

MORTGAGE LOAN MODIFICATION AGREEMENT



20120316000091380 1/4 \$23.00
Shelby Cnty Judge of Probate, AL
03/16/2012 08:02:59 AM FILED/CERT

This Mortgage Loan Modification Agreement ("Agreement") made this 21st day of February, 2012 between **BLUFFPORT INVESTMENTS, LLC**, an Alabama limited liability company ("Mortgagor and Borrower") and **BENSON PROPERTIES, LLC**, an Alabama limited liability company ("Lender"), amends and supplements (1) the Real Estate Mortgage and Security Agreement (hereinafter "Mortgage") in the amount of Three Million Three Hundred Thousand and No/100 (\$3,300,000.00) Dollars dated December 28, 2006 and recorded in Instrument Number 20061229000637480, and Assignment of Leases, Rents and Profits (Hereinafter "Assignment of Rents and Leases"), dated December 28, 2006 and recorded in Instrument Number 20061229000637490, in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter referred to collectively with the Mortgage as the "Security Instruments"), (2) the Promissory Note bearing the same date as, and secured by, the Security Instruments, which cover the real and personal property described in the Security Instruments (hereinafter referred to as the "Original Promissory Note"), and (3) the Modification and Change in Terms Agreement dated March 10, 2010 (hereinafter together with the Original Promissory Note collectively referred to as the "Note") to-wit:

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.

Whereas, Borrower and Lender have agreed to reduce the original sales price and underlying principal balance of the Note by the sum of Ninety Six Thousand Nine Hundred One and 64/100 Dollars (\$96,901.64); and

Whereas, simultaneously with the reduction in sales price and underlying principal balance of the Note, Borrower agrees to pay to Lender a principal reduction payment in the amount of One Million and NO/100 Dollars (\$1,000,000.00), leaving the Security Instruments with a modified note balance of Two Million and NO/100 (\$2,000,00.00) Dollars.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual promises and agreements contained herein, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instruments):

1. As of **January 5, 2012**, before taking into account the \$1,000,000 payment described above, the amount payable under the Note (the "Unpaid Principal Balance") is U.S. \$3,096,901.64 consisting of the amount(s) loaned to the Borrower by the Lender and any interest capitalized to date. Lender agrees to reduce the principal balance currently due under the Note by the sum of Ninety Six Thousand Nine Hundred One and 64/100 Dollars (\$96,901.64) (hereinafter referred to as "reduction in sales price"). Borrower shall, simultaneously with the execution of this Mortgage Loan Modification Agreement, execute the Second Modification and Change in Terms Agreement to Note and pay to Lender a principal reduction payment in the amount of One Million and NO/100 Dollars (\$1,000,000.00) (hereinafter referred to as "principal reduction payment"). After applying the reduction in sales price and principal reduction payment, the Borrower and Lender agree that the total remaining unpaid balance of the Note (including principal, interest and any other charges or fees), effective as of January 5, 2012, shall be Two Million and NO/100 Dollars (\$2,000,000.00), which indebtedness is owed by the Borrower to the Lender free from any defense, counterclaim or right of set-off as of the date of this Agreement.
2. Borrower and Lender agree that the maturity date of the Note shall remain January 5, 2030, subject to the extension agreement as provided in subsection 12 of the Note.
3. Borrower represents that to its actual knowledge (including the actual knowledge of the members of Borrower) the ownership of the property described in the Mortgage (the "Property") has not changed since the date of execution of the Security Instrument.

CLAYTON J. SWEENEY, ATTORNEY AT LAW



4. Borrower represents that this instrument is executed in accordance with the articles of organization and any applicable operation agreement of Borrower in effect as of the date of execution of this Agreement.

5. The Borrower also will comply with all other covenants, agreements, and requirements of the Security Instruments, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under Security Instruments.

It is further understood and agreed that:

(a) Borrower ratifies and confirms its obligations under the Mortgage as hereby modified;

(b) Borrower remises, releases, and discharges the Lender, its affiliates, officers, directors, employees, agents and successors and assigns, individually, jointly and severally, of and from all action and actions, claims, demands whatsoever, in law or in equity:

(1) that the Borrower ever had or now has, whether known or unknown through the date of this Agreement; and

(2) which have accrued, directly or indirectly, arising out of or in connection with the Mortgage or any document executed in connection with the Mortgage, or any actions, inactions, or conduct of the Lender or any of their respective affiliates, agents, officers, directors, employees, and successors and assigns, occurring, in whole or in part, through the date of this Agreement.

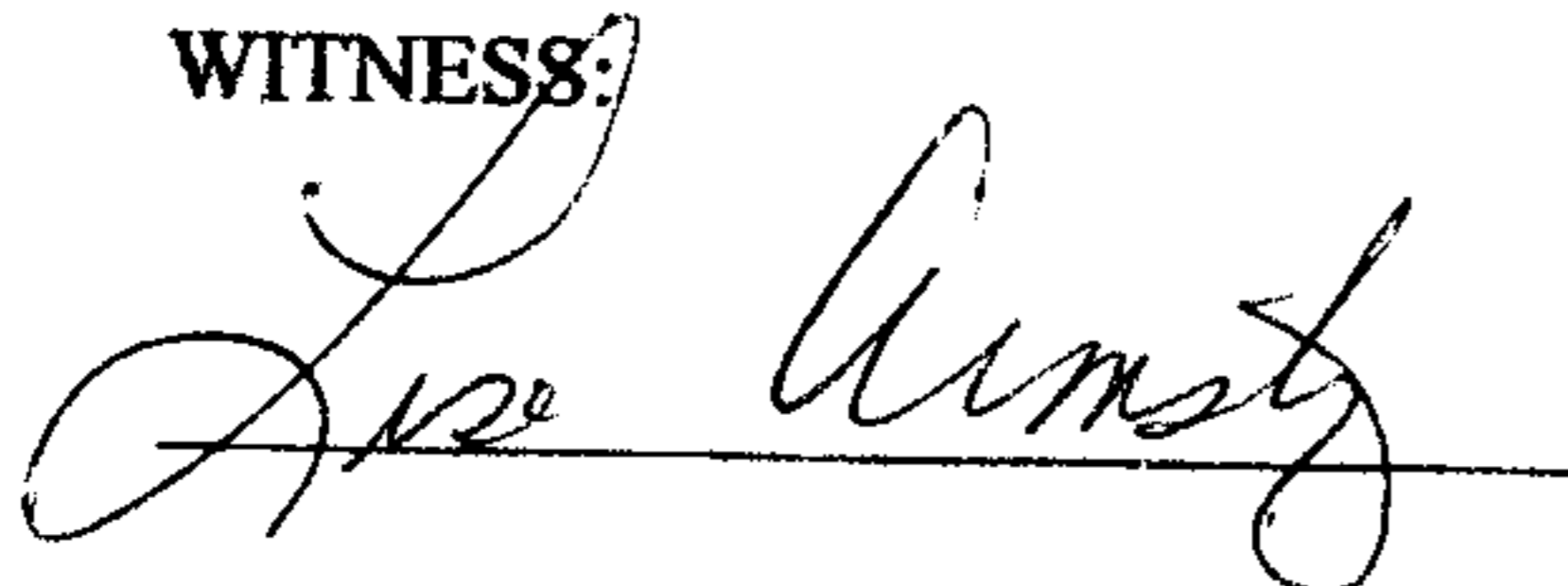
6. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Security Instruments. Except as otherwise specifically provided in this Mortgage Loan Modification Agreement and the Second Modification and Changes in Terms Agreement to Note, the terms of the Note and the Security Instrument will remain unchanged, and the Borrower and Lender will be bound by and comply with all of the terms and provisions thereof, as amended by this Agreement and the Second Modification and Changes in Terms Agreement to Note.

BORROWER (Mortgagor, Borrower):

BLUFFPORT INVESTMENTS, LLC

By: 
Keith Davis, Manager

WITNESS:



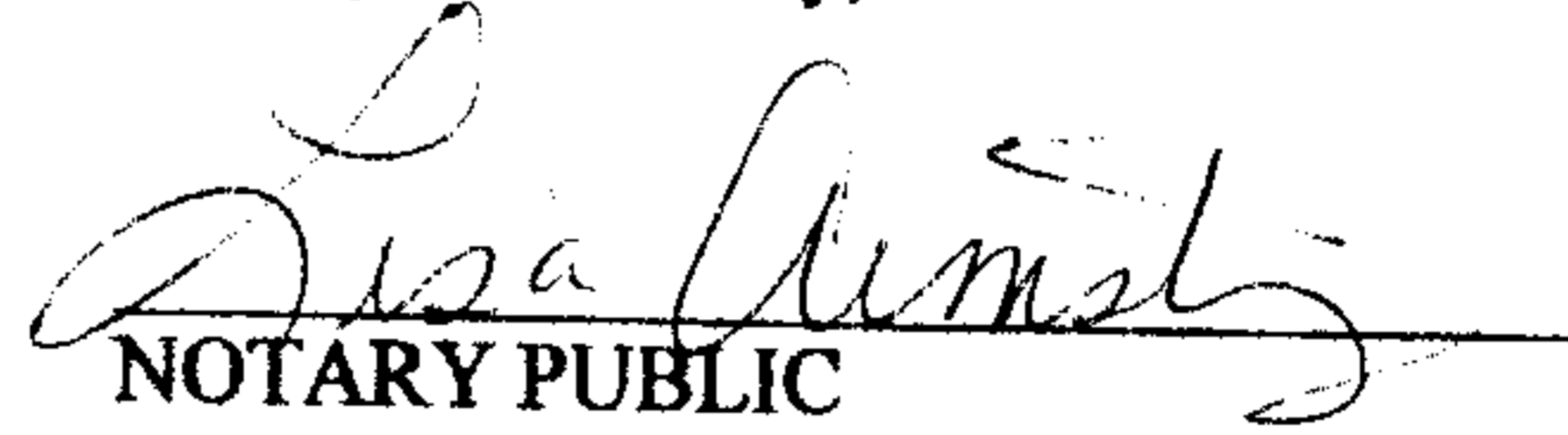


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STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

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, 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 the instrument, he, in his capacity 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 21 day of February, 2012.


NOTARY PUBLIC



My commission expires: 4-27-2013

Lender joins in the execution of this Mortgage Loan Modification Agreement to grants its consent to the terms contained herein.

WITNESS:

BENSON PROPERTIES, LLC

By: _____
Richard W. Benson
Its: Managing Member

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Richard W. Benson, whose name as President of Benson Properties, LLC, 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 the instrument, he as such 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 ____ day of February, 2012.

NOTARY PUBLIC

My commission expires: _____

This Instrument prepared by:
Clayton T. Sweeney
Attorney At Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223



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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, 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 the instrument, he, in his capacity 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 21 day of February, 2012.

Lisa Amstutz
NOTARY PUBLIC

My commission expires: 4-27-2013

Lender joins in the execution of this Mortgage Loan Modification Agreement to grants its consent to the terms contained herein.

WITNESS:

BENSON PROPERTIES, LLC

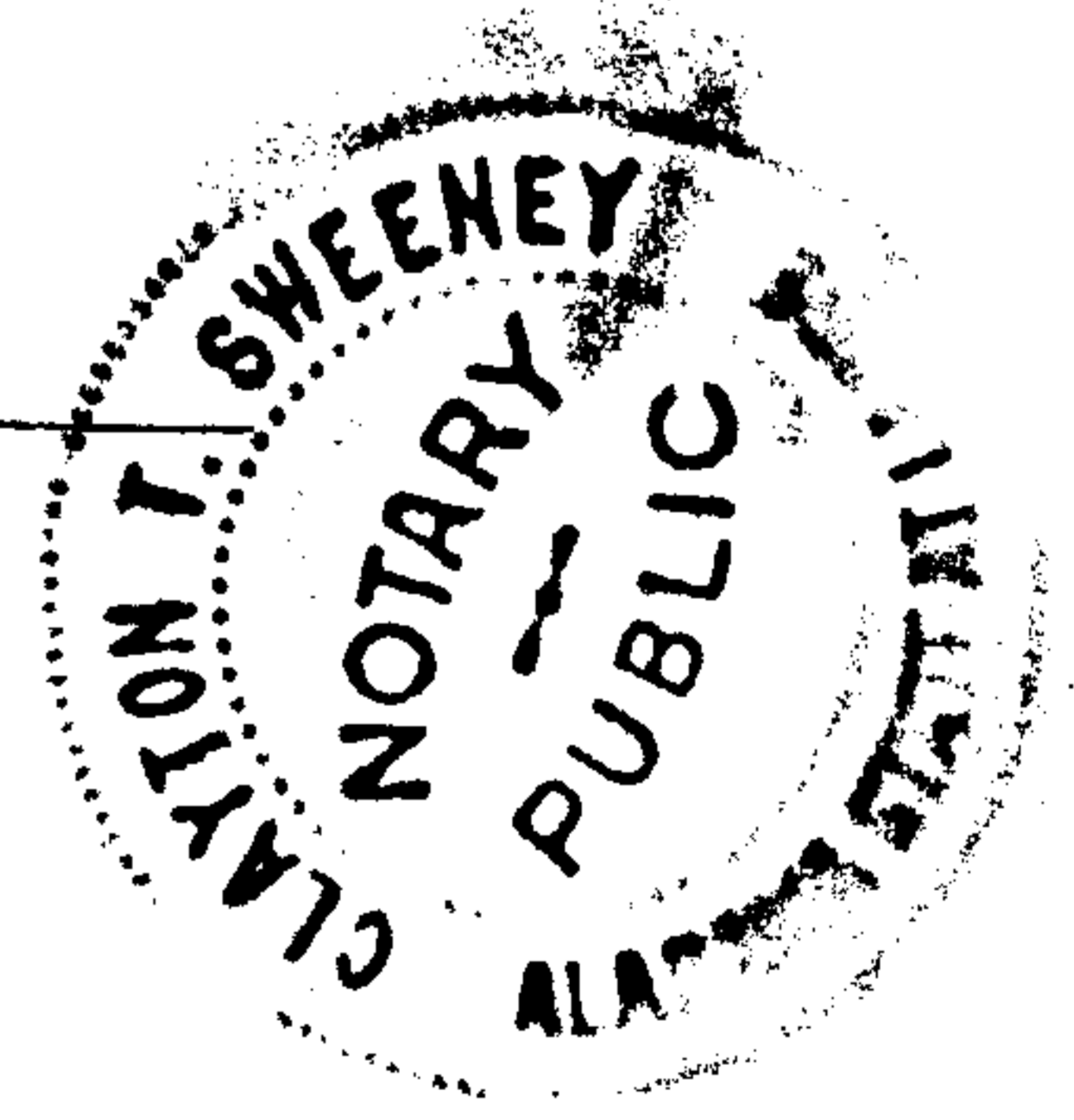
By: *Richard W. Benson*
Richard W. Benson
Its: Managing Member

STATE OF ALABAMA)
:
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Richard W. Benson, whose name as President of Benson Properties, LLC, 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 the instrument, he as such 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 25 day of February, 2012.

My commission expires: 6-5-2015 NOTARY PUBLIC



This Instrument prepared by:
Clayton T. Sweeney
Attorney At Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223