


Prepared by and return to:
Jonathan P. Jennewein, Esq.
Hill Ward Henderson,
Bank of America Plaza, Suite 3700
101 East Kennedy Boulevard
Tampa, Florida 33602


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Shelby Cnty Judge of Probate, AL
03/09/2012 10:09:35 AM FILED/CERT

**NOTICE OF FUTURE ADVANCE AND
MORTGAGE MODIFICATION AGREEMENT**

THIS NOTICE OF FUTURE ADVANCE AND MORTGAGE MODIFICATION AGREEMENT (the “**Agreement**”) is made and entered into this 8th day of MARCH, 2012, by and between **CAHABA PARK, LLC**, a Florida limited liability company, whose address is 2908 Bay to Bay Boulevard, Suite 200, Tampa, Florida 33629 (the “**Mortgagor**”), and **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation, successor in interest to Colonial Bank by asset acquisition from the FDIC as Receiver for Colonial Bank, whose address is 400 N. Tampa Street, Suite 2500, Tampa, Florida 33602.33762 (the “**Mortgagee**”).

W I T N E S S E T H :

WHEREAS, Mortgagor is the owner of the lands located in Shelby County, Alabama, which are legally described on **Exhibit A** attached hereto and made a part hereof by reference as if fully set forth herein (the “**Property**”); and

WHEREAS, Mortgagor previously executed and delivered to Mortgagee, that certain Promissory Note dated January 25, 2007 in the original principal amount of Three Million Nine Hundred Thirty Thousand and No/100ths Dollars (\$3,930,000.00) (the “**Acquisition Note**”) and (ii) a Promissory Note dated January 25, 2007 in the original principal amount of Seven Hundred Thousand and No/100ths Dollars (\$700,000.00) (the “**Renovation Note**”) (the Renovation Note and the Acquisition Note are hereafter sometimes collectively referred to as the “**Original Note**”); and

WHEREAS, the Original Note was secured, inter alia, by (a) that certain Mortgage and Security Agreement dated January 25, 2007, and recorded in Instrument Number 20070202000051270 in the Probate Office of Shelby County, Alabama (the “**Original Mortgage**”), and (b) that certain Assignment of Rents and Leases dated January 25, 2007, and recorded in Instrument Number 20070202000051280 in the Probate office of Shelby County, Alabama (the “**Assignment of Rents**”), and (c) that certain UCC Financing Statement recorded in Instrument Number 20070202000051290 in the Probate office of Shelby County, Alabama (collectively the “**UCC**” and together with the Mortgage and the Assignment of Rents, the “**Security Documents**”), each of which encumbered the Property; and

Loan Number 9661330891-00003

WHEREAS, the indebtedness evidenced by the Acquisition Note and the indebtedness evidenced by the Renovation Note were previously consolidated in order to create a single loan in the amount of Four Million Four Hundred Nine Thousand Eight Hundred Sixty Four and 03/100 Dollars (\$4,449,864.03), as evidenced by that certain Consolidation and Renewal Promissory Note dated effective as of January 26, 2010 (the “**Prior Consolidation Note**”); and

WHEREAS, in order to confirm that the Original Mortgage would continue to secure the consolidated indebtedness as now evidenced by the Prior Consolidation Note, Mortgagor and Mortgagee entered into that certain Mortgage and Loan Documents Modification Agreement dated effective as of January 25, 2010, and recorded in Instrument No. 20100402000098900 in the Probate Office of Shelby County, Alabama (the “**Modification Agreement**”) (the Original Mortgage, as modified by the Modification Agreement, is hereafter referred to as the “**Mortgage**”); and

WHEREAS, Mortgagee has this day made a future advance of additional funds under the Mortgage to the Mortgagor in the amount of Three Hundred Twelve Thousand Three Hundred Forty Six and 22/100ths Dollars (\$312,346.22) (the “**Future Advance**”); and

WHEREAS, as of this date, the indebtedness evidenced by the Prior Consolidation Note and the indebtedness evidenced by the Future Advance have been consolidated in order to create a single loan in the amount of Four Million Six Hundred Thousand and No/100ths Dollars (\$4,600,000.00), as evidenced by that certain Consolidation Promissory Note dated the date hereof, in the original principal amount of Four Million Six Hundred Thousand and No/100ths Dollars (\$4,600,000.00), made by Mortgagor to the order of Mortgagee (the “**Consolidation Note**”); and

WHEREAS, the indebtedness evidenced by the Consolidated Note is subject to the terms and conditions of that certain Amended and Restated Loan Agreement dated January 25, 2007, by and between Mortgagor and Mortgagee (the “**Loan Agreement**”); and

WHEREAS, as part of the modification and increase of the loan, Mortgagor may enter into one more agreements with Mortgagee or any affiliate of Mortgagee, including, but not limited to, an ISDA Master Agreement, which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, or any combination thereof or option with respect to any of the foregoing or similar transactions, for the purpose of hedging Mortgagor’s exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (each a “**Hedge Agreement**”); and

WHEREAS, Mortgagor and Mortgagee have agreed that the terms of the Mortgage, the Assignment of Rents and the other loan documents shall be amended to additionally secure

Mortgagor's payment and performance of the Loan Agreement, the Consolidation Note and any present or future Hedge Agreement; and

WHEREAS, Mortgagor acknowledges that the execution of this Agreement confers a real and substantial benefit upon Mortgagor and further acknowledges that it is supported by good and valuable consideration.

NOW, THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the recitals hereinabove set forth which are an integral part of this Agreement and not mere recitals thereto, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound agree as follows:

1. Recitals. The foregoing recitals are true and correct.
 2. Notice of Future Advance. This Agreement serves as notice that Mortgagee has advanced to Mortgagor the Future Advance, as evidenced hereby, and the Mortgagor hereby acknowledges receipt of the Future Advance. The aforesaid advance is a future advance made pursuant to the terms of Section 1.17 of the Mortgage. The principal indebtedness now secured by the Mortgage and the other loan documents is \$4,600,000.00. All persons shall take notice of the Future Advance and the indebtedness now secured by the Mortgage and the other loan documents.
 3. Modification of Mortgage and Security Documents. The terms and conditions of the Mortgage, the Assignment of Rents and the other loan documents are hereby modified and amended to provide that the Mortgage, the Assignment of Rents and the other loan documents will secure the indebtedness evidenced by the Consolidation Note, together with interest thereon and any and all sums due or which may become due from Mortgagor to Mortgagee thereunder. The term "Note" as used in the Mortgage is hereinafter deemed to refer to the Consolidation Note.
- Further, the terms and conditions of the Mortgage, the Assignment of Rents and the other loan documents are hereby modified and amended to provide that the Mortgage, the Assignment of Rents and the other Loan documents will also secure any and all amounts due or that may become due under any Hedge Agreement.
4. Additional Event of Default. The occurrence of an event of default under any Hedge Agreement which is not cured within any applicable grace or cure period shall constitute an "Event of Default" under Section 5.1 of the Mortgage.
 5. Original Loan-to-Value Ratio. Paragraphs 2(d) and 12(b) of the Prior Mortgage Modification are hereby modified such that the defined term of "Original Appraised Value" is modified to mean seventy-five percent (75%) of the appraised value of the Project (as such term is defined in the Loan Agreement).

6. Transfers. The second to last paragraph in Section 1.21 of the Mortgage is hereby deleted in its entirety and the following is inserted in its place:

Further, notwithstanding anything contained herein to the contrary, it shall not be an event of default hereunder if any of the members of Mortgagor shall transfer all or any portion of their membership interests into a trust or to their spouse and/or lineal descendants for tax or estate planning purposes, provided that Bruce D. Burdge and Kristen Kennedy Showalter, either directly or through their ownership of Arcis Cahaba, Inc., shall jointly retain control of Mortgagor, and it shall not be an event of default hereunder if any of the members of Mortgagor other than Bruce D. Burdge and Katherine Burdge or Cary B. Showalter and Kristen Kennedy Showalter or Arcis Cahaba, Inc., shall transfer their membership interests to an unrelated third party, provided, however, that in the event of any such transfer, Mortgagor must give prompt written notice thereof to Mortgagee.

7. No Novation. It is the intent of the parties hereto that the transaction contemplated hereby shall not be a novation of the loan previously made by the Mortgagee to the Mortgagor and will not affect the lien priority of the Mortgage and the other loan documents.

8. Ratification. The Mortgagor ratifies and confirms the lien and security interests of the Mortgage and the other loan documents upon and in any and all property, real, personal or mixed, tangible or intangible, now or hereafter encumbered by the Mortgage or the other loan documents and grants to the Mortgagee the benefit of a lien upon and security interest in all such property as security for the indebtedness evidenced by the Consolidation Note and the obligations of Mortgagor under the Hedge Agreement.

9. Acknowledgment of Mortgagor. The Mortgagor acknowledges by the execution hereof that as of the date hereof all principal and interest evidenced by the Consolidation Note through the date of this Agreement are unconditionally due and owing to the Mortgagee as provided in the Consolidation Note and that the Mortgagor has no actions, defenses, demands and/or claims of set-off or deduction whatsoever, against (i) the Mortgagee, (ii) the indebtedness evidenced by the Consolidation Note and owed to the Mortgagee (iii) the Mortgage, or (iv) the other loan documents. Furthermore, the Mortgagor acknowledges that, as of the date hereof, the Mortgagee has in no way defaulted or performed any act or omission under the Consolidation Note, the Mortgage or the other loan documents or any other agreements between the Mortgagor and the Mortgagee which would give rise to any action or actions, cause or causes of actions, suits, debts, sums of money, damages, claims, costs, expenses and/or demands whatsoever, in law or in equity or otherwise, by the Mortgagor against the Mortgagee.

10. Indemnification. The Mortgagor indemnifies and agrees to defend and hold the Mortgagee harmless against any and all documentary stamps and intangible taxes, if any, imposed on the Mortgagee by virtue of its execution of this Agreement or its ownership of the Consolidation Note and the Mortgage, including any and all penalties, interest and attorneys' fees

incurred by the Mortgagee in connection therewith, and the Mortgagor agrees to pay any and all such documentary stamps or intangible taxes due hereunder within fifteen (15) days after receipt by Mortgagor of notice thereof. In the event of a failure by the Mortgagor to pay such documentary stamps and intangible taxes upon demand and should the Mortgagee elect to pay the same, the same shall be deemed an event of default by the Mortgagor, and all such charges shall be secured by the lien of the Mortgage and shall bear interest at the default rate provided in the Consolidation Note from the date of advance by the Mortgagee until paid by the Mortgagor. The provisions of this paragraph shall survive repayment of the Consolidation Note and the satisfaction of the Mortgage so long as a claim may be asserted by the State of Florida or any of its agencies.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12. Ratification. Except as expressly modified hereby, the terms and conditions of the Mortgage shall remain in full force and effect and are hereby ratified and confirmed.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

[Signatures Begin on Following Page]

[SIGNATURE PAGE TO NOTICE OF FUTURE ADVANCE AND
MORTGAGE MODIFICATION AGREEMENT]

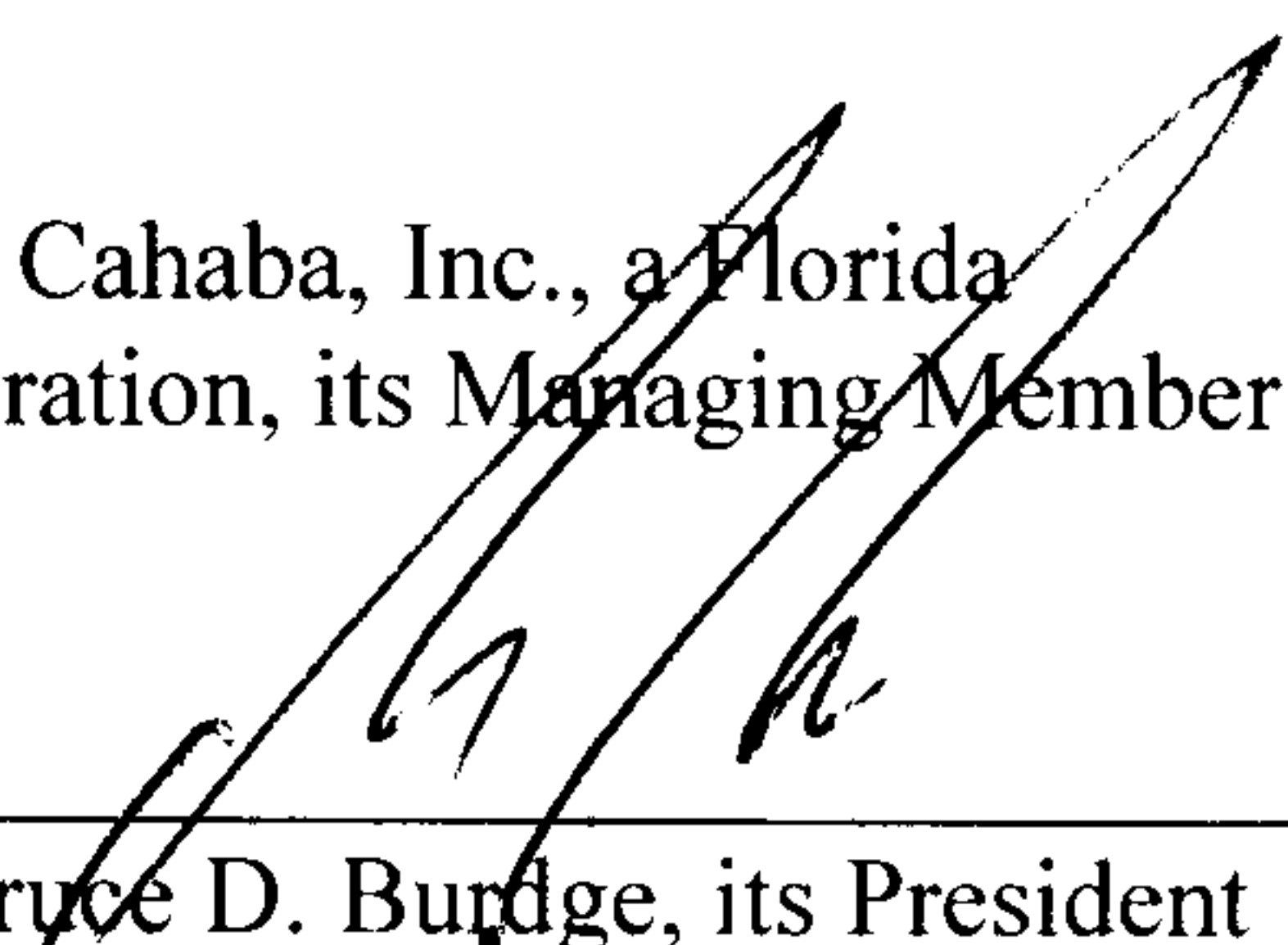
IN WITNESS WHEREOF, Mortgagor has hereunto set hand and seal all done as of the
day and year first hereinbefore written.

MORTGAGOR:


WITNESSES:

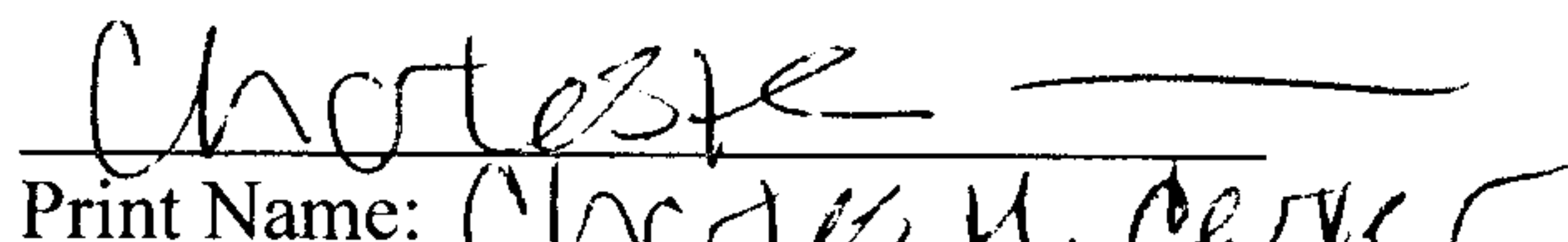
CAHABA PARK, LLC, a Florida limited liability
company

By: Arcis Cahaba, Inc., a Florida
corporation, its Managing Member

By: 
Bruce D. Burdge, its President

(Corporate Seal)


Print Name: K. Susan Dawson

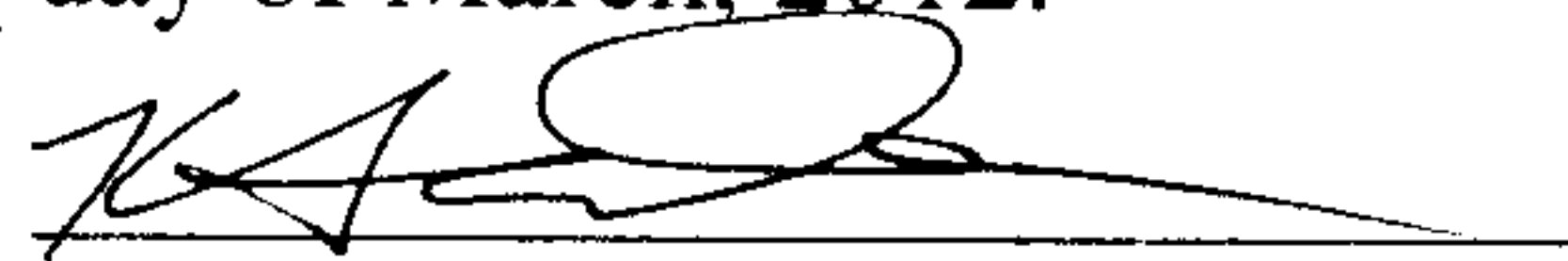

Print Name: Charles H. Carter

STATE OF FL)

Hillsborough COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that
Bruce D. Burdge, as President of Arcis Cahaba, Inc., a Florida corporation, the Managing
Member of Cahaba Park, LLC, a Florida 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 officer and with full authority, executed the same
voluntarily for and as the act of said company and said corporation.

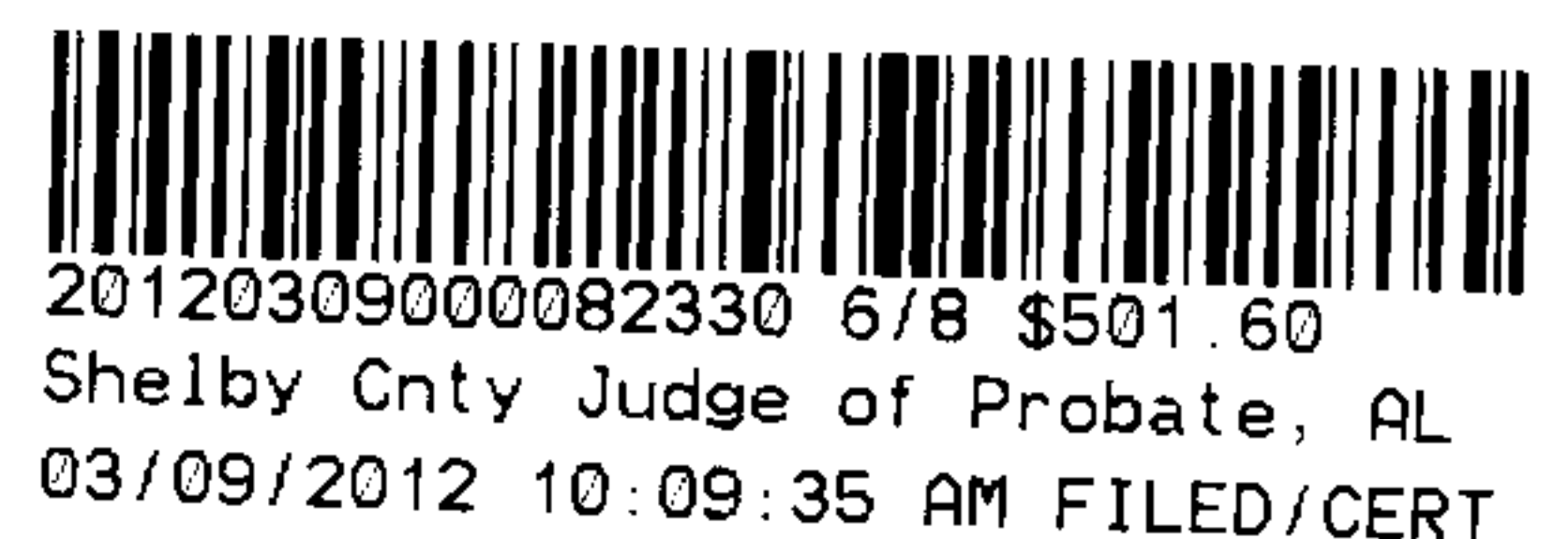
Given under my hand and official seal this the 7th day of March, 2012.


Notary Public

AFFIX SEAL

My commission expires: _____

Loan Number 9661330891-00003

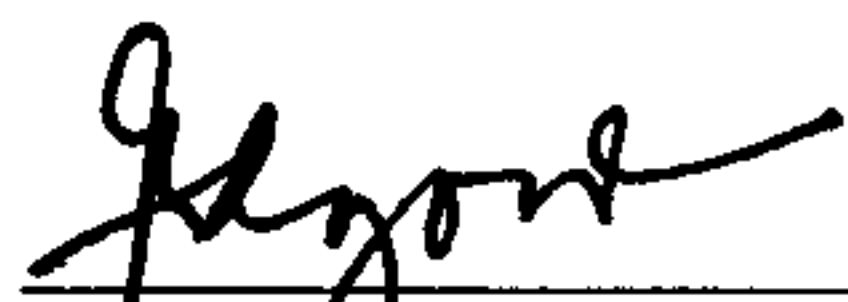


[SIGNATURE PAGE TO NOTICE OF FUTURE ADVANCE AND
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MORTGAGEE:

WITNESSES:

BRANCH BANKING AND TRUST
COMPANY, a North Carolina banking
corporation, successor in interest to Colonial
Bank by asset acquisition from the FDIC as
Receiver for Colonial Bank



Print Name: Geraldine Good



Print Name: Mary Lee Bly

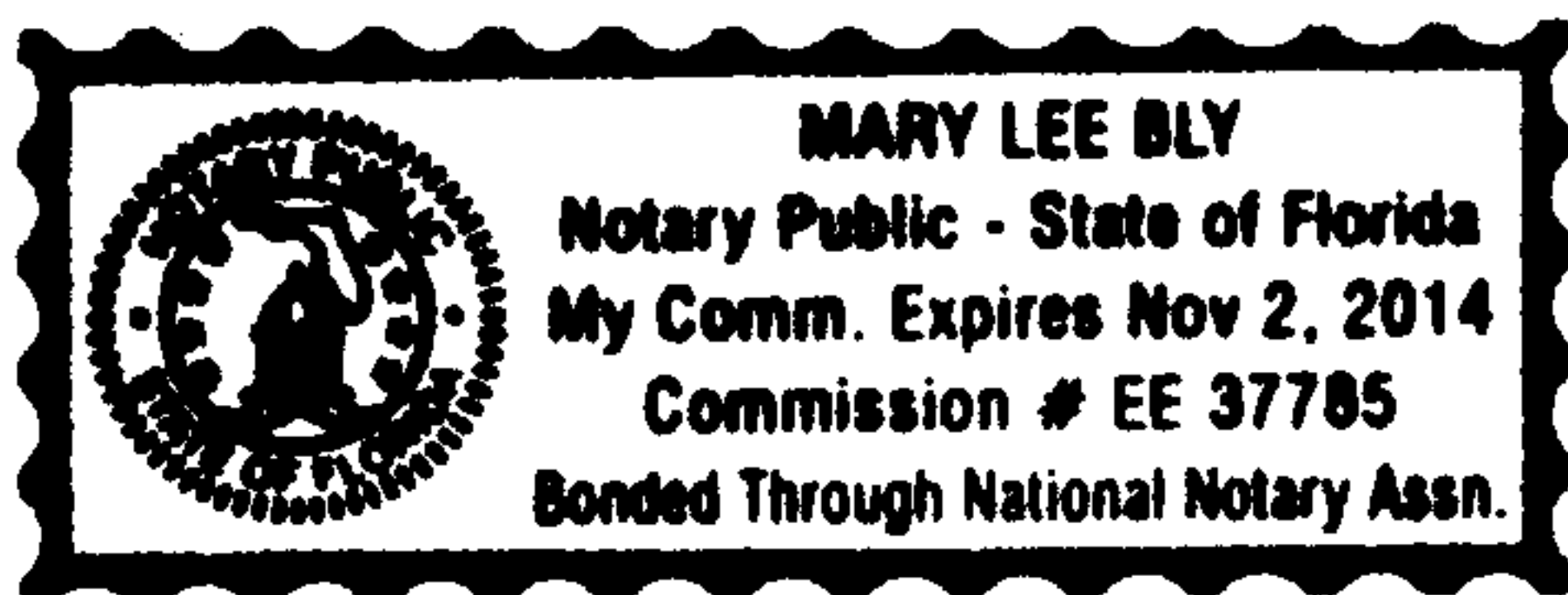
By: _____

Name: Lisa Resnick

Title: VP

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 5th day of March, 2012,
by Lisa Resnick, as Vice President of BRANCH BANKING
AND TRUST COMPANY, a North Carolina banking corporation, successor in interest to
Colonial Bank by asset acquisition from the FDIC as Receiver for Colonial Bank, on behalf of
the bank. He/She is personally known to me or has produced a valid driver's license as
identification.




Notary Public

Mary Lee Bly
(Print, Type or Stamp Name)

My Commission Expires: 11/2/2014

EXHIBIT "A" - LEGAL DESCRIPTION

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.


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Shelby Cnty Judge of Probate, AL
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