

THIS INSTRUMENT PREPARED BY
AND RETURN TO:
Christopher W. Brewer, Esquire
Brewer Perotti Martinez-Monfort, P.A.
400 North Tampa Street, Suite 2600
Tampa, Florida 33602

MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT

THIS MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT (this "Agreement"), is made and entered into as of March 30, 2010 to be effective as of the 25th day of January, 2010, by and among **CAHABA PARK, LLC**, a Florida limited liability company, ("Mortgagor"), **ARCIS INVESTMENTS, INC.**, a Florida corporation, **BRUCE D. BURDGE, KATHERINE BURDGE, KRISTEN KENNEDY SHOWALTER** and **CARY B. SHOWALTER** (collectively the "Guarantors"), and **BRANCH BANKING AND TRUST COMPANY, A NORTH CAROLINA BANKING CORPORATION, SUCCESSOR IN INTEREST TO COLONIAL BANK BY ACQUISITION OF ASSETS FROM THE FDIC AS RECEIVER FOR COLONIAL BANK, SUCCESSOR BY CONVERSION TO COLONIAL BANK, N.A.** ("Lender"), whose address is 400 North Tampa Street, Suite 2500, Tampa, Florida 33602, who is the holder of the Mortgage (as defined below).

RECITALS:

- A. Mortgagor is the owner in fee simple of that certain real property, situate, lying and being in Shelby County, Alabama, which is more particularly described on Exhibit A attached hereto and made a part hereof by reference as if fully set forth herein (the "Property").
- B. Mortgagor previously obtained loans from Lender in the aggregate amount of Four Million Six Hundred Thirty Thousand and 00/100ths Dollars (\$4,630,000.00) (collectively, the "Loan") pursuant to that certain Loan Agreement dated January 25, 2007 between Mortgagor and Lender (the "Loan Agreement"), and related loan documents.
- C. In connection with the Loan, Mortgagor executed (i) that certain Promissory Note dated as of January 25, 2007 in the principal amount of Three Million Nine Hundred Thirty Thousand and No/100ths Dollars (\$3,930,000.00) (the "Acquisition Note"), and (ii) that certain Promissory Note dated as of January 25, 2007 in the principal amount of Seven Hundred Thousand and No/100ths Dollars (\$700,000.00) (the "Renovation Note"), and together with the Acquisition Note, collectively, the "Original Note").
- D. The Original Note is secured by, *inter alia*, (i) that certain Mortgage and Security Agreement dated January 25, 2007 and recorded as Document Number 20070202000051270 of the Public Records of Shelby County, Alabama, as amended by this Agreement (collectively, the "Mortgage"), which Mortgage encumbers the Property, and (ii) that certain Assignment of Rents and Leases dated January 25, 2007, and recorded as Document Number 20070202000051280 of the Public Records of Shelby County, Alabama, (the "Assignment").
- E. Of even date herewith, Mortgagor executed that certain Consolidation and Renewal Promissory Note of even date herewith in the principal amount of Four Million Four Hundred Forty-Nine Thousand Eight Hundred Sixty-Four and 03/100ths Dollars (\$4,449,864.03) in favor of Lender (the "Note"), consolidating, renewing and evidencing the indebtedness evidenced by the Original Note.
- F. The payment of the indebtedness evidenced by the Note and the performance of the obligations under the Loan Documents are further secured by, *inter alia*, that certain Amended and Restated Absolute Guaranty



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of Payment and Performance of even date herewith in favor of Lender and executed by Guarantors (the "Guaranty Agreement").

- G. The Loan Agreement, the Mortgage, the Assignment, the Guaranty Agreement and all other documents evidencing and/or securing the Original Note and the Note and the indebtedness evidenced thereby are hereinafter collectively referred to as the "Loan Documents".
- H. Lender and Mortgagor have further agreed to modify and amend certain terms and conditions of the Mortgage and Loan Documents.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged among the parties, it is agreed as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein.
2. Amendments; Modification of Loan Documents.
 - (a) The Note renews and amends the Original Note in its entirety, and the Loan Documents are hereby modified to provide that the Loan Documents govern and secure the Note, and all references in the Loan Documents to the "Loan" or "Loans" and to the Note and indebtedness evidenced thereby mean and refer to the Note and indebtedness evidenced thereby.
 - (b) The terms of the Loan Documents are hereby modified so as to provide that the repayment terms of the indebtedness secured thereby shall also include the repayment terms of the renewal of indebtedness as evidenced by the Note.
 - (c) Mortgagor acknowledges and agrees that no additional advances are available under the Loan, and the Loan as evidenced by the Note is fully funded. The Note is not a revolving note.
 - (d) Mortgagor acknowledges and agrees that at no time shall the outstanding amount of the entire Loan exceed eighty-five percent (85%) of the appraised value of the Project (as defined in the Loan Agreement) as determined pursuant to an appraisal acceptable to Lender in its sole discretion (referred to as the "Original Loan-to-Value Ratio" as used in Section 12 below). In the even the Loan at any time exceeds eighty-five percent (85%) of the appraised value of the Project, then Mortgagor shall make the payment(s) and other requirements in accordance with Section 12 below.
 - (e) Mortgagor acknowledges and agrees that it shall cause Guarantors to deliver to Lender the financial statements and information as set forth in the Guaranty.
3. Ratification. Except as herein modified and amended, the terms and conditions of the Loan Documents and all of the documents executed with respect to the foregoing are hereby ratified and affirmed and shall remain in full force and effect.
4. Warranties and Representations. Mortgagor and Guarantor hereby jointly and severally affirm, warrant and represent that all of the warranties and representations made in the Loan Documents, and any other documents or instruments recited herein or executed with respect thereto directly or indirectly, are true and correct as of the date hereof and that neither Mortgagor nor any Guarantor is in default of any of the foregoing nor aware of any default with respect thereto, and that neither Mortgagor nor any Guarantor has any defense or right of offset with respect to any indebtedness owed to Lender. Mortgagor and Guarantor hereby jointly and severally release Lender from any cause of action against it existing as of the date of execution hereof. The rights and defenses being

waived and released hereunder include without limitation any claim or defense based on the Lender having charged or collected interest at a rate greater than that allowed to be contracted for by applicable law as changed from time to time, provided, however, that in no event shall such waiver and release be deemed to change or modify the terms of the Loan Documents which provide that sums paid or received in excess of the maximum rate of interest allowed to be contracted for by applicable law, as changed from time to time, reduce the principal sum due, said provision to be in full force and effect.

5. Security. The parties hereto acknowledge and agree that the payment of the Note, and the indebtedness evidenced by it, together with all other indebtedness owed to Lender, is secured by the Loan Documents.
6. No Novation. It is the intent of the parties that this instrument shall not constitute a novation and shall in no way adversely affect the lien priority of the Mortgage and other Loan Documents referred to above. In the event that this Agreement, or any part hereof, shall be construed by a court of competent jurisdiction as operating to affect the lien priority of the Mortgage or the other Loan Documents, or any of them, over the claims which would otherwise be subordinate thereto, then to the extent so ruled by such court, and to the extent that third persons acquiring an interest in such property as is encumbered by the Mortgage and other Loan Documents between the time of execution of the Mortgage, the other Loan Documents, and the execution hereof, are prejudiced thereby, this Agreement, or such portion hereof as shall be so construed, shall be void and of no force and effect and this Agreement shall constitute, as to that portion, a subordinate lien on the collateral described therein, incorporating by reference the terms of the Mortgage and other Loan Documents, and which Mortgage and the other Loan Documents then shall be enforced pursuant to the terms therein contained, independent of this Agreement; provided, however, that notwithstanding the foregoing, the parties hereto, as between themselves, shall be bound by all terms and conditions hereof until all indebtedness owing from the Mortgagor and to the Lender has been paid in full.
7. Guarantors. Guarantors join into this Agreement for the purpose of consenting to the terms and conditions of this Agreement, the Note and to the modifications to the Loan Documents made herein and to acknowledge and agree that they are liable in accordance with the terms and conditions of the Guaranty Agreement for the repayment of the indebtedness evidenced by the Note and for the performance of Mortgagor's obligations under the terms of the Loan Documents.
8. Costs. Mortgagor shall pay all costs of the modification made hereby, to include without limitation attorneys' fees, and recording fees. Such costs shall be due at closing hereunder and the payment thereof shall be a condition precedent to Lender's duties hereunder. In the event it is determined that additional costs relating to this transaction are due, Mortgagor agrees to pay such costs immediately upon demand.
9. Lien. Mortgagor warrants and represents that the liens of the Loan Documents are valid liens on the property described therein, as modified hereby, and with a priority as stated herein and as set forth in the Mortgage. If at any time Lender shall determine that the lien priority of its Loan Documents as stated therein is invalid or in jeopardy, or if at any time Lender is unable to obtain title insurance insuring such liens as valid liens with the priority stated therein on the collateral described therein, then Lender shall have the option of declaring the entire indebtedness secured by the Loan Documents, together with all accrued interest to be immediately due and payable in full.
10. No Waiver. The execution of this Agreement by Lender shall not be deemed to be a waiver of any default under any of the Loan Documents (as herein modified) that continues or arises after the effective date of this Agreement, nor shall this Agreement be deemed to impair any rights that Lender may otherwise have to accelerate the indebtedness evidenced by the Note or to exercise any other remedy provided by the Note, the Mortgage, or any of the other Loan Documents on account of any such default that arises or continues after the date hereof.

11. Acknowledgements. Mortgagor and Guarantors jointly and severally acknowledge that the Loan Documents are in full force and effect, and that no notice limiting the maximum principal amount of the indebtedness secured by the Mortgage pursuant to the terms of Section 697.04(b), Florida Statutes, as amended from time to time, has been filed in the public records of the county in which the Mortgage is recorded, nor has any such notice been executed or delivered, unless Mortgagor has given written notice of such event to Lender in a sworn affidavit of even date with this Agreement. In the event any such notice limiting the principal amount which may be secured by the Mortgage has been recorded, executed or delivered, then this Agreement shall also constitute a rescission of such notice, which notice shall, upon the execution and delivery of this Agreement, be deemed to be void and of no further force or effect. Mortgagor and Guarantor jointly and severally acknowledge that the outstanding balance of the Loan due as of the date of this Agreement is Four Million Four Hundred Forty Nine Thousand Eight Hundred Sixty Four and 03/100ths Dollars (\$4,449,864.03).

12. Property Appraisal.

- (a) Appraisals. In addition to the appraisals required by Lender prior to closing of the Loan, updated appraisals shall be prepared at Mortgagor's expense when requested by Lender (or when required in connection with any requested extension of the Note). Such appraisals shall be prepared in accordance with written instructions from Lender by a professional appraiser selected and engaged by Lender. Mortgagor shall cooperate fully with the appraisal process and shall allow the appraisers reasonable access to the Property and its tenants.
- (b) Reappraisal of Property. Mortgagor acknowledges that Lender was induced to enter into the Loan transaction based upon a specific loan-to value ratio (the "Original Loan-to-Value Ratio"). The Original Loan-to-Value Ratio was based upon the appraised value (the "Original Appraised Value") of the Property set forth in the appraisal Mortgagor submitted to Lender prior to the closing of the subject loan transactions. If any updated appraisal received by Lender pursuant to the above paragraph reflects that the appraised value of the Property has decreased from the Original Appraised Value and if such decrease results in a loan-to-value ratio which is higher than the Original Loan-to-Value Ratio, Mortgagor shall within ten (10) days of Lender's written request make a principal payment (the "Prepayment") under the Note in an amount sufficient to maintain the Original Loan-to-Value Ratio. Such Prepayment shall not entitle Mortgagor to a release of any of the Property.

13. Release.

- (a) In consideration of the agreements of Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor, on behalf of himself and his successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Lender, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Lender and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Mortgagor or any of its successors, assigns, or other legal representatives, may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arose or has arisen at any time on or prior to the day and date of this Agreement,

including, without limitation, for or on account of, or in relation to, or in any way in connection with the origination of the loan documents, servicing the loan, the Loan Agreement, the Note, the other Loan Documents or this Agreement or transactions thereunder or related thereto.

- (b) Mortgagor understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provision of such release.
 - (c) Mortgagor agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.
 - (d) Mortgagor acknowledges and agrees that the release of each Releasee is not and shall not be construed as an admission of wrongdoing, liability or culpability on the part of any Releasee, or as an admission by any Releasee of the existence or any Claims of Mortgagor against any Releasee. Mortgagor further acknowledges that, to the extent that any such Claims may exist, they are speculative and not liquidated. In any event, Mortgagor acknowledges and agrees that the value to Mortgagor of the covenants and agreements of Lender under this Agreement is in excess of and constitutes more than "reasonably equivalent value" for the Claims released by Mortgagor.
 - (e) Guarantor, if any, on behalf of himself and his successor, assigns, and other legal representatives does hereby absolutely, unconditionally, and irrevocably release, remise, and forever discharge Releasees of the Claims to the full and same extent as Mortgagor. Guarantor acknowledges, understands, and agrees that his release is a complete defense and appreciates the consequences of granting said release. Guarantor further acknowledges that Lender is relying upon the releases granted herein in extending the agreements contemplated hereunder.
14. Covenant Not to Sue. Mortgagor, on behalf of himself and his successors, assigns, and other legal representatives, and Guarantor, if any, on behalf of himself and his successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenant and agree with and in favor of each Releasee that it or he, as the case may be, will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by Mortgagor or Guarantor pursuant to the Release contained herein. If Mortgagor or any of its successors, assigns or other legal representatives or Guarantor, or his successors, assigns, and other legal representatives violates the foregoing covenant, Mortgagor, for itself and its successors, assigns and legal representatives, and Guarantor, for himself and his successors and assigns and legal representatives, agree, jointly and severally, to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.
15. Miscellaneous.
- (a) Paragraph headings used herein are for convenience only and shall not be construed as controlling the scope of any provision hereof.
 - (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and of the United States of America and the rules and regulations promulgated under the authority thereof.
 - (c) Time is of the essence in this Agreement.



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- (d) As used herein, the neuter gender shall include the masculine and feminine genders, and vice versa, and the singular the plural, and vice versa, as the context demands.
- (e) All costs incurred by Lender in enforcing this Agreement and in collection of sums due Lender from Mortgagor and/or any Guarantor, to include, without limitation, reasonable attorney's fees through all trials, appeals and proceedings, to include, without limitation, any proceedings pursuant to the bankruptcy laws of the United States, shall be paid by Mortgagor and any Guarantor, who shall be jointly and severally liable therefor.
- (f) This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.

[Signatures on following page]


[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

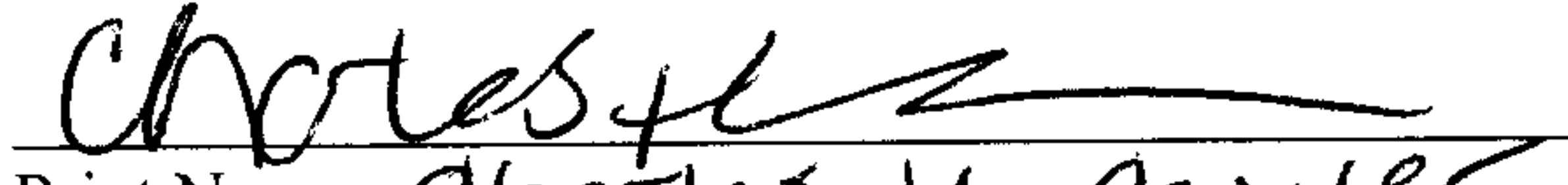
IN WITNESS WHEREOF, the undersigned have hereunto set hand and seal all done as of the day and year first hereinbefore written.

MORTGAGOR:

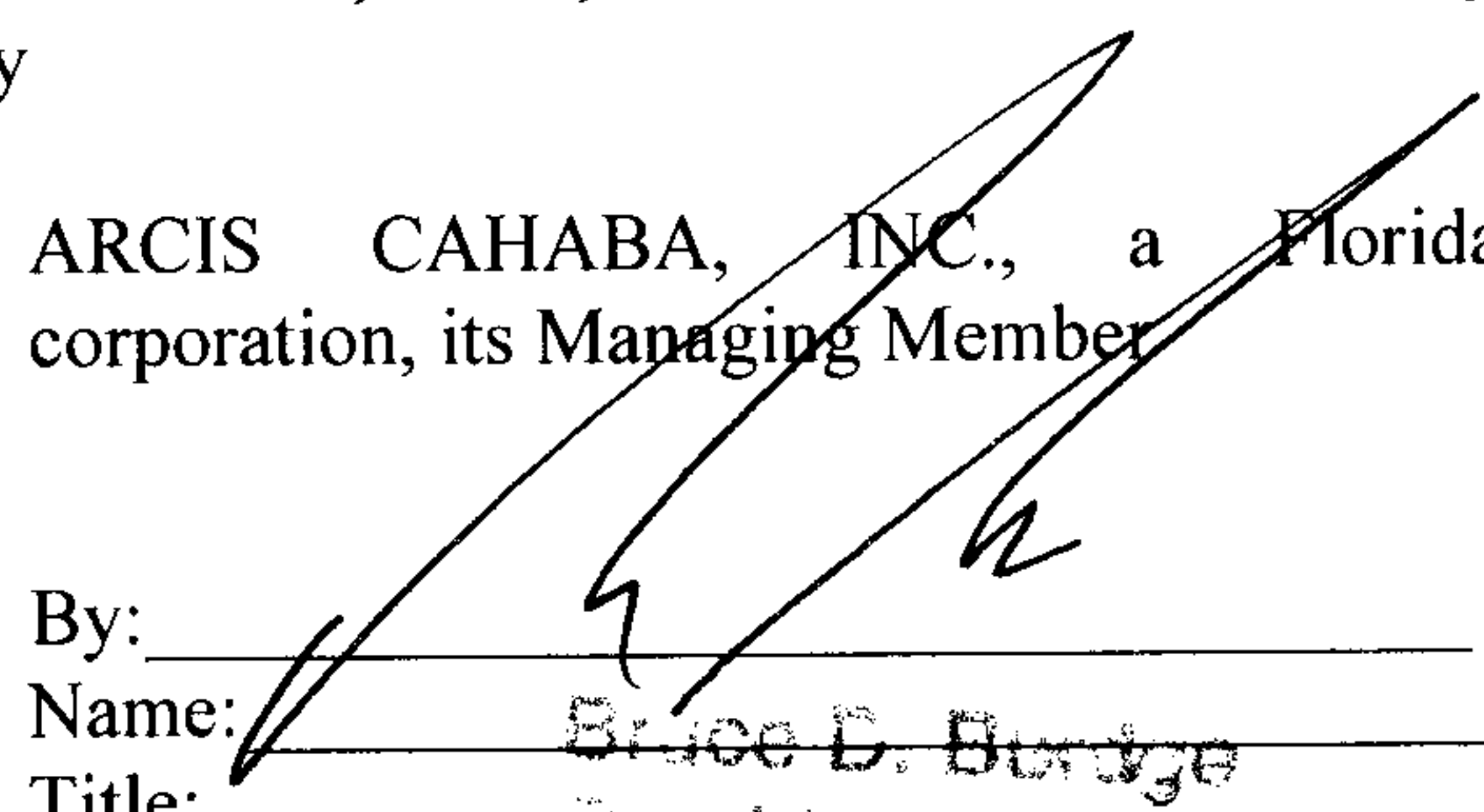
WITNESSES:

CAHABA PARK, LLC, a Florida limited liability company


Print Name: K. Susan Dawson


Print Name: Charles H. Carver

By: **ARCIS CAHABA, INC.**, a Florida corporation, its Managing Member

By: 
Name: Bruce D. Budge
Title: President

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me on March 29, 2010, by Bruce D. Budge, Pres. of **ARCIS CAHABA, INC.**, a Florida corporation, the Managing Member of **CAHABA PARK, LLC**, a Florida limited liability company, on behalf of the corporation and the limited liability company. Such person is personally known to me or has produced a valid driver's license as identification.


Notary Public

My Commission Expires:



[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

GUARANTOR:

ARCIS INVESTMENTS, INC., a Florida corporation

By: BRUCE D. BURDGE, its President

WITNESSES:

Print Name: K. Susan Dawson

Print Name: Charles H. Carver

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 29th day of March, 2010, by **BRUCE D. BURDGE**, as President of Arcis Investments, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me or who has produced _____ as identification.

[Signature]
Notary Public

(Print, Type or Stamp Name)
My Commission Expires:






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[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

GUARANTOR:

WITNESSES:


Print Name: K. Susan Dawson


Print Name: Charles H. Carver


BRUCE D. BURDGE

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 29th day of March, 2010, by **BRUCE D. BURDGE**. He is personally known to me or who has produced _____ as identification.


Notary Public

(Print, Type or Stamp Name)
My Commission Expires:





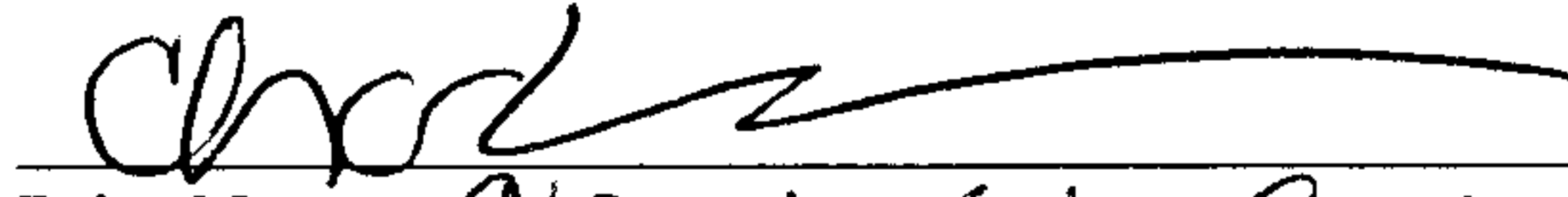
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GUARANTOR:

WITNESSES:



Print Name: K. Susan Dawson


Print Name: Charles H. Carter


KATHERINE BURDGE

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 29th day of March, 2010, by **KATHERINE BURDGE**. She is personally known to me or who has produced _____ as identification.


Notary Public





(Print, Type or Stamp Name)
My Commission Expires:

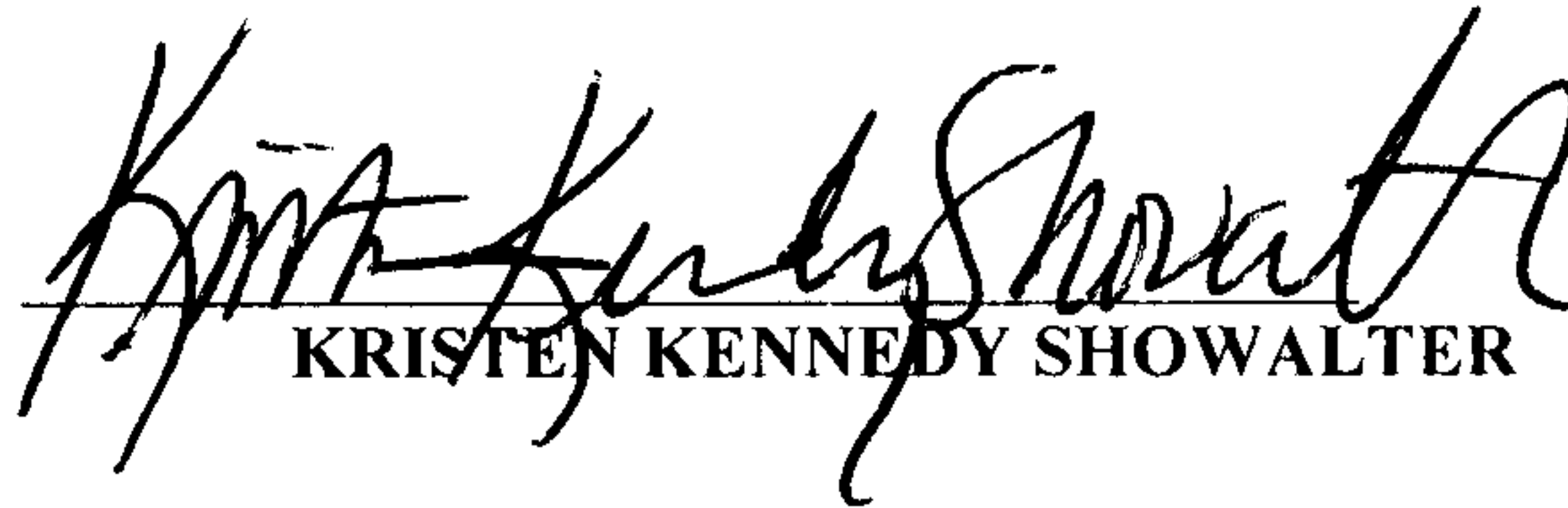
[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

GUARANTOR:

WITNESSES:



Print Name: K. Susan Dawson


Print Name: Charles H. Carver


KRISTEN KENNEDY SHOWALTER

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 29th day of March, 2010, by **KRISTEN KENNEDY SHOWALTER**. She is personally known to me or who has produced _____ as identification.


Notary Public


(Print, Type or Stamp Name)
My Commission Expires:




[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

GUARANTOR:

WITNESSES:

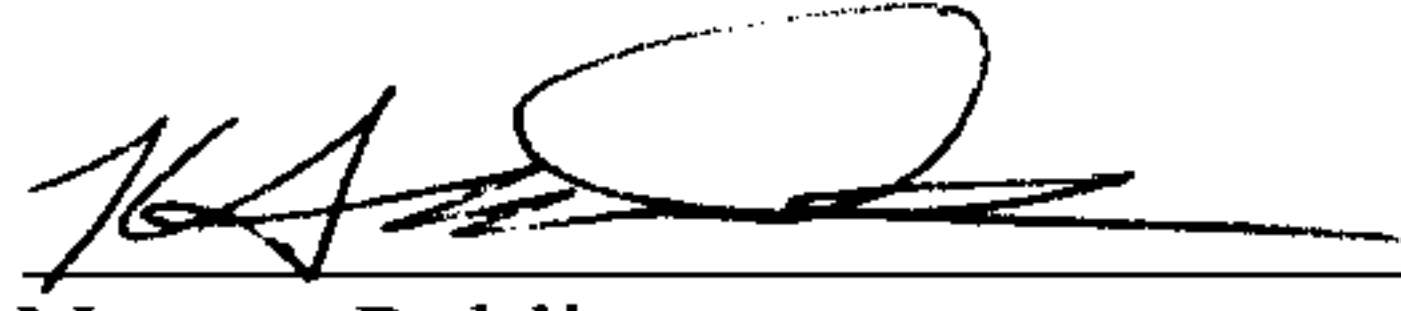

Print Name: K. Susan Dawson


CARY B. SHOWALTER

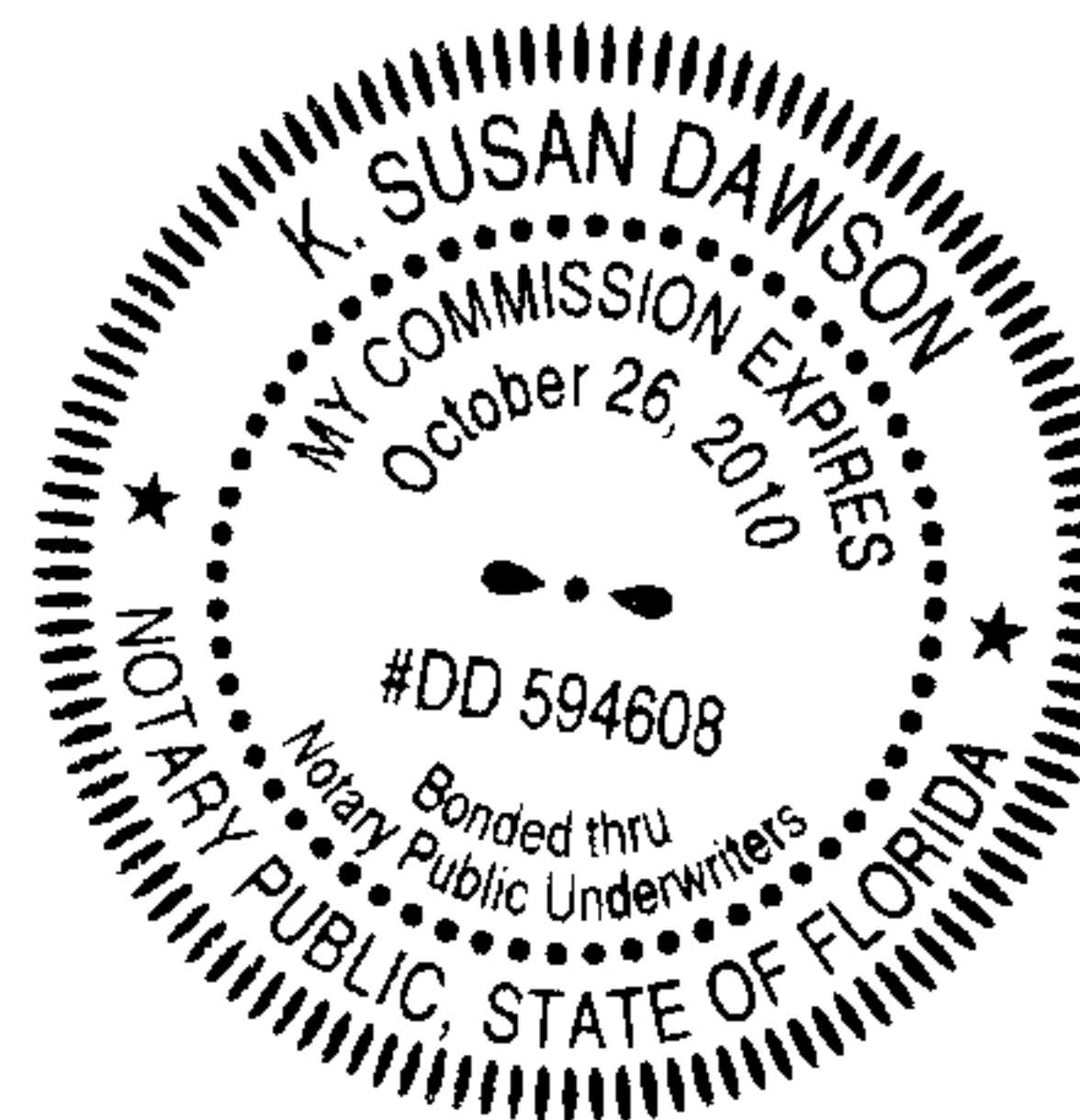

Print Name: Charles H. Carver

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 29th day of March, 2010, by **CARY B. SHOWALTER**. He is personally known to me or who has produced _____ as identification.


Notary Public

(Print, Type or Stamp Name)
My Commission Expires:



[SIGNATURE PAGE TO MORTGAGE AND LOAN DOCUMENTS MODIFICATION AGREEMENT]

LENDER:

BRANCH BANKING AND TRUST COMPANY, A
NORTH CAROLINA BANKING CORPORATION,
SUCCESSOR IN INTEREST TO COLONIAL
BANK BY ACQUISITION OF ASSETS FROM THE
FDIC AS RECEIVER FOR COLONIAL BANK,
SUCCESSOR BY CONVERSION TO COLONIAL
BANK, N.A.

By: Edward J. Miller
Name: Edward Miller
Title: Vice President

WITNESSES:

C Cheryl y. Weaver Rogers
Name: CHERYL WILLIAMS

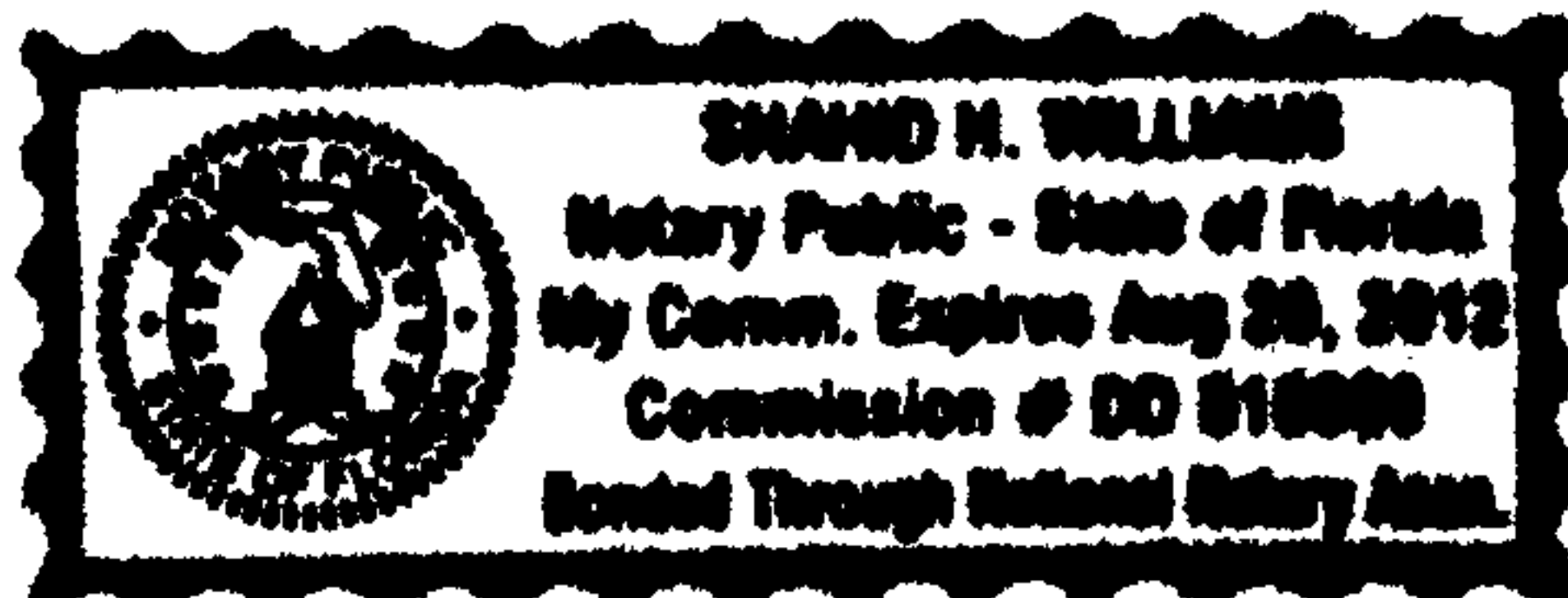
Shahid Williams
Name: SHAHID WILLIAMS

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me on March 30, 2010, by
EDWARD MILLER VP of BRANCH BANKING AND TRUST COMPANY, A
NORTH CAROLINA BANKING CORPORATION, SUCCESSOR IN INTEREST TO COLONIAL BANK
BY ACQUISITION OF ASSETS FROM THE FDIC AS RECEIVER FOR COLONIAL BANK,
SUCCESSOR BY CONVERSION TO COLONIAL BANK, N.A., on behalf of the bank. Such person is
personally known to me or has produced a valid driver's license as identification.

Shahid Williams
Notary Public

My Commission Expires: 8-20-2012





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EXHIBIT A

PARCEL I.

Lot 12, according to the Survey of Cahaba Park South, as recorded in Map Book 9, page 164, in the Probate Office of Shelby County, Alabama.

PARCEL II:

Lot 13-A, according to the Survey of Cahaba Park Survey, Resurvey No. 1, as recorded in Map Book 12, page 53, in the Probate Office of Shelby County, Alabama.

PARCEL III:

A non exclusive lift station easement as set forth in Lift Station Easement Agreement recorded in 1999-52030, in the Probate Office of Shelby County, Alabama and being described as:

Commence and begin at the Northeast Corner of Lot 14 of Cahaba Park South as recorded in Map Book 9, page 164, in the Office of the Judge of Probate of Shelby County, Alabama; thence run westerly along the South line of Lot 12 of Cahaba Park South a distance of 40.00 feet; thence an interior angle right of 88°05'00" Southerly 25.00 feet; thence an interior angle right of 91°55'00" Easterly 40.00 feet to the East line of Lot 14; thence an interior angle right of 88°05'00" Northerly 25.00 feet to the Point of Beginning.

ALSO, Together with an easement for drainage rights created by that certain Agreement recorded in Book 92, Page 687, in the Probate Office of Shelby County, Alabama.