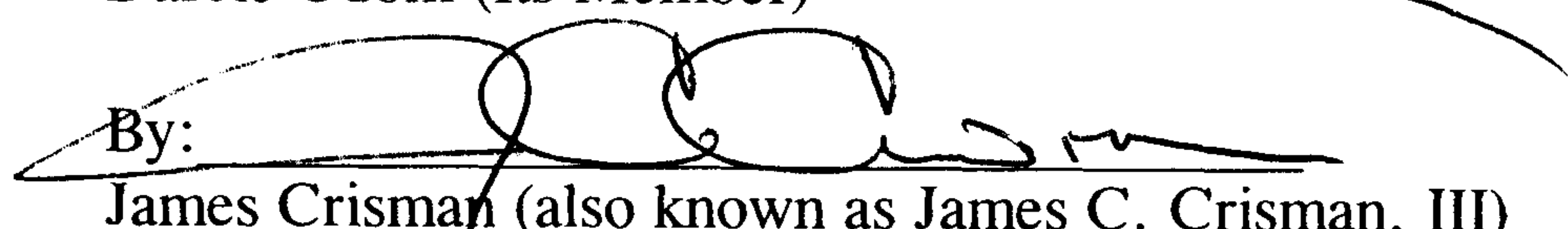
ACKNOWLEDGED AND CONSENTED TO:

  
20070322000131510 3/4 \$20.00  
Shelby Cnty Judge of Probate, AL  
03/22/2007 01:32:30PM FILED/CERT

**DocDBM LLC An Alabama Limited Liability Company**

By:   
Dara Dickey (Its Member)

By:   
Darcie Odom (Its Member)

By:   
James Crisman (also known as James C. Crisman, III)  
(Its Member)

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"**

BORROWER: DocDBM LLC An Alabama Limited Liability Company  
LENDER: BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY

Commence at the Southeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , Section 28, Township 19 South, Range 1 East; thence run Northerly along the East boundary line of said Section 28 for a distance of 891.75 feet to a point; thence turn an angle of 89 degrees 34 minutes 48 seconds to the left and run Westerly a distance of 179.5 feet to a point which is designed as the beginning in that certain deed from C.L. Moore to Florence Moore dated January 30, 1950, and recorded in Deed Book 140, page 170 at the Shelby County Probate Judge's Office; thence continue along the same line of direction for a distance of 50.85 feet to a point on the Western 75 foot right of way line of County Highway 55 for the point of beginning of the parcel of land herein described; thence continue along the same line of direction for a distance of 184.15 feet to a point; thence turn an angle of 20 degrees 40 minutes 18 seconds to the right of run Northwesterly a distance of 198.28 feet to a point; thence turn an angle of 68 degrees 54 minutes 30 seconds to the right and run Northerly a distance of 118.0 feet to a point; thence turn an angle of 111 degrees 05 minutes 30 seconds to the right and run Southeasterly a distance of 226.55 feet to a point; thence turn an angle of 20 degrees 40 minutes 18 seconds to the left and run Easterly a distance of 201.68 feet to a point on the Western 40 foot right of way line of County Highway 55; thence turn an angle of 93 degrees 19 minutes 35 seconds to the right and Southwesterly along said right of way line for a distance of 63.46 feet to a point; thence turn an angle of 2 degrees, 08 minutes 00 seconds to the right and run Southwesterly along said right of way line a distance of 16.45 feet to a point; thence turn an angle of 90 degrees to the right and run Northwesterly along said right of way line for a distance of 35.0 feet to a point on the Western 75 foot right of way line; thence turn an angle of 90 degrees to the left and run Southwesterly along said right of way line for a distance of 31.76 feet to the point of beginning. Said parcel is lying in the Southeast  $\frac{1}{4}$  of Northeast  $\frac{1}{4}$ , Section 28, Township 19 South, Range 1 East, Shelby County, Alabama.

**SUBJECT TO:** i) taxes for the year 2007 a lien but not yet payable; ii) less and except any portion of property lying within a road right of way; and iii) any coal, oil, gas and other mineral and mining rights not owned by Mortgagor.