

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

SCRIVENER'S AFFIDAVIT

STATE OF ALABAMA)

COUNTY OF SHELBY)

Before me, a notary public in and for said county and state, personally appeared David R. Kinman and, after being duly sworn, did say as follows:

My name is David R. Kinman, and I am an attorney licensed to practice law in the State of Alabama. I have personal knowledge of the matters and things set forth in this affidavit.

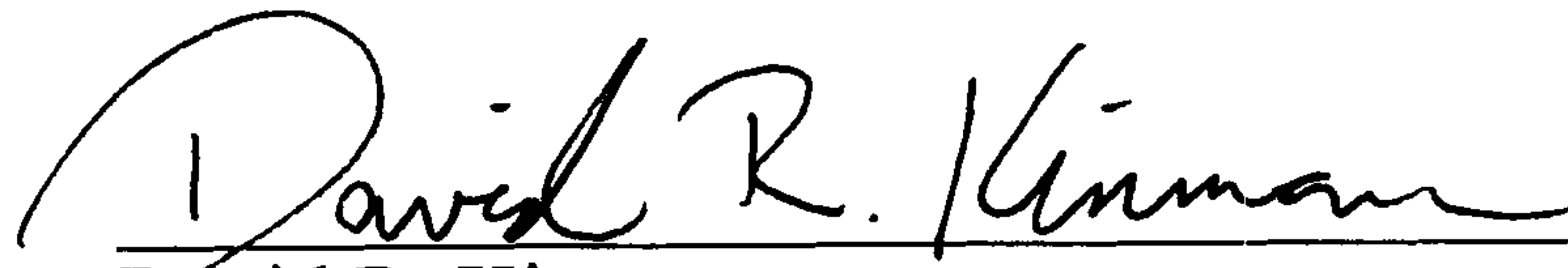
The purpose of this affidavit is to correct a scrivener's error contained in that certain Mortgage and Security Agreement dated as of June 5, 2006 (the "**Mortgage**"), by and between BBCM Real Estate, LLC, an Alabama limited liability company, BBCM Restaurant Group, LLC, an Alabama limited liability company, and First Commercial Bank, an Alabama state banking corporation. The Mortgage encumbers certain real property and improvements located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and incorporated herein, and was recorded in the Probate Office of Shelby County, Alabama, on June 7, 2006, as Instrument 20060607000268500, the first page of said Mortgage being attached hereto as Exhibit B.

Paragraph (a) on page 2 of the Mortgage should read as follows:

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

Further the affiant saith not.

[SIGNATURE ON FOLLOWING PAGE]

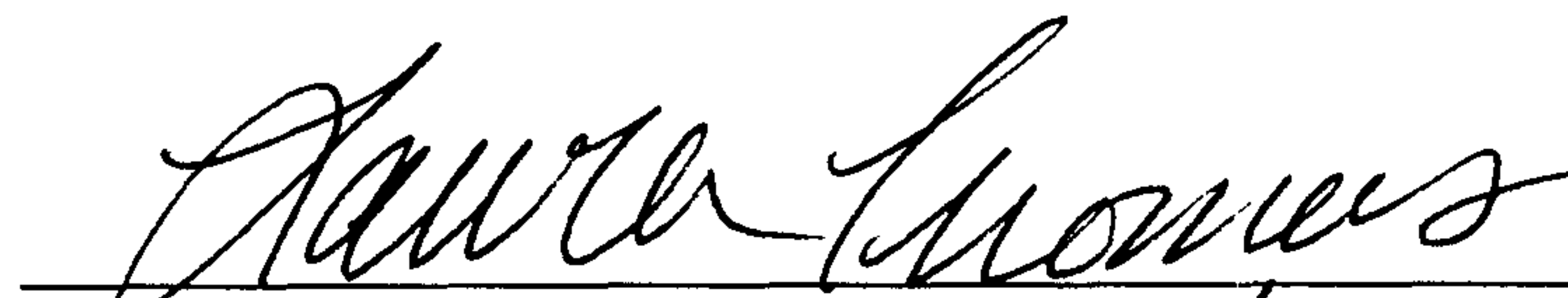

David R. Kinman

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Laura S. Thomas, the undersigned Notary Public in and for said County and State, hereby certify that David R. Kinman, whose name is signed to the foregoing Scrivener's Affidavit, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 27th day of July, 2006.


Notary Public
My Commission Expires: 9/22/09



20060802000371350 2/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/02/2006 10:17:29AM FILED/CERT

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.



20060802000371350 3/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/02/2006 10:17:29AM FILED/CERT

EXHIBIT B
FIRST PAGE OF MORTGAGE

(Attached Hereto)



20060802000371350 4/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/02/2006 10:17:29AM FILED/CERT

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

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2900 AmSouth/Harbert Plaza
Birmingham, Alabama 35203
(205) 458-9400

STATE OF ALABAMA)

SHELBY COUNTY)

20060802000371350 5/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/02/2006 10:17:29AM FILED/CERT

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}