

Prepared by or under the supervision of

Dan Mosley  
NMLS # 272529  
P.O. Box 2568  
Birmingham, AL 35203

After Recording Please Return To:

Cadence Bank, N.A.  
17 North 20<sup>th</sup> Street  
Birmingham, AL 35203  
Attn: Mortgage Division - Colonnade

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Shelby Cnty Judge of Probate, AL  
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## LOAN MODIFICATION AGREEMENT

(Providing for Fixed Interest Rate and Balloon Payment)

This Loan Modification Agreement ("Agreement"), entered into and effective as of June 1, 2011, between David R. Mellon ("Borrower" whether one or more) and CADENCE BANK N.A. SUCCESSOR IN INTEREST TO SUPERIOR BANK, N.A., AS SUCCESSOR TO SUPERIOR BANK [The FDIC was the legal successor, as Receiver, of the assets and liabilities of Superior Bank, pursuant to 12 U.S.C. 1821(d)(2)(A). The FDIC as Receiver entered into a Purchase and Assumption Agreement on April 15, 2011, whereby Superior Bank, N.A. purchased the loan the subject of this Agreement payable to Superior Bank, from the FDIC as Receiver] ("Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), and all Riders, dated June 13, 2008 and as recorded in Book or Liber \*\*\*\* at page(s) \*\*\*\*\*, or document/instrument number 20060622000300900 of the Public Land or Real Property Records of Shelby County, Alabama (2) the Note, bearing the same date as, and secured by, the Security Instrument, which covers the real and personal property described in the Security Instrument and defined therein as the "Property", located at 4013 Kinross Lane, Birmingham, Alabama 35242 (Property Address) the real property described being set forth as follows:

Lot 303, according to the Survey of Brook Highland, an Eddleman Community, 7<sup>th</sup> Sector, as recorded in Map Book 13, Page 99 A&B, in the Probate Office of Shelby County, Alabama.

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. As of December 1, 2011, the amount payable under the Note and the Security Instrument (the "Unpaid Principal Balance") is U.S. \$20,142.04, consisting of the unpaid amount(s) loaned to Borrower by Lender plus any interest and other amounts capitalized.
2. Borrower promises to pay the Unpaid Principal Balance, plus interest, to the order of Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of 3.00%, from December 1, 2011. Borrower promises to make monthly payments of principal and interest of U.S. \$139.10, beginning on January 1, 2012, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full. The yearly rate of 3.00% will remain in effect until principal and interest are paid in full. If on December 1, 2016 (the "Maturity Date"), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date. See below for additional amounts due monthly for required escrow account payments. I will make my monthly payments at Cadence Bank, N.A., 17 North 20<sup>th</sup> Street, Birmingham, AL 35203, or at a different place if required by Lender or Note Holder.
3. If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written



consent, Lender may require immediate payment in full of all sums secured by the Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by the Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.

4. Borrower also will comply with all other covenants, agreements, and requirements of the Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument. However, the following terms and provisions of the Note and Security Agreement are forever canceled, null and void, as of the effective date specified above:
  - (a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note, including, where applicable, the Timely Payment Rewards rate reduction, as described in paragraph 1 of the Timely Payment Rewards Addendum to Note and paragraph A.1. of the Timely Payment Rewards Rider. By executing this Agreement, Borrower waives any Timely Payment Rewards rate reduction to which Borrower may have otherwise been entitled;
  - (b) all terms and provisions of any adjustable rate rider, or Timely Payment Rewards Rider, where applicable, or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above; and
  - (c) all terms and provisions of the Note and Security Agreement (if any) providing for a Balloon Rider or Balloon Note Addendum, both of which may provide for a Conditional Right to Refinance. Borrower hereby acknowledges and agrees that Borrower has carefully reviewed the loan documents, including the Conditional Right to Refinance. By execution hereof, Borrower has elected to and does hereby waive any Conditional Right to Refinance as contained in the Loan Documents described above. Borrower has elected to Renew, Extend and Modify the Loan Documents described above. As further provided below, the Security Instrument and the Note are renewed, extended, and amended to secure repayment of the debt evidenced by this Modification Agreement, by delivery hereof to the Lender in recordable form in all respects.
5. Borrower understands and agrees that:
  - (a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Security Instrument shall also apply to default in the making of the modified payments hereunder.
  - (b) All covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect, except as herein modified, and none of the Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Lender's rights under or remedies on the Note and Security Instrument, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which Lender is presently entitled against any property or any other persons in any way obligated for, or liable on, the Note and Security Instrument are expressly reserved by Lender.
  - (c) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.
  - (d) All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.





- (e) Borrower agrees to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by Lender, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower.
- (f) Borrower warrants to Holder of Note and Lien that the Note and the Lien Documents, as modified, are valid and enforceable and represents that they are not subject to rights of offset, rescission, or other claims.

**Additional Terms:**

- The Note is secured by liens against the Property. Whether Borrower is primarily liable on the Note or not, Borrower nevertheless agrees to pay the Note and comply with the obligations expressed in the Lien Documents.
- For value received, Borrower renews the Note and promises to pay to the order of Lender and/or any Holder of Note and Security Instrument, according to the Modified Terms, the Unpaid Principal and Interest on Note. All unpaid amounts are due by the Extended Maturity Date of Note. Borrower also extends the liens described in the Security Instrument.
- See Escrow Waiver Agreement
- Amount due from Borrower to Lender upon execution and delivery of Modification Agreement to Lender. Borrower has agreed to deliver to Lender the sum of \$800.16 upon execution and delivery of this Modification Agreement to Lender. Such amount is payable by Borrower to Lender as additional consideration in connection with Lender's agreement to the terms and conditions of this Modification Agreement. Such amount is in addition to any other sums required by the provisions of this Modification Agreement. Please see the document entitled "Itemization of Amount Financed" for a complete description and disclosure of such amount due Lender.
- Notwithstanding terms to the contrary in the Note or Security Agreement, unless applicable law prohibits, all payments received by Lender from Borrower under the loan documents as modified by this Modification Agreement, at Lender's discretion, may be applied first to amounts payable under the Security Instrument and then to amounts due and payable to Lender under the Modification Agreement.
- Interest on the debt secured by the Security Instrument and this Modification Agreement will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.
- In no event may the Security Agreement, as modified by this Modification Agreement, secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

When the context requires, singular nouns and pronouns include the plural.

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## **NOTICE**

THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.


BORROWER ACKNOWLEDGES THAT ADEQUATE CONSIDERATION HAS BEEN GIVEN AND RECEIVED IN CONNECTION WITH THE TERMS AND CONDITIONS OF THIS WRITTEN LOAN AGREEMENT. BORROWER FURTHER ACKNOWLEDGES THAT BORROWER HAS VOLUNTARILY ELECTED TO AND DOES HEREBY WAIVE ANY AND ALL RIGHTS BORROWER MAY HAVE IN CONNECTION WITH ANY RIGHT TO REFINANCE AND/OR THE CONDITIONAL RIGHT TO REFINANCE THAT MAY EXIST UNDER THE ORIGINAL LOAN DOCUMENTS.

THERE ARE NO UNWRITTEN (ORAL) AGREEMENTS BETWEEN THE PARTIES.

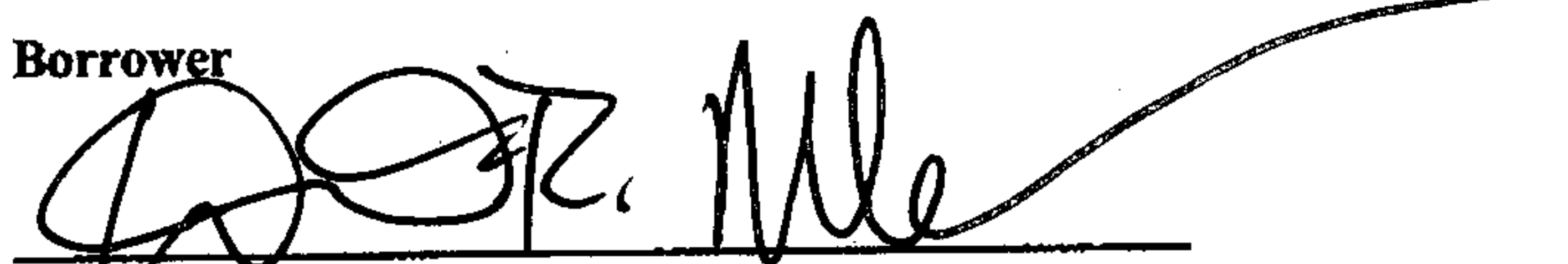
THE MODIFIED LOAN EVIDENCED BY THIS LOAN MODIFICATION AGREEMENT IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND ANY UNPAID INTEREST THEN DUE. LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THE LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN FINANCING FROM THE SAME LENDER.

### **WAIVER OF CLAIMS BY BORROWER:**

Borrower, jointly and severally, do hereby fully release, acquit, and forever discharge Lender, any participant in the loan evidenced by the Note and Security Agreement, and their respective officers, directors, attorneys, agents, employees, and/or shareholders from any and all Claims. Borrower, jointly and severally, do hereby represent and warrant to Lender that Borrower are the owner and holder of each of the Claims, and Borrower, jointly and severally, are fully authorized to execute and deliver this release without the necessity of obtaining the consent or joinder of any other person. As used in this section, the term "Claims" means any and all claims, actions, causes of action, suits, disputes, controversies, debts, offset rights, defenses to payment, losses, damages, and demands of any nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages, dues, recovery of property, or specific performance or any other redress or recompense that may have accrued or may ever accrue, may have been had, may be now possessed, or may or will be possessed in the future by or on behalf of Borrower, whether jointly or severally, against Lender or its officers, directors, attorneys, agents, employees, or shareholders by reason of, or arising from or out of, the Note, the Security Documents, the guaranty, the documents executed in connection with or securing the Note and/or the loan transaction evidenced by the Note, and/or the loan administration of said Note. The term "Claims" specifically includes, without limitation, claims based (in whole or in part) on the theories of misrepresentation, fraud, duress, tortious interference with contract, tortious interference with business opportunity, usury, lender liability, deceptive trade practices, breach of fiduciary duty, breach of funding commitment, conspiracy, violation of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of emotional distress, libel, and slander. The term "Claims" SHALL NOT include any obligation of Lender to Borrower as provided under this Modification Agreement.

  
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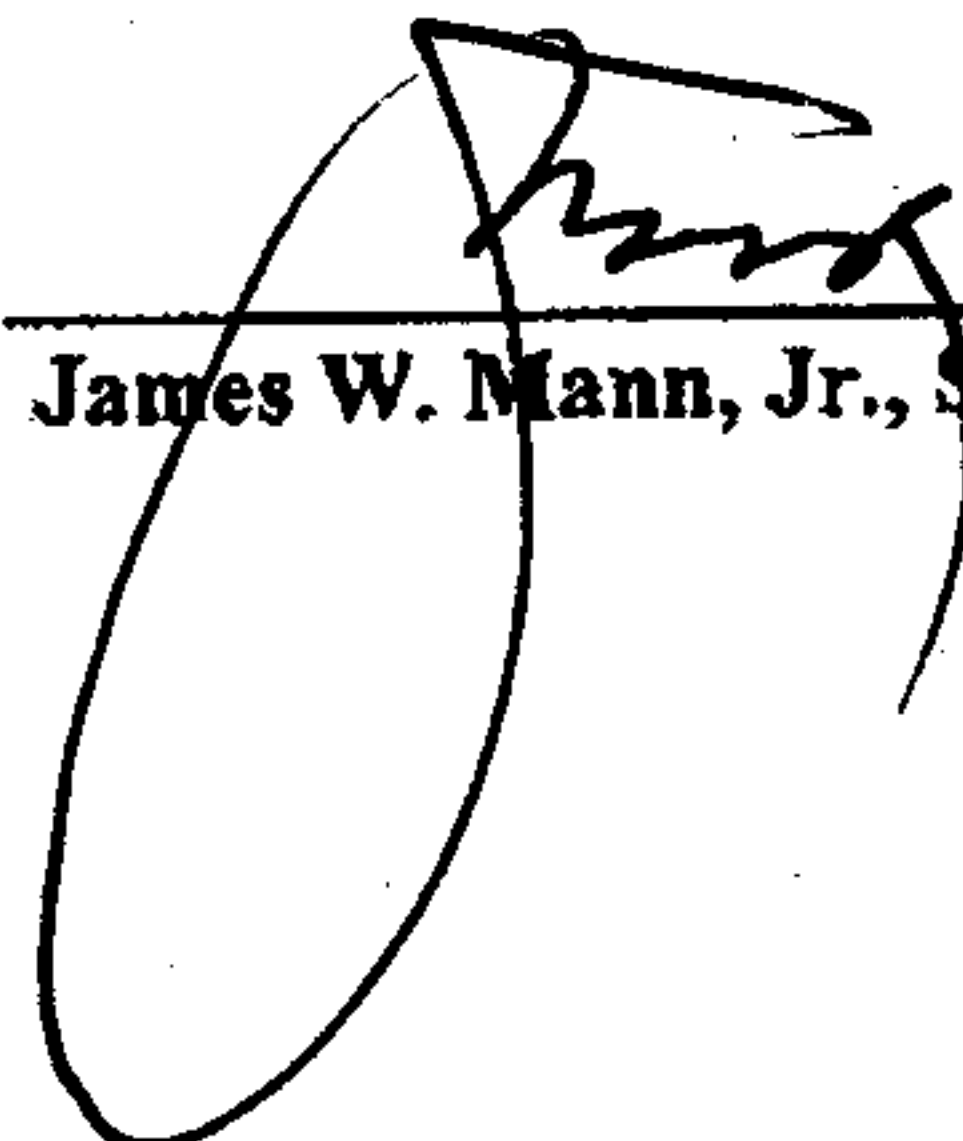
Borrower



David R. Mellon

Cadence Bank, N.A.

By:



James W. Mann, Jr., Senior Vice President



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[Space Below This Line For Acknowledgments]

(Individual)

State of Alabama  
County of Jefferson

§  
§

The foregoing instrument was acknowledged before me on  
by **David R. Mellon.**

January 25, 2012

(Seal)

Mich Y Rd  
Notary Public, State of AL

My Commission Expires: MY COMMISSION EXPIRES AUGUST 9, 2012

(Corporate)

State of Alabama  
County of Jefferson

§  
§

The foregoing instrument was acknowledged before me on January 27, 2012  
by James W. Mann, Jr.  
as the Senior Vice President  
of Cadence Bank, N.A., on behalf of the corporation.

(Seal)

Debra C. Nelson  
Notary Public, State of Alabama  
My Commission Expires: 4-23-13

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