

## LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS AGREEMENT ("Agreement") made this 29th day of May 1998, by and among COMPASS BANK ("Lender"), an Alabama state banking corporation, DONNA M. BRUNO, a single woman ("Borrower"), and RED BAY DRUG STORE, LLC, HELENA SHOPPING CENTER, LLC AND ATTALLA DRUG STORE, LLC, all being Alabama limited liability companies and being collectively referred to as the "LLCs."

WHEREAS, pursuant to that certain Loan Agreement dated May 31, 1996, between Marianne Bruno (hereafter "Bruno") and Lender (the "Loan Agreement"), Lender agreed to extend financing to Bruno in the aggregate principal amount of \$2,050,000.00 (the "Loan") for the purpose of the acquisition by Bruno of three "Big B" stores, located in Etowah, Franklin and Shelby Counties, Alabama, such stores being situated on the real property described on **Exhibit A** attached hereto and made a part hereof by this reference (collectively, the "Mortgaged Property"); and

WHEREAS, said Loan is evidenced by that certain Promissory Note dated May 31, 1996, in the original principal amount of \$2,050,000.00, executed by Bruno in favor of Lender (the "Note") and secured by (i) that certain Mortgage, Assignment of Rents and Leases and Security Agreement from Bruno dated May 31, 1996, and recorded at Instrument No. 1996-17636 in the Office of the Judge of Probate of Shelby County, Alabama, and re-recorded at Book 520, Page 379, in the Office of the Judge of Probate of Franklin County, Alabama, and at Book 3250, Page 206, in the Office of the Judge of Probate of Etowah County, Alabama (the "Mortgage") and (ii) by those certain additional documents listed on **Exhibit B** attached hereto and by this reference made a part hereof (the Loan Agreement, the Note, the Mortgage and said additional documents, being hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, Borrower acquired all of the Mortgaged Property from Bruno and succeeded to the liabilities of Bruno under the Note and the Loan, in connection with which Borrower entered into a Loan Assumption and Modification Agreement with Lender dated February 20, 1998; and

WHEREAS, Borrower is transferring the Etowah County Property to Attalla Drug Store, LLC, the Franklin County Property to Red Bay Drug Store, LLC, and the Shelby County Property to Helena Shopping Center, LLC and the respective LLCs will be succeeding to the liabilities of the Borrower under the Note and the Loan; and

WHEREAS, Borrower, the LLCs and Lender desire to enter into this Agreement to confirm the obligations of the LLCs with respect to the Loan.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Assumption and Succession to Liability.** The LLCs hereby agree and confirm that, upon acquisition of the Mortgaged Property from Borrower: (i) the LLCs will

Inst # 1998-20276

06/02/1998-20276  
02:51 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
35.00

assume, succeed to and become liable to Lender for all liabilities of the "Borrower" under the Note, the Mortgage and the other Loan Documents to the same extent as if the LLCs were the original "Borrower" thereunder; (ii) the LLCs will pay the Note and the Loan in accordance with the terms and provisions of the Loan Documents, as amended herein; and (iii) nothing contained in the purchase documents executed in connection with the acquisition of the Mortgaged Property by the LLCs shall affect or be construed to affect the encumbrance of, or warranty of title in, or conveyance effected by, the Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances; nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other instrument held by Lender as security of the Loan.

2. **Lender's Consent.** Lender hereby consents to the acquisition of the Mortgaged Property by the LLCs. This consent shall not be deemed to alter or modify any of the terms and conditions of the Loan Documents, or the rights and obligations of the parties thereunder, except as expressly provided herein. Lender acknowledges and agrees that all references to the Borrower under the Loan Documents hereafter shall be deemed to refer to the LLCs.
3. **Representations and Warranties of Borrower.** In connection with and as an inducement to Lender's consent to the acquisition of the Mortgaged Property by the LLCs, Borrower hereby represents and certifies to Lender as follows:
  - (a) **Violation of Law.** Borrower has not received any notice of inquiry from any governmental authority claiming any alleged violation of any law, rule, regulation or order of any government authority having jurisdiction over the Mortgaged Property, which violations in any way relate to or affect the Mortgaged Property.
  - (b) **No Events of Default.** As of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and Borrower has no setoff, counterclaim or defense to the Note or the other Loan Documents.
4. **Representations and Warranties of Bruno.** In connection with and as an inducement to the Lender's consent to the acquisition of the Mortgaged Property by the LLCs, the LLCs hereby represent and certify to Lender that the LLCs have thoroughly reviewed the provisions of the Loan Documents, that the LLCs have been advised and represented by counsel of the LLCs' own choice in said transaction and that the LLCs understand and consent to the provisions of such instruments; and that the Loan Documents will be, upon acquisition of the Mortgaged Property by the LLCs, the legal, valid and binding obligations of the LLCs, enforceable against the LLCs in accordance with their respective terms, except as enforceability may be limited or affected by (i) bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws from time to time in effect, (ii) customary principles, judicial decisions, and laws governing, limiting, or affecting the availability of equitable relief generally, and (iii) certain other laws and judicial decisions which

may affect certain of the remedial or other provisions contained in the Loan Documents.

5. **Amendments to Loan Documents.** In connection with the purchase and sale of the Mortgaged Property and the assumption of the Loan by the LLCs, the Loan Documents are hereby amended in the following respects:

(a) All references to "Borrower" are hereby amended to refer to "Red Bay Drug Store, LLC, Helena Shopping Center, LLC and Attalla Drug Store, LLC, all being Alabama limited liability companies," and any permitted successors or assigns to the respective LLCs hereunder and under the Loan Documents.

(b) All notice provisions in the Loan Documents are hereby modified to delete the addresses of Borrower, and to substitute the following address for the LLCs in the place thereof:

Red Bay Drug Store, LLC  
Helena Shopping Center, LLC  
Attalla Drug Store, LLC  
2017 Country Ridge Place  
Birmingham, Alabama 35243

(c) At the time of execution of this Agreement, all interest under the Note had been paid through May 1, 1998, and the principal balance of the Note was \$1,591,779.25. In consideration of (i) the Lender's consent to the acquisition of the Mortgaged Property and the assumption of the Loan by the LLCs, and (ii) the modifications to the Note as set forth herein, the LLCs have paid Lender contemporaneously herewith a transfer/modification fee in the amount of \$500.00. None of the transfer/modification fee is to be credited to principal or interest under the Loan.

(d) Effective as of February 1, 1998, Paragraph 1(b) of the Note is hereby deleted and the following is inserted in lieu thereof:

*"(b) Commencing on the date hereof and ending January 31, 1998, the applicable interest rate hereunder shall be a fixed rate of eight and one-quarter percent (8.25%) per annum. Commencing on February 1, 1998, and ending May 31, 2006, the applicable interest rate hereunder (the "Applicable Rate" shall be a fixed rate of seven and one-half percent (7.50%) per annum."*

(e) Effective as of February 1, 1998, Paragraph 3(a) of the Note is hereby deleted and the following is inserted in lieu thereof:

*"(a) Commencing with the first payment due July 1, 1996, and continuing through the payment due February 1, 1998, principal and interest shall be made in equal monthly installments of NINETEEN THOUSAND EIGHT HUNDRED EIGHTY-SEVEN AND 88/100*

*DOLLARS (\$19,887.88). Commencing with the payment due March 1, 1998, and continuing through the payment due June 1, 2006, principal and interest shall be made in equal monthly installments of SIXTEEN THOUSAND SIX AND 08/100 DOLLARS (\$16,006.08).*

- (f) NOTHING HEREIN SHALL BE CONSTRUED AS EXTENDING THE ORIGINAL MATURITY DATE OF THE NOTE AND LOAN.

**6. Additional Agreements Regarding Loan.** In connection with the assumption and succession by the LLCs to the obligations of the Borrower under the Loan, the LLCs and Lender hereby agree as follows:

- (a) The LLCs agree to pay all costs and expenses of Lender in connection with the execution and delivery of this Agreement, including but not limited to the reasonable fees and expenses of Lender's attorneys, together with all recording fees, title examination fees, title insurance premiums, and similar charges.
- (b) The LLCs agree, at their expense, to provide an endorsement to Lender's Loan Title Policy from First American Title Insurance Company, Loan Policy No. FA-31-06961, reflecting the acquisition of the Mortgaged Property by the LLCs, and showing no additional encumbrances on the Mortgaged Property.

**7. Release of Lender.** By its execution hereinbelow, Borrower hereby acknowledges and agrees that neither Lender nor any of its agents, servants, representatives, employees, attorneys, successors, successors-in-interest, predecessors-in-interest and assigns (hereinafter referred to collectively as the "Released Parties") have interfered with or impaired the acquisition, development, construction, operation, ownership, management or leasing of the Mortgaged Property, and that the Borrower has no claim of any nature whatsoever, at law, in equity or otherwise, against the Released Parties, or any of them, as a result of any acts or omissions of the Released Parties, or any of them, under the Loan Documents or in connection to the Loan prior to the date hereof. The Borrower hereby unconditionally waives and releases the Released Parties from and against any and all manner of action, suits, claims, counterclaims, offsets, deductions, breach or breaches, default or defaults, debts, dues, sums of money, accounts, deposits, damages, expenses, losses, liabilities and any and all demands whatsoever that the Borrower or any of the Borrower's heirs, successors or assigns can or may have against the Released Parties, or any of them, by reason of any matter, cause, transaction or occurrence whatsoever, which happened or has happened on or before the date of this Agreement, and which is connected in any manner whatsoever with the Loan, the Mortgaged Property, any and all collateral which has served or is serving as security for the Loan or the Loan Documents. Any and all such claims are hereby declared to be satisfied and settled, and Borrower hereby discharges the Released Parties from any liability with respect to any and all such claims.

8. **Continuing Liability of Donna Bruno.** Donna Bruno shall continue to remain liable to Lender for subsequent principal and interest payments under the Note and the Loan.
9. **Ratification.** Borrower, the LLCs and Lender mutually covenant and agree that, except as expressly modified herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect, and all of the remaining terms and provisions of the Loan Documents are hereby ratified and confirmed. Borrower, the LLCs and Lender agree that (i) the outstanding and unpaid principal balance of the Loan as of the date hereof is \$1,591,779.25, and (ii) interest has been paid on the Loan through May 1, 1998.
10. **Miscellaneous.**
- (a) **Heirs, Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
- (b) **Governing Law.** This Agreement has been negotiated, and is being executed and delivered in Birmingham, in the State of Alabama, or if executed elsewhere, shall become effective upon the Lender's receipt and acceptance of the executed original of this Agreement in the State of Alabama; provided, however, that the Lender shall have no obligation to give, nor shall Borrower be entitled to receive, any notice of such acceptance for this Agreement to become a binding obligation of Borrower and the LLCs. Borrower and the LLCs hereby submit to jurisdiction in the State of Alabama for any cause of action or action arising out of or in connection with this Agreement. Borrower and the LLCs acknowledge that the negotiation, execution and delivery of this Agreement constitutes the transaction of business within the State of Alabama and that any cause of action arising under this Agreement will be a cause of action arising from such transaction of business. Borrower and the LLCs understand and agree that this Agreement has and will have a significant effect on an Alabama bank. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
- (c) **Headings.** This paragraph and subparagraph headings contained in this Agreement are for reference purposes only and shall not affect its meaning or interpretation in any way.
- (d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
-

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto under seal as of the day and year first above written.

**COMPASS BANK**

Marjorie O. Dabbs  
Witness

By: [Signature]  
Its: SVP

Marjorie O. Dabbs  
Witness

[Signature]  
**DONNA M. BRUNO**

**RED BAY DRUG STORE, LLC, an  
Alabama limited liability company**

Marjorie O. Dabbs  
Witness

By: [Signature]  
Donna M. Bruno  
Its: Managing Member

**HELENA SHOPPING CENTER, LLC,  
an Alabama limited liability company**

Marjorie O. Dabbs  
Witness

By: [Signature]  
Donna M. Bruno  
Its: Managing Member

**ATTALLA DRUG STORE, LLC, an  
Alabama limited liability company**

Marjorie O. Dabbs  
Witness

By: [Signature]  
Donna M. Bruno  
Its: Managing Member

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Lori M. Forshee, a notary public in and for said county in said state, hereby certify that Janet Brock, whose name as Sr. Vice President of **COMPASS BANK**, an Alabama banking 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 such instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 29<sup>th</sup> day of May, 1998.

Lori M. Forshee  
Notary Public

[ Notarial Seal ]

My Commission Expires: 8-14-99

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Lori M. Forshee, a notary public in and for said county in said state, hereby certify that **DONNA M. BRUNO**, whose name 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 such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29<sup>th</sup> day of May, 1998.

Lori M. Forshee  
Notary Public

[ Notarial Seal ]

My Commission Expires: 8-14-99

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Lori M. Forshee, a notary public in and for said county in said state, hereby certify that Donna M. Bruno, whose name as Managing Member of **RED BAY DRUG STORE, LLC, HELENA SHOPPING CENTER, LLC, and ATTALLA DRUG STORE, LLC**, all being Alabama limited liability companies, 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 such instrument, she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability companies.

Given under my hand and official seal this 29<sup>th</sup> day of May, 1998.

Lori M. Forshee  
Notary Public

[ Notarial Seal ]

My Commission Expires: 8-14-99

## **EXHIBIT A**

### **Description of Real Property**

**Parcel I** Commence at an existing concrete R/W marker at the point of intersection of the northeast right of way line of 3rd Avenue and the southeast right of way line of 3rd Street, according to the Original Survey of Attalla, Alabama as recorded in Plat Book "A", Page 226 and 227, Etowah County, Probate Office, and run North 53°30'57" East, along the southeast R/W of 3rd Street a distance of 260.00 feet to the point of beginning of the property described herein; thence continue North 53°30'57" East, along said Southeast R/W for a distance of 175.00 feet to a point; thence deflect right and ran South 36°29'03" East for a distance of 268.00 feet to the northwest R/W line of the Norfolk Southern Railroad R/W; thence deflect right and run South 53°30'57" West along said R/W for a distance of 175.00 feet to a point; thence deflect right and run North 36°29'03" West for a distance of 268.00 feet to the point of beginning. Said property being a portion of the Southeast 1/4 of the Northeast 1/4 Section 3, Township 12 South, Range 5 East of the Huntsville Meridian, Etowah County, Alabama.

TOGETHER WITH those certain easements described in Declaration of Easements and Restrictions recorded in Misc. Book 332, Page 309, in the Probate Office of Etowah County, Alabama.

**Parcel II** A tract of land lying in the South 1/2 of Section 20, Township 7 South, Range 15 West, Franklin County, Alabama, and being more particularly described as follows: Commence at the intersection of the North right of way line of 4th Avenue South and the East right of way line of 5th Street East, in the City of Red Bay, Franklin County, Alabama; thence along the North line of 4th Avenue South, S. 68°53' E. 520.0 feet to the POINT OF BEGINNING of the tract of land hereby described; thence leaving said North right of way line N. 22°23' E. 220.00 feet to a point; thence S. 68°53' E. 150.00 feet to a point; thence S. 22°23' W. 220.00 feet to a point on the North right of way line of 4th Avenue South; thence along said North right of way line, N. 68°53' W. 150.00 feet to the point of beginning of the tract of land hereby described.

**Parcel III** A part of the NE 1/4 of the SE 1/4 of Section 21, Township 20 South, Range 3 West, Shelby County, Alabama and being more particularly described as follows: Commence at the NW corner of said NE 1/4 of the SE 1/4, thence N 89°58'53" E 22.26 feet, along the half mile line to the point of beginning; thence N 89°58'03" E 312.00 feet, along said half mile line; thence S 0°01'48" E 300.09 feet, to a point on the north right of way line of Brookline Parkway; thence S 89°58'03" W 289.16 feet, along said right of way line; thence along said right of way line along the arc of a curve concave northeasterly having a radius of 24.98 feet, an arc length of 37.88 feet to a point on the east right of way of Shelby County Highway No. 17; thence N 3°09'49" W 188.39, along said right of way line; thence N 8°00'27" E 89.33 feet, to the point of beginning.

## **EXHIBIT B**

### **List of Loan Documents**

1. Promissory Note
2. Mortgage, Assignment of Rents and Leases and Security Agent from Borrower dated May 31, 1996, and recorded at Instrument No. 1996-17636 in the Office of the Judge of Probate of Shelby County, Alabama, and re-recorded at Book 520, Page 379, in the Office of the Judge of Probate of Franklin County, Alabama, and at Book 3250, Page 206, in the Office of the Judge of Probate of Etowah County, Alabama
3. UCC-1 Financing Statement recorded at File No. B-96-23451-FS in the Office of the Secretary of State of Alabama \*
4. UCC-1 Financing Statement recorded at Instrument No. 1996-17637, in the Office of the Judge of Probate of Shelby County, Alabama \*
5. UCC-1 Financing Statement recorded at File No. 58522, in the Office of the Judge of Probate of Franklin County, Alabama \*
6. UCC-1 Financing Statement recorded at File No. 18056, in the Office of the Judge of Probate of Etowah County, Alabama \*
7. Loan Agreement
8. Borrower's Closing Affidavit
9. Loan Closing Statement
10. Loan Assumption and Modification Agreement dated February 20, 1998 executed by Donna M. Bruno \*\*\*
11. Guaranty Agreement of Donna M. Bruno

\* As amended on February 20, 1998, to change the debtor's name to "Donna M. Bruno"\*\*\*

\*\* UCC-3 Amendments are being filed with the debtor's name shown as "Red Bay Drug Store, LLC, Helena Shopping Center, LLC, and Attalla Drug Store, LLC".

\*\*\* A new Loan Assumption and Modification Agreement is being executed by Red Bay Drug Store, LLC, Helena Shopping Center, LLC and Attalla Drug Store, LLC.

**Loan Assumption and Modification Agreement**

06/02/1998-20276  
02:51 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE Page 10  
010 MCD 35.00