

Clerk: NICOLE

NOTE TO PROBATE JUDGE:

This Third Amendment to the Mortgage Assignment of Rents and Leases and Security Agreement does not increase the principal amount of the indebtedness secured by the Mortgage nor the maturity date of the Mortgage.


20170711000246760 1/9 \$39.00
Shelby Cnty Judge of Probate, AL
07/11/2017 10:17:47 AM FILED/CERT

STATE OF ALABAMA
COUNTY OF JEFFERSON
COUNTY OF SHELBY

**THIRD AMENDMENT
TO
MORTGAGE
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT**

THIS THIRD AMENDMENT amends that certain Mortgage, Assignment of Rents and Leases and Security Agreement thereto (hereinafter along with all amendments thereto the "Mortgage") executed on December 31, 2012 by **XPRESS INVESTMENTS, LLC**, an Alabama limited liability company (hereinafter "Mortgagor") in favor of **IBERIABANK**, a Louisiana state bank (hereinafter "Mortgagee"). [Capitalized terms used herein not otherwise defined shall be defined in accordance with the terms of the Mortgage.]

WHEREAS, the Mortgage is recorded in Book LR201311 at page 4457 in the Office of the Judge of Probate of Jefferson County, Alabama and as instrument 20130109000011960 in the Office of the Judge of Probate of Shelby County, Alabama, and pertains to the property described on Exhibit "A" attached hereto (the "Initial Mortgaged Property").

WHEREAS, by an Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement (the "First Amendment") recorded as Book LR201513, page 29526 in the Office of the Judge of Probate of Jefferson County and Instrument No. 20150710000233760 in the Office of the Judge of Probate of Shelby County was amended to add the property described on Exhibit "B" thereto (hereinafter "First Amendment Property") and to increase the amount secured by the Mortgage by \$830,000.00.

WHEREAS, by a Second Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement (the "Second Amendment") recorded as Instrument 2016080755 in the Office of the Judge of Probate of Jefferson County and Instrument No. 20160809000283860 in the Office of the Judge of Probate of Shelby County was amended to add the property described on Exhibit "C" thereto (hereinafter "Second Amendment Property") and to increase the amount secured by the Mortgage by \$600,000.00.

WHEREAS, in connection with the recordation of the Mortgage, First Amendment and Second Amendment the mortgage tax on all the principal indebtedness secured by the Mortgage was was paid.

WHEREAS, Mortgagor has requested Mortgagee to enter into interest rate derivatives as to the indebtedness secured by the Mortgage, and Mortgagee has agreed to do so, provided Mortgagor enters into this amendment, a Fourth Amendment to Promissory Note and the documents referred to therein.

NOW THEREFORE, in consideration of the terms and conditions contained herein, and to induce Mortgagee to enter into a Hedge Agreement with Mortgagor, the Mortgage is hereby amended as follows:

1. **Debt.** The term "Debt" as used in the Mortgage shall be defined to mean not only the indebtedness evidenced by the \$1,415,000.00 Note executed on December 31, 2012, and all interest thereon, and all extensions and renewals thereof, the \$830,000.00 advance made in connection with the First Amendment, and all interest thereon, and all extensions and renewals thereof, the \$600,000.00 advance made in connection with the Second Amendment, and all interest thereon, and all extensions and renewals thereof, but also all Swap Indebtedness (as defined herein), and all of Mortgagor's obligations under the Swap and Financial Contracts (as defined herein).
2. **Mortgaged Property.** The term "Mortgaged Property" as used in the Mortgage includes the Initial Mortgaged Property, the First Amendment Property, the Second Amendment Property, along with all rights pertaining thereto.
3. **Swap Agreement.** Mortgagor and Mortgagee may from time to time be parties to (1) an agreement (including terms and conditions incorporated by reference therein) between the Borrower and Lender which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap, bond option, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, and other similar agreement (including any option to enter into any of the foregoing); (2) any combination of the foregoing; or (3) a master agreement for any of the foregoing together with all amendments and supplements (hereinafter a "Swap" and/or "Swap Transaction" or "Financial Contract"). Mortgagor hereby agrees that all of its obligations under the Swap (including but not limited to all of the obligations arising out of any prepayment provision associated with the Financial Contract) shall be part of the "Debt" as that terms is used in the Mortgage. Mortgagor further agrees that the Mortgaged Property, shall be security for the payment and performance of all of the Mortgagor's obligations under the Swap, and that the grant of the lien contained in this Mortgage is intended to be the grant of a lien against the Mortgaged Property to

secure all of the Debt which shall include the obligations of Mortgagor under the Swap. Mortgagor further agrees that (i) a default under this Mortgage shall constitute an Event of Default (as that term is defined in the Financial Contract) under the Swap, and (ii) the occurrence of an Event of Default under or in connection with the Swap shall constitute a default under this Mortgage, and Mortgagee shall thereafter have all rights and remedies following a default under the Mortgage and the occurrence of an Event of Default under the Swap.

4. **Swap Indebtedness.** The term "Swap Indebtedness" includes all principal and interest together with all other indebtedness and costs and expenses for which the Mortgagor is responsible under the Swap, including all assessments, penalties, losses, fees and costs of any kind or nature incurred by Mortgagee under any and all Financial Contracts by and between Mortgagor and Mortgagee, which arise, directly or indirectly, as a result of Mortgagor's prepayment of the principal amount of the Note, in whole or in part, whether voluntary or involuntary.
5. **Swap Cross-Collateral Provision.** Mortgagor acknowledges and agrees that the Mortgaged Property granted in accordance with the terms of the Mortgage shall also secure any and all Swap Indebtedness, and Mortgagor does hereby grant, bargain, sell, convey and mortgage (in accordance with the terms of the Mortgage) to Mortgagee the Mortgaged Property as security for the Swap Indebtedness.
6. **Compliance with Swap.** In addition to the Note and Loan Documents, Mortgagor shall perform and comply with all provisions of the Swap, Swap Transaction, Financial Contract and of any documents executed in connection therewith.
7. **Additional Events of Default.** In addition to the events of default set forth in the Mortgage, a default by Mortgagor under the Swap shall be an event of default under the Mortgage, and an Event of Default under the Mortgage shall constitute a default under the Swap.

In addition hereto, Mortgagor further amends all of the documents and agreements executed in connection with the Mortgage, or pertaining to the Mortgage (the "Agreements") to the terms as herein cited.

Mortgagor hereby agrees and directs Mortgagee to take any action necessary to conform the Mortgage and the Agreements to the terms as herein cited and by these presents accepts and confirms their liability under said Mortgage and Agreements with the terms as herein modified.

All of the terms and provisions of the Mortgage not specifically amended herein, are hereby reaffirmed, ratified and restated. This Amendment amends the Mortgage and is not a novation thereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals effective this 20th day of June, 2017.

XPRESS INVESTMENTS, LLC, an Alabama limited liability company

By: Douglas A. Levene
Print Name: Douglas A. Levene
Title: Authorized Agent

STATE OF ALABAMA
COUNTY OF JEFFERSON

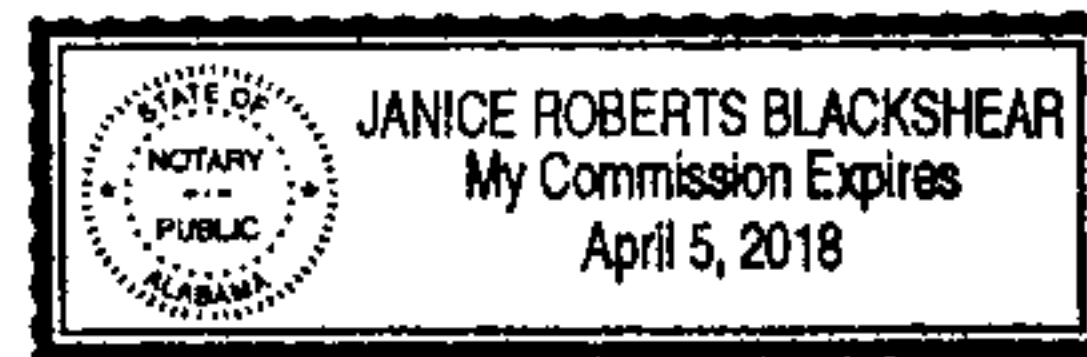
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Douglas A. Levene, whose name as Authorized Agent of XPRESS INVESTMENTS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member, and with full authority, executed the same voluntarily, as an act of said company, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 20th day of June, 2017.

Janice Roberts Blackshear
NOTARY PUBLIC
My Commission Expires: 4-5-18

**THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:**

Stephanie J. Gossett
ENGEL HAIRSTON & JOHANSON, P.C.
4th Floor, 109 North 20th Street
Birmingham, Alabama 35203
(205) 328-4600
D-7172



20170711000246760 4/9 \$39.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT A

PARCEL I:

Part of the NW 1/4 of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama, which is more particularly described as follows:

Commence at the NW corner of the NW 1/4 of said section; thence run East along the North line of said 1/4 section for a distance of 369.52 feet; thence 90°00'00" right and run southerly for a distance of 1,089.47 feet to a point on a traverse line of Old Bishop Creek shown on a survey of a 7.40 acre tract, dated July 11, 1978, made by John E. Norton, Ala.Reg. P.E. and L.S. No. 10287; thence 57°15'38" left and run Southeasterly along said traverse line for a distance of 317.57 feet; thence 26°59'56" left and continue along said traverse for a distance of 170.50 feet; thence 29°51'32" left and run along said traverse for a distance of 99.28 feet; thence 54°36'27" left and run along said traverse for a distance of 293.24 feet to a point of spiral of a curve on U.S. Highway 31 South; thence 05°40'36" left to the right of way tangent of said Highway; thence reverse course and from said tangent extended Southerly turn an angle to the right of 05°40'36" and run along said traverse line for a distance of 77.84 feet to the point of beginning; thence 88°22'28" right and run Westerly for a distance of 203.00 feet; thence 86°21'41" right and run Northerly for a distance of 100 feet; thence 93°39'02" right and run Easterly for a distance 210.0 feet to a point on the West right of way line of U.S. Highway 31 South; thence 94°03'48" right and run Southerly along said right of way for a distance of 22.00 feet to said point of spiral curve; thence continue Southerly along said spiral curve and said right of way line for a distance of 78.00 feet; thence run Westerly for a distance of 5.02 feet to the point of beginning

And Also: An easement for access to a sewage pumping station said easement being situated in part of the NW 1/4 of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the NW corner of the NW 1/4 of said section; thence run East along the North line of said 1/4 section for a distance of 369.52 feet; thence 90°00'00" right and run southerly for a distance of 1,089.47 feet to a point on the traverse line of Old Bishop Creek shown on a survey of a 7.40 acre tract, dated July 11, 1978, made by John E. Norton, Ala. Reg. P.E. and L.S. No. 10287, thence 57°15'38" left and run Southeasterly along said traverse line for a distance of 317.57 feet; thence 26°59'56" left and continue along said traverse for a distance of 1701.50 feet; thence 29°51'32" left and run along said traverse for a distance of 99.28 feet; thence 54°36'27" left and run along said traverse for a distance of 293.24 feet to a point of spiral of said curve on U.S. Highway 31 South; thence 05°40'36" left to the right of way tangent from said Highway; thence reverse course and from said tangent extended Southerly turn an angle to the right of 05°40'36" and run along said traverse line for a distance of 77.84 feet to the point of beginning, thence 88°22'28" right and run Westerly for a distance of 12.28 feet; thence run southerly for a distance of 6.00 feet; thence run Easterly for a distance of 17.30 feet to

a point on said right of way line; thence run North along said right of way line for a distance of 6.00 feet; thence run Westerly for a distance of 5.02 feet to the point of beginning, according to the survey of Miller, Triplett & Miller Engineers, Inc.

Parcel II:

A tract or parcel of land located in the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 29, Township 18 South, Range 4 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of the Northeast 1/4 of the Northwest 1/4 of said Section 29, Township 18 South, Range 4 West, Jefferson County, Alabama, and run in a Northerly direction along the East line of said 1/4 section a bearing of North 00 degrees 58 minutes 02 seconds East a distance of 1100.00 feet; thence North 89 degrees 01 minutes 58 seconds West a distance of 210.00 feet; thence South 74 degrees 58 minutes 02 seconds West a distance of 515.00 feet to the Point of Beginning of the tract of land herein described; thence deflect 8 degrees 06 minutes to the left and run along a bearing of South 67 degrees 30 minutes 23 seconds West a distance of 78.00 feet; thence North 16 degrees 30 minutes 37 seconds West a distance of 239.76 feet to the South right-of-way margin of Allison Bonnett Memorial Drive; thence along the South right-of-way margin of Allison Bonnett Memorial Drive with a curve turning to the left with an arc length of 36.71 feet, a radius of 603.11 feet, a chord bearing of North 67 degrees 07 minutes 40 seconds East, and a chord length of 36.70 feet; thence continue along the South right-of-way margin of Allison Bonnett Memorial Drive North 65 degrees 23 minutes 03 seconds East a distance of 50.58 feet; thence leaving the South right-of-way margin of Allison Bonnett Memorial Drive South 14 degrees 23 minutes 37 seconds East a distance of 242.99 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.

SUBJECT TO: i) taxes and assessments for the year 2017, a lien but not yet payable; ii) Right of Way granted to Alabama Power Company by instrument recorded in Deed Book 232, Page 385 and Deed Book 101, page 506 in the Probate Office of Shelby County, Alabama (Parcel I); iii) Easement to Postal Telegraph Co., as recorded in Deed Book 80, Page 37, in the Probate Office of Shelby County, Alabama. (Parcel I); iv) Sanitary Sewer Agreement as recorded in Instrument 1993-785, in the Probate Office of Shelby County, Alabama (Parcel I); v) Easement recorded in Instrument 1993-35726 in the Probate Office of Shelby County, Alabama (Parcel I); vi) The rights of upstream and downstream riparian owners with respect to any body of water which may lie adjacent to, and/or traversing through, subject property (Parcel I); vii) Less and except any portion of subject property lying within a road right of way. (Parcel I); viii) Mineral and mining rights and rights incident thereto recorded in Volume 36, Page 345, in the Probate Office of Jefferson County, Alabama (Parcel II); ix) Right of Way granted to Alabama Power Company by instrument recorded in Bessemer Volume 970, Page 851 in the Probate Office of Jefferson County, Alabama (Parcel II); x) 15 feet permanent slope easement recorded in Instrument 200162/4062 in the Probate Office of Jefferson County, Alabama (Parcel II); and xi) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor.

EXHIBIT B

LOT 1 ACCORDING TO THE SURVEY OF MORGAN ROAD SQUARE, AS RECORDED IN MAP BOOK 29, PAGE 93, IN THE PROBATE OFFICE OF JEFFERSON COUNTY, ALABAMA, BESSEMER, DIVISION.

SUBJECT TO:

- i) Taxes and assessments for the year 2017, a lien but not yet payable;
- ii) Restrictions or Covenants recorded in Real 1104, page 701, amended by Instrument 9661/5305; Instrument 9761/6560; Instrument 9963/0593 and Instrument 9761/6590, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- iii) Right of Way granted to Alabama Power Company by instrument recorded in Volume 269, page 270, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- iv) Mineral and mining rights and rights incident thereto recorded in Volume 1044, page 29 and Volume 311, page 147, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- v) Right of way to Jefferson County, recorded in Real 665, page 58, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- vi) Easement referred to in deed recorded in Volume 1011, page 719, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- vii) Restrictions or Covenants recorded in Real 1061, page 652, in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- viii) Restrictions as set forth in deed from Birmingham Realty company to G & J Properties, L.L.C. recorded in Instrument 9761/6592 in the Probate Office of Jefferson County, Alabama, Bessemer Division;
- ix) Right of way to Jefferson County, recorded in Book LR201060, Page 17193, in the Probate Office of Jefferson County, Alabama;
- x) Right of Way granted to Alabama Power Company by instrument recorded in Book LR201060, Page 17193 in the Probate Office of Jefferson County, Alabama; and
- xi) Coal, oil, gas and mineral and mining rights which are not owned by Grantor/Mortgagor.


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Shelby Cnty Judge of Probate, AL
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EXHIBIT "C"

Parcel IV:

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 11, Township 16 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Quarter-Quarter section; thence run Northerly along the West line of said Southeast Quarter for a distance of 32.59 feet to the point of beginning; thence continue along the last course for a distance of 177.41 feet; thence turn an interior angle to the left of 88°26'49" and run easterly for a distance of 127.37 feet to a point on the westerly right of way line of Mulberry Lane; thence turn an interior angle to the left of 91°27'54" and run southerly for a distance of 157.46 feet; thence turn an interior angle to the left of 118°18'15" and run Southwesterly for a distance of 33.80 feet to a point on a non-tangent curve to the left having a radius of 7683.44 feet; thence run westerly along the arc of said curve for an arc length of 80.94 feet (delta = 00°36'13", chord length = 80.94, angle to chord = 152°27'42") to the point of beginning.

Less and except any portion of subject property lying within a road right of way.

Parcel V:

A parcel of land situated in the Southeast quarter of the Southeast quarter of Section 11, Township 16 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at a found disk in the center of Fieldstown Road (Right of Way varies), said point marking the Southeast corner of said Section 11, thence run North 88 degrees 27 minutes 41 seconds West along the South line of said Section 11 for a distance of 532.70 feet, thence leaving said South Section line run North 00 degrees 04 minutes 06 seconds East for a distance of 208.34 feet to a set 5/8 inch capped rebar stamped CA-560-LS, said point being the POINT OF BEGINNING; thence run North 88 degrees 27 minutes 41 seconds West for a distance of 128.04 feet to a found capped rebar (Day); thence run North 00 degrees 04 minutes 06 seconds East for a distance of 89.87 feet to a set 5/8 inch capped rebar stamped CA-560-LS; thence run South 88 degrees 27 minutes 41 seconds East for a distance of 128.04 feet to a set 5/8 inch capped rebar stamped CA-560-LS; thence run South 00 degrees 04 minutes 06 seconds West for a distance of 89.87 feet to the POINT OF BEGINNING.

Together with an 18' easement for ingress and egress as granted in that certain deed recorded in Instrument 200316/4640, in the Probate Office of Jefferson County, Alabama.

Such parcel being the same parcel conveyed in Instrument 200316/4640, in the probate

office of Jefferson County and described as:

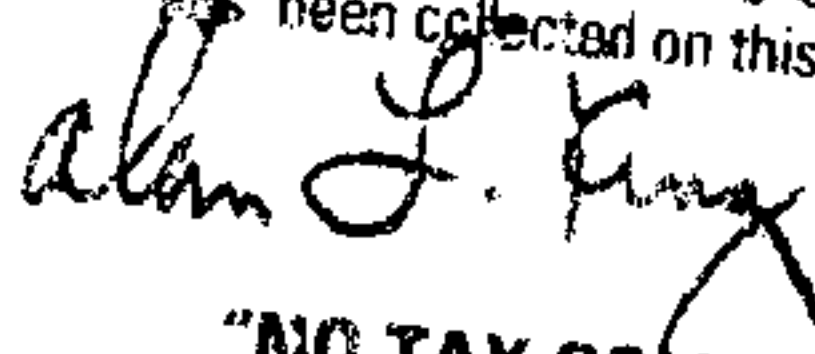
The North 90 feet of the South 300 feet of the West 128 feet of the South 1/2 of the East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 11, Township 16 South, Range 3 West, Jefferson County, Alabama.

Together with an easement for ingress and egress across the easterly 18 feet of the South 120 feet of the West 128 feet of the South 1/2 of the East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 11, Township 16 South, Range 3 West, Jefferson County, Alabama.

SUBJECT TO:

- 1 Taxes and Assessments for the year 2017, a lien but not yet payable.
- 2 Mineral and mining rights and rights incident thereto recorded in Volume 3636, Page 127, in the Probate Office of Jefferson County, Alabama.
- 3 Right of Way granted to Alabama Power Company by instrument recorded in Volume 5619, Page 213 in the Probate Office of Jefferson County, Alabama.
- 4 Easement for ingress and egress recorded in Volume 6699, page 430 in the Probate Office of Jefferson County, Alabama.
- 5 Easement to Alabama Power Company as recorded in Instrument 2004081671 in the Probate Office of Jefferson County, Alabama.
- 6 Less and except any portion of subject property lying within a road right of way. (Parcel IV)


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STATE OF ALABAMA - JEFFERSON COUNTY
I hereby certify that no mortgage tax or deed tax
has been collected on this instrument.

Judge of Probate
"NO TAX COLLECTED"