

**STATE OF ALABAMA
COUNTY OF SHELBY**

PRIOR LIENHOLDER'S AGREEMENT

This **PRIOR LIENHOLDER'S AGREEMENT** is by and between **THE MONEY STORE COMMERCIAL MORTGAGE, INC.** (hereinafter the "Prior Lienholder") and **SOUTHERN DEVELOPMENT COUNCIL, INC.** (hereinafter along with its successors and assigns, the "CDC").

RECITALS

WHEREAS, Robert L. Kirkland and wife, Janet A. Kirkland (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made loans in the original principal amounts of \$551,652.00, of which only \$526,340.00 was disbursed (the "\$551,652.00 Prior Loan"), and \$469,148.00, of which only \$414,826.00 was disbursed (the "\$469,148.00 Prior Loan"), (collectively the "Prior Loans"). The Prior Loans are secured by Mortgages dated December 30, 1996, and recorded, respectively, as Instrument # 1996-42668, (the "Prior First Mortgage"), and as Instrument # 1996-42669, (the "Prior Second Mortgage"), in the Office of the Judge of Probate of Shelby County, Alabama.

WHEREAS, CDC has agreed to make a loan in the amount of \$430,000.00 (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 Loans.** Following the funding of the 504 Loan, Prior Lienholder will receive \$414,826.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$414,826.00 will reduce the \$469,148.00 Prior Loan secured by the Prior Second Mortgage, and the principal balance of the Prior Loans will upon such reduction be no more than \$526,340.00, and will be the only obligation superior to Borrower's obligations to CDC which are secured by the 504 Mortgage.

2. **Subordination of Future Advances.** Except for liens arising from advances under the Prior First Mortgage or Prior Second Mortgage, intended to preserve the Real Estate and made pursuant to the Prior First Mortgage or Prior Second Mortgage, any lien securing any sum advanced to Borrower by Prior Lienholder after the date of this Agreement will be subordinate to the lien created by the 504 Mortgage.

Inst # 1997-14401

05/08/1997-14401
10:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 HCD 21.00

Inst # 1997-14401

3. Waiver of Enforcement of Covenant Not to Encumber the Real Estate. If the Prior First Mortgage or the Prior Second Mortgage or any document evidencing the Prior Loans 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.

4. Notice of Default Under the Prior Loan. If an event of default occurs under the Prior First Mortgage, the Prior Second Mortgage, or any document evidencing the Prior Loans, Prior Lienholder will give CDC and the U.S. Small Business Administration (the SBA) written notice of the event of default within thirty (30) days after the occurrence of the event of default. After an event of default, Prior Lienholder will not sell all or any portion of the Real Estate without giving CDC and the SBA 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, as the case may be, to CDC, SOUTHERN DEVELOPMENT COUNCIL, INC. at 4101-C Wall Street, Montgomery, Alabama, 36106, and to the SBA at its Birmingham District Office, Suite 200, 2121 Eighth Avenue North, Birmingham, Alabama 35203-2398, Attention: District Counsel.

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.

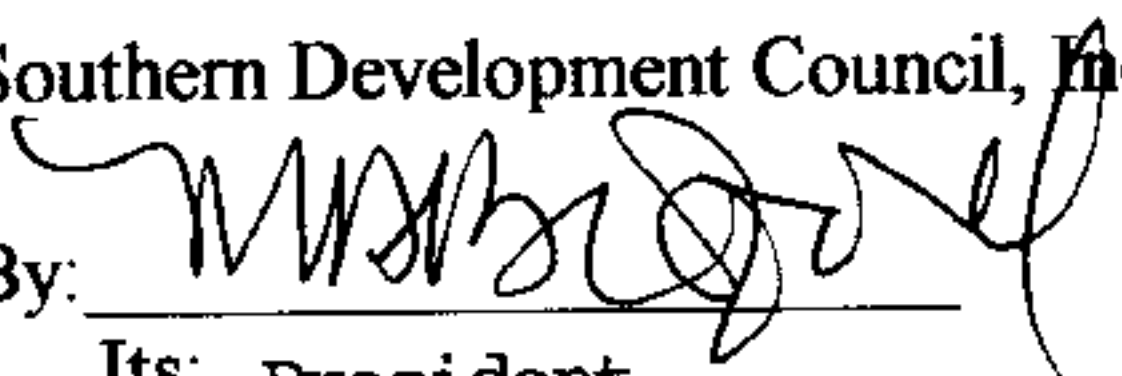
IN WITNESS WHEREOF, We have hereunto set our hands and seals this 2nd day of May, 1997.

PRIOR LIENHOLDER:

The Money Store Commercial Mortgage, Inc.

By: 
Its: Assistant Vice President

CDC:

Southern Development Council, Inc.
By: 
Its: President

ACKNOWLEDGED AND CONSENTED TO:

BORROWER:

Robert L. Kirkland individually and as the proprietor
d/b/a Kirkland Chevron Food Mart


Robert L. Kirkland

Janet A. Kirkland
Janet A. Kirkland

STATE OF CALIFORNIA
_____ COUNTY

Acknowledgment of The Money Store Commercial
Mortgage, Inc.

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that
_____, whose name as _____ of The Money
Store Commercial Mortgage, Inc., 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, _____, as such officer, and with full authority, executed the same voluntarily, as
an act of said Corporation, acting in his capacity as aforesaid.
Given under my hand and official seal this the _____ day of _____, 1997.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA
MONTGOMERY COUNTY

Acknowledgment of CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that
M. M. Bedford, whose name as President of Southern
Development Council, Inc., 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 his capacity as aforesaid.
Given under my hand and official seal this the 16th day of April, 1997.

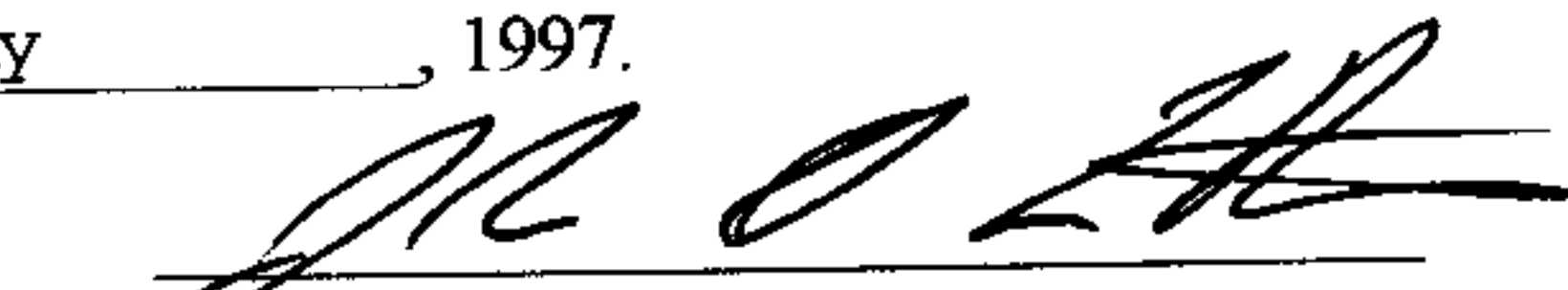
Audria Burney
Notary Public
My Commission Expires: 2-26-2001

STATE OF ALABAMA
COUNTY OF JEFFERSON

Acknowledgement of Individuals

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that
Robert L. Kirkland and wife, Janet A. Kirkland, whose names are signed to the foregoing
instrument, and who are known to me, acknowledged before me on this day that, being informed

of the contents of the instrument, they executed the same voluntarily.
Given under my hand this 8 day of May, 1997.



Notary Public
My Commission Expires: 1-5-99

THIS INSTRUMENT PREPARED BY:

John G. Lowther
John G. Lowther, P.C.
3500 Independence Drive
Birmingham, Alabama 35209
(205) 879-9595

State of California

}

} ss.

County of Sacramento

}

On May 2, 1997, before me, Sharon L. Hess, Notary Public in and for said County and State, personally appeared Debi Stytz personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to be that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sharon L. Hess

Signature of Notary Public



EXHIBIT "A"

A parcel of land situated in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the SE corner of Section 24, Township 20 South, Range 3 West; thence North 2 degrees 28 minutes 59 seconds West for a distance of 1639.63 feet to the point of beginning; thence North 2 degrees 28 minutes 10 seconds West for a distance of 364.29 feet, to the southwesterly line of a State of Alabama right of way (R.O.W. varies); thence North 61 degrees 32 minutes 32 seconds West along said right of way for a distance of 312.05 feet, to a point on the southeasterly right of way of McCain Parkway (60 foot right of way); thence South 16 degrees 16 minutes 03 seconds West along said right of way for a distance of 372.23 feet, to a point on a curve to the left having a central angle of 9 degrees 54 minutes 44 seconds and a radius of 1011.24 feet; thence along the arc of said curve and along said right of way for a distance of 174.95 feet, said curve is subtended by a chord bearing South 11 degrees 18 minutes 41 seconds West and a chord distance of 174.73 feet; thence North 87 degrees 51 minutes 37 seconds East and leaving said right of way for a distance of 428.89 feet, to the point of beginning. Situated in Shelby County, Alabama.

R112
JAK

Inst # 1997-14401

05/08/1997-14401
10:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00