

## EASEMENT AGREEMENT

THIS EASEMENT (referred to herein as "the Easement") is made as of December \_\_\_, 2006 by and between BENSON PROPERTIES, LLC, an Alabama Limited Liability Company, ("BENSON"), whose address is 1000 Eagle Point Corporate Drive, Birmingham, AL 35242 Attention: Richard W. Benson, and BLUFFPORT INVESTMENTS, LLC, an Alabama Limited Liability Company, (hereinafter referred to as "BLUFFPORT"), whose address is 60 Chelsea Corners Way. Chelsea, Alabama 35043, Attention: Dr. Keith Davis.

### I. INTRODUCTION

BENSON owns certain real property in Shelby County, Alabama, more particularly described in Exhibit 1 (the "BENSON Property") on which is now located a Selco Cleaners, Pappa Saiia's Pizza, Johnny Ray's Barbeque, and other tenants and on which is now located and shall be located in the future from time to time certain motor vehicle paved entrances, exits, driveways, parking spaces, parking structures, ramps, and sidewalks (referred to collectively herein as the "Parking Area").

BLUFFPORT is purchasing from BENSON that certain property described in Exhibit 2, on which land Benson Plaza is currently located and operated as a shopping/storefront retail/office center (hereinafter "Benson Plaza"), pursuant to that certain contract between BENSON and BLUFFPORT dated December 5, 2006 (such interest in the land and fee simple interest in the Building are referred to herein as the "BLUFFPORT Property").

BENSON desires to permit BLUFFPORT and each of BLUFFPORT's tenants and their respective agents, employees, guests, invitees, visitors, and patients to have non-exclusive rights of access, ingress, egress, and parking across, over, and on the Parking Area, and the right to install and maintain utility service lines on the BENSON Property providing service to the BLUFFPORT Property. BLUFFPORT desires to permit BENSON and each of BENSON's tenants and their respective agents, employees, guests, invitees, visitors, and patients to have non-exclusive rights of access, ingress, egress, and parking across, over, and on the Parking Area, and the right to install and maintain utility service lines on the BLUFFPORT Property providing service to the BENSON Property. For the purposes of this Agreement, the term "Easement" shall be defined as a grant of a non-exclusive limited interest in the real property described in Exhibit 1 entitling BLUFFPORT to a limited use or enjoyment of the real property described in Exhibit 1 in accordance with the terms and conditions of this Agreement and a grant of a non-exclusive limited interest in the real property described in Exhibit 2 entitling BENSON to a limited use or enjoyment of the real property described in Exhibit 2 in accordance with the terms and conditions of this Agreement. The Easement created pursuant to this Agreement shall be perpetual, is not personal and shall be deemed to constitute a covenant running with land as hereinafter provided. The Easement created herein shall not be assignable nor transferable, except in connection with sale, assignment, conveyance, judicial foreclosure sale, or conveyance in lieu of foreclosure of the either the BENSON Property or the BLUFFPORT Property.

## II.

### A). NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FROM THE BENSON PROPERTY TO THE BLUFFPORT PROPERTY

BENSON hereby grants a non-exclusive Easement to BLUFFPORT for ingress and egress free of charge for all types of vehicular traffic by BLUFFPORT and its employees, agents, guests, invitees, and patients to and from a public street to the BLUFFPORT Property over and across sidewalks and private service roads on the Parking Area. BENSON shall provide direct vehicular access to and from the BLUFFPORT Property and from and to any parking structures to a public street via the system of paved, private drives and service roads on the Parking Area. Without diminishing the rights granted to BLUFFPORT, BENSON reserves the right to redesign, remove, and reconstruct from time to time the alignment and specific location of the system of paved drives and private service roads on the Parking Area to conform to the then best overall development and use of the Parking Area, as determined by BENSON in the reasonable exercise of its discretion. Notwithstanding any provision of this Agreement to the contrary, the rights granted to BLUFFPORT in this Section II.A. shall be of perpetual duration.

### B). NON-EXCLUSIVE EASEMENT FOR PARKING

BENSON hereby grants to BLUFFPORT and its tenants, agents, employees guests, invitees, visitors, and patients a non-exclusive Easement to use free of charge the parking spaces in the Parking Area, in compliance with all applicable requirements of law. The use of parking spaces shall be on a space-available basis (i.e., a "first come, first served" basis). No fences, barricades or other obstacles shall be erected or permitted upon the Parking Area if such fences, barricades or other obstacles would interfere with the rights and duties created by this Agreement. BENSON shall maintain at a minimum the number of parking spaces required by applicable law for improvements now or hereafter constructed on the BENSON Property.

## III.

### A). NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FROM THE BENSON PROPERTY TO THE BLUFFPORT PROPERTY

BENSON hereby reserves unto itself, its successors and assigns, a non-exclusive Easement over the BLUFFPORT Property described on Exhibit 2 for ingress and egress free of charge for all types of vehicular traffic by BENSON and its employees, agents, guests, invitees, and patients to and from a public street to the BENSON Property over and across sidewalks and private service roads on the Parking Area. BENSON reserves direct vehicular access to and from the BENSON Property and from and to any parking structures to a public street via the system of paved, private drives and service roads on the Parking Area. Without diminishing the rights granted to BENSON, BENSON grants to BLUFFPORT the right to redesign, remove, and reconstruct from time to time the alignment and specific location of the system of paved drives and private service roads on the Parking Area to conform to the then best overall development and use of the Parking Area, as determined by BLUFFPORT in the reasonable exercise of its

discretion. Notwithstanding any provision of this Agreement to the contrary, the rights reserved to BENSON and granted to BLUFFPORT in this Section II.A. shall be of perpetual duration.

#### B). NON-EXCLUSIVE EASEMENT FOR PARKING

BENSON hereby reserves unto itself, its successors and assigns and its tenants, agents, employees guests, invitees, visitors, and patients a non-exclusive Easement to use free of charge the parking spaces in the Parking Area, in compliance with all applicable requirements of law. The use of parking spaces shall be on a space-available basis (i.e., a "first come, first served" basis). No fences, barricades or other obstacles shall be erected or permitted upon the Parking Area if such fences, barricades or other obstacles would interfere with the rights and duties created by this Agreement. BLUFFPORT shall maintain at a minimum the number of parking spaces required by applicable law for improvements now or hereafter constructed on the BENSON Plaza Property described on Exhibit 2.

#### IV. MAINTENANCE AND INSURANCE

BENSON and BLUFFPORT shall each maintain the private drives, service roads, and Parking Area on their respective properties in an attractive condition and good state of repair in conformance with all applicable municipal ordinances to allow the continued use of the Parking Area for parking, ingress, and egress purposes during the term of the Easement. BENSON's and BLUFFPORT's maintenance obligations shall include, but not be limited to, landscaping, snow removal, patching, repairing, restriping, and repaving the roads and Parking Area and maintaining the lighting in the Parking Area and over the private service roads located on their respective properties.

BENSON and BLUFFPORT shall maintain at their expense adequate personal injury and property damage insurance in amounts less than \$500,000.00 with respect to any one injury, \$1,000,000.00 with respect to any one accident, and \$250,000.00 with respect to property damage. Within the first 15 days of each year, each party shall provide the other party with a copy of its respective certificates of insurance to show that such insurance is in effect.

#### V. EASEMENT FOR UTILITIES

BENSON hereby grants to BLUFFPORT and its successors, assigns, employees, contractors, subcontractors and agents a permanent easement over the BENSON Property to enter into and upon the BENSON Property to effectuate the purposes of this easement and in order to conduct inspections, maintenance and repair as shall be reasonably necessary to assure the continuing efficient functioning of the utilities installed pursuant to this Agreement. BENSON reserves for itself, its successors, assigns, employees, contractors, subcontractors and agents a permanent easement over the BLUFFPORT Property to enter into and upon the BLUFFPORT Property to effectuate the purposes of this easement and in order to conduct inspections, maintenance and repair as shall be reasonably necessary to assure the continuing efficient functioning of the utilities installed pursuant to this Agreement

BLUFFPORT hereby agrees to defend, indemnify and hold harmless BENSON and its agents, contractors, directors, employees and representatives from any damage, claim, loss or injury, whether suffered by or asserted against any one or more of them, from or by any party whatsoever arising from (i) the exercise by BLUFFPORT of the easement herein granted, (ii) the entry upon the BENSON Property or any portion thereof by BLUFFPORT or any party acting on behalf of BLUFFPORT, or (iii) any use, repair or maintenance of the easement area, by BLUFFPORT, its successors, assigns, employees, contractors or agents, or any other party acting on behalf of Grantee, including personal injury, loss of life, loss of or damage to real or personal property, and attorney fees and other costs of defense or litigation.

BENSON hereby agrees to defend, indemnify and hold harmless BLUFFPORT and its agents, contractors, directors, employees and representatives from any damage, claim, loss or injury, whether suffered by or asserted against any one or more of them, from or by any party whatsoever arising from (i) the exercise by BENSON of the easement herein granted, (ii) the entry upon the BLUFFPORT Property or any portion thereof by BENSON or any party acting on behalf of BENSON, or (iii) any use, repair or maintenance of the easement area, by BENSON, its successors, assigns, employees, contractors or agents, or any other party acting on behalf of Grantee, including personal injury, loss of life, loss of or damage to real or personal property, and attorney fees and other costs of defense or litigation.

## VI. THIRD PARTY BENEFICIARIES

BENSON and BLUFFPORT execute this Agreement with the specific intent to confer benefits directly only upon themselves. BENSON and BLUFFPORT do not intend to confer any direct benefits on any agents, employees, guests, tenants, invitees, visitors, or sublicensees of BLUFFPORT, as third-party beneficiaries of the Easement or in any other capacity. All such persons are merely incidental gratuitous beneficiaries of this Agreement without any rights under this Agreement or any right to enforce this Agreement. Such persons may, however, make use of the Easement to the limited extent to which BLUFFPORT and BENSON may permit such use if such persons use such Easement in a manner consistent with the terms and conditions of this Agreement. The use of the Easement by agents, employees, guests, tenants, invitees, visitors, or sublicensees of either party as permitted herein shall not in any event be construed as intent of any party that the private drives and service roads in the Parking Area are dedicated to public use, but rather such private drives and service roads shall remain the private property of BENSON at all times.

## VII. ENFORCEMENT

If any party or other person who is entitled to any benefit under this Agreement incurs costs, attorney's fees, or both in enforcing this Agreement, the party or person against whom the enforcement is obtained shall pay all costs and reasonable attorney's fees that may be incurred by the party or person who successfully obtains enforcement of this Agreement. The provisions of this Agreement may be enforced by BENSON and BLUFFPORT and their respective successors

and assigns, including any lender who may have acquired a security interest in any of the property subject to the Easement.

### VIII. ASSIGNABILITY

The Easement and other rights granted by this Agreement are appurtenant to the BENSON Property and the BLUFFPORT Property, shall run with the land, and otherwise shall not be assignable except in connection with the conveyance of either the BENSON Property or the BLUFFPORT Property, including conveyance to a mortgagee through foreclosure or deed in lieu of foreclosure. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, transferees and permitted assigns.

### IX. MISCELLANEOUS PROVISIONS

A. Entire Agreement. All representations, understandings, warranties, and agreements made previously by and between the parties are merged in this Agreement, which alone fully and completely expresses the agreement of the parties regarding motor vehicle parking, access, ingress, and egress.

B. Modification. This Agreement may be amended only by a writing signed by the party against whom enforcement may be sought. It may not be amended by an oral agreement of the parties.

C. No Joint venture. BENSON and BLUFFPORT do not intend to create a partnership or joint venture relationship by the execution of this Agreement.

### X. NOTICES

Any notice which may be required or permitted to be made under this Agreement shall be in writing and may be served personally by hand delivery, mail or by facsimile. Any notice which is given by hand delivery shall be deemed to have been effectively given when it is delivered personally to the party or person indicated below. Any such notice shall be deemed to have been effectively given by mail when it has been transmitted by facsimile or deposited in the United States Mail, first-class postage, certified mail, return receipt requested, postage prepaid, and addressed to the parties to this Agreement and their respective representatives at the following addresses:

If to BLUFFPORT:

BLUFFPORT INVESTMENT, LLC  
Attention: Dr. Keith Davis  
60 Chelsea Corners Way  
Chelsea, AL 35043  
Facsimile: 205-\_\_\_\_\_



20061229000637460 6/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
12/29/2006 02:06:18PM FILED/CERT

with a copy to: William J. Bryant, Esq.  
Feld, Hyde, Wertheimer, Bryant & Stone, P.C.  
2000 SouthBridge Parkway, Suite 400  
Birmingham, Alabama 35209  
Facsimile: 205-802-7550

If to BENSON: BENSON PROPERTIES, LLC  
Attention: Richard W. Benson  
1000 Eagle Point Corporate Drive  
Birmingham, AL 35242  
Facsimile: 205-408-1005

with a copy to: Clayton T. Sweeney, Esq.  
Attorney At Law  
2700 Highway 280 East Suite 160  
Birmingham, AL 35223  
Facsimile: 205-871-9004

#### XI. CONTROLLING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Alabama. If any provision of this Agreement is deemed to be unenforceable by statute, court decision, or otherwise, that provision shall be deemed severable and the balance of this Agreement shall remain in full force and effect.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized officers as of the date first above written.

BENSON PROPERTIES, LLC,  
An Alabama Limited Liability Company

By: Richard W. Benson  
Richard W. Benson  
Managing Member

BLUFFPORT INVESTMENTS, LLC  
An Alabama Limited Liability Company

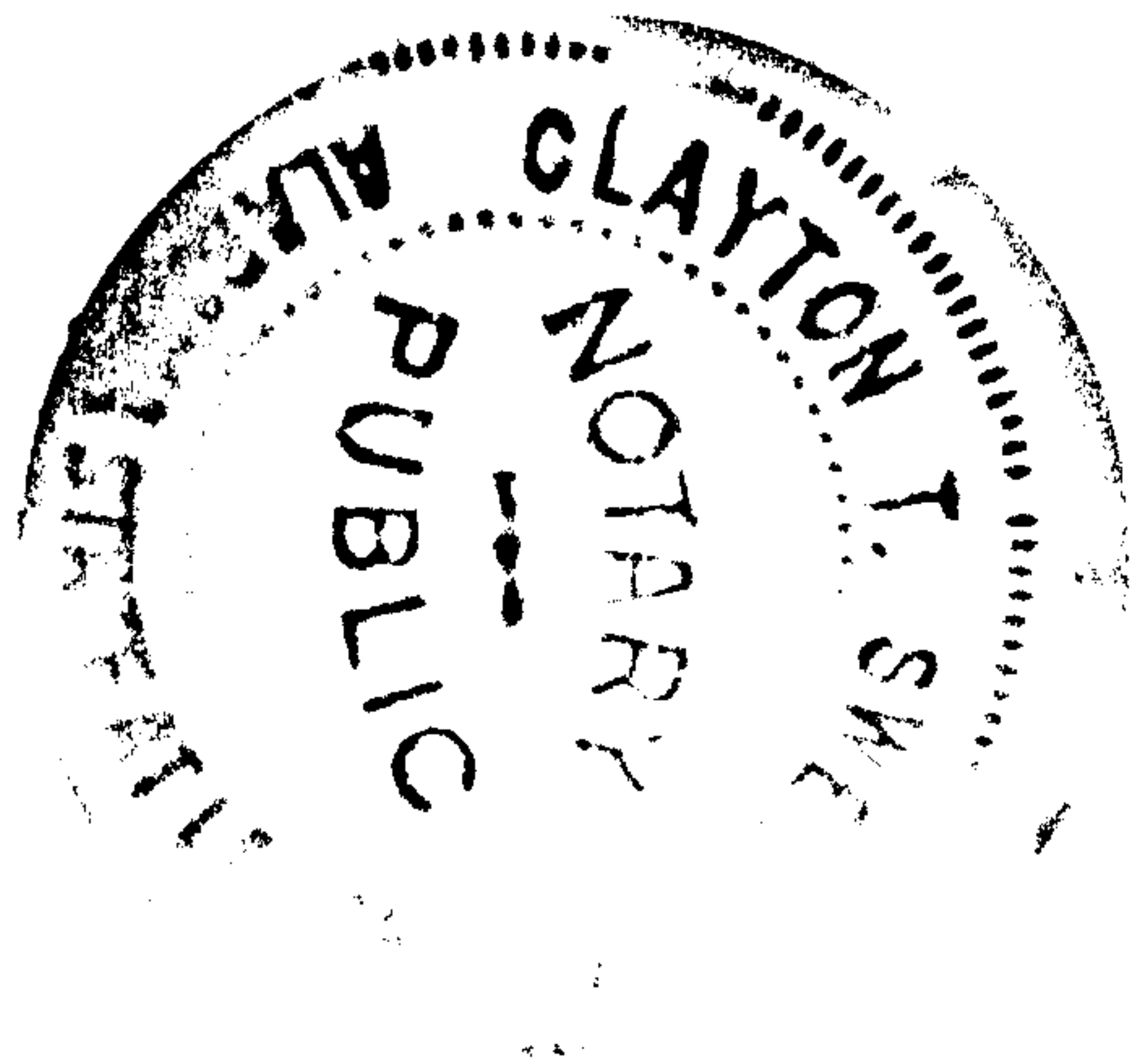
By: Keith Davis  
Keith Davis,  
Managing Member

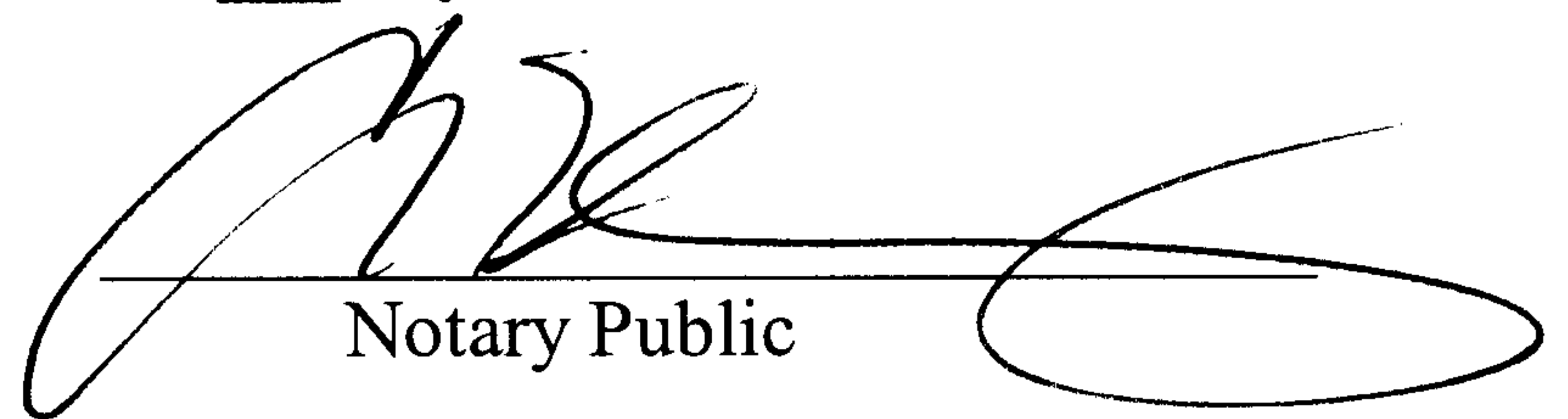
STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that RICHARD W. BENSON, whose name as Managing Member of BENSON PROPERTIES, 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 thereof, he, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 28<sup>th</sup> day of December, 2006.



  
Notary Public

My Commission Expires:

6-5-2007

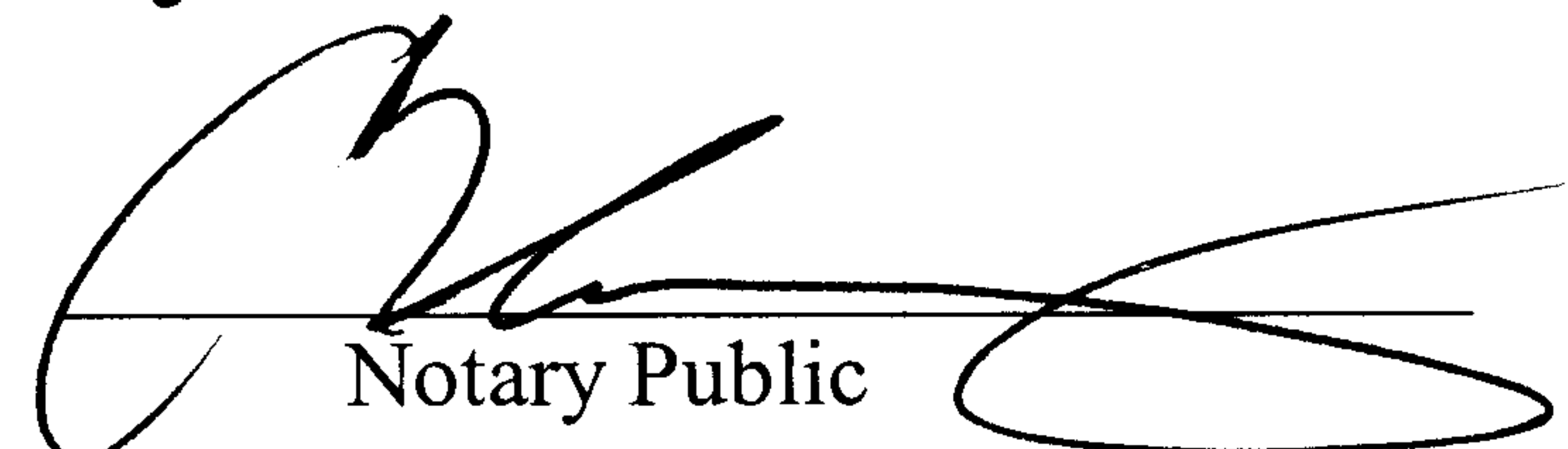
STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Keith Davis, whose name as Manager of BLUFFPORT INVESTMENTS, LLC, a 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 thereof, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 28<sup>th</sup> day of December, 2006.



  
Notary Public

My Commission Expires:

6-5-2007

EXHIBIT 1

  
20061229000637460 9/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
12/29/2006 02:06:18PM FILED/CERT

BENSON PROPERTY

Lots 3 and 5, according to the Survey of the Shoppes at the Corners, Phase 2, as recorded in Map Book 26, Page 89, in the Probate Office of Shelby County, Alabama.

Lot 4-B, according to a Resurvey of Lot 4, The Shoppes at the Corners, Phase II, as recorded in Map Book 29, Page 96, in the Probate Office of Shelby County, Alabama.

EXHIBIT 2

  
20061229000637460 10/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
12/29/2006 02:06:18PM FILED/CERT

BLUFFPORT PROPERTY

Lot 4A, according to a Resurvey of Lot 4, The Shoppes at the Corners, Phase II, as recorded in Map Book 29, Page 96, in the Probate Office of Shelby County, Alabama.