

**ACCESS ROAD CONSTRUCTION, RECIPROCAL EASEMENT AND BENEFICIAL
EASEMENT AGREEMENT**

\$500.00

THIS ACCESS ROAD CONSTRUCTION, RECIPROCAL EASEMENT AND BENEFICIAL EASEMENT AGREEMENT made this 2nd day of November, 2007, by and between **BALMORAL DEVELOPMENT, INC.**, an Alabama corporation and **6531 PROPERTIES, INC.**, an Alabama corporation (hereinafter collectively, "Balmoral"), and **J&N ALABASTER, LLC**, an Alabama limited liability company (hereinafter "J&N" and together with Balmoral, the "Declarants").

RECITALS

WHEREAS, by Statutory Warranty Deed dated of even date herewith (the "Deed"), J&N purchased from Balmoral, and Balmoral conveyed unto J&N, certain real estate situated in Shelby County, Alabama as described in Exhibit "A" attached hereto ("Parcel 1"), and

WHEREAS, J&N intends to develop Parcel 1 and construct a restaurant thereon, and

WHEREAS, Balmoral owns a certain parcel of property described in Exhibit "B" attached hereto ("Parcel 2"; Parcel 2, together with Parcel 1, are sometimes collectively referred to herein as the "Parcels") which is adjacent to and contiguous with Parcel 1, and

WHEREAS, Balmoral and J&N have determined that it is necessary and appropriate to create, grant and reserve certain easements and rights with respect to access, ingress, egress, pedestrian and vehicular traffic over and across a portion of Parcel 1 fifteen feet in width and one hundred twenty-five feet in length (the "Parcel 1 Easement Property") and a portion of Parcel 2 fifteen feet in width and one hundred twenty-five feet in length (the "Parcel 2 Easement Property", collectively, with the Parcel 1 Easement Property, the "Easement Property"), for the use and benefit of the owners of such parcels, their respective successors and assigns (all of which persons are hereafter referred to as the "Owners"), and their agents, customers, patrons, guests, invitees, licensees, and employees, servants, contractors, mortgagees, tenants and such tenants' agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors and mortgagees (all of which persons are hereinafter referred to as the "Permittees"), and

WHEREAS, Balmoral and J&N have likewise determined that it is necessary and appropriate to create, grant and reserve certain easements and rights with respect to storm water drainage and water utility service over and across a portion of Parcel 1 for the benefit of Parcel 2.

AGREEMENT

NOW, THEREFORE, Balmoral and J&N hereby declare that the Parcels, and the various parcels now and hereafter constituting parts thereof, shall be benefited and burdened by the following easements and rights:

1. **RECIPROCAL EASEMENTS.** Balmoral hereby creates, declares and imposes on the Parcel 2 Easement Property for the benefit of Parcel 1, a non-exclusive easement extending fifteen feet in width from the property line between Parcel 1 and Parcel 2 (the "Common Property Line") and one hundred twenty-five feet in length from the western right of way line of Alabaster Boulevard, for vehicular and pedestrian access to, ingress to and egress from Parcel 1 to Alabaster Boulevard over the Easement Property. In addition, J&N hereby creates, declares and imposes on the Parcel 1 Easement Property for the benefit of Parcel 2, a non-exclusive easement extending fifteen feet in width from the Common Property Line and one hundred twenty-five feet in length from the western right of way line of Alabaster Boulevard, for vehicular and pedestrian access to, ingress to and egress from Parcel 2 to Alabaster Boulevard over the Easement Property. As such, the Easement Property shall be a total of thirty feet in width and one hundred twenty-five feet in length extending from the western right of way line of Alabaster Boulevard with the Common Property Line functioning as the center line for the Easement Property.

2. **CONSTRUCTION OF ACCESS ROAD.** Either Declarant shall have the right to construct an access road (the "Road") within the Easement Property provided that (i) it shall provide thirty (30) days written notice to the other Declarant, of its intent to commence construction and of its estimated commencement date; (ii) if a Declarant commences construction of the Road within the Easement Property, it shall diligently pursue completion thereof; (iii) such Road shall be constructed in accordance with the same specifications used to construct Alabaster Boulevard (the "Plans"); and (iv) if a Declarant chooses to construct the Road, it shall be required to construct the entire Road sufficient to provide full ingress and egress to each Parcel including curb cuts to each parcel and not just the portion of such Road to be located on such Declarant's property. The Declarants will share equally in all expenses related to the construction of the Road. The Declarants will likewise share equally in all expenses related to the operation and maintenance of the Road and the Easement Property. Finally, the Declarant that commences construction of the Road shall be solely responsible for any and all damages to the Easement Property, Parcel 1 or Parcel 2 that result from said construction.

3. **UNIMPEDED ACCESS.** No barricade or other divider will be constructed between any of the Parcels, and the Owners shall do nothing to prohibit or discourage the free and uninterrupted flow of vehicular traffic among the Parcels in the areas designated for such purpose by each Owner with respect to the property it owns that is subject to this Agreement; provided, however, that (i) the Owners shall have the right to erect barriers temporarily to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein; and (ii) each Owner shall have the right to erect such walls, fences or other artificial or natural barriers at the perimeter of, on or within its Parcel as may be necessary or convenient for the enjoyment of its rights in such Parcel so long as such barriers shall otherwise be in compliance with all laws, regulations and restrictions governing the use of such Parcel, and so long as gates, openings, doors or other means of free passage are provided so as to continue the unimpeded flow of vehicular access among the Parcels.

4. **BENEFICIAL STORM SEWER DRAINAGE EASEMENT.** J&N does hereby grant, convey, bargain and sell to Balmoral, its successors and assigns, for the benefit of

Parcel 2, an indefeasible and perpetual non exclusive storm sewer drainage easement fifteen feet in width, over and across Parcel 1 in a location to be mutually agreed upon by the Owners, with the right to maintain, inspect, operate, protect, replace and repair storm sewer drainage facilities, and empty the water that leaves Parcel 2 over, under, through, across, along and upon said easement property. In connection with said easement, J&N hereby acknowledges and agrees that it shall have the affirmative obligation to construct and install a storm sewer pipe to serve Parcel 2, at a reasonable depth, in a location to be mutually agreed upon, and in any event, sufficient to serve the drainage needs of Parcel 2. The cost and expense of the design and installation of said storm sewer pipe shall be born by Balmoral.

5. **BENEFICIAL WATER UTILITY EASEMENT.** J&N does hereby grant, convey, bargain and sell to Balmoral, its successors and assigns, for the benefit of Parcel 2, an indefeasible and perpetual non exclusive easement, twenty (20) feet in width, over, under, through, across, along and upon an undetermined portion of Parcel 1, as required by the Alabaster Water Board, for the purpose of obtaining water utility services for Parcel 2. The cost and expense of the design and installation of said ~~storm sewer~~ ^{water} pipe shall be born by Balmoral.

6. **USE OF EASEMENTS.** The use of all easements created by this Agreement will, in each instance, be non-exclusive and for the use and benefit of the Owners and their Permittees.

7. **MAINTENANCE OF EASEMENT AREAS.** Except to the extent that such areas might be operated and maintained by public authorities or utilities or that such operation and maintenance are otherwise provided in this Agreement, each Owner will operate and maintain, at its own expense, all the areas of its Parcel that are subject to the easements created by this Agreement in sound structural and operating condition. Furthermore, each Owner covenants and agrees to reasonably work together, as applicable to keep the easements in sound structural and operating condition.

8. **LEGAL EFFECT.** Each of the easements and rights created by this Agreement shall run with the land and shall be appurtenant to the Parcel to which it relates and shall not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Agreement (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in any Parcel, and such Owner's successors, assigns and mortgagees, and (iii) will inure to the benefit of each Owner and each Owner's successors, assigns, and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Agreement.

9. **NO DEDICATION.** Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to the private use of the Owners and their respective Permittees. This Agreement is intended to benefit the Owners and their respective successors, assigns and mortgagees.

10. **AMENDMENT.** This Agreement may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

11. **SEVERABILITY.** The provisions of this Agreement are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

12. **GOVERNING LAW.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

13. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement.

14. **EFFECT OF BREACH.** Breach of any of the covenants contained in this Agreement shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any of the Parcels, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure or otherwise. Except as otherwise provided herein, if either Owner breaches any provision herein (the "Defaulting Owner"), then the other Owner may in its sole discretion, upon thirty (30) days prior written notice to the Defaulting Owner, proceed to cure the breach or institute proceedings against the Defaulting Owner. In the event that an Owner shall institute any proceedings against the other Owner for a breach hereunder, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant in connection with such action or proceeding and any appeals therefrom, including reasonable attorneys' fees.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

BALMORAL DEVELOPMENT, INC.,
an Alabama corporation

By: [Signature]
Name: James A. Jackson
Its: President

STATE OF ALABAMA)
COUNTY OF Jefferson)

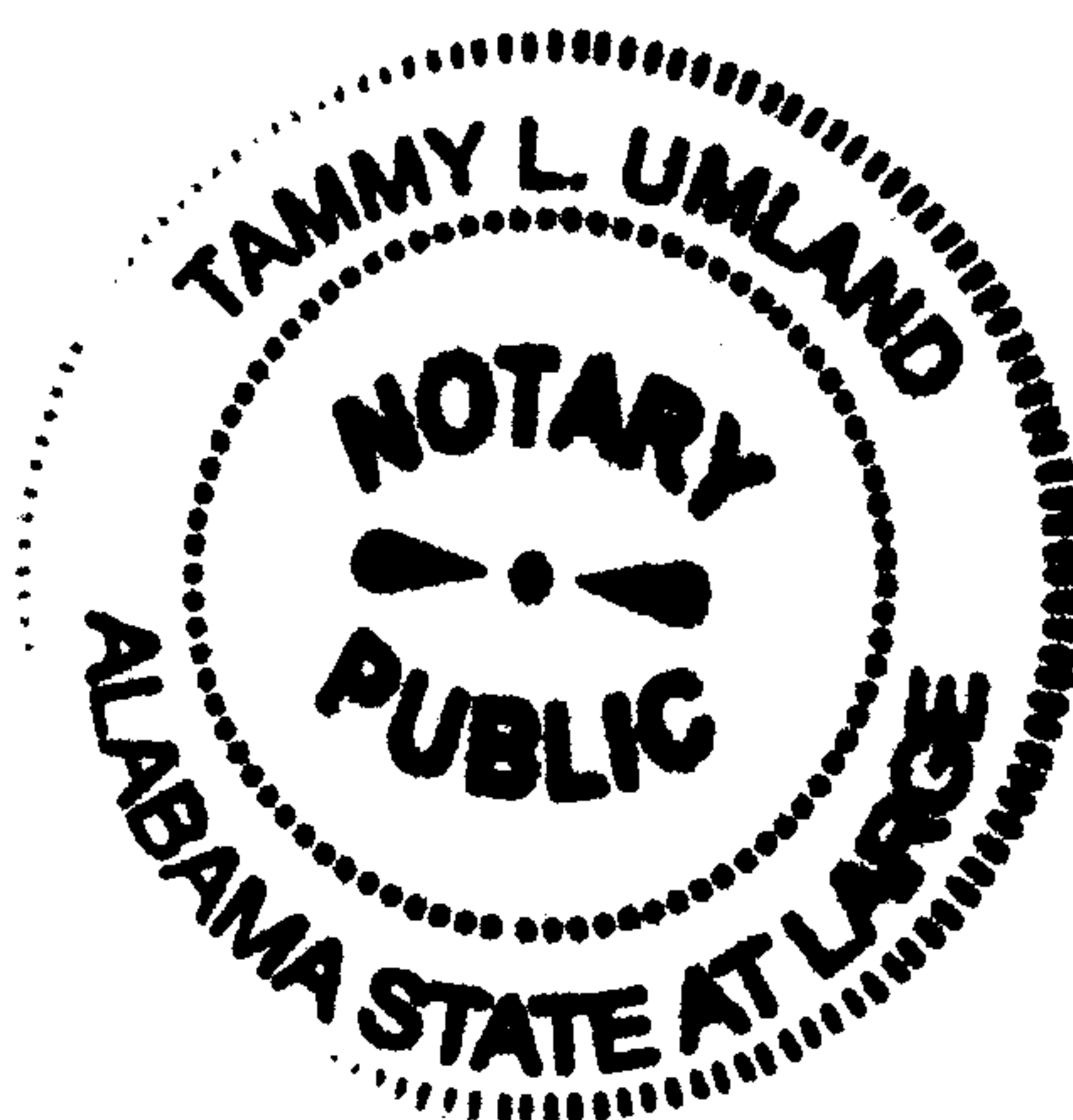
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that James A. Jackson whose name as President of Balmoral Development, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such representative and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the ____ day of November, 2007.

[Signature]
Notary Public

AFFIX SEAL

My commission expires: 5/8/2010





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Shelby Cnty Judge of Probate, AL
11/05/2007 11:05:18AM FILED/CERT

6531 PROPERTIES, INC.,

an Alabama corporation

By: 

Name: Mark E. Osborn

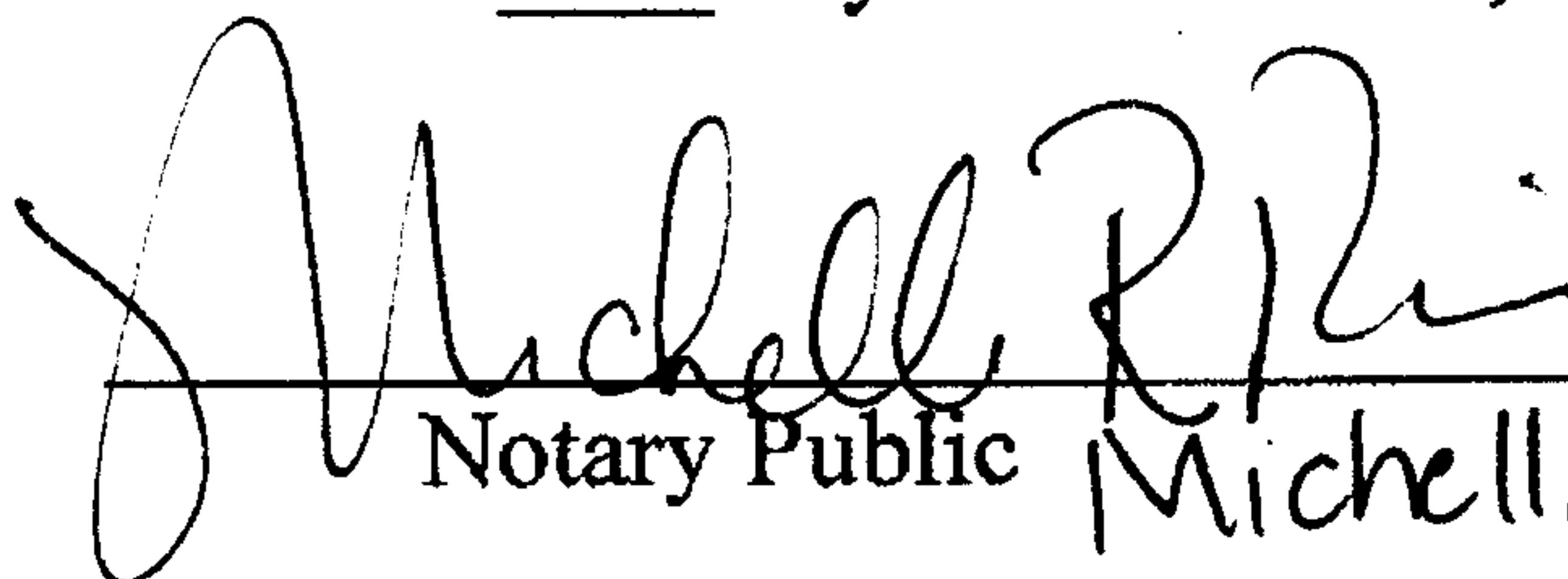
Its: President

STATE OF ALABAMA)

COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mark Osborn, whose name as President of 6531 Properties, Inc., an Alabama 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 said instrument, he/she, as such representative and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 2nd day of November, 2007.


Notary Public Michelle R. Rice

AFFIX SEAL

My commission expires: 2/17/11



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Shelby Cnty Judge of Probate, AL
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J&N ALABASTER, LLC,
an Alabama limited liability company

By: Bodnar Investment Group, Inc.
Its: Manager

By: [Signature]
Name: John M. Bodnar
Its: VP

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Michael Bodnar, whose name as Vice President of Bodnar Investment Group, Inc., the manager of J&N Alabaster, 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 said instrument, he/she, as such representative and with full authority, executed the same voluntarily for and as the act of said manager of said limited liability company.

Given under my hand and official seal this the 2nd day of November, 2007.

[Signature]
Notary Public

AFFIX SEAL

My commission expires: 12-20-07



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Shelby Cnty Judge of Probate, AL
11/05/2007 11:05:18AM FILED/CERT

EXHIBIT A

(Legal Description)

Lot 2, according to the Final Plat of Balmoral Phase I Resurvey No. 1, as recorded in Map Book 36, Page 129, in the Probate Office of Shelby County, Alabama.



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Shelby Cnty Judge of Probate, AL
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EXHIBIT B

(Legal Description)

Lot 3, according to the Final Plat of Balmoral Phase I Resurvey No. 1, as recorded in Map Book 36, Page 129, in the Probate Office of Shelby County, Alabama.

Shelby County, AL 11/05/2007
State of Alabama

Deed Tax: \$.50