


Prepared By and Return to:

James M. Wilson
Buist Moore Smythe McGee P.A.
5 Exchange Street
Charleston, South Carolina 29401
Phone: 843-720-4640
Fax: 843-723-7398


20070122000033050 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
01/22/2007 01:15:52PM FILED/CERT

MEMORANDUM OF TENANCY IN COMMON AGREEMENT

THIS MEMORANDUM OF TENANCY IN COMMON AGREEMENT (“Memorandum”) dated as of the 19th day of January, 2007, is entered into by and between **Homecourt Hospitality – Birmingham 1, LLC, Homecourt Hospitality – Birmingham 2, LLC and PHREG - Birmingham, LLC** (collectively the “Co-Owners”).

WITNESSETH:

WHEREAS, the Co-Owners are the owners of the property known as 215 Inverness Center Drive, Birmingham, Alabama 35242 and more fully described on the attached Exhibit “A” (the “Property”) attached hereto and incorporated herein by reference ; and

WHEREAS, the Co-Owners entered into a Tenancy in Common Agreement (“TIC Agreement”) dated January __, 2007 relating to the joint ownership of the Property upon the terms and conditions more particularly set forth in said TIC Agreement; and

WHEREAS, the Co-Owners wish to record this Memorandum of Tenancy in Common Agreement setting forth certain terms and conditions as more particularly set forth in said TIC Agreement;

NOW, THEREFORE, the Co-Owners do hereby agree as follows:

1. **Property; Purpose.** Each Co-Owner owns an undivided tenant-in-common interest in the Property. The Co-Owners constitute all of the tenants-in-common with respect to the Property. The Co-Owners shall each separately and solely own their tenant-in-common interest in the Property as described in the TIC Agreement and the Co-Owners, collectively, are entered into the TIC Agreement solely for the purpose of owning, operating and managing the Property and for the purpose of engaging in such other lawful activities as may be incidental, necessary or appropriate to the ownership, operation and management of the Property.
2. **Title to Property.** The Property shall be owned by the Co-Owners as tenants-in-common.

3. **Right of Partition.** Each Co-Owner irrevocably waives the right to directly or indirectly maintain an action or petition in any court for a partition of the Property.
4. **Restrictions On Sale.** No Co-Owner may sell, convey or otherwise transfer, voluntarily or involuntarily, any of such Co-Owner's interest in the Property except in compliance with the terms of the TIC Agreement and the loan documents secured by a mortgage on the Property as more particularly described in the TIC Agreement.
5. **Liens and Encumbrances.** Each Co-Owner shall have no right to encumber the Co-Owner's separate interest in the Property. In the event that a Co-Owner separately encumbers its interest in the Property or suffers an encumbrance against that interest in the Property (including without limitation any judicial attachment, a judgment lien, any lien arising out of the order or judgment of any court, any lien in connection with taxes claimed due to any governmental unit, and any lien arising under federal or state bankruptcy or insolvency laws), the Co-Owner shall indemnify and hold each of the Co-Owners harmless from and against any and all claims, costs, demands, and expenses (including reasonable attorneys' fees) relating to such encumbrance.
6. **Sale of Ownership Percentage, Right of First Offer.** Each Co-Owner grants to each other Co-Owner a right of first refusal in the Property as provided in the TIC Agreement.
7. **Termination.** This Memorandum shall automatically terminate and be of no force or effect upon any termination of the TIC Agreement as described in the TIC Agreement.
8. **Further Assurances.** Each party shall execute, acknowledge (where necessary), and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as expressed in the TIC Agreement and this Memorandum. If the TIC Agreement terminates, then each Co-Owner shall execute, acknowledge (where necessary), and deliver such documents as another Co-Owner shall reasonably require or as any title insurance, abstract company, or institutional lender shall reasonably require to remove this Memorandum of record.
9. **Counterparts.** This Memorandum may be executed in counterparts.

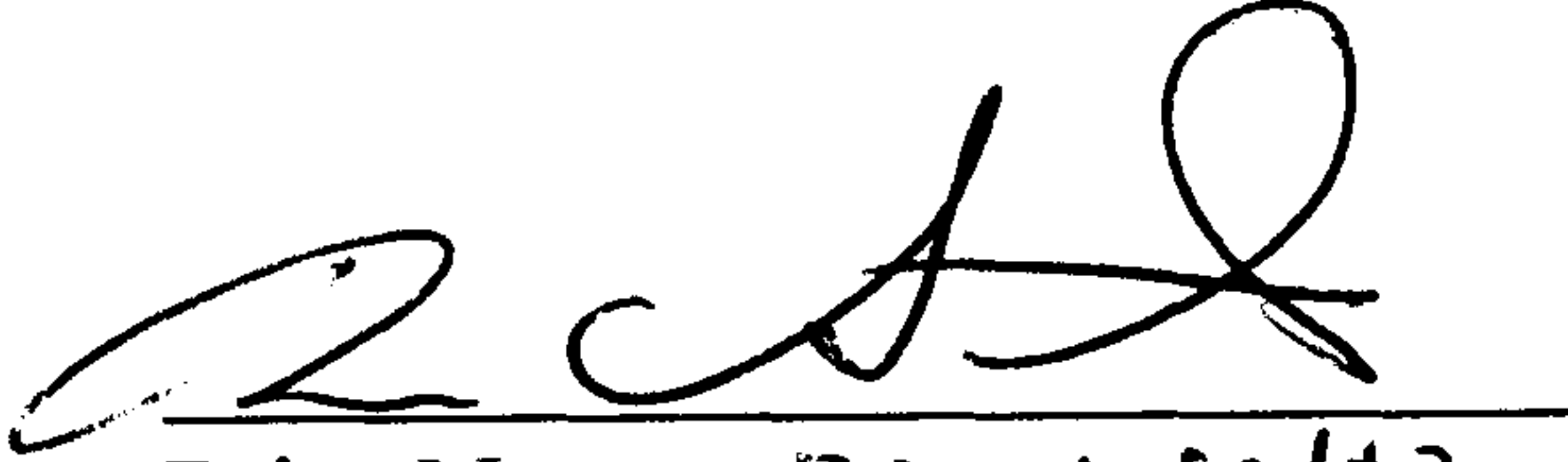

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Co-Owners by their duly authorized managers or other authorized persons have executed this Memorandum of Tenancy in Common Agreement and hereunto affixed their hands and seals on the date first above written.

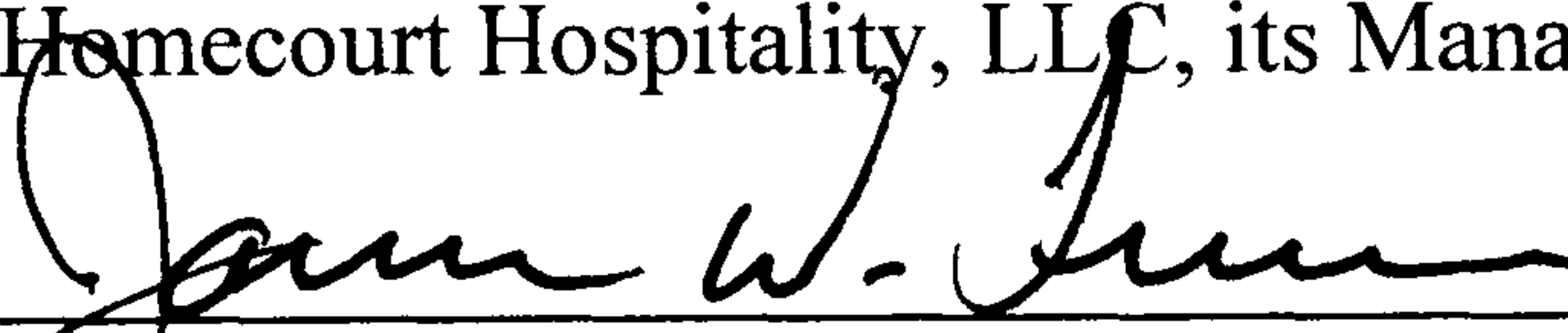
CO-OWNERS

WITNESS:

Homecourt Hospitality-Birmingham 1, LLC

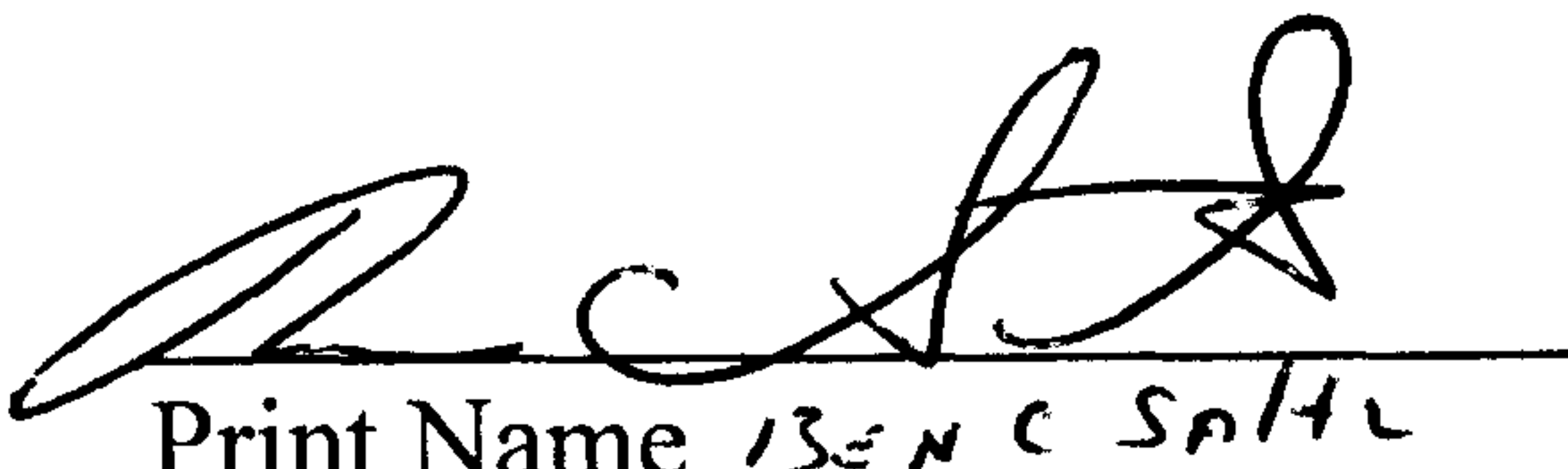


Print Name BEN C SAITZ

Print Name
Teresa Bass

By: Homecourt Hospitality, LLC, its Manager

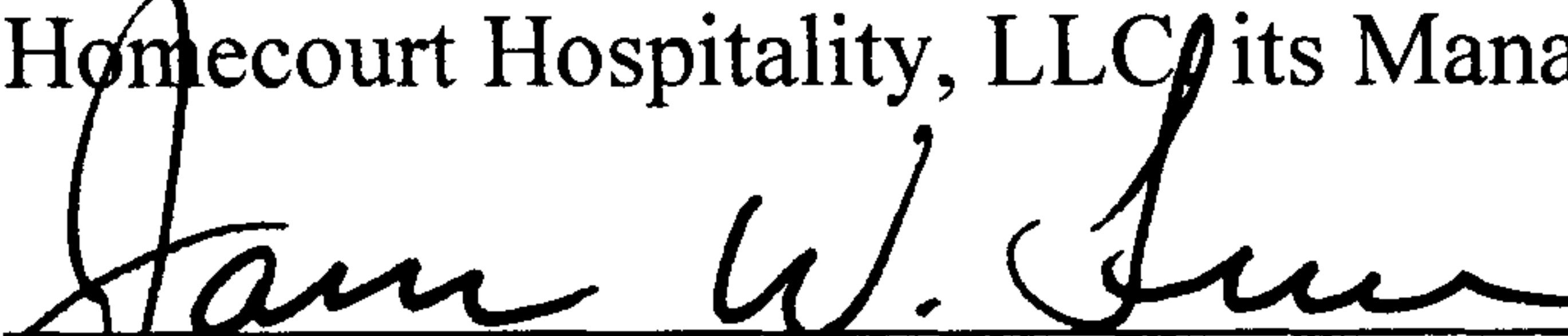
By: 
Name: James W. Turner
Its: Sole Member

WITNESS:

Homecourt Hospitality-Birmingham 2, LLC

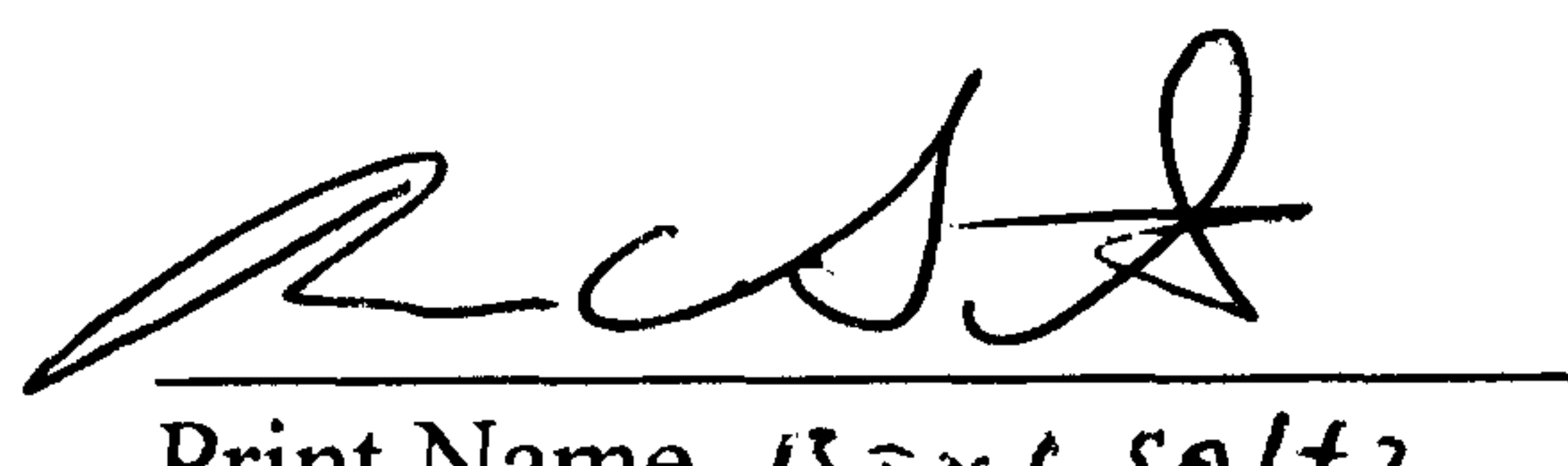


Print Name BEN C SAITZ

Print Name
Teresa Bass

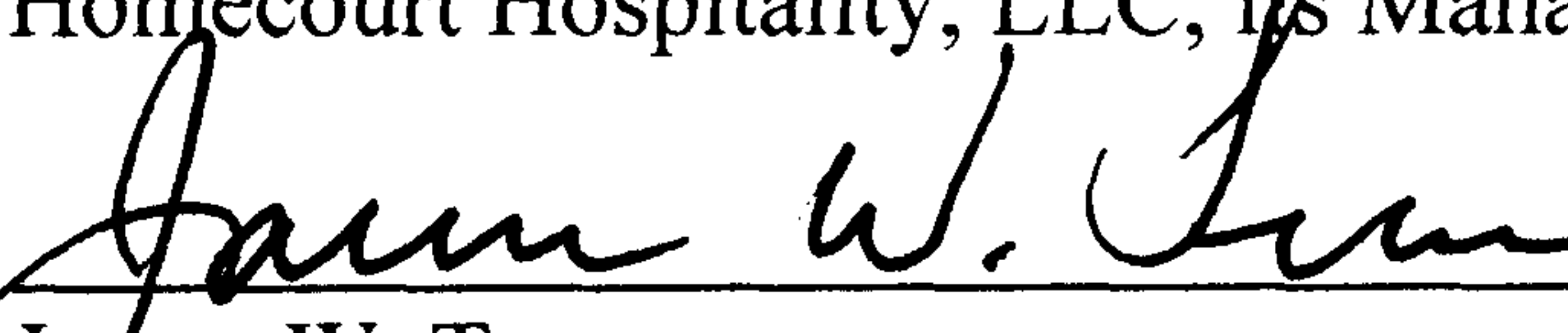
By: Homecourt Hospitality, LLC, its Manager

By: 
Name: James W. Turner
Its: Sole Member

PHREG-Birmingham, LLC

By: Homecourt Hospitality, LLC, its Manager


Print Name BEN C SAITZ

Print Name
Teresa Bass

By: 
Name: James W. Turner
Its: Sole Member

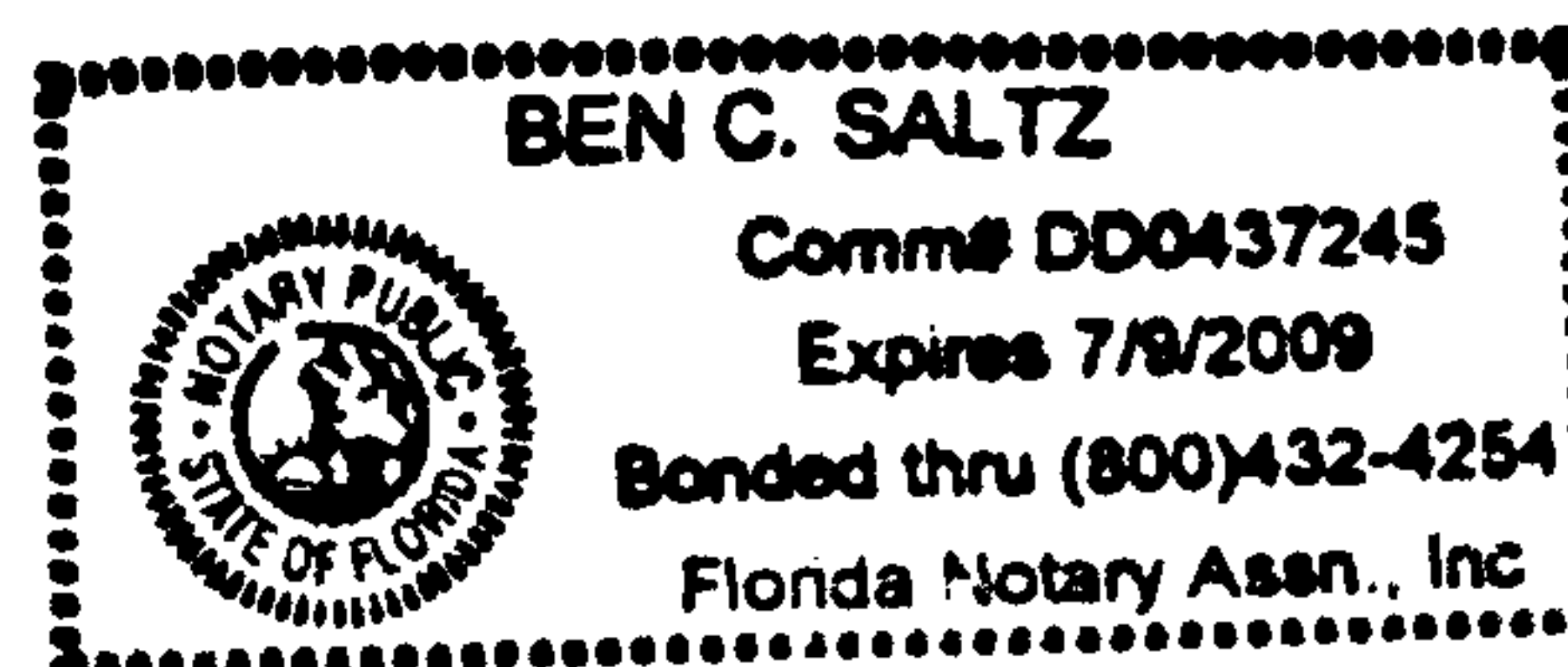
STATE OF Florida)
)
COUNTY OF Indian River)

ACKNOWLEDGEMENT

I, BEN C SALTZ, a Notary Public, do hereby certify that Homecourt Hospitality – Birmingham 1, LLC, by Homecourt Hospitality, LLC, its Manager, by James W. Turner, its Sole Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 12 day of
day of JANUARY 2007.

[Signature]
Notary Public for the State of Florida
My Commission Expires: 7-9-09



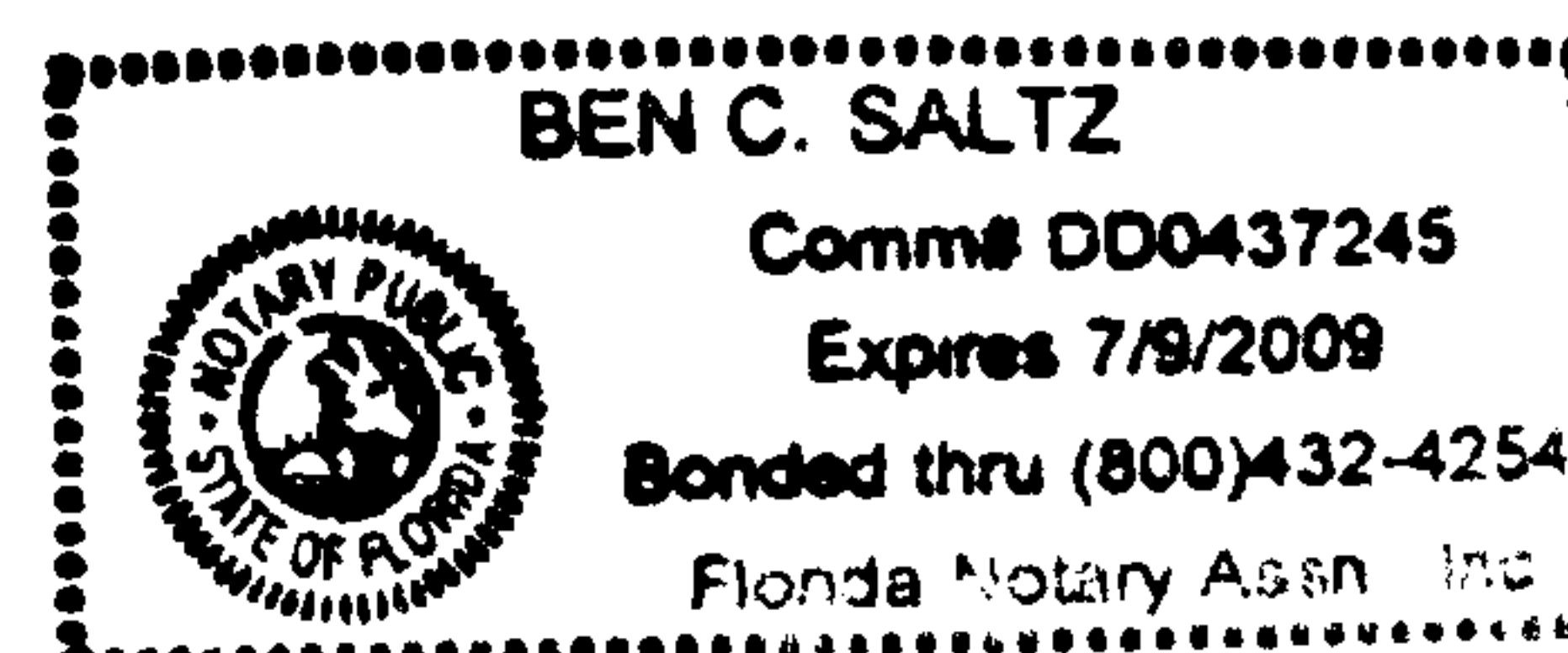
STATE OF Florida)
)
COUNTY OF Indian River)

ACKNOWLEDGEMENT

I, BEN C SALTZ, a Notary Public, do hereby certify that Homecourt Hospitality – Birmingham 2, LLC, by Homecourt Hospitality, LLC, its Manager, by James W. Turner, its Sole Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 12 day of
day of JANUARY 2007.

[Signature]
Notary Public for the State of Florida
My Commission Expires: 7-9-09





20070122000033050 5/6 \$26.00
Shelby Cnty Judge of Probate, AL
01/22/2007 01:15:52PM FILED/CERT

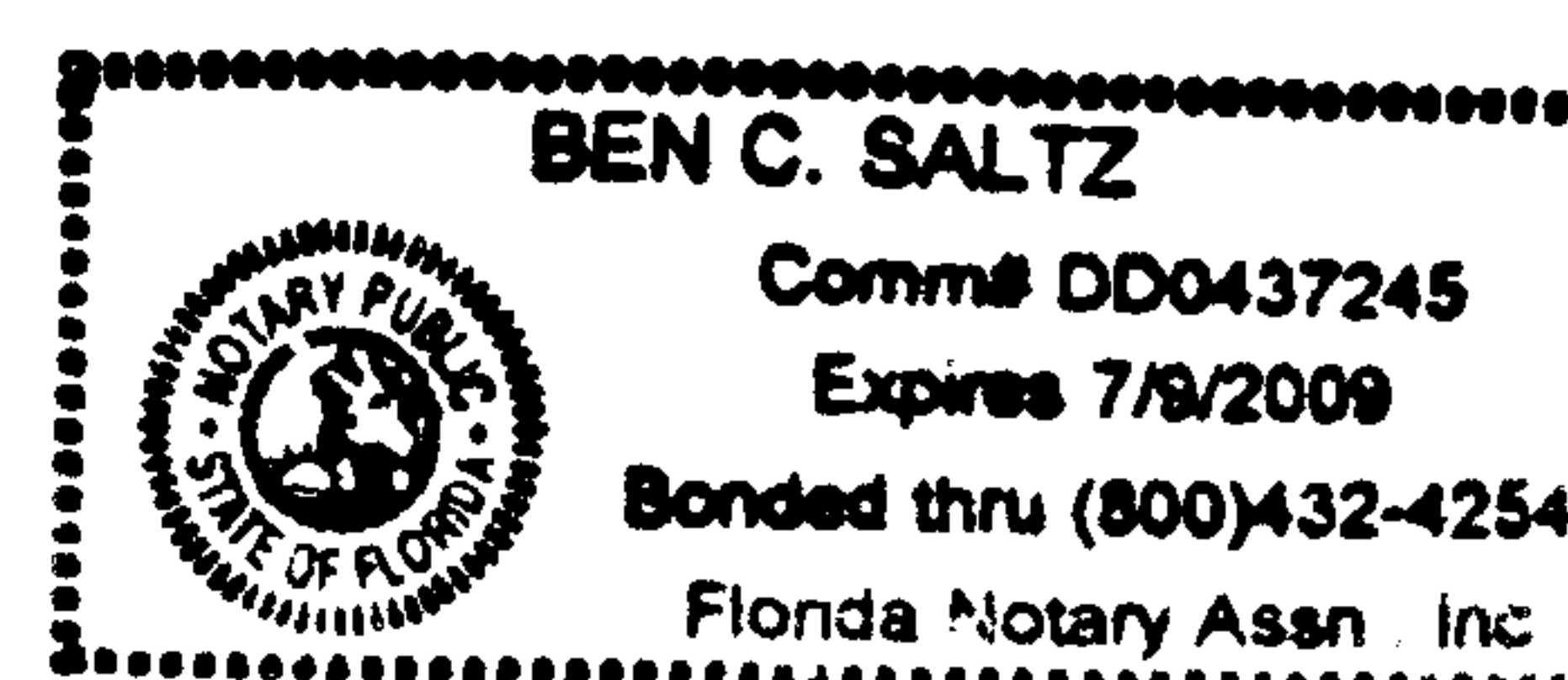
STATE OF Florida)
)
COUNTY OF Indian River)

ACKNOWLEDGEMENT

I, BEN C SALTZ, a Notary Public, do hereby certify that PHREG – Birmingham, LLC, by Homecourt Hospitality, LLC, its Manager, by James W. Turner, its Sole Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 12 day of
JANUARY 2007.

B C Saltz
Notary Public for the State of FLORIDA
My Commission Expires: 7-9-09





20070122000033050 6/6 \$26.00
Shelby Cnty Judge of Probate, AL
01/22/2007 01:15:52PM FILED/CERT

EXHIBIT A
TO MEMORANDUM OF TENANCY IN COMMON AGREEMENT

Property Address: Homewood suites by Hilton Birmingham South/Inverness
215 Inverness Center Drive
Birmingham, Alabama 35242

Legal Description: