



THIS INSTRUMENT PREPARED BY:
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20100128000028230 1/9 \$36.00
Shelby Cnty Judge of Probate, AL
01/28/2010 03:56:51 PM FILED/CERT

STATE OF ALABAMA

COUNTIES OF JEFFERSON AND SHELBY


20100128000098840 1/9
Bk: LR201001 Pg:20083
Jefferson County, Alabama
I certify this instrument filed on
01/28/2010 01:10:14 PM MTG
Judge of Probate- Alan L. King

LOAN ASSUMPTION AGREEMENT

THIS AGREEMENT ("Agreement") made this 28 day of December, 2009, by and among **COMPASS BANK** ("Lender"), an Alabama state banking corporation, Charles K. McPherson, Jr., an individual ("Borrower"), and **MAC I, LLC**, an Alabama limited liability company ("Newco").

WHEREAS, pursuant to that certain Loan Agreement dated as of November 28, 2006, between Borrower and Lender (the "**Loan Agreement**"), Lender agreed to extend financing to Borrower in the aggregate principal amount of \$2,810,000.00 (the "**Loan**") for the purpose of financing the purchase of four convenience stores in Jefferson and Shelby Counties, Alabama; and

WHEREAS, said Loan is evidenced by a Promissory Note in the amount of \$2,810,000.00 from Borrower to Lender dated November 28, 2006 (the "**Note**") and secured by (i) that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Borrower dated November 28, 2006, and recorded at Book LR200619, Page 14423 in the Office of the Judge of Probate of Jefferson County, Alabama and at Instrument Number 20061201000585160 in the Office of the Judge of Probate of Shelby County, Alabama (the "**Mortgage**"), and (ii) by those certain additional documents listed on **Exhibit A** attached hereto and by this reference made a part hereof (the Loan Agreement, Note, Mortgage and said additional documents, being hereinafter collectively referred to as the "**Loan Documents**"); and

WHEREAS, Newco has obtained title to the Mortgaged Property described in the Mortgage (herein, the "**Premises**"), subject to the Mortgage and the Loan; and

WHEREAS, Borrower and Newco have requested Lender to consent to such conveyance subject to the Loan; and

WHEREAS, as a condition to its consent, Lender requires that Newco assume and agree to perform all of Borrower's obligations and agreements under the Loan Documents.

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.** Newco hereby assumes and agrees to be bound by and to perform all of the terms, covenants, conditions and agreements of Borrower under the Loan Documents, and acknowledges and agrees that it shall be subject to all remedies reserved to the Lender in the Loan Documents in the event of any Event of Default thereunder. Newco hereby acknowledges and agrees that the Premises shall remain in all respects subject to the Mortgage, and nothing herein contained, and nothing done pursuant hereto, 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 conveyance of the Premises to Newco subject to the Loan Documents, and to the assumption of the Loan Documents by Newco. 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 shall be deemed to refer to Newco with respect to covenants and agreements to be performed or observed from and after the date hereof.

3. **Representations and Warranties of Borrower.** In connection with and as an inducement to Lender's consent to the conveyance of the Premises to Newco and assumption of the Loan by Newco, Borrower hereby represents and certifies to Lender as follows:

(a) **Condemnation.** To the best knowledge of Borrower, there are no pending or threatened actions or proceedings with respect to the condemnation of all or any portion of the Premises.

(b) **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 Premises, which violations in any way relate to or affect the Premises.

(c) **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 Newco.** In connection with and as an inducement to the Lender's consent to the acquisition of the Premises and assumption of the Loan by Newco, Newco hereby represents and certifies to Lender as follows:

(a) That Newco is a limited liability company duly organized, in good standing, and validly existing under the laws of the State of Alabama, and has all requisite power and authority to enter into and perform this Agreement and the Loan Documents; that Newco is authorized to conduct business and own and operate the Premises under all applicable laws; that

the execution, delivery and performance of this Agreement and the assumption of the Loan Documents have been duly authorized by all requisite corporate action of Newco and will not violate any provisions of applicable law, the Articles of Organization or Operating Agreement of Newco, or any agreement, indenture or instrument to which Newco is a party or by which Newco or any of the properties or assets of Newco are bound; and that this Agreement and the Loan Documents are the legal, valid and binding obligations of Newco, enforceable against Newco 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.

(b) As of the date hereof, no "Event of Default" (as defined in the Loan Agreement) exists under the Loan Documents and Newco has no setoff, counterclaim or defense to the Note or the other Loan Documents.

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

(a) All references to "Borrower" are hereby amended to include "MAC I, LLC, an Alabama limited liability company", and any permitted successor in interest to such party 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 Newco in the place thereof:

MAC I, LLC
5501 Cardinal Street
Trussville, Alabama 35173
Attention: _____

(c) All references in the Loan Documents to the "Record Owner of Real Estate" are hereby amended to reference "MAC I, LLC, an Alabama limited liability company."

(d) It is the intent of this instrument, and Borrower, Lender and Newco agree, that Charles K. McPherson, Jr. shall remain liable under the Note and the other Loan Documents, and upon the occurrence of an Event of Default by Newco under the Note or the other Loan Documents, and in addition to Lender's right to enforce the Loan Documents and pursue its remedies against Newco, Lender may enforce the terms of the Note against and collect the indebtedness evidenced by the Note from Charles K. McPherson, Jr., all to the same extent as if this instrument had never been executed.

6. Additional Agreements Regarding Loan. In connection with the conveyance of the Premises to Newco and the assumption of the Loan by Newco, Newco and Lender hereby agrees as follows:

(a) Newco agrees to pay all costs and expenses of Lender in connection with the execution and delivery of this Agreement and the conveyance of the Premises to Newco, including but not limited to the reasonable fees and expenses of Lender's attorneys and all recording fees, title examination fees, title insurance premiums, and similar charges.

(b) Newco agrees that this Agreement shall be recorded at Newco's expense in the Office of the Judge of Probate of Jefferson and Shelby Counties, Alabama. Additionally, Newco agrees, at its expense, to provide an endorsement to Lender's Loan Title Policy from Stewart Title Insurance Company Numbers M-9702-1037834, reflecting this Agreement and the transfer of the Premises to Newco, and showing no additional encumbrances on the Premises.

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 Premises, 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 and including 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 successors, successors-in-interest 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 Premises, 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. Ratification. Borrower, Newco 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, Newco and Lender agree that (i) the outstanding and unpaid principal balance of the Loan as of the date hereof is \$2,353,023.70 and (ii) interest has been paid on the Loan through December 28, 2009.

9. Miscellaneous.

(a) **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

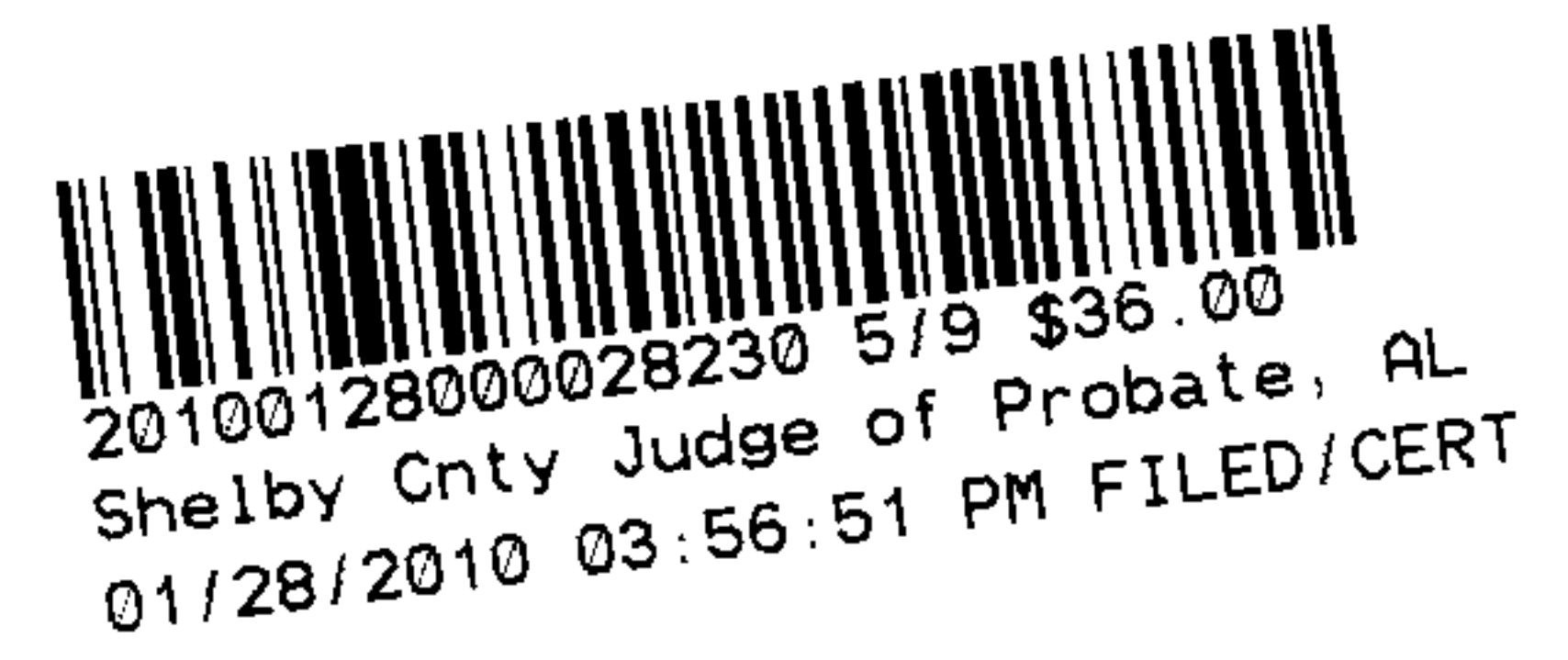
(b) **Governing Law.** This Agreement has been negotiated, and is being executed and delivered in Birmingham, in the State of Alabama, or if executed elsewhere, shall become effective upon the Lender's receipt and acceptance of the executed original of this Agreement in the State of Alabama; provided, 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 Newco. Borrower and Newco 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 Newco 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 Newco 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.

[the remainder of this page is blank; signature pages follow]



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

LENDER:

COMPASS BANK

By: Laura R. Clarke
Name: Laura R. Clarke
Its: Vice President

STATE OF ALABAMA

COUNTY OF Jefferson

I, Mary Jo Ann Ferguson, a notary public in and for said County, in said State, hereby certify that Laura R. Clarke whose name as 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 said instrument, she, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 28 day of December, 2009.

Mary Jo Ann Ferguson
Notary Public

{SEAL}

My Commission Expires: Nov 10, 2010



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Shelby Cnty Judge of Probate, AL
01/28/2010 03:56:51 PM FILED/CERT

BORROWER:



Charles K. McPherson, Jr.

STATE OF)
COUNTY OF)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Charles K. McPherson, Jr.**, 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 the instrument, he executed the same voluntarily.

Given under my hand this the 28th day of December, 2009.

[NOTARIAL SEAL]

Notary Public
My commission expires:



MY COMMISSION EXPIRES MAY 11, 2012



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NEWCO:

MAC I, LLC,
an Alabama limited liability company

By: [Signature]
Name: [Signature]
Its: Manager

STATE OF ALABAMA

COUNTY OF Jefferson

I, Larry S. Schiff, a notary public in and for said County, in said State, hereby certify that Charles K. MacPherson, Sr., whose name as Manager of MAC I, LLC, an Alabama limited liability company, 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 for and as the act of said limited liability company.

Given under my hand this the 24th day of December, 2009.

[Signature]
Notary Public

{SEAL}

My Commission Expires: _____

MY COMMISSION EXPIRES MAY 11, 2012



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EXHIBIT A

Loan Documents

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Shelby Cnty Judge of Probate, AL
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1. Promissory Note executed by Borrower dated November 28, 2006
2. Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement from Borrower to Compass Bank dated November 28, 2006, and recorded at Book LR200619, Page 14423 in the Office of the Judge of Probate of Jefferson County, Alabama and under Instrument Number 20061201000585160 in the Office of the Judge of Probate of Shelby County, Alabama.
3. Loan Agreement executed by Borrower and Lender dated November 28, 2006
5. UCC-1 Financing Statements filed with the Secretary of State of Alabama and the Judge of Probate of Jefferson County, Alabama, from Borrower (as Debtor) to Compass Bank (as Secured Party)
6. Assignment of Contract Documents executed by Borrower
7. Borrower's Closing Affidavit executed by Borrower

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Jefferson County, Alabama
01/28/2010 01:10:14 PM MTG
Fee - \$29.00

Total of Fees and Taxes-\$29.00
HATCHERK

STATE OF ALABAMA - JEFFERSON COUNTY
I hereby certify that no mortgage tax or deed tax
has been collected on this instrument

Alan L. King Judge of Probate

"NO TAX COLLECTED"