

2017 066946

2017 OCT -3 AM 10: 14

AMENDED AND RESTATED EASEMENT AGREEMENT MICHAEL B. BROWN
RECORDER

THIS AMENDED AND RESTATED EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 24th day of May 2017, by and between COLVEL INVESTMENTS, LLC, an Indiana limited liability companies (together with their successors and assigns, "Owner A"), and THREE BROTHERS INVESTMENTS, LLC, an Indiana limited liability company (together with their successors and assigns, "Owner B"). Owner A and Owner B hereinafter are sometimes referred to individually as an "Owner" and collectively as the "Owners".

RECITALS:

A. Owner A is the owner in fee simple of certain real property ("Parcel A") situated in the City of Hobart, Lake County, Indiana described in Exhibit "A" attached hereto and made a part hereof;

B. Owner B is the owner in fee simple of certain real property ("Parcel B") situated in the City of Hobart, Lake County, Indiana described in Exhibit "B" attached hereto and made a part hereof;

C. Pursuant to that certain Easement For Access dated as of October 20, 2000 (the "Original Easement") by and between Howard Sattler and Suzanne C. Sattler, as grantor, and Morton Oil Corporation, as grantee, recorded as instrument number 2000-078418, the owner of Parcel A, Owner A's predecessor-in-interest, granted an easement in favor of the owner of Parcel B, Owner B's predecessor-in-interest, for a perpetual easement for a right-of-way, over, above and across the portion of Parcel A described on Exhibit "C" attached hereto and made a part hereof (the "Easement Parcel");

D. Parcel A, Parcel B and the Easement Parcel are graphically depicted on Exhibit "D" attached hereto and made a part hereof (the "Site Plan");

E. In order to address issues that have arisen in connection with the development of Parcel A after the Original Easement was executed and recorded, Owner A and Owner B desire to amend and restate the Original Easement in its entirety; and

F. In order to provide for the continued use and enjoyment of the Easement Parcel, the parties are entering into this Agreement in order to memorialize the easements and other agreements set forth herein;

NOW, THEREFORE, the parties, intending to be legally bound hereby, for Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the covenants, agreements, conditions, restrictions and stipulations herein contained, hereby agree that the foregoing recitals are incorporated herein by reference and further agree as follows:

1. Grant of Easements.

a. Access. Subject to the terms and conditions set forth herein, Owner A hereby grants Owner B, its successors and assigns, a perpetual, nonexclusive, right-of-way and easement running



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MICHAEL B. BROWN
RECORDER

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NO SALES DISCLOSURE NEEDED

Approved Assessor's Office

By: [Signature]

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JOHN ESTALAS
LAKE COUNTY AUDITOR

RM

with the land, over and upon the entire Easement Parcel situated on Parcel A, for Owner B, its successors and assigns and its agents, servants, employees, visitors, lessees, licensees and all other persons for the benefit of Owner B, its successors and assigns, at all times, for the purpose of vehicular and pedestrian access over and through the Easement Parcel (the "Access Easement"). For the avoidance of doubt, although the foregoing easement is a nonexclusive easement for the benefit of Owner B, its successors and assigns, the only right that Owner A reserves for itself and for the benefit of other parties to whom Owner A may grant easements in the future, if any, is the following: (i) as it relates solely to those portions of the Easement Parcel that are identified on the Site Plan as the "Driveway" (the "Driveway") is the right, subject to this Agreement, to use the Driveway solely for vehicular and pedestrian access over and through the Easement Parcel, (ii) as it relates to the other portions of the Easement Parcel, for the use of a Monument Sign (as defined below) pursuant to Section 1(b), below, and for the use of parking solely within the designated parking spaces graphically depicted on the Site Plan and in no other location. The Easement Parcel shall not be used for any other purpose whatsoever by Owner A, Owner B and/or any other parties.

b. Sign. Subject to the terms and conditions set forth herein, in the event that Owner A ever constructs a sign on the Easement Parcel (the "Sign"), Owner A hereby grants Owner B, its successors and assigns, a perpetual, nonexclusive, easement over and upon the land, over and upon the Easement Parcel situated on Parcel A, for Owner B, its successors and assigns and its agents, servants, employees, visitors, lessees, licensees and all other persons for the benefit of Owner B, its successors and assigns, at all times, for the purpose of installing and maintaining a sign with the name of the business that is located on Parcel B on the Sign in accordance with this Section 1(b) (the "Sign Easement" and collectively with the Access Easement, the "Easements"). The sign entitled to be installed and maintained pursuant to this Section 1(b) shall be visible on both sides of the Sign and shall be equal in size to the largest sign installed and maintained on the Sign by any other party. If Owner A elects to exercise the right to construct such Sign within the Easement Parcel, Owner B shall be responsible for the cost and expense of creating Owner B's sign and installing the sign on the Sign. Owner B shall have no right to compel the construction of any Sign by Owner A.

c. Non-Interference/Non-Obstruction. Without limiting the generality of Section 1(a), above, and for the avoidance of doubt, Owner A shall not obstruct, hinder and/or interfere with Owner B's use and enjoyment of the Easements including, without limitation, Owner B's access over and through the Easement Parcel in any manner, shall keep the Easement Parcel free and unobstructed at all times and shall not close all or any portion of the Easement Parcel, whether permanently or temporarily, without the prior written consent of Owner B in each instance, in Owner B's sole and absolute discretion.

d. No Alterations. Owner A shall not make any alterations, modifications or changes to the improvements situated on the Easement Parcel that exist as of the date hereof and that are graphically depicted on the Site Plan ("Alteration(s)") including, without limitation, the traffic lanes, direction and/or flow and the size and location of any and all improvements located therein including, without limitation, the Monument Sign, pavement, curbs, drainage and landscaping, except as follows: (i) any Alteration(s) of the Driveway shall require the prior written consent of Owner B, in each instance, in Owner B's sole and absolute discretion and (ii) any other Alteration(s) shall require Owner A to provide prior notice to Owner B, which notice shall set forth in reasonable detail the Alteration(s) being proposed by Owner A, and Owner B shall have thirty (30) days after receipt of such notice to object by providing notice to Owner A; provided that, if Owner B fails to provide such notice of objection timely, Owner shall be deemed to have waived

any objection thereto; provided further, that in the event Owner B objects to any Alternation(s) and the parties are unable to amicably reach a resolution of the matter within thirty (30) days after Owner B's notice of objection, either party may elect to proceed in accordance with Section 7, below.

2. Maintenance and Repair. Owner A, at its sole cost and expense, shall maintain, repair and replace, or cause to be maintained, repaired and replaced, in good order and repair all improvements on the Easement Parcel including, without limitation, the Monument Sign, paving, curbs and drainage facilities within or upon the Easement Parcel which maintenance shall include, without limitation, snow and ice removal, trash removal, patching and resurfacing, and shall perform the foregoing all in compliance with industry standards for a first-class retail and/or office building and applicable laws and ordinances. Owner A, at its sole cost and expense, shall be responsible for any and all costs and expenses associated with the ownership, use, operation, maintenance, repair and/or replacement of the Easement Parcel including, without limitation, utilities, if any, and real estate taxes.

Without limiting the generality of the foregoing, and for the avoidance of doubt, Owner B shall not be responsible for any costs or expenses whatsoever arising out of or, in connection with, the ownership, use, operation, maintenance, repair and/or replacement of the Easement Parcel. "Maintenance" shall include removal of snow and ice from the Easement, upon 24 hours written notice from Owner B. Notwithstanding the foregoing, Owner B may enter the easement for the purpose of snow and ice removal at its own expenses without notice to Owner A. In the event Owner A fails to perform any maintenance, repairs or replacements within thirty (30) days after written notice from Owner B, Owner B may, but shall not be obligated to, perform such maintenance, repairs or replacements at Owner A's sole cost and expense. Within thirty (30) days after Owner B renders a bill for the cost of said maintenance, repairs or replacements performed by Owner B, Owner A shall reimburse Owner B.

3. Indemnification. Each Owner (the "First Party") agrees that it shall be liable for, and shall indemnify and hold harmless each of the other Owners (the "Second Party") from and against, any and all liability, claims, suits, judgments, damages, losses, costs and expenses on account of injury to or death of any person, or damage to or loss or destruction of any property, caused by or connected with the First Party's exercise of any of the rights, privileges and easements herein granted, or any act, omission or neglect of such First Party, its agents, employees, licensees or contractors, in connection with its use and enjoyment of the Easement Parcel; provided, however, the foregoing indemnity shall not apply in respect of any injury, death, damage, loss or destruction to the extent caused by the negligence of the Second Party, its agents or employees.

4. No Dedication. This Agreement and the easements granted herein shall not be construed as a dedication or gift of any portion of the Parcel A, Parcel B or the Easement Parcel for public use, and each of the Owners agrees to cooperate with one another to prevent such a dedication from taking place. Nothing contained herein is intended to create nor shall it be construed as creating any rights hereunder in any third party or in or for the benefit of the general public.

5. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Indiana. If any provision of this Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this

Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby, and shall be enforced to the extent permitted by law.

6. No Waiver. The failure of any party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

7. Mediation. In the event of any controversy or claim arising out of or relating to this Agreement, or a breach thereof, the parties hereto shall first attempt to settle the dispute by mediation, administered by the American Arbitration Association under its Mediation Rules. If settlement is not reached within sixty days after service of a written demand for mediation, any unresolved controversy or claim may be brought before any court, whether at law or in equity, having jurisdiction. Without limiting the generality of the foregoing, any party may petition for injunctive relief to the Indiana Superior Court in Lake County, Indiana.

8. Attorneys' Fees. In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

9. Section Headings. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

10. Successors and Assigns; Legal Effect. This Agreement and the easements, restrictions, covenants, obligations and rights granted herein shall be deemed covenants running with the land and shall be binding upon and shall inure to the benefit of each of the Owners, its respective successors, transferees and assigns, and future owners, lessees, and licensees of the Parcel A and Parcel B. Whenever in this Agreement it is stated that any benefits accrue to, or any obligations are imposed upon any of the Owners, it shall mean the respective owners of Parcel A and Parcel B, as applicable. Without limiting the generality of the foregoing, the benefit of the Easement Parcel, together with all rights and obligations incident thereto, shall be appurtenant to and run with the title to Parcel A and Parcel B and shall be binding upon all persons having or acquiring any right, title or interest in and to the such premises or any portion thereof. The covenants and grants contained herein are for and shall inure to the benefit of Parcel A and Parcel B, and shall apply to and bind every owner or other person now or hereafter owning or holding any interest in Parcel A, Parcel B or the Easement Parcel or occupying or possessing any portion thereof, and their respective successors and assigns, and shall constitute covenants running with the land and creating privity of contract in estate among all the foregoing. If any Owner (a "Transferor") shall convey, transfer, assign or otherwise dispose of all or a portion of its right, title and interest in Parcel A or Parcel B, as applicable, other than as security for an obligation, through public dedication, private conveyance or otherwise, the Transferor shall thereupon be released and discharged from any and all further liabilities and obligations for the breach of any covenant or agreement hereunder arising from and after the effective date of such transfer with respect to the property so transferred, and, except as expressly provided herein, such liabilities and obligations thereafter arising with respect to any of the property so transferred shall be binding on the successor in title to such transferor.

11. Counterparts. This Agreement may be executed in counterparts, and all such counterparts shall constitute one agreement binding on all the parties, notwithstanding that all the parties are not signators to the same counterpart.

12. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the rights granted herein and the obligations assumed hereunder. Any modifications to this Agreement shall be in writing and signed by the parties to this Agreement or their heirs, successors and assigns.

13. Notice. Any notice or election which may be or is required to be given pursuant to the provisions of this Agreement must be in writing and will be deemed effective when delivered in person, or on the first business day after it is sent by Federal Express or other recognized overnight delivery service, or on the third day after the day on which mailed if sent by certified or registered mail, postage prepaid, ~~return receipt requested, and~~ addressed as follows:

AS TO OWNER B:

Family Express Corporation
213 S. State Road 49
Valparaiso, IN 46383
Attention: Raphael J. Omerza

WITH A COPY TO:

Burke Costanza & Carberry LLP
156 S. Washington St.
Valparaiso, IN 46383
Attention: Kevin E. Steele, Esq.

AS TO OWNER A:

Colvel Investments, LLC
6195 Marcella Boulevard, IN 46342
Attention: Dr. Barry S. Ring

WITH A COPY TO:

Rieck and Crotty, P.C.
55 West Monroe Street, Suite 3625
Chicago, Illinois 60603
Attention: Bernard A. Henry, Esq.

Either party may change the addresses to which notices shall be sent by providing written notice to the other party in accordance with this Section 13.

14. Amend and Restate. In consideration of the foregoing rights, privileges and easements herein granted, this Agreement amends and restates in its entirety the Original Agreement.

~~15. Mortgage Consent. _____, in respect of the mortgage(s) granted in its favor by Owner A, encumbering Parcel A, joins in the execution of this Agreement solely for the purpose of agreeing that said mortgage is hereby subordinate and made subject to the terms and conditions of the easements herein granted.~~

N/A - No Mortgage

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives to be effective as of the date first above written.

COLVEL INVESTMENTS, LLC

By: [Signature]
Name: BARRY RING
Title: CEO

THREE BROTHERS INVESTMENTS, LLC

Document is NOT OFFICIAL!
 This Document is the property of the Lake County Recorder!
 By: [Signature]
 Name: Alex Olympidis
 Title: Authorizing Signing Member

STOP

RECORDER'S OFFICE
 SEAL
 INDIANA

OFFICIAL SEAL
 BERNARD A HENRY
 NOTARY PUBLIC - STATE OF INDIANA
 MY COMMISSION EXPIRES 09/09/20

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared Barry Ring the CEO of COLVEL INVESTMENTS, LLC, an Indiana limited liability company, on behalf of said company, and acknowledged the execution of the above and foregoing document.

WITNESS my hand and Notarial Seal on August 24, 2017

Commission Expires: 9/9/2020
County of Residence: Cook, IL

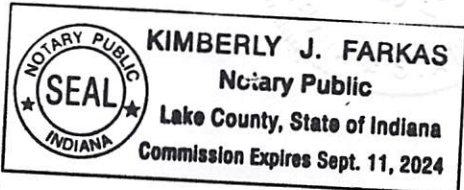
STATE OF INDIANA)
) SS:
COUNTY OF Porter)

Before me, a Notary Public in and for said County and State, personally appeared Alex Olympidis the Authorizing Signing Member of THREE BROTHERS INVESTMENTS, LLC, an Indiana limited liability company, on behalf of said company, and acknowledged the execution of the above and foregoing document.

WITNESS my hand and Notarial Seal on August September 26, 2017

Commission Expires: September 11, 2024
County of Residence: Lake

Kimberly J. Forkas, Notary Public



_____, as to the mortgage granted to it by Owner A, which mortgage is recorded in Volume _____, Page _____, Lake County Real Estate/Mortgage Records, hereby agrees that said mortgage shall be subordinate to the foregoing Amended and Restated Easement Agreement.

N/A -
No Mortgage

By: _____

Name: _____

Title: _____

STATE OF INDIANA _____)

COUNTY OF _____)

Document is

NOT OFFICIAL!

~~Before me, a Notary Public in and for said County and State, personally appeared _____ the _____ of _____, a _____, on behalf of said company, and acknowledged the execution of the above and foregoing document.~~

WITNESS my hand and Notarial Seal on April _____, 2017

~~Commission Expires: _____
County of Residence: _____~~

_____, Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

STOP



*This instrument prepared by:
Kevin E. Steele
Burke Costanza & Carberry
156 S. Washington St.
Valparaiso, IN 46383
(219) 769-1313*

EXHIBIT "A"

Legal Description of Parcel A

Lot 2 of Sattler Minor Plat, a Subdivision in Hobart, Lake County, Indiana, all as shown in Plat Book 89, Page 48 in the Office of the Recorder of Lake County, Indiana.



EXHIBIT "B"

Legal Description of Parcel B

Lot 1 of Sattler Minor Plat, a Subdivision in Hobart, Lake County, Indiana, all as shown in Plat Book 89, Page 48 in the Office of the Recorder of Lake County, Indiana.



EXHIBIT "C"

Legal Description of Easement Parcel

The North 102.67 feet of the West 65 feet of Lot 2 of Sattler Minor Plat, a Subdivision in Hobart, Lake County, Indiana, all as shown in Plat Book 89, Page 48 in the Office of the Recorder of Lake County, Indiana.



EXHIBIT "D"

