

**Note to Judge of Probate: Mortgage filing privilege taxes have previously been paid on indebtedness in the amount of \$3,100,000.00 in connection with the recordation of that certain Amended and Restated Mortgage dated April 22, 2003 and recorded with the Office of the Judge of Probate of Jefferson County, Alabama, Book 200306, Page 1634.**

STATE OF ALABAMA                     )  
COUNTY OF SHELBY                 )

**FIRST AMENDMENT TO MORTGAGE**

**THIS FIRST AMENDMENT TO MORTGAGE** (this "Amendment") is entered into as of the 27th day of December, 2006 (the "Effective Date"), by and between **XPRESS PARTNERS, LLC**, an Alabama limited liability company (the "Borrower"), and **FIRST AMERICAN BANK**, an Alabama banking corporation, as successor-in-interest to National Bank of Commerce of Birmingham (the "Lender").

**Recitals**

A. The Borrower and the Lender have previously entered into that certain Credit Agreement dated April 22, 2003 (the "Credit Agreement"), pursuant to which the Lender agreed to make a loan (the "Loan") to the Borrower in the original maximum principal amount of \$3,100,000.00. The Loan is evidenced by that certain Amended and Restated Promissory Note dated May 25, 2006 executed by the Borrower in favor of the Lender in said principal amount (the "Original Note").

B. The Loan is secured by, among other things, a pledge of the Borrower's interest in certain real estate located in Shelby County, Alabama pursuant to that certain Mortgage dated April 22, 2003 and recorded in the Office of the Judge of Probate of Shelby County as Instrument # 20030428000257030 (the "Mortgage"). This Amendment is given to amend the Mortgage.

C. The Borrower has requested that the Lender extend additional credit to the Borrower under the Credit Agreement in the approximate amount of \$780,323.08. Simultaneously herewith, the Borrower is executing (i) a Promissory Note in favor of the Lender in the principal amount of \$730,323.08 (the "December 2006 Term Note") and (ii) a Universal Note and Security Agreement in favor of the Lender in the principal amount of \$50,000.00 (the "December 2006 Revolving Note" together with the Original Note and the December 2006 Term Note, the "Notes"). To induce the Lender to extend the additional credit to the Borrower, and in order to evidence that the additional credit is secured by the Mortgage, the Borrower has agreed to execute and deliver this Amendment to the Lender.

D. The Lender has agreed to such request, subject to the terms and conditions hereof.



**Agreement**

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements set forth in this Amendment, effective as of the Effective Date, the Borrower and the Lender hereby agree as follows:

1. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in the Mortgage, as amended by this Amendment.

2. From and after the Effective Date, the maximum principal amount secured by the Mortgage shall be \$3,880,323.08.

3. Exhibit B to the Mortgage is hereby replaced in its entirety with the Revised Exhibit B attached hereto.

4. All other provisions of the Credit Documents that are inconsistent with this Amendment are hereby modified so as to be consistent herewith.

5. Except as specifically modified and amended hereby, each of the Credit Documents shall remain in full force and effect in accordance with their respective terms.

6. Notwithstanding the execution of this Amendment, all of the indebtedness evidenced by the Notes shall remain in full force and effect, as modified hereby, and all of the property described in the Mortgage, as amended hereby, shall remain subject to the liens, security interests and assignments of the Credit Documents as security for the indebtedness evidenced by the Notes and all other indebtedness described therein; and the Borrower agrees that as to such property, nothing contained in this Amendment shall be construed to constitute a novation of the indebtedness evidenced by the Notes, or to release, satisfy, discharge, terminate or otherwise affect or impair in any manner whatsoever (a) the validity or enforceability of the indebtedness evidenced by the Notes; (b) the liens, security interests, assignments and conveyances effected by the Credit Documents, or the priority thereof; (c) the liability of any maker, endorser, surety, guarantor or other person that may now or hereafter be liable under or on account of the Notes or the Credit Documents; or (d) any other security or instrument now or hereafter held by the Lender as security for or as evidence of any of the above-described indebtedness.

7. The Borrower represents and warrants that all representations and warranties made in the Credit Agreement are true and correct as of the date of this Agreement, and no Event of Default, as said term is defined in the Credit Agreement, or circumstances that with notice or lapse of time or both would constitute an Event of Default thereunder, has occurred or is continuing.

8. Any provision of this Amendment or any other Credit Document referenced herein that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*[signature(s) on following page(s)]*



IN WITNESS WHEREOF, the undersigned has executed this Amendment or caused this Amendment to be executed in its name and on its behalf by its duly authorized representative, all as of the date first set forth above.

**BORROWER:**

**XPRESS PARTNERS, LLC,**  
an Alabama limited liability company

By: Douglas A. Levene  
Name: Douglas A. Levene  
Its: Authorized Member

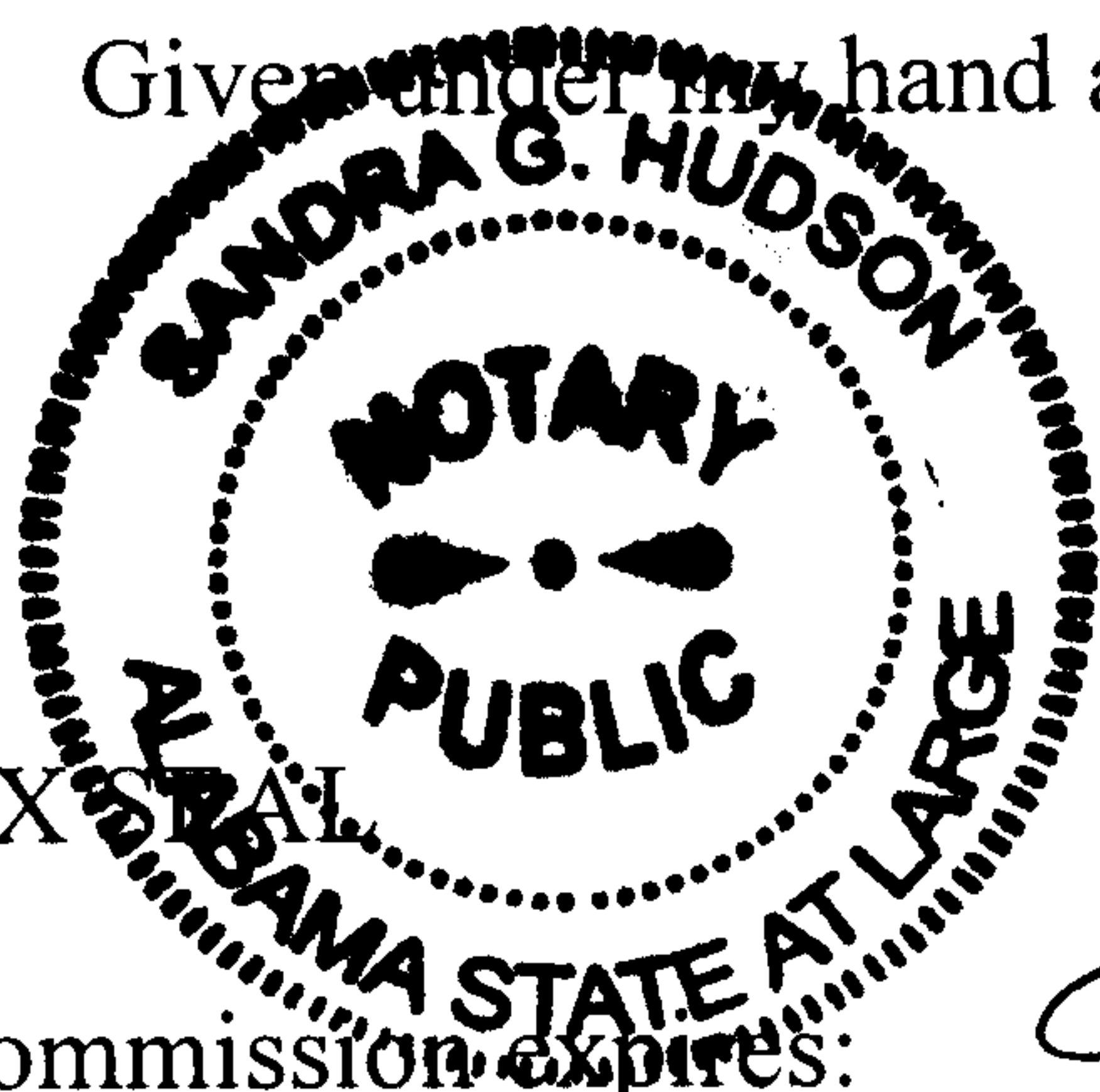
STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Douglas A. Levene, whose name as an authorized member of Xpress Partners, 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 representative 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 27th day of December, 2006.

AFFIX SEAL

My commission expires:



Sandra G. Hudson  
Notary Public

June 8, 2010

**LENDER:**

**FIRST AMERICAN BANK,**  
an Alabama banking corporation

By:   
Name: Jason S. Bains  
Its: Vice 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 Jason S. Bains, whose name as Vice President of **FIRST AMERICAN BANK**, an Alabama banking 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, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal, this the 27<sup>th</sup> day of December, 2006.

[AFFIX SEAL]  
My Commission Expires: June 8, 2010

  
Notary Public

This instrument prepared by:

Thomas M. McElroy, II  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2618



**REVISED EXHIBIT B**

(Credit Documents)

The “**Credit Documents**” referred to in this Agreement include the following:

- (a) Promissory Note dated of even date herewith executed by the Borrower in favor of the Lender in the principal amount of \$780,323.08.
- (b) Universal Note and Security Agreement dated of even date herewith executed by the Borrower in favor of the Lender in the principal amount of \$50,000.00.
- (c) Amended and Restated Guaranty Agreement dated of even date herewith executed by Douglas A. Levene in favor of the Lender.
- (d) Amended and Restated Guaranty Agreement dated of even date herewith executed by George Barefield in favor of the Lender.
- (e) Pledge Agreement dated of even date herewith executed by the Borrower in favor of the Lender (Life Insurance Policy).
- (f) Pledge Agreement dated of even date herewith executed by the Borrower in favor of the Lender (Certificate of Deposit).
- (g) Irrevocable Standby Letter of Credit No. 12212006-157 issued by First National Bank in favor of the Lender.
- (h) Amended and Restated Promissory Note dated May 25, 2006 executed by the Borrower in favor of the Lender in the principal amount of \$3,100,000.00.
- (i) Credit Agreement dated April 22, 2003 executed by the Borrower and the Lender, as amended by that certain First Amendment to Credit Agreement dated May 25, 2006, and as further amended by that certain Second Amendment to Credit Agreement dated of even date herewith.
- (j) Amended and Restated Mortgage dated April 22, 2003 executed by the Borrower in favor of the Lender and recorded in the office of the Judge of Probate of Jefferson County, Alabama as Instrument No. 200306/1639.
- (k) Amended and Restated Mortgage dated April 22, 2003 executed by the Borrower in favor of the Lender and recorded in the office of the Judge of Probate of Jefferson County, Alabama as Instrument No. 200306/1634.
- (l) Mortgage dated April 22, 2003 executed by the Borrower in favor of the Lender and recorded in the office of the Judge of Probate of Walker County, Alabama in Book 1829, Page 93.

(m) Mortgage dated April 22, 2003 executed by the Borrower in favor of the Lender and recorded in the office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20030428000257030.

(n) Security Agreement (Tangible Property) dated April 22, 2003 executed by the Borrower in favor of the Lender.

(o) Environmental Indemnity Agreement dated April 22, 2003 executed by the Borrower and the Guarantors in favor of the Lender.