

STATE OF ALABAMA       )  
                                  :  
SHELBY COUNTY         )

*This instrument was prepared by:*  
Frank C. Galloway III  
Galloway & Somerville, LLC  
11 Oak Street  
Birmingham, Alabama 35213

**REAL ESTATE ACCOMMODATION MORTGAGE<sup>1</sup>**  
(ALABAMA)

KNOW ALL MEN BY THESE PRESENTS: That WHEREAS SBE Properties LLC (hereinafter "Borrowers", whether one or more) are, contemporaneously with the execution hereof, becoming indebted to Bryant Bank (hereinafter "Mortgagee") in the amount of One Million Eight Hundred Sixty Thousand and 00/100 Dollars (\$1,860,000.00) principal, as evidenced by a promissory note dated May 29, 2008, payable to Mortgagee with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

WHEREAS, in order to induce Mortgage to make the above loan or loans to Borrowers, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the undersigned Jack J. Phillips and Patricia Pulliam Phillips (hereinafter "Mortgagors") agree to make this Accommodation Mortgage to secure Eight Hundred Thousand and 00/100 Dollars (\$800,000.00) of said principal amount with interest, and all renewals, extensions or modifications thereof, and any and all other additional indebtedness of the Borrowers or Mortgagors to Mortgagee, now existing or hereinafter arising, whether joint or several, due to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and whether incurred or given as maker, endorser, guarantor or otherwise, all of which are hereinafter referred to as "Other Indebtedness".

NOW THEREFORE, the undersigned Mortgagors and all others execution this Accommodation Mortgage, in consideration of the premises, and to secure the prompt payment of the loan or loans above mentioned with the interest thereon, and any extensions, renewals or modifications of same; and any and all Other Indebtedness of Borrowers or Mortgagors to Mortgagee as set forth above and further to secure the performance of the covenants, conditions and agreements hereinafter set forth in instruments evidencing or securing Other Indebtedness of Borrowers to Mortgagee, and further to secure any and all charges incurred by Mortgagee on account of Mortgagors, including but not limited to attorney's fees, have bargained and sold and do hereby grant, bargain, sell and convey unto Mortgagee, its successors and assigns, that certain real property situated in Shelby County, Alabama (hereinafter the "Property"), described as follows:

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<sup>1</sup> As an officer of the court, the scrivener hereof, Frank C. Galloway III represents to the Shelby County Probate Office that the \$800,000.00 secured by this Accommodation Mortgage is "additional security" as contemplated by Section 40-22-2(4) of the *Code of Alabama* (1975), the initial security being a mortgage from SBE Properties LLC to Bryant Bank securing the subject principal amount of \$1,860,000.00. Accordingly, no mortgage recording privilege tax should be owing as a result of the recordation of this Accommodation Mortgage.



**PARCEL I:**

Tract 1, according to the Survey of Crossbrook Farms, Third Sector, Revised, Revision of Lots 1, 2, 3, 4, 5, 7 and 8, as recorded in Map Book 13, Page 148, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Also, rights to use of easement for ingress and egress described as follows:

From the Southwest corner of Section 9, Township 20 South, Range 1 West, run thence North along the West boundary of said Section 9 a distance of 1295.47 feet to the point of beginning of the centerline of a 60.0 foot road easement; thence turn 90 degrees 26 minutes 49 seconds right and run 72.50 feet to the radius point of a 100.0 foot cul-de-sac; thence continue along said course a distance of 50.0 feet; thence turn 06 degrees 51 minutes 40 seconds right and run 263.0 feet; thence turn 21 degrees 32 minutes 30 seconds right and run 313.37 feet; thence turn 20 degrees 17 minutes 14 seconds left and run 250.97 feet; thence turn 77 degrees 48 minutes 06 seconds left and run 270.90 feet; thence turn 68 degrees 52 minutes 26 seconds right and run 310.0 feet; thence turn 89 degrees 30 minutes 45 seconds left and run 705.07 feet to a radius point of a 100.0 foot cul-de-sac; thence turn 180 degrees 00 minutes right and run 1370.15 feet to the radius point of a 100.0 foot cul-de-sac; thence turn 90 degrees 15 minutes 13 seconds left and run 695.31 feet to the radius point of a 100.0 foot cul-de-sac, said point and cul-de-sac being the termination point of herein described easement.

**PARCEL II:**

Tract 2, according to the Survey of Crossbrook Farms, Third Sector, Revised, Revision of Lots 1, 2, 3, 4, 5, 7 and 8, as recorded in Map Book 13, Page 148, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Together with all and singular the rights, privileges, tenements, hereditaments, improvements, fixtures and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the above granted Property unto Mortgagee, its successors and assigns, forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers or Mortgagors shall pay or cause to be paid to Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers or Mortgagors, and shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of the Note, or of any installment thereof, principal or interest, when due, or upon the happening of a default in the payment of any Other Indebtedness, obligation or liability hereby secured, or any renewals, extensions or modifications thereof when due, or upon default in the performance of any of the covenants, conditions and



agreements in the Note, or in this Accommodation Mortgage, or in any other instruments evidencing or securing the Note or Other Indebtedness of Borrowers to Mortgagee, or should the interest of Mortgagee or assigns in the Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Borrowers or Mortgagors, or any endorser, surety or guarantor of the Note of Other Indebtedness Borrowers to Mortgagee, file or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law for relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment of any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be to be immediately due and payable, and Mortgagors hereby vest Mortgagee with full power and authority to sell the Property at public auction at the front door of the courthouse of the county. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in said county and state. Mortgagee has full power and authority to convey the Property to the purchaser and to apply the proceeds of said sale: first, to the payment of the expenses of such sale, including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. Mortgagee may, at the sale made under this Accommodation Mortgage, become the purchaser of the Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of Mortgagors, and all recitals made in any deed executed under this Accommodation Mortgage shall be evidence of the facts therein recited.

Mortgagors, their heirs, assigns, executors and administrators, hereby covenant with Mortgagee, its successors and assigns, that they are seized of an indefeasible estate in fee simple in and to the Property, that the Property is free from all liens and encumbrances except as set forth herein (and except as to the outcome of the title issues being adjudicated in the pending case in Shelby County Circuit Court identified as CV-02-659 and that they will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto Mortgagee, its successors or assigns and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

Mortgagors further expressly agree and covenant as follows:

1. Mortgagors shall keep any buildings now or hereafter erected on the Property in good repair, and insured against fire and windstorm, and such other risks as Mortgagee may designate, by policies made payable to Mortgagee by a New York Standard Loss Payee Endorsement, and deposited with Mortgagee. Such policies shall be in an amount as may be required by Mortgagee, but Mortgagee shall not require insurance exceeding the value of said buildings and other improvements.



2. Mortgagors shall keep the improvements situated on the Property in a reasonable state of repair and shall not commit or permit waste of the Property, or remove any fixtures.

3. Mortgagors shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against the Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.

4. If Mortgagee shall employ an attorney to collect the debt or any of the debts hereby secured, or any portion thereof, or to foreclose this Accommodation Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceeding, then Mortgagors shall pay and allow a reasonable attorney's fee.

5. Mortgagors shall maintain possession of the Property above described, subordinate to the rights of Mortgagee, and in the event of litigation arising over the title to, or possession of the Property, Mortgagee may prosecute or defend said litigation.

6. If Mortgagors fail to perform any of the duties herein specified, Mortgagee may perform the same.

7. Mortgagee may advance to Mortgagors such monies as may be necessary to discharge any liens of any character now or hereafter placed against the Property, or to pay for any work done upon the Property, or for materials furnished to the Property.

8. Mortgagee shall have an additional lien upon the Property, secured by this Accommodation Mortgage for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 4 through 7 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate set forth in the Note, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.

9. Mortgagors shall not sell or otherwise transfer or dispose of the Property without the prior written consent of Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be immediately due and payable.

10. Mortgagee is authorized, without notice or demand and without affecting this Accommodation Mortgage, from time to time to (a) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrowers or Mortgagors, or any part thereof, including increase or decrease of the rate of interest thereof; (b) take and hold security for the payment of the Note or any Other Indebtedness of Borrowers or Mortgagors, and exchange, enforce, waive and release any such security; and (c) apply such security and direct to the order or manner of sale thereof as Mortgagee in its discretion may determine. Mortgagee may without notice assign this Accommodation Mortgage in whole or in part.



11. Mortgagors waive any right to require Mortgagee to (a) proceed against Borrowers; (b) proceed against or exhaust any security held from Borrowers; or (c) pursue any other remedy in Mortgagee's power whatsoever. Mortgagors waive any defense arising by reason of any disability or other defense of Borrowers or by reason of the cessation from any cause whatsoever of the liability of Borrowers. Until the Note and all Other Indebtedness of Borrowers to Mortgagee shall have been paid in full, Mortgagors shall have no right of subrogation, and waive any right to enforce any remedy which Mortgage now has or may hereafter have against Borrower, and waive any benefit of, and any right to participate in any security now or hereafter held by Mortgagee. Mortgagors waive all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

12. It is the intent hereof that this Accommodation Mortgage shall be and remain unaffected, (a) by the existence or nonexistence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrowers, or any part thereof; or (b) by resort on the part of Mortgagee to any other security or remedy for the collection of any indebtedness of Borrowers or Mortgagors; or (c) by the death or bankruptcy of any one or more of the Borrowers or its members, if more than one, and in case of any such death or bankruptcy, by failure of Mortgagee to file claim against the deceased's estate or against such bankrupt's estate, as the case may be, for the amount of such decedent's or such bankrupt's liability to Mortgagee.

13. This Accommodation Mortgage is independent of the obligations of Borrowers, and Mortgagee may exercise its rights under this Accommodation Mortgage whether or not action is brought against Borrowers; and Mortgagors waive the benefit of any statute of limitations or other defenses affecting this Accommodation Mortgage or the enforcement thereof.

14. The provisions of this Accommodation Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.

15. No delay or omission of the Mortgage or of any holder of the Note to exercise any right, power or remedy under this Accommodation Mortgage, the Note, or other instrument securing the Note or Other Indebtedness of Borrowers or Mortgagors, upon any default shall exhaust or impair any such right, power or remedy or shall be extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

16. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Accommodation Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

17. This Accommodation Mortgage is given under the seal of all parties hereto, and it is intended that this Accommodation Mortgage is and shall constitute and have the effect of a sealed instrument according to law.



IN WITNESS WHEREOF, we have set our hands and seals, this 29 day of May, 2008.

Jack J. Phillips  
By: Steve Martin  
HIS ATTORNEY IN FACT (Seal)  
Jack J. Phillips

Patricia Pulliam Phillips  
By: Steve Martin  
HER ATTORNEY IN FACT (Seal)  
Patricia Pulliam Phillips

STATE OF ALABAMA     )  
                                     :  
JEFFERSON COUNTY     )

On this 29<sup>th</sup> day of May, 2008, before me the undersigned Notary Public in and for said County and State, personally appeared Steve E. Martin as attorney-in-fact for Jack J. Phillips, personally known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed the same in his authorized capacity as such attorney-in-fact, and that by his signature on the instrument subscribed to me that the person, upon whose behalf he acted, executed the instrument.

Given under my hand and official seal this 29<sup>th</sup> day of May, 2008.

Leresa V. Whitmore  
Notary Public:  
My commission expires: 12/2/09

STATE OF ALABAMA     )  
                                     :  
JEFFERSON COUNTY     )

On this 29<sup>th</sup> day of May, 2008, before me the undersigned Notary Public in and for said County and State, personally appeared Steve E. Martin as attorney-in-fact for Patricia Pulliam Phillips, personally known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed the same in his authorized capacity as such attorney-in-fact, and that by his signature on the instrument subscribed to me that the person, upon whose behalf he acted, executed the instrument.

Given under my hand and official seal this 29<sup>th</sup> day of May, 2008.

Leresa V. Whitmore  
Notary Public:  
My commission expires: 12/2/09