

## THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 12th day of August 2009, by and between BANCORPSOUTH BANK (Third Party Lender) whose address is 4680 Highway 280, Birmingham, Alabama 35242, and BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY, (CDC) whose address is 1500 1st Avenue North, Suite 108B, Birmingham, Alabama 35203.

### RECITALS

1. As described in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (Authorization), and as detailed below, the Third Party Lender will provide term financing (Third Party Loan), and the CDC will provide a loan (the 504 Loan) funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration (SBA), to Borrower and Operating Company, if any, identified below (collectively, Borrower) for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference (Project Property):

SBA Loan #:	32886060-03
SBA Loan Name:	Guthrie's of Alabaster
Borrower:	BENTON INVESTMENTS, INC.
Operating Company (if any)	(Not Applicable)
Third Party Loan Amount:	\$312,000.00
Term of Third Party Loan:	ten (10) years
If Real Property -- Project Property Address:	
Street address:	1103 1st Street North
City, State, Zip code:	Alabaster, Alabama 35007

Attach Legal description as Exhibit A

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more. If needed, attach a more complete description as Exhibit A.

2. The parties have required the Borrower to grant liens or security interests in the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien or security interest held by CDC (CDC Lien) will be junior and subordinate to the lien or security interest held by the Third Party Lender (Third Party Lender Lien), unless CDC and SBA agree otherwise in writing.

## TERMS AND CONDITIONS

In consideration of the above factual recitals, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced and does not and will not exceed the amount allowed in the Authorization.

2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate position in the Common Collateral upon the condition that Third Party Lender executes this Agreement and makes the Third Party Loan.

3. Accurate Information. The Third Party Lender warrants and represents that all information provided to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of the SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered a false statement to the SBA, and that CDC and the SBA are relying upon the information submitted by the Third Party Lender.

4. Waiver of Provision Not to Encumber Common Collateral. If any of the Third Party Lender's documents evidencing the Third Party Loan and/or Third Party Lender Lien contain provisions that prohibit further encumbrances on the Common Collateral or subordinate debt by the Borrower or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral, then Third Party Lender waives its right to enforce such provisions as they may apply to the 504 Loan and the CDC Lien.

5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program requirements as established by the SBA and including those identified in the following subparagraphs, and in the event that it is determined that one or more of the provisions in such documents do not comply with any of these 504 Loan Program requirements, Third Party Lender agrees to waive the right to enforce all such provisions.

a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect the amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.

b. No Early Call or Demand Provisions. Third Party Lender agrees that Third Party Loan documents must not contain any early call feature or permit the Lender to make demand prior to maturity unless the loan is in default.

c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral is not now, and will not be in the future, security for any other financing provided by Third Party Lender to Borrower other than the Third Party Loan in a superior position to that of the CDC lien unless authorized in writing by CDC and SBA.





d. No Cross-Default. During the term of the Third Party Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand prior to maturity unless the loan is in default.

e. Maturity and Balloon Payments. The Third Party Loan has a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be clearly identified in the Authorization.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. No Preference. No Third Party Lender shall establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA. See 13 C.F.R. §120.10 for a definition of preference.

7. Notice of Default under the Third Party Loan. In the event of a default under the Third Party Loan or Third Party Lien, Third Party Lender must give CDC and SBA written notice, referencing the loan number for the 504 loan, of such default within thirty (30) days of the event of default and at least sixty (60) days prior to Third Party Lender's foreclosure upon the Common Collateral.

8. Certification as to Default Interest Rate as Against Borrower. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register from commercial financial institutions in effect as of the date of this Agreement. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and in no event shall be applicable to Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC/SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.



*Paragraph 10 is optional and is applicable only if marked*

XXX 10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

*Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.*

XXX 12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supercede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14 Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to the SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

LENDER:

BANCORPSOUTH BANK

By: 

Print Name: CHARLES W. ESDER

Title: VP

CERTIFIED DEVELOPMENT COMPANY (CDC):

BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY

By: 

Wil Puckett, Its President

**ASSIGNMENT TO SBA**

CDC assigns this Third Party Lender Agreement to SBA.

By: 

Date: August 12, 2009

Typed Name: Wil Puckett, Its President, authorized officer of CDC.

Attest: 

John Schoppert, Its Secretary

[NOTE: ACKNOWLEDGMENTS CONTAINED ON FOLLOWING PAGE.]





STATE OF ALABAMA  
JEFFERSON COUNTY

ACKNOWLEDGMENT OF THIRD PARTY LENDER

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles Wisdom, whose name as Vice President of BANCORPSOUTH 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 its capacity as aforesaid.

Given under my hand and official seal, this the 12<sup>th</sup> day of August, 2009.

William C. Brown  
NOTARY PUBLIC

My Commission Expires: 12/14/2012

STATE OF ALABAMA  
JEFFERSON COUNTY

ACKNOWLEDGMENT OF CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Wil Puckett 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 its capacity as aforesaid.

Given under my hand and official seal, this the 12<sup>th</sup> day of August, 2009.

William C. Brown  
NOTARY PUBLIC

My Commission Expires: 12/14/2012

STATE OF ALABAMA  
JEFFERSON COUNTY

ACKNOWLEDGMENT OF CDC ASSIGNMENT

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Wil Puckett 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 its capacity as aforesaid.

Given under my hand and official seal, this the 12<sup>th</sup> day of August, 2009.

William C. Brown  
NOTARY PUBLIC

My Commission Expires: 12/14/2012

**THIS INSTRUMENT PREPARED BY:**

William C. Brown  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 N. 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Birmingham, AL 35203  
(205) 328-4600





## EXHIBIT "A"

### PARCEL I

Part of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at a point on the South line of Lot 13, Block 2, Cedar Grove Estates, a map of which is recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 3, page 53, said point on South line of said Lot 13 being at its intersection with the West right-of-way of line of U.S. Highway #31 (being approximately 24.10 feet West of the original Southeast corner of said Lot 13), run in a westerly direction along the South line of said Lot 13 for a distance of 83.27 feet; thence turn an angle to the left of 97 degrees 44 minutes and run in a southerly direction for a distance of 170.62 feet to a point on the North right-of-way line of Industrial Road (Shelby County Highway #66); thence turn an angle to the left of 82 degrees 11 minutes 20 seconds and run in a southeasterly direction along said North right-of-way line for a distance of 60.31 feet to a point of intersection with the West right-of-way line of U.S. Highway #31; thence turn an angle to the left of 90 degrees 04 minutes 40 seconds and run in a northerly direction along said West right-of-way line of U.S. Highway #31 for a distance of 169.15 feet to the point of beginning. Also, the South 5.00 feet of said Lot 13, Block 2, Cedar Grove Estates less and except that part taken for highway right-of-way.

### PARCEL II

Part of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the Southwest corner of Lot 13, Block 2, Cedar Grove Estates, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 3, page 53, running in an Easterly direction along the South line of said Lot 13, for a distance of 50.77 feet to the existing iron pin and being a corner of that certain property as described in Deed Book 347, page 556; thence turn an angle to the right of 82 degrees 16 minutes and running in a southerly direction for a distance of 170.62 feet to an existing spike being the Southwest corner of that property as described in aforementioned Book 347, page 556; thence turn an angle to the right of 97 degrees 48 minutes 40 seconds and running in a westerly direction along the North right of way line of Industrial Road for a distance of 50.40 feet to an existing iron pin being on the right of way line of L & N Railroad Tracks; thence turn an angle to the right of 82 degrees 03 minutes 46 seconds and running in a northerly direction along said East right of way line of said railroad for a distance of 170.60 feet, more or less, to an existing iron pin being the point of beginning.

All property located in Shelby County, Alabama.

**SUBJECT TO:** i) taxes and assessments for the year 2009, a lien but not yet payable; ii) Waterline Easement recorded in Real 355, page 496 in the Probate Office of Shelby County, Alabama; iii) right of way to Shelby County, recorded in Instrument 1996-39161, in the Probate Office of Shelby County, Alabama; iv) Lease Agreement as recorded in Real 50, page 869, in the Probate Office of Shelby County, Alabama; v) right of way to Shelby County, recorded in Volume 256, page 873, in the Probate Office of Shelby County, Alabama; vi) rights of way and easements as may exist by virtue of railroad bordering subject property; vii) less and except any part of subject property which lies within a railroad; viii) rights acquired by Shelby County for road purposes over property described in condemnation Lis Pendens recorded at Lis Pendens Volume 4, page 462, in the Probate Office of Shelby County, Alabama, dated April 19, 1968; ix) transmission line permit to Alabama Power Company, recorded in Deed Book 103, Page 54; Deed Book 138, page 434; Deed Book 134, page 25; Deed Book 160, page 64; Deed Book 176, page 377; Deed Book 170, page 252 and Deed Book 160, page 66, in the Probate Office of Shelby County, Alabama; x) easement to Shelby County, as recorded in Deed Book 167, page 236; Deed Book 167, page 242; Deed Book 102, page 446; Deed Book 167, page 380 and in Deed Book 167, page 234, in the Probate Office of Shelby County, Alabama; xi) permit to American Telephone and Telegraph Company recorded in said Probate Office in Deed Book 168, page 473 and 474; xii) easement to Postal Telegraph &

Cable Company, as recorded in Deed Book 80, page 44, in the Probate Office of Shelby County, Alabama; xiii) permit to Southern Bell Telephone & Telegraph Company recorded in Deed Book 175, page 409; xiv) restrictions appearing of record in Deed Book 141, page 192 and 193, in the Probate Office of Shelby County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin; xv) right of way to Southern Bell Telephone & Telegraph Company, recorded in Deed Book 168, page 480, in the Probate Office of Shelby County, Alabama; xvi) less and except any portion of subject property lying within a road right of way or easement; and xvii) coal, oil, gas and mineral and mining rights which are not owned by Grantor/Mortgagor.



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Shelby Cnty Judge of Probate, AL  
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