


STATE OF ALABAMA)
:
SHELBY COUNTY)


20070220000077340 1/5 \$475.00
Shelby Cnty Judge of Probate, AL
02/20/2007 11:15:32AM FILED/CERT

FIRST MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 15th day of February, 2007, by and between WHITCOMB PROPERTIES, L.L.C., an Alabama limited liability company ("Borrower"), MICHAEL S. WHITCOMB and LORI WHITCOMB (collectively referred to as "Guarantors") (Borrower and Guarantors are sometimes referred to as "Obligors") and CITIZENS TRUST BANK ("Lender").

RECITALS:

A. Lender is the holder of a Promissory Note in the face amount of \$1,238,000.00, made by Borrower, dated December 8, 2003 (such note, as amended and restated as described herein, is referred to the "Note"). The Note is secured by various documents and instruments all dated December 8, 2003, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

- 1 Mortgage and Security Agreement recorded as Instrument #20031210000798950, in the Probate Office of Shelby County, Alabama (the "Indenture").
- 2 Assignment of Rents and Leases recorded as Instrument #20031210000798960, in the Probate Office of Shelby County, Alabama.
3. UCC Financing Statements filed as Instrument #20031210000798970, in the Probate Office of Shelby County, Alabama, and filed as Instrument #B03-1076914FS, in the Secretary of States' Office for the State of Alabama.
4. Guaranty executed by Guarantors, and other members of Borrower (who have assigned their membership interests to Guarantors this date).

B. All the documents and instruments referred to or described in the foregoing paragraphs, and all other documents and instruments further securing the Note as amended and restated herein, is referred to as the "Loan Documents." The real and personal properties pledged and mortgaged under the Loan Documents are referred to as the "Project".

C. The Borrower has requested an additional advance of \$300,000.00 (the "Advance") under the Loan Documents. The Advance is evidenced by an Amended and Restated Promissory Note made by Borrower in favor of Lender on this date in the face amount of \$1,431,338.51 (referred to as the "Note").

D. The purpose of this document is to provide record notice of the agreement of the parties that the Note (as amended and restated aforesaid), is secured by the Loan Documents as the same may be modified from time to time hereafter, and of the other matters specified herein.

If not defined herein, capitalized terms used herein shall have the meanings given to them in the Loan Documents.

WITNESSETH:

NOW THEREFORE, in consideration of the premises and of other due, good, and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

This Instrument Prepared by:

Guy V. Martin, Jr., Esq.
Martin, Rawson & Woosley, P.C.
#2 Metroplex Drive, Suite 102
Birmingham, Alabama 35209

1. **Note.** All references to the Note, Secured Indebtedness, or Secured Obligations appearing in the Loan Documents shall also include the Note as amended and restated herein and the indebtedness and obligations evidenced by such Note. The Note (as amended and restated as described herein), together with any extensions, renewals, amendments or modifications thereof, is secured by the Loan Documents, whether now existing or hereafter executed.

2. **Guaranty.** Guarantors consent to this agreement; the term "Note" as defined in the Guaranty is modified to include the New Note as executed today, which New Note Guarantors guarantee under the terms of the Guaranty; and the Guaranty is ratified, confirmed and modified to include this instrument as one of the Loan Documents described therein.

3. **Representations and Warranties.** Borrower represents and warrants to Lender that the following are true, correct and complete as of the date of this agreement:

3.1 **Due Organization, Authority.** Each Borrower which is a partnership, corporation or limited liability company represents that such Borrower is duly organized and validly existing under the state in which such Borrower is stated as being organized herein and in good standing under the laws of such state and has power adequate to carry on its businesses in each such State as presently conducted, to own and/or lease the Properties, to make and enter into those Loan Documents executed by Borrower and to carry out the transactions contemplated therein.

3.2 **Execution, Delivery and Effect of Loan Documents.** Borrower represents (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Borrower, as the case may be, that each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, that there are no defenses, counterclaims, or set-offs to any of the Loan Documents, and that upon default Lender shall be entitled to exercise any one or more remedies under any one or more of the Loan Documents including without limitation suit, receivership, foreclosure, and/or other remedies available under law or equity.

3.3 **Other Obligations.** No Borrower is in violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to the leases executed by any Borrower of portions of (or space in) the Properties or the personal or real property or other thing of value secured by the Loan Documents (the "Collateral"). No tenant or other party has asserted any claim or default relating to any such lease or to any of the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which any Borrower is a party or by which any Borrower may be bound or affected, and do not and will not violate or contravene any laws to which any Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

3.4 **Legal Actions.** There are no material actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of any Borrower's knowledge and belief, threatened, against or affecting any Borrower, its business or the Collateral, or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of any Borrower's knowledge and belief, threatened against or affecting any Borrower, any Borrower's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Borrower would not have a material adverse effect on any Borrower or the Collateral. No Borrower is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any such Borrower or the Collateral.

3.5 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the loan evidenced by the Notes ("Loan") are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the

parties or entities covered by such statement as of the date thereof. Since the date thereof, no Borrower has experienced any material, adverse change in its finances, business, operations, affairs or prospects.

3.6 Title to Collateral. Borrower represents that Borrower has good and clear record and marketable title to the Collateral, free of all liens, encumbrances or restrictions other than the exceptions reflected in the title policies heretofore delivered to and approved by Lender ("Permitted Encumbrances").

3.7 Compliance with Laws and Private Covenants. The Collateral complies in all material respects with all laws. Borrower has examined and are familiar with the Permitted Encumbrances and there now exists no material violation thereof. Borrower has no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

3.8 Hazardous Waste. To the best knowledge and belief of Borrower, no release of any hazardous waste or hazardous substance (as defined under applicable laws) is present on, in, under, or at the Collateral, nor has any Borrower received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

4. Miscellaneous. Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Security Documents shall remain in full force and effect and are hereby ratified and confirmed by each Obligor.

5. Releases of Condominium Units. Lender agrees to release condominium units ("units") from the lien of this Mortgage upon fulfillment of the following conditions:

(a) Lender shall have executed the condominium declaration and all organization documents related thereto pursuant to which the property is submitted to the condominium form of ownership under Alabama law, which must be acceptable to Lender in its sole discretion, and Borrower shall have paid the expenses of the Lender, including reasonable attorneys fees, incurred by the Lender in connection with the Lender's review of such documents;

(b) Lender must have received in good funds an amount equal to the greater of (i) eighty percent (80%) of the gross sales price of the unit and (ii) a sum derived by multiplying (aa) a fraction equal to the Percent of Building Sold (as herein defined) times (bb) the loan amount as of the date of the release (including unpaid interest and other amounts due under the Loan Documents) times (cc) one hundred twenty percent (120%). The term "Percent of Building Sold" shall mean a fraction, the numerator being the square feet of the unit sold, and the denominator being the sum of the square feet of all units unsold at the time of the release at issue;

(c) proof that the "loan to value", as defined below, following the release of a unit, shall not exceed seventy-eight percent (78%), according to Lender's underwriting criteria as applied by Lender in its reasonable discretion, such proof including (*inter alia*) such update of Lender's appraisal as may be required. The term loan to value shall mean a fraction, the numerator of which is the loan amount following the proposed release of a unit, and the denominator of which is the value of the unsold units following the proposed release of a unit;

(d) a copy of the sales contract, closing statement and all other closing documents with regard to the sale of the unit, shall have been delivered to and approved by Lender in its sole discretion, and Lender shall have approved the sales price for the unit in its sole discretion,

(e) each sale shall be a bona fide sale to an unrelated third party purchaser, and


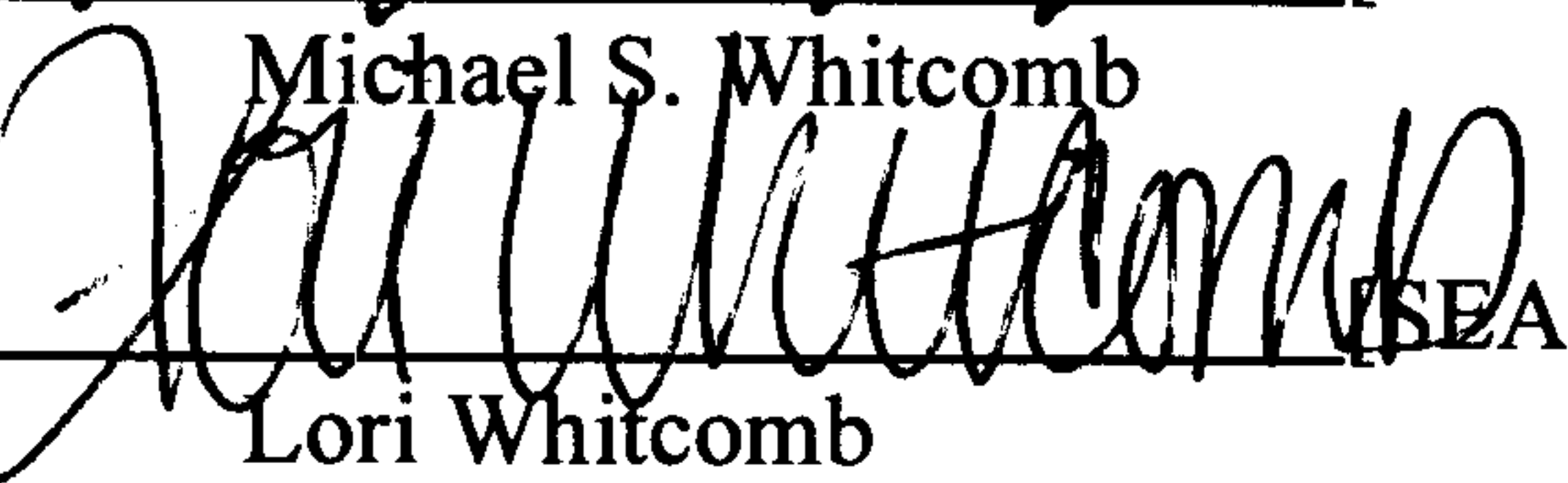
(f) no default may exist under the Loan Documents and no fact or condition exists which, with the giving of notice or passage of time, could give rise to default.

6. Waiver of Jury Trial. After consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, the parties hereto knowingly, voluntarily, and intentionally waive

any right to a trial by jury with respect to any litigation based upon, arising out of, relating to, or in connection with this transaction, this instrument, or any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledge that this provision is a material inducement for entering into this loan transaction by all parties.

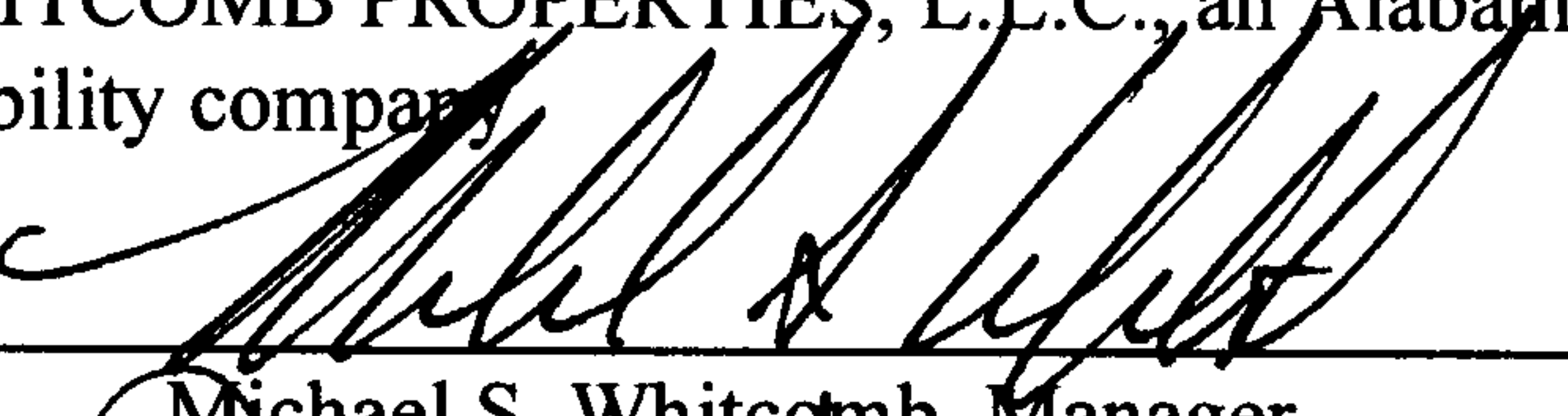
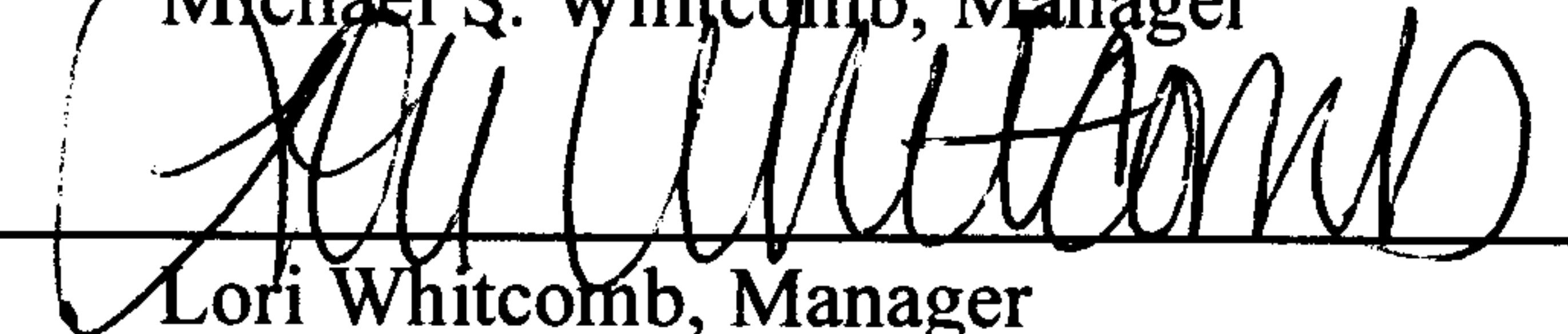
7. **Counterparts.** This agreement may be executed in counterparts, but all counterparts shall constitute but one and the same document.

"GUARANTORS:"

(1)  [SEAL]
Michael S. Whitcomb
(2)  [SEAL]
Lori Whitcomb

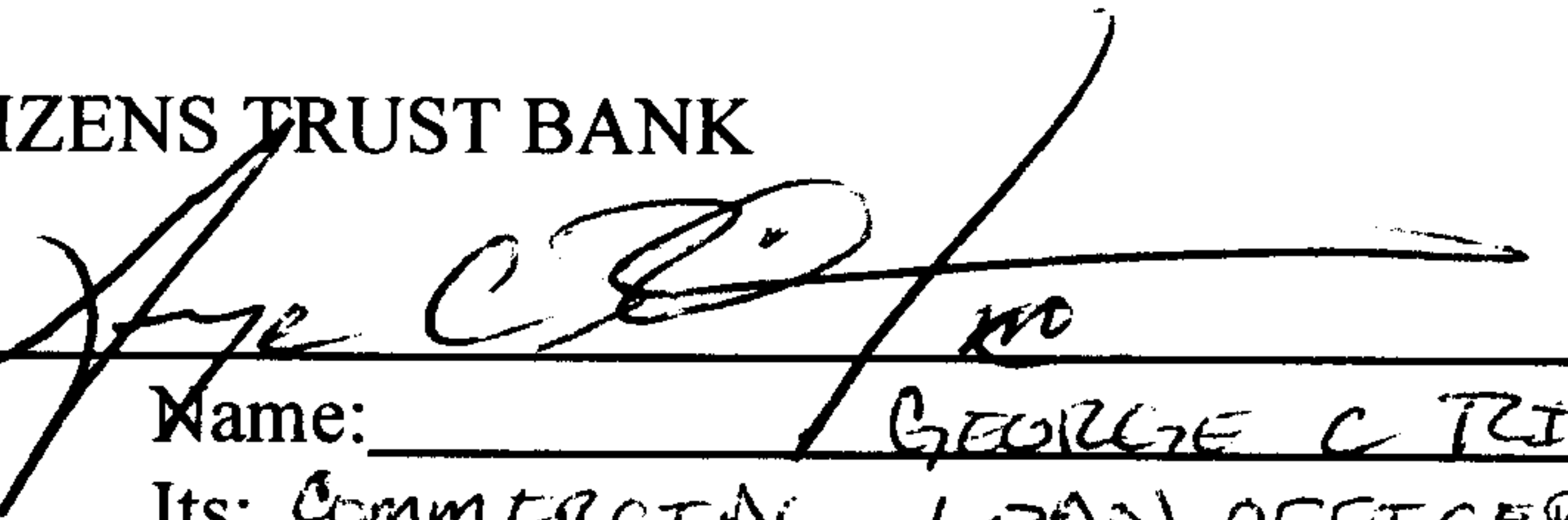
"BORROWER:"

WHITCOMB PROPERTIES, L.L.C., an Alabama limited liability company

By:  [SEAL]
Michael S. Whitcomb, Manager
By:  [SEAL]
Lori Whitcomb, Manager

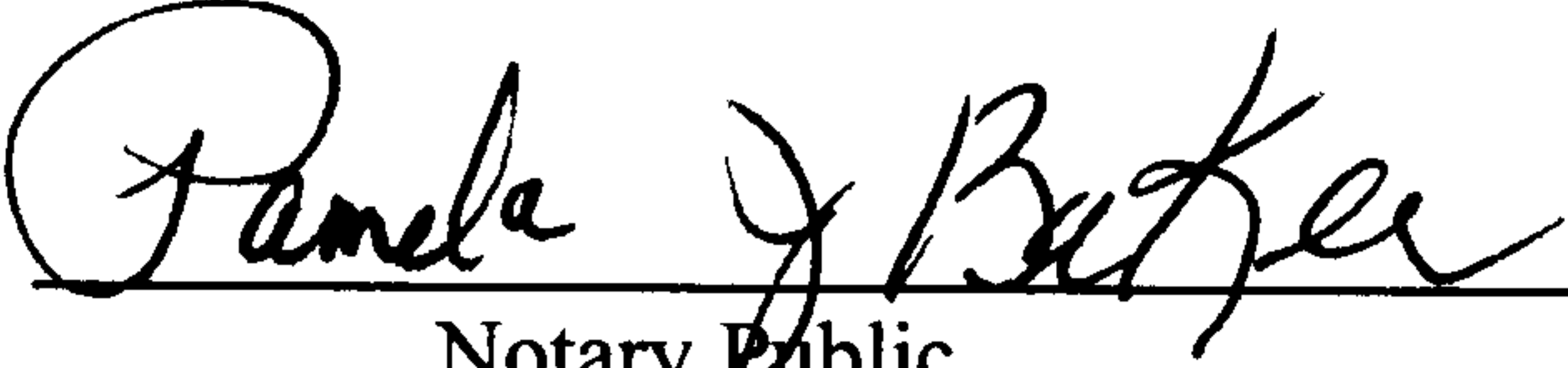
"LENDER:"

CITIZENS TRUST BANK

By:  [SEAL]
Name: GEORGE C. RICHARDSON, III
Its: COMMERCIAL LOAN OFFICER

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael S. Whitcomb and Lori Whitcomb, whose names as Managers of Whitcomb Properties, L.L.C., an Alabama limited liability company, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such managers 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 15th day of February, 2007.


Notary Public

My Commission Expires: ~~Notary Public State of Alabama at Large~~
My Commission Expires: July 25, 2010

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that GEORGE C. RICHARDSON, as COMMERCIAL LOAN OFFICER of Citizens Trust Bank, 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 executed the same voluntarily on behalf of said banking institution on the day the same bears date. Given under my hand and official seal this _____ day of February, 2007.

Shawanda D. Heard
Notary Public

My Commission Expires: 3/29/08

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael S. Whitcomb and Lori Whitcomb, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date. Given under my hand and official seal this 15th day of February, 2007.

Pamela J. Butler
Notary Public

My Commission Expires: Notary Public State of Alabama at Large
My Commission Expires: July 25, 2010