

STATE OF ALABAMA)
 :
SHELBY COUNTY)

This Instrument Prepared By:
Guy V. Martin, Jr.
Martin, Rawson & Woosley, P.C.
#2 Metroplex Drive, Suite 102
Birmingham, Alabama 35209

FIRST MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 10 day of JUNE, 2009, by and between, BWV APC, L.L.C. , an Alabama limited liability company ("Borrower"), and BRENT WARD VACARELLA ("Guarantor") (Borrower and Guarantor are sometimes referred to as "Obligors"), and SOUTHCITY BANK ("Lender").

RECITALS:

A Lender is the holder of a Promissory Note in the face amount of \$100,000.00, made by Borrower, dated December 12, 2008 (such note, as modified herein, is referred to as the "Note"). The Note is secured by various documents and instruments all dated December 12, 2008, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded as Instrument Number 20081216000467280, in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Assignment of Rents and Leases recorded under Instrument Number 20081216000467290, said records.
3. UCC-1 Financing Statements, both county and state.
4. Guaranty executed by Guarantor in favor of Lender ("Guaranty").

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

B The Borrower has requested an additional advance of \$50,000 (the "Advance") under the Loan Documents. The Advance is evidenced by the Note, as amended and restated this date to reflect an increase in its face amount to \$150,000.00 (the Note, as amended and restated, is referred to hereafter as

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

C. The purpose of this document is to provide record notice of the agreement of the parties that the Note 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.

W I T N E S S E T H:

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:

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, are secured by the Loan Documents, whether now existing or hereafter executed.

2. **Guaranty.** Without limiting the foregoing, Guarantor consents to this agreement; the term "Note" as defined in the Guaranty is modified to refer to and include the Note as amended and restated today, which Note Guarantor 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.** Obligors represent and warrant to Lender that the following are true, correct and complete as of the date of this agreement:

3.1 **Due Organization, Authority.** 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.** Obligors represent (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Obligors, as the case may be, that each is a legal, valid and binding obligation of Obligors, 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 Obligor 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 Obligor 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 Obligor is a party or by which any Obligor may be bound or affected, and do not and will not violate or contravene any laws to which any Obligor 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 Obligor's knowledge and belief, threatened, against or affecting any Obligor, 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 Obligor's knowledge and belief, threatened against or affecting any Obligor, any Obligor'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 Obligor would not have a material adverse effect on any Obligor or the Collateral. No Obligor is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any such Obligor 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 Obligor has experienced any material, adverse change in its finances, business, operations, affairs or prospects.

3.6 Title to Collateral. Obligors represent 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. Obligors have examined and are familiar with the Permitted Encumbrances and there now exists no material violation thereof. Obligors have 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 Obligors, 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 Obligor 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. Counterparts. This agreement may be executed in counterparts, but all counterparts shall constitute but one and the same document.

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.

"GUARANTOR:"

 [SEAL]
Brent Ward Vacarella

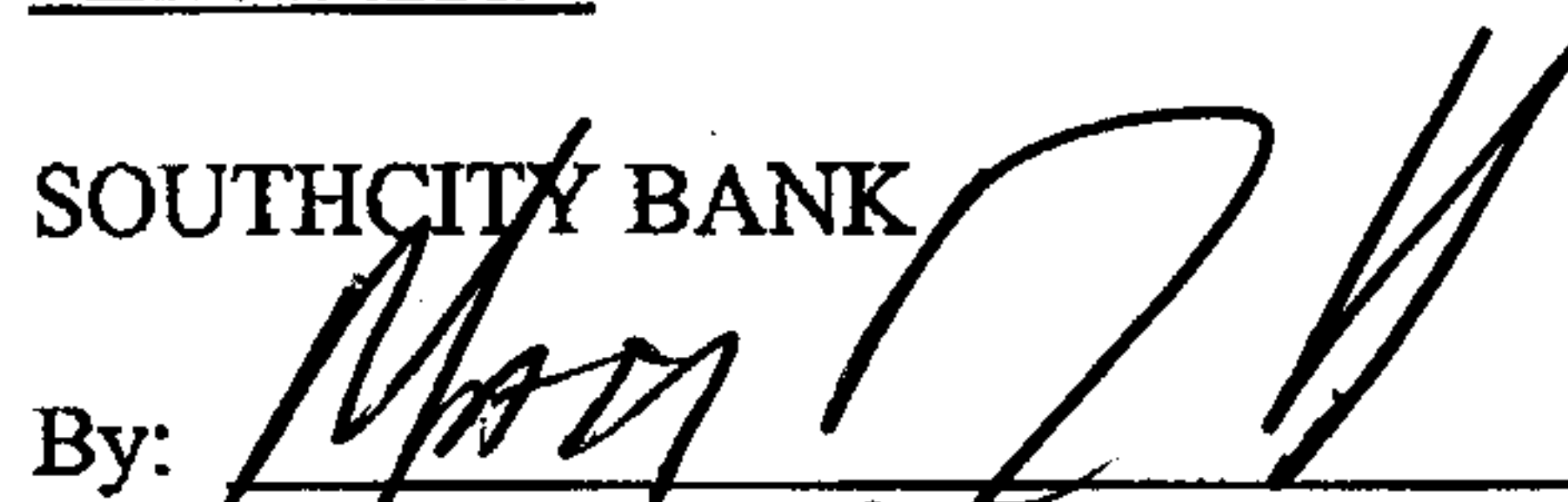
"BORROWER:"

BWV APC, L.L.C.
an Alabama limited liability company

By:  [SEAL]
Brent Ward Vacarella, Managing Member

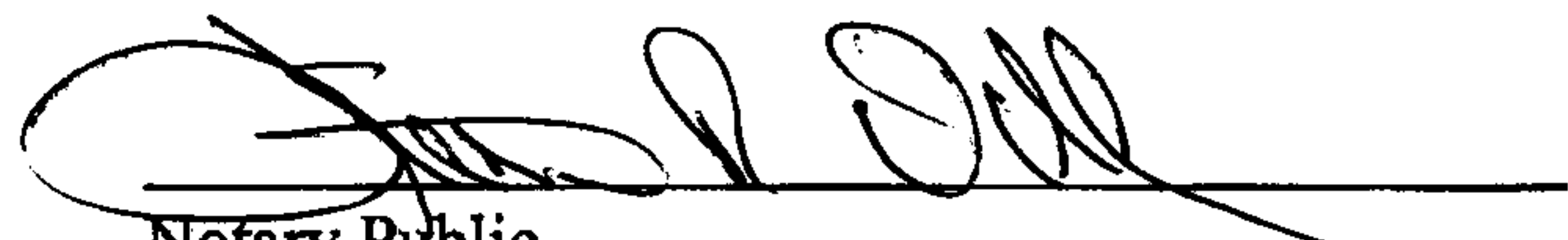
"LENDER:"

SOUTHCITY BANK

By:  [SEAL]
Name: Matt Rockett
Its: Vice President

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

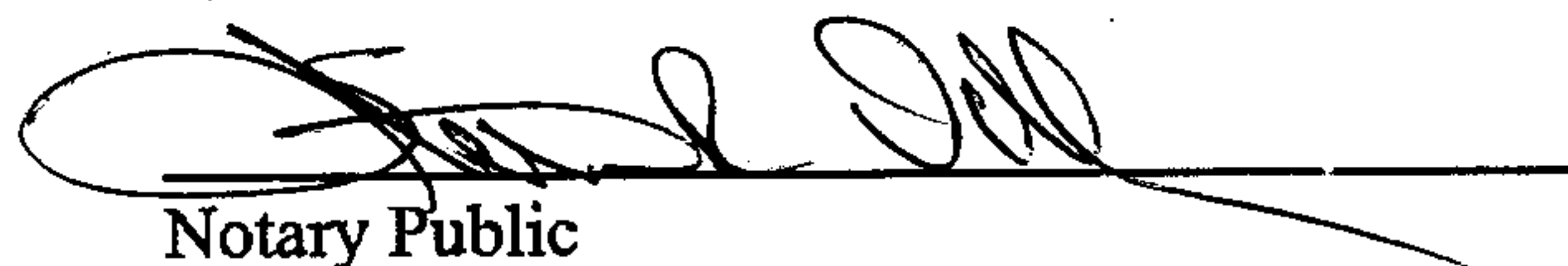
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Brent Ward Vacarella, whose name as Managing Member of BWV APC, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such manager and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date. Given under my hand and official seal this 10th day of JUNE, 2009.


Notary Public

My Commission Expires Mar 14, 2013
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Matt Robert, as VICE PRESIDENT of SouthCity 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 10th day of JUNE, 2009.


Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 14, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Brent Ward Vacarella, 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 said instrument, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal this 10th day of JUNE, 2009.


Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 14, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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Shelby Cnty Judge of Probate, AL
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