



20060607000268500 1/9 \$1655.00  
Shelby Cnty Judge of Probate, AL  
06/07/2006 08:26:00AM FILED/CERT

This instrument prepared by  
and record and return to:  
David R. Kinman, Esq.  
Johnston Barton Proctor & Powell LLP  
1901 6<sup>th</sup> Avenue North  
2900 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203  
(205) 458-9400

STATE OF ALABAMA )  
 )  
SHELBY COUNTY )

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage") is dated and is effective as of June 5, 2006, from **BBCM REAL ESTATE, LLC**, an Alabama limited liability company, whose address is 1806 6th Avenue South, Irondale, Alabama, 35210 (the "Mortgagor #1"), and **BBCM RESTAURANT GROUP, LLC**, an Alabama limited liability company (the "Mortgagor #2", together with Mortgagor #1, collectively, the "Mortgagor"), in favor of **FIRST COMMERCIAL BANK**, an Alabama state banking corporation, whose address is 800 Shades Creek Parkway, Birmingham, Alabama 35209 (the "Mortgagee").

**THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING AS DEFINED IN SECTION 7-9A-102(a)(40) OF THE CODE OF ALABAMA.**

**RECITALS:**

**WHEREAS**, Mortgagor has requested that Lender make three loans to Mortgagor in the aggregate principal sum of \$1,376,258.77 (collectively, the "Loan"), pursuant to that certain Loan Agreement of even date herewith by and between Mortgagor, as borrower, and Mortgagee, as Lender, capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

**WHEREAS**, the Loan is comprised of a loan in the original principal amount of \$1,080,000 payable by Mortgagor #1 to the order of Mortgagee (the "Real Estate Loan"), as evidenced by that certain Promissory Note of even date herewith in the original principal amount of \$1,080,000 (the "Real Estate Note"); a loan in the original principal amount of \$208,258.77 payable by Mortgagor #2 to the order of Mortgagee (the "Equipment Loan"), as evidenced by that certain Promissory Note of even date herewith in the original principal amount of \$208,258.77 (the "Equipment Note"); and a loan in the original principal amount of \$88,000 payable by Mortgagor to the order of Mortgagee (the "Joint Loan"), as evidenced by that certain Promissory Note of even date herewith in the original principal amount of \$88,000 (the "Joint Note", together with the Real Estate Note, collectively, the "Note").

{W0552173.4}

**AND WHEREAS**, Mortgagor has agreed, incurring said indebtedness, that this Mortgage should be given to secure (i) the prompt payment thereof according to the tenor and effect of the Note, and all renewals, extensions and modifications thereof, and all refinancings of any part of the indebtedness evidenced by the Note, and interest thereon, and any and all other additional indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, whether joint or several, whether evidenced by the Note, or otherwise, and any renewals, extensions and modifications thereof, whether incurred or given as maker, endorser, guarantor or otherwise, and interest thereon (all such indebtedness, together with interest thereon, is hereinafter collectively referred to as the "Indebtedness") and (ii) compliance by Mortgagor with the covenants, agreements and requirements of this Mortgage, the Note, any guarantees and any other instrument or agreement secured by this Mortgage (collectively referred to herein as the "Obligations").

**NOW THEREFORE**, for and in consideration of the Obligations, and to secure the prompt payment of same, including future advances, Borrower does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Lender, its successors and assigns, and grant to Lender a security interest in, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, all whether now owned or hereafter acquired, and including replacements, additions, accessions, substitutions and products thereto (which property is hereinafter referred to collectively as the "Collateral"):

(a) All the tract(s) or parcel(s) of land located in Jefferson County, Alabama, as are more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"); and

(b) All Improvements and Equipment, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Property and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Obligations herein described to be secured by this Mortgage; and

(c) All Appurtenant Rights; and

(d) All Rents; and

(e) All Accounts, General Intangibles, Instruments, Inventory, Money, and (to the full extent assignable) Permits; and

(f) All Proceeds.

**TO HAVE AND TO HOLD** the Collateral unto Mortgagee and its successors and assigns forever,

**AND**, Mortgagor does covenant with Mortgagee that it is lawfully seized in fee simple and possessed of the Collateral, and has good right to convey the same; that the Collateral are free from all liens, charges, encumbrances, easements and restrictions whatsoever not herein specifically mentioned or of record in said Probate Office as of the date hereof; and that, subject only to exceptions herein specifically mentioned, Mortgagor does warrant and will defend the title to the same unto Mortgagee against the lawful claims of all persons whomsoever.

**THIS MORTGAGE IS MADE**, however, subject to the following covenants, conditions, and agreements:

1. Mortgagor shall pay the Indebtedness when and as it becomes due.
2. Mortgagor shall keep the Collateral in good condition and repair, reasonable wear and tear expected; shall not permit nor perform any act which would in any way impair the value of the Collateral; shall not remove any fixture nor remove or demolish any building or improvement located on the above described land without the express prior written consent of Mortgagee; and shall neither permit nor intentionally commit waste of the Collateral.
3. Mortgagor shall pay and discharge as the same become due all taxes and assessments that may accrue, be levied, or assessed upon the Collateral or any part thereof, which may be or become a lien prior to the lien of this Mortgage or have priority in payment to the debt secured hereby, or upon Mortgagee's interest therein or upon this Mortgage or the Indebtedness or evidence of Indebtedness secured hereby, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon the Mortgagee. Upon the passage of any law imposing the payment of the whole or any part thereof upon the Mortgagee, or upon the rendering by any appellate court of competent jurisdiction that the undertaking by the Mortgagor to pay such taxes is legally inoperative, then all Indebtedness hereby secured without deduction shall, at the option of Mortgagee, become immediately due and payable, notwithstanding anything contained in this Mortgage or any law heretofore or hereafter enacted. Mortgagor shall not suffer or permit any taxes or assessments on the Collateral to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments; and, further, shall furnish annually to Mortgagee, prior to the date when they would become delinquent, certificates or receipts of the proper officer showing full payment of all such taxes and assessments.
4. Mortgagor shall pay all debts, claims, or other charges that may become liens against the Collateral or any part thereof for repairs or improvements that may have been, or may hereafter be, made on the Collateral and shall not permit any lien or encumbrance of any kind which might become superior to the title of Mortgagee or the lien of this Mortgage to accrue or remain on the Collateral or any part thereof.
5. Mortgagor shall keep the Collateral continuously insured and shall provide, maintain, and deliver to Mortgagee policies of fire and such other insurance as Mortgagee may from time to time require in companies, forms, and amounts satisfactory to Mortgagee, with loss,



if any, payable to Mortgagee, as Mortgagee's interest may appear, and shall assign and deliver to Mortgagee with mortgage clauses satisfactory to Mortgagee all insurance policies of any kind or in any amount now or hereafter issued upon the Collateral. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the Collateral caused by any casualty. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand and receive all monies becoming payable thereunder and to assign absolutely all policies to any endorsee of the Note or to the grantee of the Collateral in the event of the foreclosure of this Mortgage or other transfer of title to the Collateral in extinguishment of the Indebtedness. In the event of loss under any of the policies of insurance herein referred to, the proceeds of such policy shall be paid by the insurer to Mortgagee who may, in Mortgagee's sole and absolute discretion, apply the same, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either as a payment on account of the indebtedness, whether or not then due or payable, or toward the alteration, reconstruction, repair, or restoration of the mortgaged Collateral either to the portion thereof by which said loss was sustained or any other portion thereof.

6. The rents, income, and profits of all and every part of the Collateral are hereby specifically pledged to the payment of the Indebtedness and the performance of all Obligations. If default shall be made in the payment of the Indebtedness or any part thereof or in the performance of any Obligation, Mortgagee shall have the right forthwith to enter into and upon the Collateral, take possession thereof, and collect said rent, income, and profits with or without the appointment of a receiver. All such net income, after payment of reasonable collection, management, and attorneys' fees, shall be applied toward the payment of any advances made by Mortgagee or in reduction of the Indebtedness in such manner or proportion as Mortgagee may elect.

7. If Mortgagor fails to insure the Collateral, or to pay and furnish receipts for all taxes and assessments, or to pay debts, claims or other charges for repairs and improvements, or to keep the Collateral in good condition and repair, all as provided herein, Mortgagee may at its option procure such insurance, pay such taxes and assessments, redeem the Collateral from any tax sale, procure such receipts, or enter upon the Collateral and make such repairs as it may deem necessary; and Mortgagor shall immediately pay to Mortgagee all sums which Mortgagee shall have so paid, together with interest at the rate of eight per cent (8%) per annum from the date the same was paid, and for payment thereof, this Mortgage shall stand as security in like manner and effect as for the payment of the Indebtedness; but the failure of Mortgagee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Mortgagee liable to Mortgagor. If Mortgagee shall elect to advance insurance premiums, taxes, or assessments, or redeem from tax sale, the receipt of the insurance company or of the proper tax official shall be conclusive evidence of the amount, validity, and the fact of payment thereof.

8. Mortgagor shall immediately pay to Mortgagee all sums, including out-of-pocket costs, expenses, and reasonable agents' and attorneys' fees, which Mortgagee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of

waste; to establish or sustain the lien of this Mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions, asserting priority to this Mortgage; in payment, settlement, discharge, or release of any asserted lien, claim, right, easement, or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage; for title insurance, abstract of title, or extension thereof; in connection with any suit to enforce or foreclose this Mortgage, or to recover any sums hereby secured, together with interest on all such sums at the rate of eight per cent (8%) per annum until paid, and for payment of such sums and interest this Mortgage shall stand as security in like manner and effect as for the payment of the said principal indebtedness.

9. If default shall be made in the payment of the Indebtedness or any part thereof in accordance with the terms thereof, or in the performance of any Obligation then the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable and this Mortgage subject to foreclosure; and Mortgagee shall have the right and is hereby authorized to enter upon and take possession of the Collateral, and after or without taking possession, to sell the same before the courthouse door in Shelby County, at public outcry for cash, after having given notice of the time, place, and terms of sale by publication once a week for three successive weeks prior to said sale in a newspaper of general circulation published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting said sale for Mortgagee is authorized and empowered to execute to the purchaser at said sale a deed to the Collateral so purchased. Mortgagee may bid at said sale and purchase said Collateral, or any part thereof, if the highest bidder therefore. At said foreclosure sale the Collateral may be offered for sale and sold as a whole or in parcels without first offering it in any other manner, or the Collateral may be offered for sale and sold in any other manner as Mortgagee may elect.

10. The proceeds of said sale shall be applied: First, to the expense of advertising and selling, including reasonable attorneys' fees; second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay, for taxes, assessments insurance or other charges, liens, or debts as hereinabove provided; third, to the payment of the Indebtedness, with interest to date of sale; fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Collateral at the time of the sale after deducting any out-of-pocket expense of ascertaining who is such owner. If this Mortgage be foreclosed in a judicial proceeding, reasonable attorneys' fees and expenses incurred by Mortgagee in connection with such proceeding shall be paid out of the proceeds of the sale.

11. Mortgagor waives all rights of exemption pertaining to real or personal property as to any Indebtedness, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Collateral be set off against any part of the Indebtedness.

12. After foreclosure of this Mortgage, Mortgagor and all holding under it shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

13. Any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this Mortgage shall not be waived thereby, and as to such debts the Mortgagor waives all rights of exemption under the law and agrees to pay a reasonable attorneys' fee for the collection thereof.

14. No delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any other option at any time and the payment or contracting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this Mortgage on account of such failure of Mortgagor.

15. If Mortgagor shall well and truly pay and discharge all Indebtedness as it shall become due and payable and shall do and perform all Obligations, then this conveyance shall be and become null and void.

16. All awards of damages in connection with any condemnation for public use of or injury to any of said Collateral are hereby assigned and shall be paid to Mortgagee, who may apply the same to payment of the installments last due under the Note, and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

17. The terms "Mortgagor" wherever used herein, shall mean the party executing this Mortgage, and all the covenants, conditions, and agreements hereof shall bind Mortgagor, its successors and assigns, and shall inure to the benefit of and be available (jointly and severally if more than one) to Mortgagee, and to the successors and assigns of Mortgagee. The rights, options, powers, and remedies herein provided shall be cumulative and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.

**[SIGNATURE ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned have has executed this instrument as of the date and year first above written.

**BBCM REAL ESTATE, LLC**, an Alabama limited liability company

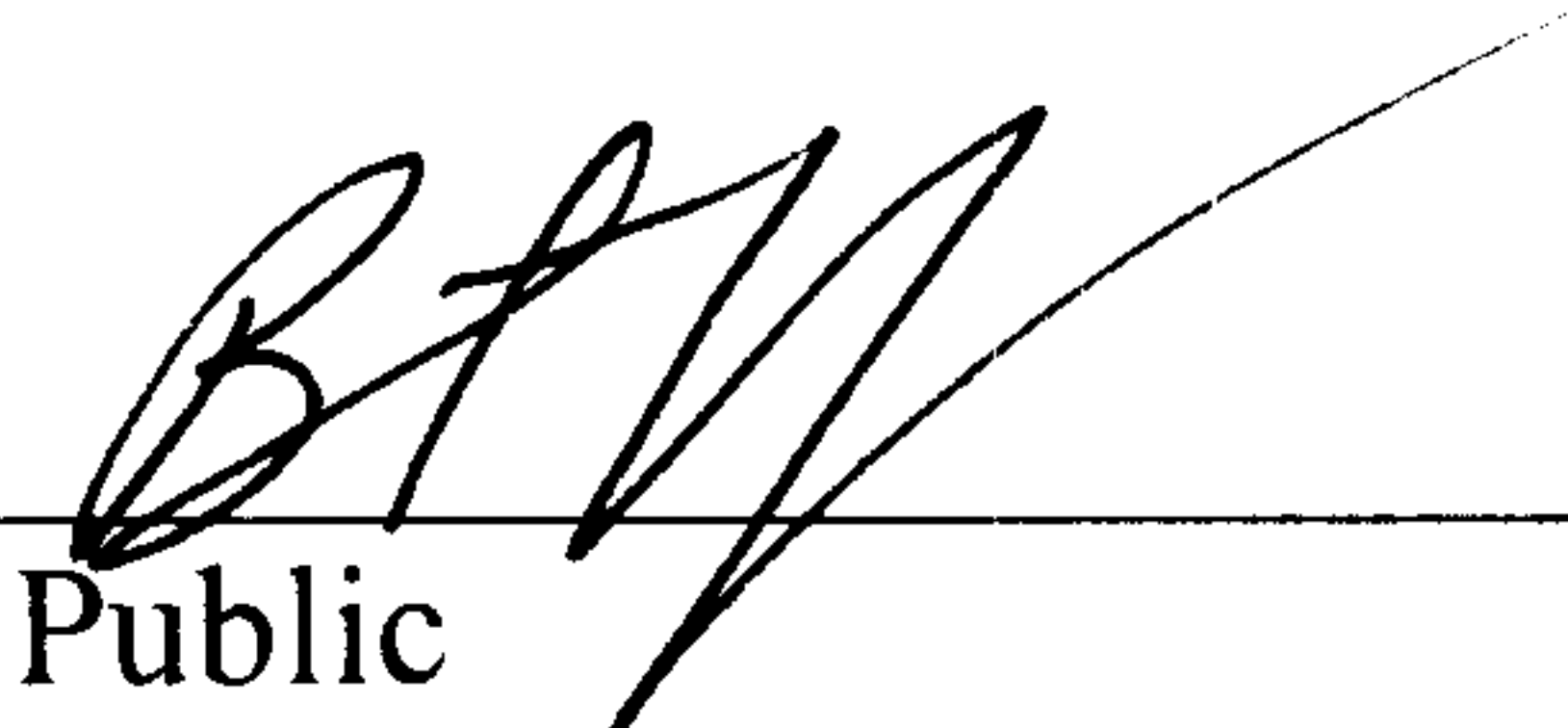
By:   
Todd R. Becker  
Its: Manager

STATE OF ALABAMA )

COUNTY OF Jefferson )


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Todd R. Becker, whose name as Manager of BBCM Real Estate, LLC, an Alabama limited liability company, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 5 day of June, 2006.

  
Notary Public  
My commission expires: \_\_\_\_\_

[AFFIX SEAL]

**BBCM RESTAURANT GROUP, LLC**, an  
Alabama limited liability company

By:   
Todd R. Becker  
Its: Manager

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Todd R. Becker, whose name as Manager of BBCM Restaurant Group, LLC, an Alabama limited liability company, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 5 day of June, 2006.

[AFFIX SEAL]

  
Notary Public  
My commission expires: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

A tract of land situated in the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 4, Township 22 South, Range 2 West; thence North along the East line of said  $\frac{1}{4}$   $\frac{1}{4}$  section 143.75 feet; thence 88 degrees 25 minutes 30 seconds left 618.37 feet to a railroad spike found; thence 0 degrees 54 minutes 45 seconds left 31.01 feet to a point; thence 91 degrees 15 minutes 25 seconds right 29.88 feet to an iron pin found; said iron pin lying on the North margin of a paved road and being the Southeast corner of "Alabama Plastics" property; thence 91 degrees 15 minutes 25 seconds left along the South line of the "Alabama Plastics" property and the North margin of said paved road 417.55 feet to an iron pin found being the Southwest corner of "Alabama Plastics" property; thence continue along last mentioned course and the North margin of said paved road 150.00 feet to a point; thence 01 degrees 21 minutes 08 seconds right, continue along the North margin of said paved road 310.74 feet to a point on the Eastern right of way of U. S. Highway 31; thence 53 degrees 17 minutes 03 seconds right, along and with said right of way 3.09 feet to an existing concrete monument; thence 21 degrees 49 minutes 31 seconds right, along and with said right of way 946.98 feet to the Point of Beginning; thence continue along the last mentioned course and the Eastern right of way of U. S. Highway 31, 206.95 feet to a point; thence 104 degrees 53 minutes 26 seconds right 244.39 feet to a point; thence 90 degrees 00 minutes 00 seconds right 200.00 feet to a point; thence 90 degrees 00 minutes 00 seconds right 191.21 feet to the Point Of Beginning forming a closing interior angle of 104 degrees 53 minutes 26 seconds, being situated in Shelby County, Alabama.