

This instrument prepared by:  
Krivcher Magids PLC (ccc)  
International Place II  
6410 Poplar Avenue, Suite 300  
Memphis, TN 38119-4839  
(901) 682-6431

**PRIOR LIENHOLDER'S AGREEMENT**  
(SBA - Best Western)

This PRIOR LIENHOLDER'S AGREEMENT, dated as of the 2<sup>nd</sup> day of December 1999, by and between INSOUTH BANK (the "Prior Lienholder") and INSOUTH BANK (the "SBA Lienholder"), recites and provides:

RECITALS:

A. Shiv-Krupa, LLC, a Mississippi limited liability company (the "Borrower") is the owner of real estate described on Exhibit "A", attached hereto (the "Real Property").

B. Prior Lienholder has made or will be making a loan in the original principal amount of \$1,130,000.00 (the "Prior Loan") to Borrower.

C. The Prior Loan is secured by a Deed of Trust on the Real Property of even date to be recorded in the office of the Chancery Clerk of DeSoto County, Mississippi (the "Prior Deed of Trust").

D. The Prior Loan is also secured by a Security Agreement of even date (the "Prior Security Agreement") respecting Borrower's equipment, inventory, accounts and general intangibles (the "Personal Property") as evidenced by UCC-1 financing statements to be filed with the Mississippi Secretary of State and the office of the DeSoto County Chancery Clerk.

E. SBA Lienholder has agreed to make a loan in the amount of \$1,000,000.00 (the "SBA Loan") to Borrower. The SBA Loan will be secured by a second priority Deed of Trust on the Real Property (the "SBA Deed of Trust") to be recorded in the office of the Chancery Clerk of DeSoto County, Mississippi.

F. The SBA Loan will also be secured by a second priority security interest in the Personal Property pursuant to a Security Agreement of even date (the "SBA Security 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. Acknowledgment of Prior Lienholder. Prior Lienholder acknowledges that the principal balance outstanding on the Prior Loan is \$1,130,000.00, that Borrower is current on payments under the Prior Loan, and Borrower is not otherwise in default under the Prior Loan.

2. Future Advances Under Prior Deed of Trust. Except for liens arising from advances under the Prior Deed of Trust intended to preserve the Real Estate or the Personal Property and made pursuant to the Prior Deed of Trust or the Prior Security Agreement, any lien securing any sum advanced to the Borrower by Prior Lienholder after the closing of the Prior Loan in connection with the Prior Loan will be subordinate to the liens created by the SBA Deed of Trust and the liens created by the SBA Security Agreement.

3. Waiver of Enforcement of Covenant Not to Encumber the Real Estate. If the Prior Deed of Trust or any document evidencing the Prior Loan contains any provision prohibiting Borrower from further encumbering the Real Property, Prior Lienholder waives its right to enforce any such provision as it might apply to the liens arising from the SBA Deed of Trust, the SBA Security Agreement or any document evidencing the SBA Loan.

4. Notice of Default Under the Prior Loan. If an event of default occurs under the Prior Deed of Trust, the Prior Security Agreement or any document evidencing the Prior Loan, Prior Lienholder will give SBA Lienholder and the U.S. Small Business Administration (the "SBA") written notice of the default at least sixty (60) days before commencing foreclosure of the prior lien. The requirement of notice to the SBA Lienholder is for the sole benefit of the SBA Lienholder and is not intended to confer any rights or benefits to Borrower. SBA Lienholder shall have the right to waive or reduce the notice otherwise required hereunder.

5. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their successors and assigns.

[SIGNATURE PAGE FOLLOWS]

[Signature Page to Prior Lienholder's Agreement]

Witness the following signatures:

**PRIOR LIENHOLDER:**

**SBA LIENHOLDER:**

INSOUTH BANK  
as lender under the Prior Loan  
6141 Walnut Grove Road  
Memphis, Tennessee 38120

INSOUTH BANK  
as lender under the SBA Loan  
6141 Walnut Grove Road  
Memphis, Tennessee 38120

By: *Dale P. Bowling*

By: *Dale P. Bowling*

Name: *Dale P. Bowling*

Name: *Dale P. Bowling*

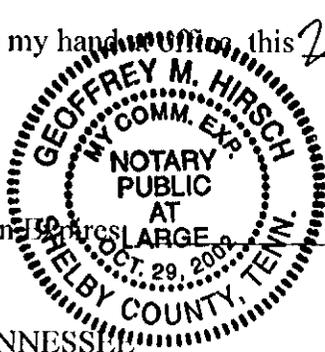
Title: *President*

Title: *President*

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the state and county aforesaid, personally appeared Dale Bowling, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be the president of INSOUTH BANK, the within named bargainor, a corporation, and that he/she as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the corporation as its president.

Witness my hand at office, this 2<sup>nd</sup> day of December, 1999.



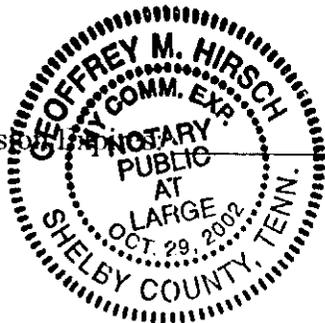
Geoffrey M. Hirsch  
Notary Public

My Commission Expires

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the state and county aforesaid, personally appeared Dale Bowling, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be the president of INSOUTH BANK, the within named bargainor, a corporation, and that he/she as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the corporation as its president.

Witness my hand at office, this 2<sup>nd</sup> day of December, 1999.



Geoffrey M. Hirsch  
Notary Public

My Commission Expires

## EXHIBIT "A"

LEGAL DESCRIPTION  
(Southaven Best Western)

BEING THE SOUTHAVEN PARTNERS, L.P. PROPERTY AS RECORDED IN BOOK 277, PAGE 631, ALSO KNOWN AS PART OF THE BEST WESTERN COMMERCIAL SUBDIVISION AS RECORDED IN PLAT BOOK 22, PAGE 21, SAID RECORDED INFORMATION BEING LOCATED AT THE CHANCERY'S OFFICE IN HERNANDO, DESOTO COUNTY, MISSISSIPPI, SAID PROPERTY BEING LOCATED IN SECTION 24, TOWNSHIP 1 SOUTH, RANGE 8 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY MISSISSIPPI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET IRON PIN ON THE WEST LINE OF HAMILTON ROAD (60' R.O.W.), SAID PIN BEING 220.5' SOUTH OF THE SOUTH LINE OF STATE LINE ROAD (R.O.W. VARIES) 78.5' FROM CENTERLINE AS MEASURED ALONG SAID WEST LINE, SAID PIN ALSO BEING THE SOUTHEAST CORNER OF THE FRANCHISE REALTY INTERSTATE CORPORATION (BOOK 108, PAGE 567), SAID PIN ALSO BEING A POINT ON A CURVE; THENCE CONTINUING ALONG SAID WEST LINE AND ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 301.79 FEET AND AN ARC LENGTH OF 42.96 FEET (CHORD = S 15°47'24" E - 42.93 FEET) TO A SET IRON PIN, SAID PIN BEING THE NORTHEAST CORNER OF THE COLLIS FOODS, INC. PROPERTY (BOOK 171, PAGE 393); THENCE LEAVING SAID WEST LINE AND ALONG THE NORTH LINE OF SAID COLLIS FOODS, INC. PROPERTY, N 84°30'21" W A DISTANCE OF 233.07 FEET TO A SET P.K. NAIL; THENCE ALONG THE WEST LINE OF SAID COLLIS FOODS, INC. PROPERTY, S 06°57'20" W A DISTANCE OF 37.57 FEET TO A SET P.K. NAIL; THENCE S 36°30'18" E A DISTANCE OF 137.50 FEET TO A SET IRON PIN, SAID PIN BEING ON THE NORTH LINE OF THE R.L. STEPHERSON PROPERTY, SAID PIN ALSO BEING ON THE NORTH LINE OF A 150 FOOT WIDE TEXAS GAS TRANSMISSION EASEMENT (BOOK 37, PAGE 61, BOOK 37, PAGE 326, BOOK 46, PAGE 311 & BOOK 70, PAGE 623); THENCE LEAVING THE WEST LINE OF SAID COLLIS FOODS, INC. PROPERTY, AND ALONG THE NORTH LINE OF SAID STEPHERSON PROPERTY AND SAID GAS EASEMENT, S 56°43'00" W A DISTANCE OF 530.00 FEET TO A FOUND AXLE, SAID AXLE BEING THE NORTHWEST CORNER OF SAID STEPHERSON PROPERTY, SAID AXLE ALSO BEING ON THE EAST LINE OF INTERSTATE NO. 55; THENCE ALONG SAID EAST LINE, N 03°55'24" E A DISTANCE OF 147.88 FEET TO A FOUND RIGHT-OF-WAY MARKER; THENCE N 86°07'21" W A DISTANCE OF 59.95 FEET TO A FOUND RIGHT-OF-WAY MARKER; THENCE N 18°26'40" E A DISTANCE OF 161.33 FEET TO A SET IRON PIN, SAID PIN BEING THE SOUTHWEST CORNER OF THE THOMAS E. ROBERTSON, JR. (TRUSTEE) PROPERTY (BOOK 267, PAGE 626); THENCE LEAVING SAID EAST LINE AND ALONG THE SOUTH LINE OF SAID ROBERTSON PROPERTY, S 71°10'41" E A DISTANCE OF 87.90 FEET TO A SET IRON PIN; THENCE N 56°11'52" E A DISTANCE OF 297.76 FEET TO A SET IRON PIN; THENCE S 84°30'21" E A DISTANCE OF 3.53 FEET TO A SET IRON PIN; THENCE ALONG THE EAST LINE OF SAID ROBERTSON PROPERTY N 05°29'05" E A DISTANCE OF 40.00 FEET TO A SET IRON PIN, SAID PIN BEING ON THE SOUTH LINE OF THE SHELL OIL COMPANY PROPERTY (BOOK 59, PAGE 163); THENCE LEAVING SAID EAST LINE AND ALONG THE SOUTH LINE OF SAID SHELL OIL COMPANY PROPERTY AND ONTO THE SOUTH LINE OF SAID FRANCHISE REALTY INTERSTATE CORPORATION PROPERTY, S 84°30'21" E A DISTANCE OF 247.96 FEET TO THE POINT OF BEGINNING. CONTAINING 103,535 SQUARE FEET OR 2.377 ACRES.