

Note To Alabama Probate Office: This Agreement is given as additional security for the Loans described herein in the aggregate principal amount of \$3,002,500 (the "Total Debt"), upon which mortgage privilege tax has previously been paid as follows: (A) Mortgage privilege tax on \$1,200,000 of the Total Debt was paid upon the recording of that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated September 19, 2005 recorded in Book 3257, Page 913 on September 28, 2005 in the Office of the Judge of Probate of Lee County, Alabama (B) Mortgage privilege tax on \$1,002,500 of the Total Debt was paid upon the recording of that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated March 25, 2008 recorded as Instrument No. 20080326000121690 on March 26, 2008 in the Office of the Judge of Probate of Shelby County; and (C) Mortgage privilege tax on \$800,000 of the Total Debt was paid upon the recording of that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated May 10, 2005 recorded as Instrument No. 20050512000230220 on May 12, 2005 in the Office of the Judge of Probate of Shelby County, Alabama. THE MATURITY DATE OF THE LOANS IS NOT BEING EXTENDED AND NO ADDITIONAL FUNDS ARE BEING ADVANCED IN CONJUNCTION WITH RECORDING OF THIS AGREEMENT; THUS, NO ADDITIONAL MORTGAGE PRIVILEGE TAX IS DUE UPON RECORDING THIS AGREEMENT.

***This Instrument Prepared By, And After  
Recording Should Be Returned To:***


Donald M. Warren, Esq.  
Burr & Forman LLP  
420 North 20th Street  
Suite 3400  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000

STATE OF ALABAMA )

COUNTIES OF LEE AND SHELBY )

1299 127  
Recorded in the Above  
MISC Book & Page  
07-06-2012 12:31:10 PM  
Bill English - Probate Judge  
Lee County, AL  
Book/Pg: 1299/127  
Term/Cashier: SCANS / CD  
Tran: 9873.152709.204892  
Recorded: 07-06-2012 12:31:41  
REC Recording Fee  
Total Fees: \$ 41.00

41.00

  
20120724000266600 1/12 \$45.00  
Shelby Cnty Judge of Probate, AL  
07/24/2012 03:42:57 PM FILED/CERT

**CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT**

**THIS CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT** (this "Agreement"), is entered into as of the 31<sup>st</sup> day of May, 2012, to be effective as of April 24, 2012 (the "Effective Date", is from **FORESIGHT DEVELOPMENT, LLC**, an Alabama limited liability company ("Foresight"), **BUCK, LTD**, an Alabama limited partnership ("Buck" together with Foresight, the "Borrowers"), **BENA ANN SPINA**, an individual ("B. Spina") **PAUL J. SPINA, JR.**, an individual ("P. Spina" and together with B. Spina, the "Buck Guarantors", and each singularly, a "Buck Guarantor"), and **BOBBY L. BYNUM**, an individual ("Bynum" together with P. Spina, the "Foresight Guarantors", and each singularly, a "Foresight Guarantor"; the Buck Guarantors and Foresight Guarantors are collectively referred to herein as the "Guarantors" and each singularly a "Guarantor"; the Guarantors, together with the Borrowers



are hereinafter collectively referred to as the "Borrower Parties" and individually as a "Borrower Party") in favor of **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation, as successor in interest to Colonial Bank by acquisition of assets from the FDIC, as Receiver for Colonial Bank (formerly known as Colonial Bank, N.A.) ("Lender").

**WITNESSETH:**

**WHEREAS**, Lender made available to Buck a loan in the original principal amount of \$1,200,000 ("Loan 1"), most recently evidenced by that certain Promissory Note dated September 19, 2005 in said principal amount given by Buck in favor of Lender, as amended by Amendment to Promissory Note dated October 1, 2008, as amended by Second Amendment to Promissory Note dated April 30, 2009 (as amended from time to time, "Note 1");

**WHEREAS**, Loan 1 is further evidenced and secured by (i) that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated September 19, 2005 given by Buck in favor of Lender and recorded in Book 3257, Page 913 on September 28, 2005 in the Office of the Judge of Probate of Lee County, Alabama (as amended from time to time, the "Loan 1 Mortgage"), which Loan 1 Mortgage encumbers the real property more particularly described therein (the "Loan 1 Property"), (ii) that certain Loan Agreement (Development Loan) dated September 19, 2005 between Buck and Lender (as amended from time to time, the "Loan 1 Loan Agreement"), (iii) that certain Guaranty Agreement dated September 19, 2005 given by B. Spina in favor of Lender (the "B. Spina Loan 1 Guaranty"); (iv) that certain Guaranty Agreement dated September 19, 2005 given by P. Spina in favor of Lender (the "P. Spina Loan 1 Guaranty"); and (v) that certain Hazardous Substances Indemnification and Warranty Agreement from Buck in favor of Lender dated September 19, 2005 (the "Indemnity", and together with Note 1, the Loan 1 Mortgage, the Loan 1 Loan Agreement, the B. Spina Loan 1 Guaranty, the P. Spina Loan 1 Guaranty and all other documents and instruments evidencing and/or securing Loan 1, the "Loan 1 Documents");

**WHEREAS**, Lender made available to Buck a loan in the original principal amount of \$1,002,500 ("Loan 2"), most recently evidenced by that certain Promissory Note dated March 25, 2008 in said principal amount given by Buck in favor of Lender (as amended from time to time, "Note 2");

**WHEREAS**, Loan 2 is further evidenced and secured by: (i) that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated March 25, 2008 given by Buck in favor of Lender and recorded as Instrument No. 20080326000121690 on March 26, 2008 in the Office of the Judge of Probate of Shelby County, Alabama, as amended by Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement dated March 25, 2008 and recorded as Instrument No. 200910220000398280 in said Probate Office (as amended from time to time, the "Loan 2 Mortgage"), which Loan 2 Mortgage encumbers the real property more particularly described therein (the "Loan 2 Property"); (ii) that certain Loan Agreement dated March 25, 2008 between Buck and Lender (as amended from time to time, the "Loan 2 Loan Agreement"); (iii) that certain Guaranty Agreement dated March 25, 2008 given by B. Spina in favor of Lender (the "B. Spina Loan 2 Guaranty"); (iv) that certain Guaranty Agreement dated March 25, 2008 given by P. Spina in favor of Lender (the "P. Spina Loan 2 Guaranty"); and (v) that certain Hazardous Substances Indemnification and Warranty Agreement from Buck in favor



of Lender dated March 25, 2008 (the "Indemnity", and together with Note 2, the Loan 2 Mortgage, the Loan 2 Loan Agreement, the B. Spina Loan 2 Guaranty, the P. Spina Loan 2 Guaranty and all other documents and instruments evidencing and/or securing Loan 2, the "Loan 2 Documents");

**WHEREAS**, Lender made available to Foresight a loan in the original principal amount of \$800,000.00 ("Loan 3", together with Loan 1 and Loan 2, the "Loans"), most recently evidenced by that certain Promissory Note dated May 10, 2005 in said principal amount given by Foresight in favor of Lender, as amended by Amendment to Promissory Note dated May 27, 2008, as amended by Second Amendment to Promissory Note dated August 11, 2008 (as amended from time to time, "Note 3" together with Note 1 and Note 2, the "Notes");

**WHEREAS**, Loan 3 is further evidenced and secured by: (i) that certain Mortgage, Assignment of Rents and Leases and Security Agreement dated May 10, 2005 given by Foresight in favor of Lender and recorded as Instrument No. 20050512000230220 on May 12, 2005 in the Office of the Judge of Probate of Shelby County, Alabama, as amended by Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement dated October 14, 2009 and recorded as Instrument No. 20091022000398290 in said Probate Office (as amended from time to time, the "Loan 3 Mortgage" together with the Loan 1 Mortgage and Loan 2 Mortgage, the "Mortgages"), which Loan 3 Mortgage encumbers the real property more particularly described therein (the "Loan 3 Property" collectively with the Loan 1 Property and Loan 2 Property, the "Properties"); (ii) that certain Loan Agreement dated May 10, 2005 between Foresight and Lender (as amended from time to time, the "Loan 3 Loan Agreement"); (iii) that certain Guaranty Agreement dated May 10, 2005 given by P. Spina in favor of Lender, as renewed by that certain Guarantee dated August 11, 2008 (the "P. Spina Loan 3 Guaranty"); (iv) that certain Guaranty Agreement dated May 10, 2005 given by Bynum in favor of Lender, as renewed by that certain Guarantee dated August 11, 2008 (the "Bynum Loan 3 Guaranty"); and (v) that certain Hazardous Substances Indemnification and Warranty Agreement from Foresight in favor of Lender dated May 10, 2005 (the "Indemnity", and together with Note 3, the Loan 3 Mortgage, the Loan 3 Loan Agreement, the P. Spina Loan 3 Guaranty, the Bynum Loan 3 Guaranty and all other documents and instruments evidencing and/or securing Loan 3, the "Loan 3 Documents"; the Loan 3 Documents together with the Loan 1 Documents and Loan 2 Documents, collectively, the "Loan Documents")

**WHEREAS**, the obligations to pay the indebtedness evidenced by the Notes together with all other charges owing from Borrowers to Lender and to perform the other obligations contained in the Loan Documents according to the terms thereof are collectively referred to herein as the "Obligations";

**WHEREAS**, Borrower Parties and Lender have entered into that certain Forbearance and Modification Agreement effective as of the Effective Date (the "Forbearance Agreement") to modify the terms and conditions of the Loans; and

**WHEREAS**, as a condition to Lender entering into the Forbearance Agreement, Lender requires that the Loans be cross-defaulted and cross-collateralized, and Borrower Parties and Lender have agreed to cross-collateralize and cross-default the Loans on the terms and conditions hereafter set forth.



**AGREEMENT**

**NOW, THEREFORE**, in consideration of the Recitals, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree with Lender as follows:

1. **Recitals.** The recitals to this Agreement are true and correct.

2. **Cross-Default.** Except as set forth in the Forbearance Agreement, the occurrence of a Default or Event of Default (as defined in any of the Loan Documents), which is not cured within applicable grace or curative periods, if any, expressly set forth in the Loan Documents, shall constitute an immediate Event of Default (without need of additional notice or the expiration of any additional cure period) under the Loan Documents for all the Loans.

3. **Cross-Collateralization.** The Loans are hereby cross-collateralized with one another and Borrowers hereby grant, bargain, convey, and mortgage each of the Properties to secure, and agrees that all collateral described in the respective Loan Documents shall secure, in addition to each respective Loan and on a pari passu basis with the other Loans, the obligations of the Borrowers under the other Loan Documents, including, without limitation, Borrowers' obligations to pay the principal and interest on each of the Loans, as the same may hereafter be renewed, modified, amended or extended, and to pay all other indebtedness and other agreed charges and to perform all of the terms and conditions under the Loan Documents.

4. **Waivers.**

(a) Each of the Borrower Parties hereby waives any right it may now or hereafter have to require Lender, as a condition to the exercise of any remedy or other right against any one or more of the Borrower Parties under this Agreement or under any other document executed by one or more Borrower Parties in connection with any Obligations: (1) to proceed against any of the other Borrower Parties or other person, or against any other collateral assigned to Lender by a particular Borrower Party or other person; (2) to pursue any other right or remedy in Lender's power; (3) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Lender by any of the Borrower Parties or other person; or (4) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Obligations or any collateral for any of the Obligations.

(b) Each of the Borrower Parties hereby waives any defense it may now or hereafter have that relates to: (1) any disability or other defense of any other Borrower Parties or other person; (2) the cessation, from any cause other than full performance, of the obligations of any of the other Borrower Parties or any other person; (3) the application of the proceeds of any Obligations, by any of the other Borrower Parties or other person, for purposes other than the purposes set forth in the Loan Documents; (4) any act or omission by Lender which directly or indirectly results in or contributes to the release of any of the other Borrower Parties or other person or any collateral for any Obligations; (5) the unenforceability or invalidity of any collateral assignment (other than this Agreement) or guaranty with respect to any of the Obligations, or the lack of perfection or continuing perfection or lack of priority of any lien



which secures any of the Obligations; (6) any failure of Lender to marshal assets in favor of such Borrower Party or any other person; (7) any modification of any of the Obligations, including any renewal, extension, acceleration or increase in interest rate; (8) any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Borrower Party's rights of subrogation and reimbursement against the principal; (9) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (10) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (11) the election by Lender, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (12) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (13) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (14) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person.

(c) Each of the Borrower Parties further waives any and all rights and defenses it may have because any debt of any of the other Borrower Parties is secured by real property; this means, among other things, that: (1) Lender may collect from such Borrower Party without first foreclosing on any real or personal property collateral pledged by other Borrower Parties; (2) if Lender forecloses on any real property collateral pledged by any of the other Borrower Parties, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Lender may collect from such Borrower Party even if Lender, by foreclosing on the real property collateral, has destroyed any right such Borrower Party may have to collect from any other Borrower Parties. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses each of the Borrower Parties may have because of any debts of any other Borrower Parties with Lender is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, each of the Borrower Parties further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to such Borrower Parties under applicable law.

(d) Each of the Borrower Parties hereby waives: (1) any right of subrogation against any other Borrower Parties that relates to any of such Obligations; (2) any right to enforce any remedy any Borrower Party may now or hereafter have against any other Borrower Parties that relates to any of such Obligations; and (3) any right to participate in any collateral now or hereafter assigned to Lender with respect to any of such Obligations.

## 5. **Representations and Warranties.**

(a) Each of the Borrower Parties warrants and agrees: (1) that Lender would not enter into the Forbearance Agreement or make further modifications to the Loans but for Borrower Parties entering into this Agreement; (2) that Borrower Parties have not relied, and will not rely, on any representations or warranties by Lender to any of the Borrower Parties with respect to the credit worthiness of any of the other Borrower Parties or the prospects of repayment of any of



the Obligations; (3) that each of the Borrower Parties has established and/or will establish adequate means of obtaining from each of the other Borrower Parties, as applicable, on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each of the other Borrower Parties; (4) that each of the Borrower Parties assumes full responsibility for keeping informed with respect to all other Borrower Parties' business operations, if any, and financial condition; (5) that Lender shall have no duty to disclose or report to any of the Borrower Parties any information now or hereafter known to Lender with respect to any of the Borrower Parties, including, without limitation, any information relating to any of the other Borrower Parties' business operations or financial condition; and (6) that each of the Borrower Parties is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

(b) Each of the Borrower Parties warrants that all of the waivers in this Agreement are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by each of the Borrower Parties may destroy or impair rights which such Borrower Parties would otherwise have against Lender, other Borrower Parties and other persons, or against collateral. Each of the Borrower Parties agree that all such waivers are reasonable under the circumstances and further agree that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

6. **Enforceability.** Each of the Borrower Parties hereby acknowledges that: (a) the obligations undertaken by the Borrower Parties in this Agreement and the Loan Documents are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by each of the Borrower Parties of all such defenses, and (d) each of the Borrower Parties has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, each of the Borrower Parties does hereby represent and confirm to Lender that it is fully informed regarding, and that it does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon the Borrower Parties, and (iv) the legal consequences to it of waiving such defenses. Each of the Borrower Parties acknowledges that it enters into this Agreement with the intent that this Agreement and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

7. **Miscellaneous.**

(a) This Agreement is being given as additional collateral to secure the obligations of the Borrower Parties under the Forbearance Agreement and all other Loan Documents.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

8. **Loan Documents.** Except as hereby expressly modified and amended, the Loan Documents shall remain in full force and effect, and are hereby ratified and affirmed in all respects. Borrower Parties confirm that they have no defenses or setoffs with respect to their obligations under the Loan Documents.

9. **Guarantors.** Guarantors join in the execution of this Agreement to evidence their consent to the terms hereof. Each Guarantor confirms that it has no defenses or setoffs with respect to its obligations pursuant to its guarantee of the Obligations, or any part thereof.

10. **Effectiveness of this Agreement.** Notwithstanding any language in this Agreement to the contrary, the undersigned Borrower Parties acknowledge and agree that failure by Bynum to execute this Agreement shall not affect the obligations and agreements of the other Borrower Parties pursuant to this Agreement. The undersigned Guarantors further acknowledge and agree that the Guarantees expressly provide that the modifications to the Loan Documents evidenced by this Agreement may be made by Lender without the consent of the Guarantors, the Guarantors shall continue to be bound by the terms and conditions of the Loan Documents as amended and modified hereby.

11. **Controlling Law.** This Agreement shall be governed by the laws of the State of Alabama.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement under their respective seals with the intention that this Agreement will be effective as of the Effective Date.

**BORROWERS:**

**BUCK, LTD,**  
an Alabama limited partnership

BY: *Paul J Spina Jr*  
Its GENERAL PARTNER

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that *Paul J Spina Jr*, whose name as General Partner of Buck, Ltd, an Alabama limited partnership, 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 such instrument, he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and seal, this 31<sup>st</sup> day of May, 2012.

*Alexa Carter*  
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires: My Commision Expires June 12, 2012

SIGNATURES CONTINUE ON NEXT PAGE



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Shelby Cnty Judge of Probate, AL  
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FORESIGHT DEVELOPMENT, LLC,  
an Alabama limited liability company

BY: Paul Spina Jr  
Its MEMBER

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul J Spina Jr, whose name as Member of Foresight Development, LLC, 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 such instrument, he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 31<sup>st</sup> day of May, 2012.

Alisa Cant  
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

~~My Commission Expires~~ June 12, 2012

SIGNATURES CONTINUE ON NEXT PAGE



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**GUARANTORS:**

Bena A. Spina  
BENA A. SPINA

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Bena A. Spina, 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 such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this 31<sup>st</sup> day of May, 2012.

Alma Carter  
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

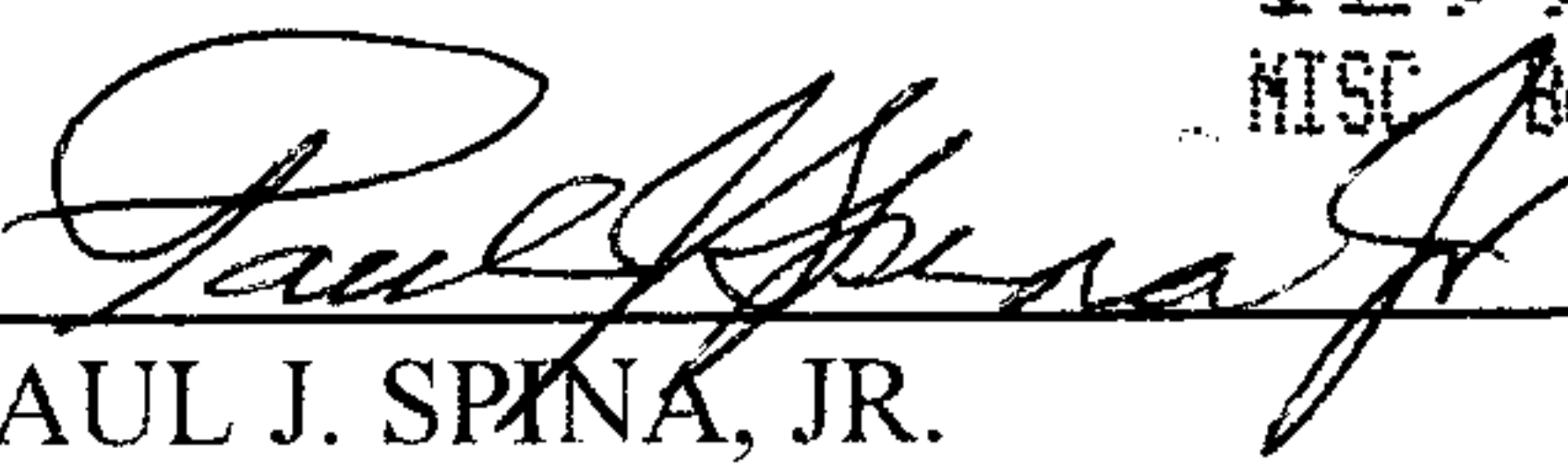
~~My Commission Expires June 12, 2012~~

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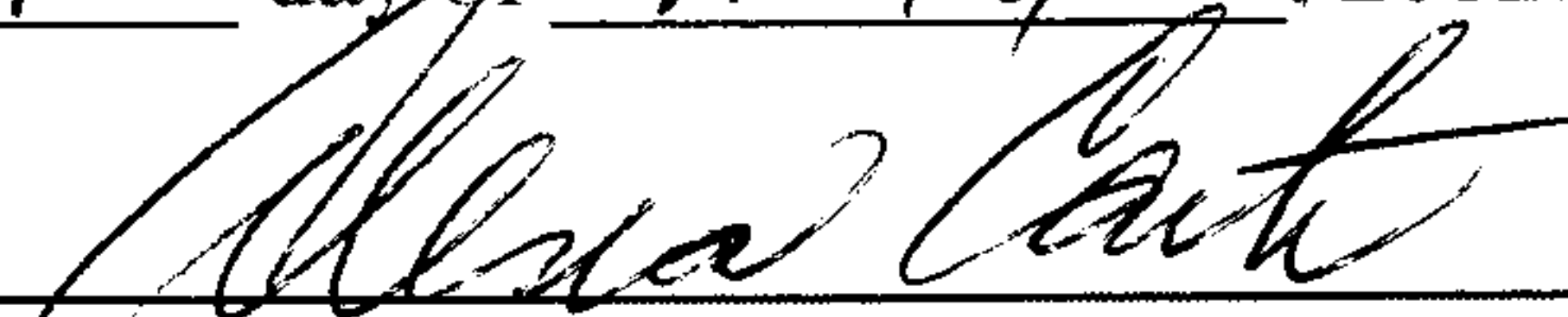


  
\_\_\_\_\_  
PAUL J. SPINA, JR.

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul J. Spina, Jr., 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this 31<sup>st</sup> day of May, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires June 12, 2012

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**LENDER:**

**BRANCH BANKING AND TRUST  
COMPANY**, a North Carolina banking  
corporation, a successor-in-interest to Colonial  
Bank by acquisition of assets from the FDIC,  
as Receiver for Colonial Bank (f/k/a Colonial  
Bank, N.A.)

BY:  
Its

*[Signature]*  
Sr. Vice President

STATE OF Florida )  
COUNTY OF Okaloosa )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify  
that SUSAN BELL, whose name as  
Sr. Vice President of Branch Banking and Trust Company, a  
North Carolina banking corporation, 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 such instrument,  
he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and  
as the act of said banking corporation.

Given under my hand and seal, this 5<sup>th</sup> day of June, 2012.

*[Signature]*

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

