


PREPARED BY, AND
WHEN RECORDED, RETURN TO:
TARGET CORPORATION
Target Property Development
1000 Nicollet Mall TPN 12H
Minneapolis, Minnesota 55403
Attn: Property Development/Real Estate Portfolio Management


20140303000055650 1/16 \$59.00
Shelby Cnty Judge of Probate, AL
03/03/2014 08:17:50 AM FILED/CERT

(Space Above for Recorder's Use)

THIRD AMENDMENT TO
OPERATION AND EASEMENT AGREEMENT

This Third Amendment to Operation and Easement Agreement (this "Amendment") is made and entered into as of February 28, 2014, by and between TARGET CORPORATION, a Minnesota corporation ("**Target**"), and HIGHWAY 11/31, LLC, a Delaware limited liability company, successor in interest to Highway 31 Alabaster, LLC and Highway 31, Alabaster Two, LLC, ("**Developer**"), and HIGHWAY 11/31 II, LLC, a Delaware limited liability company ("**Highway**").

RECITALS

A. Target and Highway 31 Alabaster, LLC and Highway 31 Alabaster Two, LLC (collectively, "**Original Developer**") previously entered into that certain Operation and Easement Agreement dated as of January 13, 2006, recorded as Document No. 20060117000026240 in the records of Shelby County Judge of Probate, Shelby County, Alabama, as amended by that certain First Amendment to Operation and Easement Agreement dated as of February 2, 2007, recorded as Document No. 20070220000077630, Second Amendment to Operation and Easement Agreement dated as of August 26, 2013, recorded as Document No. 20130826000349440 in aforesaid records (as so amended, the "**OEA**").

B. Target has conveyed to Highway a portion of the Target Tract identified in the OEA as the "Target Outlot" but which has been subdivided and shall be referred to herein as "**Outparcels 11-A and 11-B**".

C. Target and Developer are all of the "Approving Parties" under the OEA and have the power and authority to amend the OEA pursuant to Subsection 6.8.5 of the OEA.

D. Target and Developer desire to amend the OEA to reflect the transfer of ownership of Outparcels 11-A and 11-B and to further restrict Outparcels 11-A and 11-B as herein agreed.

E. Highway joins in this Amendment solely for the purpose of consenting to those provisions that materially impact the obligations and rights of Highway and/or Outparcels 11-A and 11-B.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Target and Developer agree as follows:

1. **Target Tract.** The legal description of the Target Tract described on Exhibit A-1 (Modified) of the OEA is deleted in its entirety and replaced with the legal description on **Exhibit A-2** attached hereto. From and after the date hereof, all references in the OEA to the "Target Fee Tract" or the "Target Tract" shall refer solely to the real property described on **Exhibit A-2** attached hereto.
2. **Outparcels 11-A and 11-B.** The property legally described on **Exhibit B-4** attached hereto, previously referred to as the Target Outlot, shall, as subdivided, from and after the date hereof, be referred to as "Outparcels 11-A and 11-B" and will not be part of the Target Tract. Outparcels 11-A and 11-B are hereby released from all terms, provisions, covenants, conditions, restrictions, easements and other matters in the OEA that apply solely to the Target Tract and is declared to be subject to and bound by the terms, provisions, covenants, conditions, restrictions, easements and other matters in the OEA applicable to the "Shopping Center," "Developer Tract", "Tracts", "Lots", "Outparcels" and "Highway Tract".
3. **Target Outlot.** All references in the OEA to Target Outlot will now refer to Outparcels 11-A and 11-B. As of the date hereof, Outparcels 11-A and 11-B shall be required independently to comply with all requirements of the OEA, including but not limited to, the Outparcel contribution obligation.
4. **Highway Tract.** As of the date hereof, Highway is the fee owner of Outparcels 11-A and 11-B. From and after the date hereof, Highway Tract shall include Outparcels 11-A and 11-B. The Highway Tract legal descriptions shown on Exhibits H-1 and H-2 are hereby deleted in their entirety and replaced with the legal descriptions shown on **Exhibit H-3** attached hereto. Therefore from and after the date hereof, all references in the OEA to the "Highway Tract" shall, except with respect to the CAM proration set forth in Section 4.2.4, include Outparcels 11-A and 11-B.
5. **Site Plan.** The Site Plan attached to the OEA as Exhibit X-1 is deleted in its entirety and replaced with **Exhibit X-2** attached hereto and made a part hereof. From and after the date hereof, all references in the OEA to the Site Plan or to **Exhibit X or Exhibit X-1** shall be deemed to refer to **Exhibit X-2** attached hereto.

6. **Subsection 3.2.6.** The last paragraph of Subsection 3.2.6 is hereby amended by deleting clause (ii) in its entirety.

7. **Subsection 3.3.1** Subsection 3.3.1 is hereby amended by adding the following sentence at the end of the first paragraph:

“Except for Outparcels 11-A and 11-B, Buildings may be located anywhere within an Outparcel so long as each such Building and location complies in all other respects with the terms and provisions of the OEA.”

8. **Subsection 3.3.5.** Subsection 3.3.5 of the OEA is hereby amended to add the following sentence at the end of Subsection 3.3.5:

“Additionally, all mechanical equipment (whether mounted upon the roof or on the ground), transformers, trash containers or compactors and any trash area located on Outparcels 11-A and 11-B must be screened.”

9. **Corrected CAM Allocation.** The allocations for Common Area Maintenance Costs and the Administration Fee set forth in the Second Amendment to Operation and Easement Agreement were incorrect (the calculation of the acreage for the Target Tract inadvertently included the Target Outparcel). The parties hereby acknowledge that the total acreage of the Shopping Center is equal to 36.71 acres and hereby agree as follows:

9.1 The first sentence of Section 4.2.4 of the OEA is hereby deleted in its entirety and replaced with the following:


“4.2.4 Common Area Maintenance Costs and the Administration Fee shall be allocated on a proportionate ‘per acre’ as follows (after deduction for Outparcel Areas, for Stormwater Management Area (as identified on the Site Plan) and for the Dedicated Drive), after deduction of payments received Outparcels under Section 4.2.8.”

9.2 That the Common Area Maintenance Costs and Administration Fee allocations set forth in Subsection 4.2.4 and are hereby revised as follows:

(A) To the Developer Tract 73.10 % based upon a 25.64 acre area
(The Highway Tract shall be deemed part of the Developer Tract for purposes of this Subsection).

(B) To the Target Tract 26.9% based upon a 9.43 acre area

The Approving Party for the Developer Tract will be the responsible Party for payments to the Operator with respect to the Common Area Maintenance Costs and Administrative Fees for the Developer Tract and the Highway Tract.


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10. **Subsection 5.1.11.** The following new Subsection 5.1.11 is added immediately after Subsection 5.1.10 of the OEA:

“5.1.11 The following uses shall not be permitted on Outparcels 11-A and 11-B:

(A) Any (i) automobile, truck, trailer or recreational vehicle sales, leasing, or display operation, (ii) car wash or (iii) body shop repair operation.

(B) Any veterinary hospital or animal raising or boarding facility.

(C) Any establishment selling or exhibiting illicit drugs or related paraphernalia.

(D) Any toy store exceeding five thousand (5,000) square feet of floor area.

(E) Any store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist.

(F) Any pet shop.

(G) Any gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel.

(H) Any (i) automotive service/repair station, or (ii) any facility that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories.

(I) Any liquor store offering the sale of alcoholic beverages for off-premises consumption.

(J) Any grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food and/or beverages. Restaurants are not prohibited on the basis of this subsection.

(K) Any dental or orthodontic office or clinic where dental or orthodontic practices are conducted and services are provided to the general public as well as dental laboratories where dental products are manufactured.

(L) The selling, renting, servicing or warehousing (and, if applicable, installing in motor vehicles), any of the following product categories: televisions, stereos, radios and DVD or video machines; major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers); personal computers and peripherals, computer software; car radios, stereos, tape decks or phones (whether cellular, hand-held for landlines or fixed base); entertainment software including compact discs, music videos, DVDs and prerecorded tapes; accessories and connectors for such products; telephones (whether cellular, hand-held for landlines or fixed base), telecopy, facsimile and photocopy machines; photographic cameras or equipment; office equipment, supplies or furniture; books and magazines; and/or any items which are a technological evolution of the foregoing.

(M) The sale of shoes.

(N) The selling, renting and/or distribution, either singly or in any combination of health, fitness and/or exercise equipment; sporting goods and sporting equipment including, but not limited to, golf equipment and accessories; hunting, camping and fishing equipment and accessories; and/or athletic footwear or permit a sporting goods store such as The Sports Authority, Academy, Bass Pro, Hibbett Sports, Orvis, REI, Gander Mountain, Road Runner Sports, Edwin Watts Golf or Golfsmith.

(O) The sale of: (I) pets (including but not limited to fish, birds, reptiles, dogs, cats and other small animals), (II) pet food, accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, (III) services related to pets and animals, such as grooming, boarding, pet day care, animal training and obedience classes, pet adoption and veterinary services, (IV) products relating to nature and the environment or (V) educational products and services related to any of the foregoing and office and storage uses incidental to the foregoing.

(P) The sale of plus size (size 14 and up) women's clothing or apparel.

(Q) The sale of sporting good-related products such as sporting goods, caps, t-shirts and memorabilia that has been licensed by professional and college teams to bear their name or logo.

(R) A restaurant specializing (25% or more of sales) in the sale, at retail, of Italian food; provided, however, this restriction shall not apply to leases existing as of the date hereof, any renewals or extensions of said existing leases, and replacement tenants in said existing lease locations, any tenant leases in excess of 20,000 square feet, any department store or junior department store or a pizza style restaurant serving primarily pizza and/or sandwiches.

(S) A business whose sales of the following products, collectively, constitute 10% or more of its gross sales: (I) freshly ground or whole coffee beans, (II) espresso, espresso-based coffee drinks or coffee-based drinks, (III) tea or tea-based drinks, (IV) gourmet, brand-identified brewed coffee, or (V) blended coffee beverages including, without limitation, those containing the following: coffee, espresso, and/or tea.

(T) A business primarily engaged in the sale of health foods, vitamins, mineral and herbal supplements and sports nutrition supplements.

(U) Sale of 10K or better of gold, white gold, silver, platinum or precious stones.

(V) Sale of bagels, baked goods, breads, salads, sandwiches, soups, blended beverages; however, the foregoing restriction shall specifically exclude a Del Taco restaurant.”

11. **Conflicts/Ratification.** If there is any conflict between the provisions of the OEA and this Amendment, the provisions of this Amendment shall control. Except as amended and supplemented by this Amendment, the OEA is ratified by the parties and remains in full force and effect.


12. **Authority.** Each of the parties represents and warrants that it has the full capacity, right, power and authority to execute, deliver and perform this Amendment and that all required actions, consents and approvals therefor have been duly taken and obtained. Furthermore, each of the parties represents and warrants that upon full execution of this Amendment, the OEA as amended by this Amendment shall be binding on all parties with any interest in its respective Tract, including but not limited to the holder of any mortgagee’s interest. Each of the parties to this Amendment, as an Approving Party, warrants and represents that the terms and provisions of this Amendment will not either impose any materially greater obligation on any Tract represented by such Approving Party, or materially impair any right of a Party owning a Tract represented by such Approving Party.

13. **Entire Agreement.** This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral agreements pertaining thereto.

14. **Captions; Capitalized Terms.** Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall bear the same meanings assigned thereto in the OEA. The captions set forth herein are for convenience only and are not a part of this Amendment.

15. **Counterparts.** This Amendment may be executed in counterparts or with counterpart signature pages, which upon execution by all parties shall constitute one integrated agreement.

[Rest of page intentionally left blank; signature pages follow.]


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IN WITNESS WHEREOF, the undersigned has executed this Amendment effective as of the day and year first above written.

TARGET CORPORATION,
a Minnesota corporation

By: 

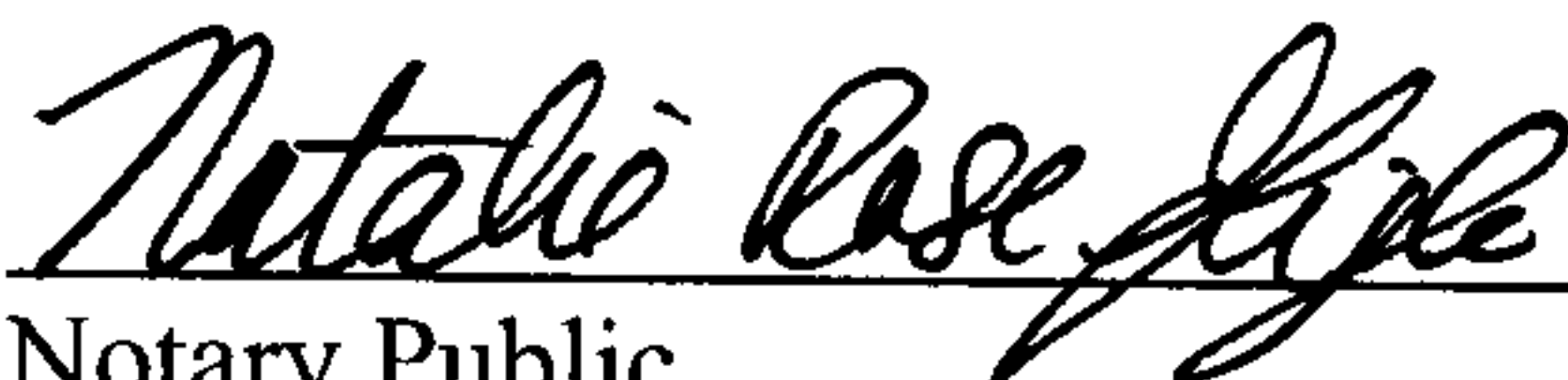
Printed Name: James L. Tucker

Its: Director Real Estate
Target Corporation

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

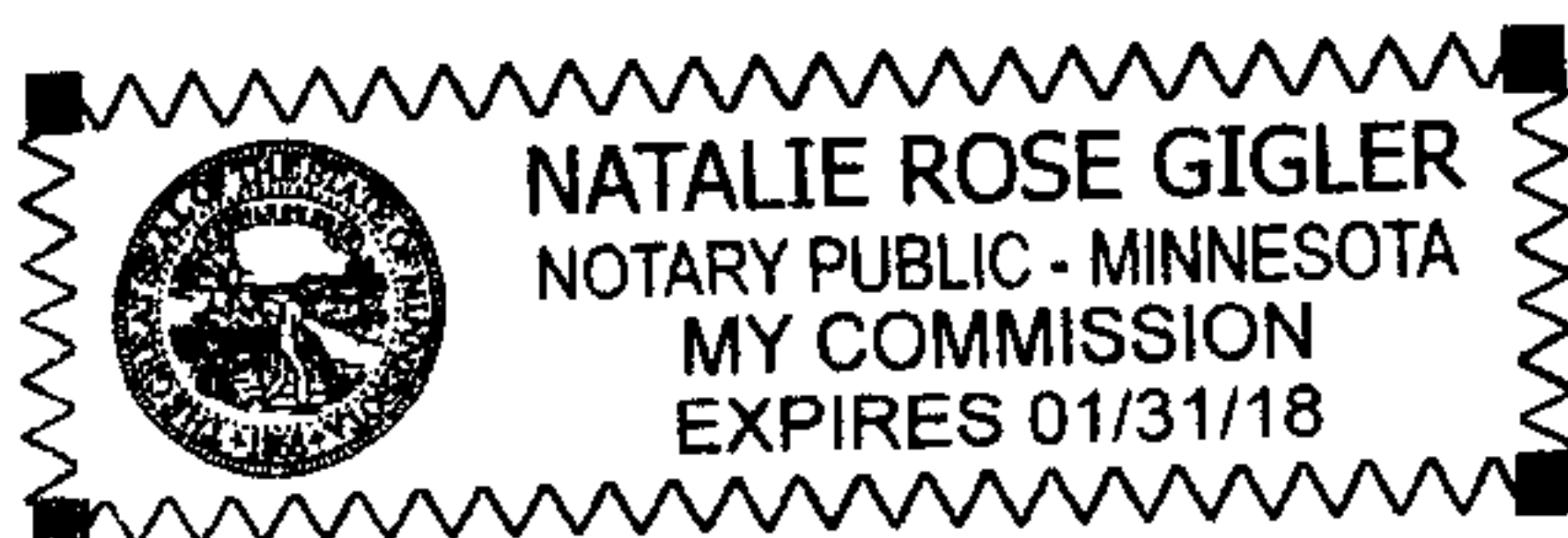
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that James L. Tucker whose name as Director of **Target Corporation**, a Minnesota corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/~~she~~, in his/~~her~~ capacity as such Director and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.


Given under my hand and seal this the 25th day of February, 2014.


Notary Public

[NOTARIAL SEAL]

My Commission Expires: 1/31/18




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IN WITNESS WHEREOF, the undersigned has executed this Amendment effective as of the day and year first above written.

HIGHWAY 11/31 LLC,
a Delaware limited liability company

By: [Signature]
Printed Name: William Leitner
Its: manager

STATE OF ALABAMA)
)ss
COUNTY OF JEFFERSON)


I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William Leitner whose named as manager of **Highway 11/31, LLC**, a Delaware 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, in his capacity as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the 27th day of FEB, 2014.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 10-01-2014


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CONSENT AND JOINDER

The undersigned join in the execution of the foregoing Third Amendment to Operation and Easement Agreement for the sole purpose of consenting, acknowledging and agreeing to the terms and conditions set forth therein.

HIGHWAY 11/31 II LLC,
a Delaware limited liability company

By: [Signature]
Printed Name: William Leitner
Its: manager

STATE OF ALABAMA)
)ss
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William Leitner whose named as manager of **Highway 11/31 II, LLC**, a Delaware 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, in his capacity as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the 27th day of February, 2014.

[Signature]
Notary Public

My Commission Expires: 10-01-2014

[NOTARIAL SEAL]



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Exhibit A-2
(Legal description of Target Tract)

Lot 3-A, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama.



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Exhibit B-4
(Legal description of Outparcel 11-A and 11-B)

Lots 7A and 7B according to the Final Plat of Colonial Promenade Alabaster South Lot 7 Subdivide, recorded in Map Book 44, Page 3, in the Probate Office of Shelby County, Alabama.

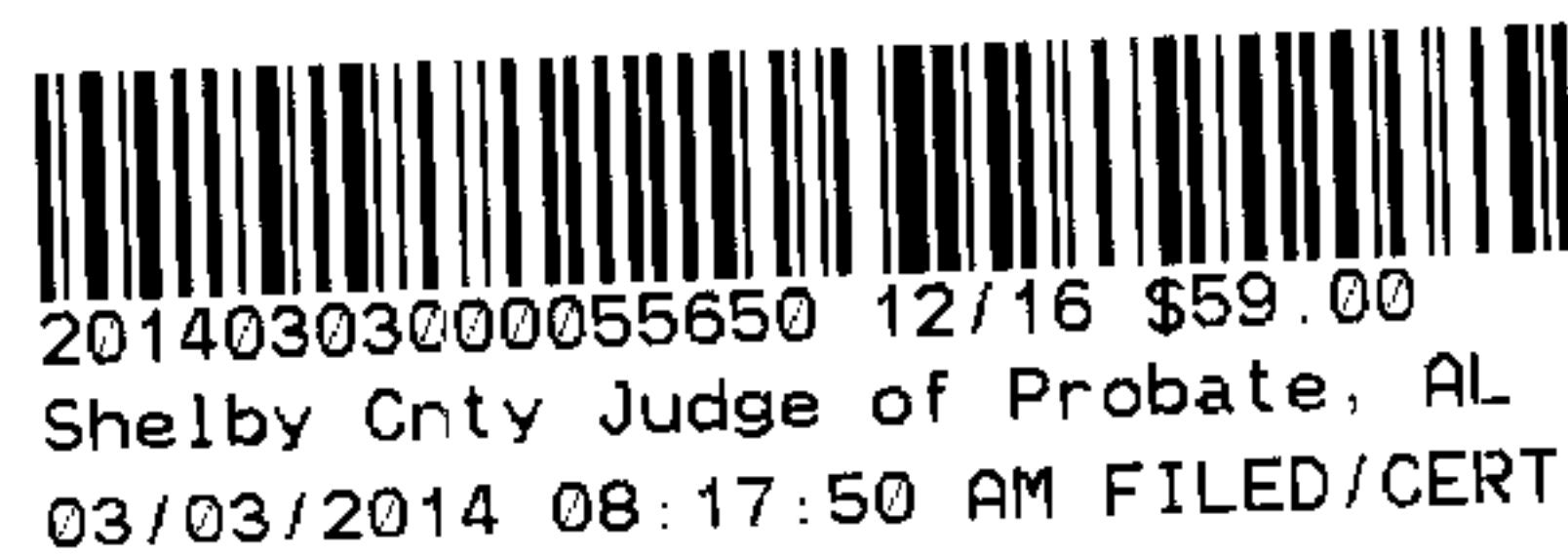
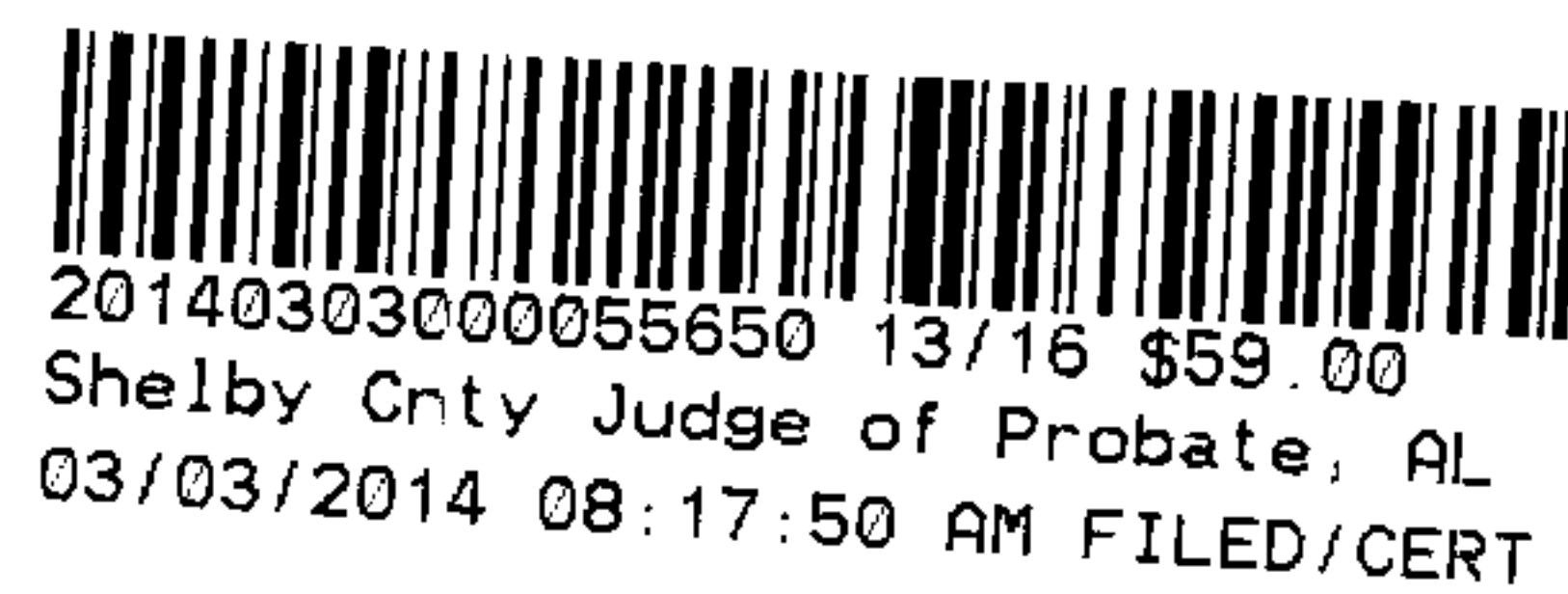


Exhibit H-3
(Legal description of Highway Tract)

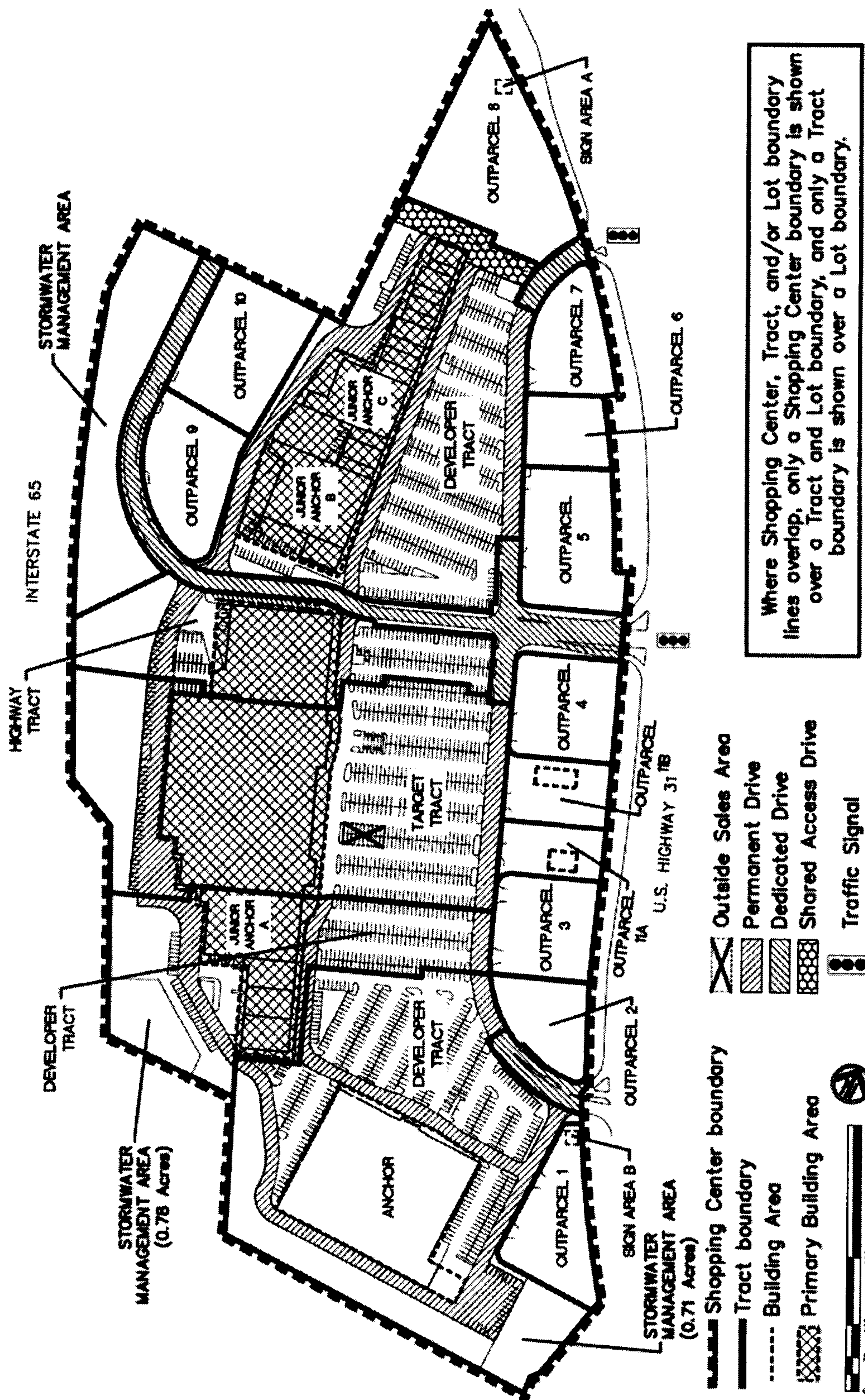
Lot 3-B, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama (Fee Portion)

Lot 15-A, according to the Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104, in the Probate Office of Shelby County, Alabama (Sublease Portion)

Lots 7A and 7B according to the Final Plat of Colonial Promenade Alabaster South Lot 7 Subdivide, recorded in Map Book 44, Page 3, in the Probate Office of Shelby County, Alabama.



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Exhibit X-2 Site Plan

**REGIONS BANK
CONSENT AND SUBORDINATION TO
THIRD AMENDMENT TO OPERATION
AND EASEMENT AGREEMENT**

The undersigned, as the holder of that certain mortgage lien ("Mortgage Lien") pursuant to a Mortgage and Security Agreement dated December 14, 2007 and recorded December 18, 2007 as Instrument No. 20071218000569450 in the Office of the County Recorder in and for Shelby County, Alabama (the "Mortgage"), which Mortgage is subordinate to the OEA (as that term is defined in the instrument to which this Consent and Subordination is attached), hereby consents to the attached Amendment to Operation and Easement Agreement (the "Third Amendment") and agrees to be bound by it and accordingly agrees that the Mortgage Lien is and shall be subordinate to the OEA as amended by the Amendment.

The undersigned represents and warrants that it has the full capacity, right, power and authority to execute and deliver this Consent and Subordination, and all required actions, consents and approvals therefor have been duly taken and obtained.

REGIONS BANK,
an Alabama corporation


By: 

Its: VP

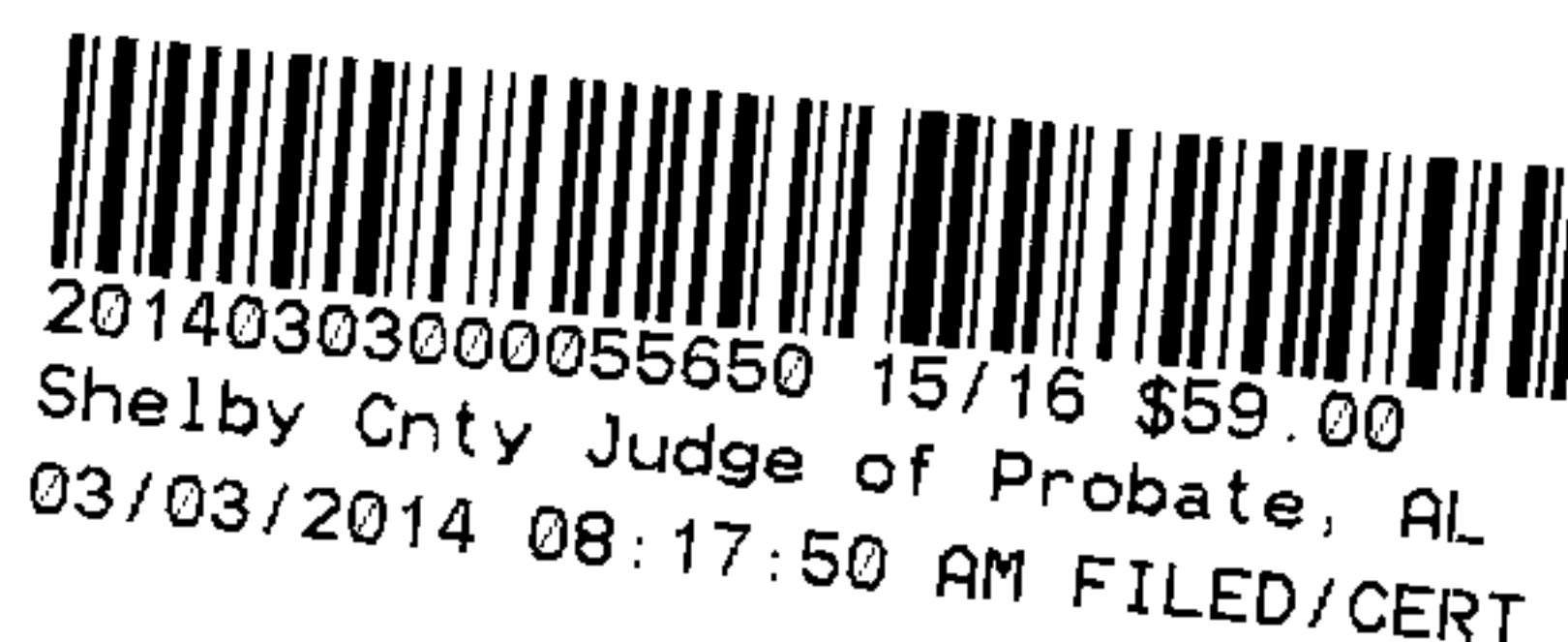
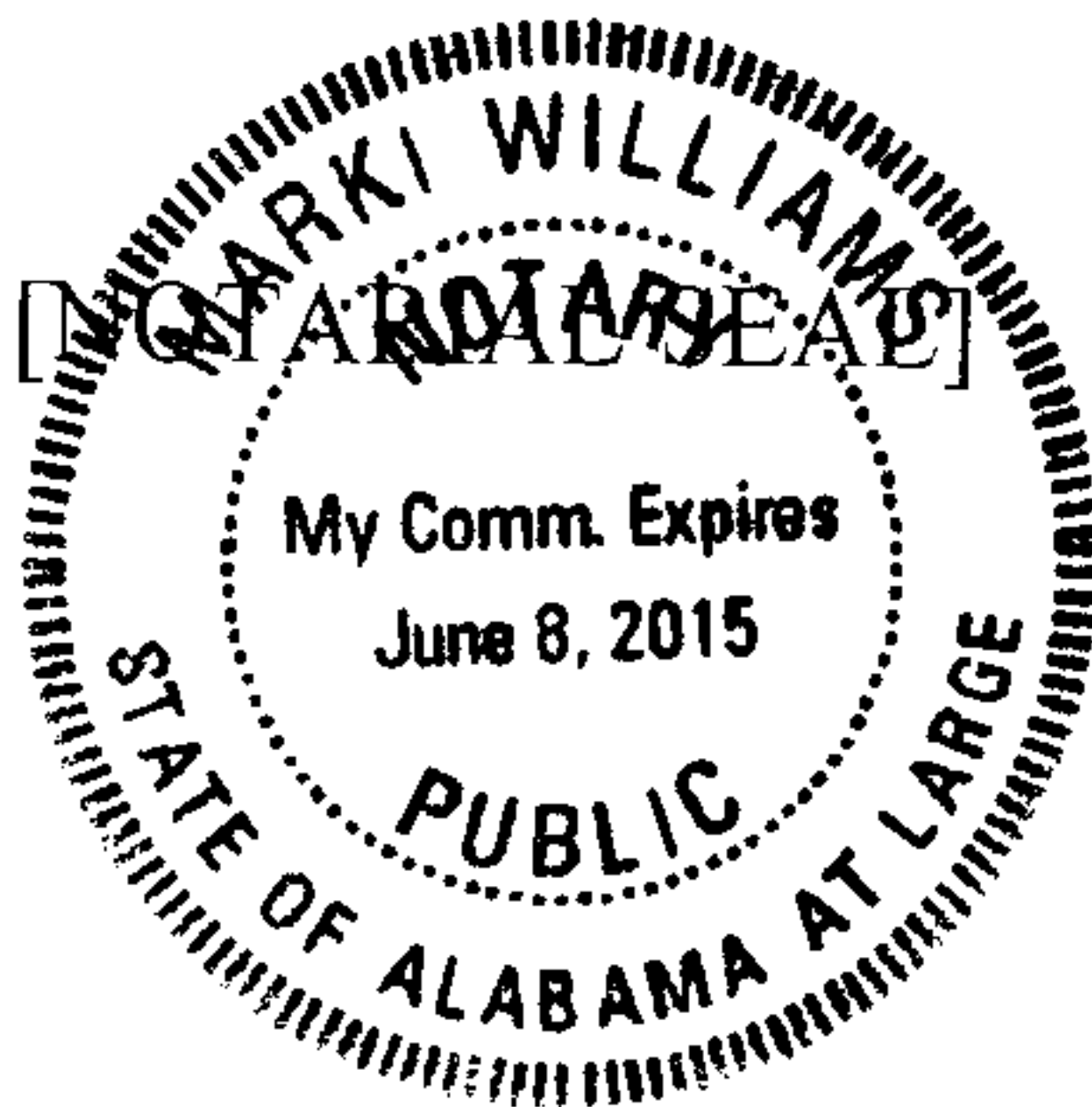
STATE OF Alabama)
COUNTY OF Jefferson)ss

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Todd Harris whose name as VP of **Regions Bank**, 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, in his/her capacity as such VP and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

Given under my hand and seal this the 21st day of February, 2014.


Notary Public

My Commission Expires: June 8, 2015



**MIDSOUTH BANK
CONSENT AND SUBORDINATION TO
THIRD AMENDMENT TO OPERATION
AND EASEMENT AGREEMENT**

The undersigned, as the holder of that certain mortgage lien ("Mortgage Lien") pursuant to a Mortgage dated August 26, 2013 and recorded August 26, 2013 as Instrument No. 20130826000349410 in the Office of the County Recorder in and for Shelby County, Alabama (the "Mortgage"), which Mortgage is subordinate to the OEA (as that term is defined in the instrument to which this Consent and Subordination is attached), hereby consents to the attached Amendment to Operation and Easement Agreement (the "Third Amendment") and agrees to be bound by it and accordingly agrees that the Mortgage Lien is and shall be subordinate to the OEA as amended by the Amendment.

The undersigned represents and warrants that it has the full capacity, right, power and authority to execute and deliver this Consent and Subordination, and all required actions, consents and approvals therefor have been duly taken and obtained.

MIDSOUTH BANK,
National Association

By: Andy Hart

Its: EVP/CLO

STATE OF ALABAMA)
)ss
COUNTY OF HOUSTON)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Andy Hart whose name as EVP/CLO of Midsouth Bank, National Association, 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, in his/her capacity as such EVP/CLO and with full authority, executed the same voluntarily for and as the act of said national association, on the day the same bears date.


Given under my hand and seal this the 19th day of February, 2014.

Marilyn C. Chancey
Notary Public

My Commission Expires: _____

MARILYN C. CHANCEY
Notary Public, State of Alabama
Alabama State at Large
My Commission Expires
January 18, 2016

[NOTARIAL SEAL]


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