

**RECORDATION REQUESTED BY:**

Pinnacle Bank  
801 Broad Street  
Chattanooga, TN 37402

20220922000365690  
09/22/2022 10:35:04 AM  
MORTAMEN 1/5

**WHEN RECORDED MAIL TO:**

Ms. Cara J. Alday  
Patrick, Beard, Schulman & Jacoway  
537 Market Street, Suite 300  
Chattanooga, TN 37402

**SEND TAX NOTICES TO:**

High Point Birmingham LLC  
219 Broad Street  
Chattanooga, TN 37402

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**THIRD AMENDED MORTGAGE**

THIS THIRD AMENDED MORTGAGE is made by and between High Point Birmingham LLC, whose address is 219 Broad Street, Chattanooga, TN 37402, a Tennessee Limited Liability Company (referred to herein as "Grantor") and Pinnacle Bank, formerly known as and doing business as CapitalMark Bank & Trust, whose address is 801 Broad Street, Chattanooga, TN 37402 (referred to herein as "Lender").

WHEREAS, Grantor and Lender entered into a Mortgage dated June 30, 2015, and recorded in Instrument #20150701000221950, in the Office of the Judge of Probate of Shelby County, Alabama (herein referred to as the "Mortgage"); and

WHEREAS, the Mortgage secured, among other things, a Note in the amount of One Million Nine Hundred Fifty-Five Thousand Dollars (\$1,955,000.00) payable to Lender by Grantor dated June 30, 2015, which Note was extended on January 22, 2016; and

WHEREAS, Grantor requested and Lender agreed to modify, extend, renew and restate the Promissory Note reflecting the debt of One Million Nine Hundred Fifty-Five Thousand Dollars (\$1,955,000.00), so that additional advances can be made under such Note; and

WHEREAS, the parties executed, on May 25, 2016, a Modified, Extended, Renewed and Restated Promissory Note in the amount of Five Million Thirty-Two Thousand Dollars (\$5,032,000.00) (hereinafter referred to as the "Modified Note"); and

WHEREAS, Grantor further requested an additional loan from Lender in the amount of One Million One Hundred Forty Thousand Dollars (\$1,140,000.00), which additional loan was evidenced by a Promissory Note in the amount of One Million One Hundred Forty Thousand Dollars (\$1,140,000.00), dated May 25, 2016 ("hereinafter referred to as the "Second Note"); and

WHEREAS, Grantor and Lender amended the Mortgage to provide that it shall secure any and all indebtedness owing under the Modified Note and owing under the Second Note pursuant to an Amended Mortgage dated May 25, 2016 and, recorded in Instrument #2016713000244020, in the office of the Judge of Probate of Shelby County, Alabama (the "Amended Mortgage"); and

WHEREAS, due to the impact of COVID-19 to Grantor's operations, Grantor requested relief from Lender under the CARES Act and Grantor and Lender agreed to modify, extend, amend and restate the Modified Note to extend the maturity date to June 5, 2021 and to reflect a current principal balance of \$4,841,808.73 by a Second Modified, Extended, Amended and Restated Promissory Note dated December 30, 2020 (the "Second Modified Note"), and to extend, modify and amend the Second Note to extend the maturity date to June 5, 2021 and to reflect a current principal balance of \$857,047.61 by an Extended, Modified, Amended and Restated Promissory Note dated December 30, 2020 (the "Extended Second Note"); and

WHEREAS, Grantor requested and Lender agreed to further modify, extend, amend and restate and renew the Note and the Second Note to extend the maturity date to May 10, 2023 and modify the interest rate and, accordingly, Grantor executed a Third Modified, Extended, Amended, Restated and Renewed Promissory Note in the principal amount of \$4,841,808.73 dated July 29, 2021 (the "Third Modified Note") and a Second Extended, Modified, Amended, Restated and Renewed Promissory Note in the principal amount of \$857,047.61 dated July 29, 2021 (the "Second Extended Note"); and

WHEREAS, Grantor and Lender further amended the Mortgage to reflect the extension of the maturity date of the Note and Second Note pursuant to the Third Modified Note and Second Extended Note and affirmed that the Mortgage, as amended, shall secure any and all indebtedness owing under the Third Modified Note and Second Extended Note pursuant to a Second Amended Mortgage, dated July 29, 2021 and recorded in Instrument #20210802000372330 in the office of the Judge of Probate of Shelby County, Alabama (the "Second Amended Mortgage"); and

WHEREAS, Grantor and Lender have agreed to consolidate the Third Modified Note and the Second Extended Note and extend, modify, amend and restate the consolidated notes in the total principal amount of \$6,000,000.00 to extend the maturity date and amend the interest rate (the "Consolidated Note" or "Consolidated Notes"); and

WHEREAS, Grantor and Lender desire to further amend the Mortgage to reflect the consolidation and modification of the Third Modified Note and Second Extended Note and extension of the maturity date of the Consolidated Notes, and affirm that the Mortgage, as amended, shall secure any and all indebtedness owing under the Consolidated Notes;

Now, Therefore In Consideration of the mutual terms, conditions, covenants and representations contained herein, and as contained in the Loan Documents as that term is defined in the Construction Loan Agreement, as amended December 30, 2020, as amended of even date herewith (collectively hereinafter the "Loan Agreement") the parties agree as follows:

1. Maximum Lien. The lien of this mortgage shall not exceed, at any one time, Six Million Dollars (\$6,000,000.00).
2. Definition of Note. The definition of the word "Note" used in the Mortgage shall be amended to include the Consolidated, Modified, Extended, Amended and Restated Promissory Note of even date herewith in the amount of Six Million Dollars (\$6,000,000.00) with such Consolidated Note executed and payable by Grantor to Lender, as may be further amended, modified, extended, restated or renewed hereafter from time to time. The maturity date, as set forth in the definition of "Note" in the Mortgage, is also amended so that the maturity date of this mortgage will now be September 25, 2032.
3. Definition of Indebtedness. The definition of "Indebtedness" shall be amended to include all principal, interest and other amounts, costs and expenses, payable under the "Note" as described above in this Third Amended Mortgage, and in the Loan Documents, and all Obligations as defined in the Loan Agreement, together with all renewals, extensions, modifications, consolidations, and substitutions for the Note as defined above in this Third Amended Mortgage and Loan Documents, and any amounts expended or advanced by Lender to discharge Grantor's Obligations or expenses incurred by Lender to enforce Grantor's Obligations under the this Third Amended Mortgage, together with interest on such amounts as provided in the Note.
4. Default. The definition of default under the Mortgage, as amended, shall be as follows after the expiration of applicable notice and cure periods: a default will occur if payment is not made under the Note as defined herein or if any of the Obligations are not met by Grantor, as the term Obligations is defined in the Loan Agreement or if there occurs a default under any of the other terms of the Loan Documents as "Loan Documents" is defined in the Loan Agreement. Without limiting the preceding definition, a Default will also include, but not be limited to, the failure of Grantor to make payments as required in the Note as defined herein.
5. Security. Grantor and Lender agree that the Mortgage, as amended, shall secure the Note (as defined in this Third Amended Mortgage), and all other debts and obligations owing by Grantor to Lender, and the performance of any and all obligations under the Notes (as defined in this Third Amended Mortgage) and the Loan Documents as defined in the Loan Agreement.
6. Confirmation. Except as specifically amended herein, all of the other remaining terms, conditions, obligations, covenants and agreements by and between Grantor and Lender as

set forth in the Mortgage, as amended, are hereby confirmed as if fully set forth herein. Grantor specifically and expressly agrees that, except as set forth in this Second Amended Mortgage, all of the terms of the Mortgage, as amended, shall remain in full force and effect and binding on Grantor.

Grantor acknowledges having read all of the provisions of the Mortgage, as amended, and this Third Amended Mortgage, and Grantor agrees to their terms. This Third Amended Mortgage is given under seal and it is intended that this Third Amended Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

**GRANTOR:**

**HIGH POINT BIRMINGHAM, LLC**

By: \_\_\_\_\_

John P. O'Brien, Jr.,  
Manager of High Point Birmingham LLC

**STATE OF TENNESSEE )**

**)**

**COUNTY OF HAMILTON )**

Before me personally appeared **John P. O'Brien, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Manager of High Point Birmingham LLC, the within named bargainor, a limited liability company, and that he as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as such officer.

WITNESS my hand and seal, at office, this 20<sup>th</sup> day of September, 2022.

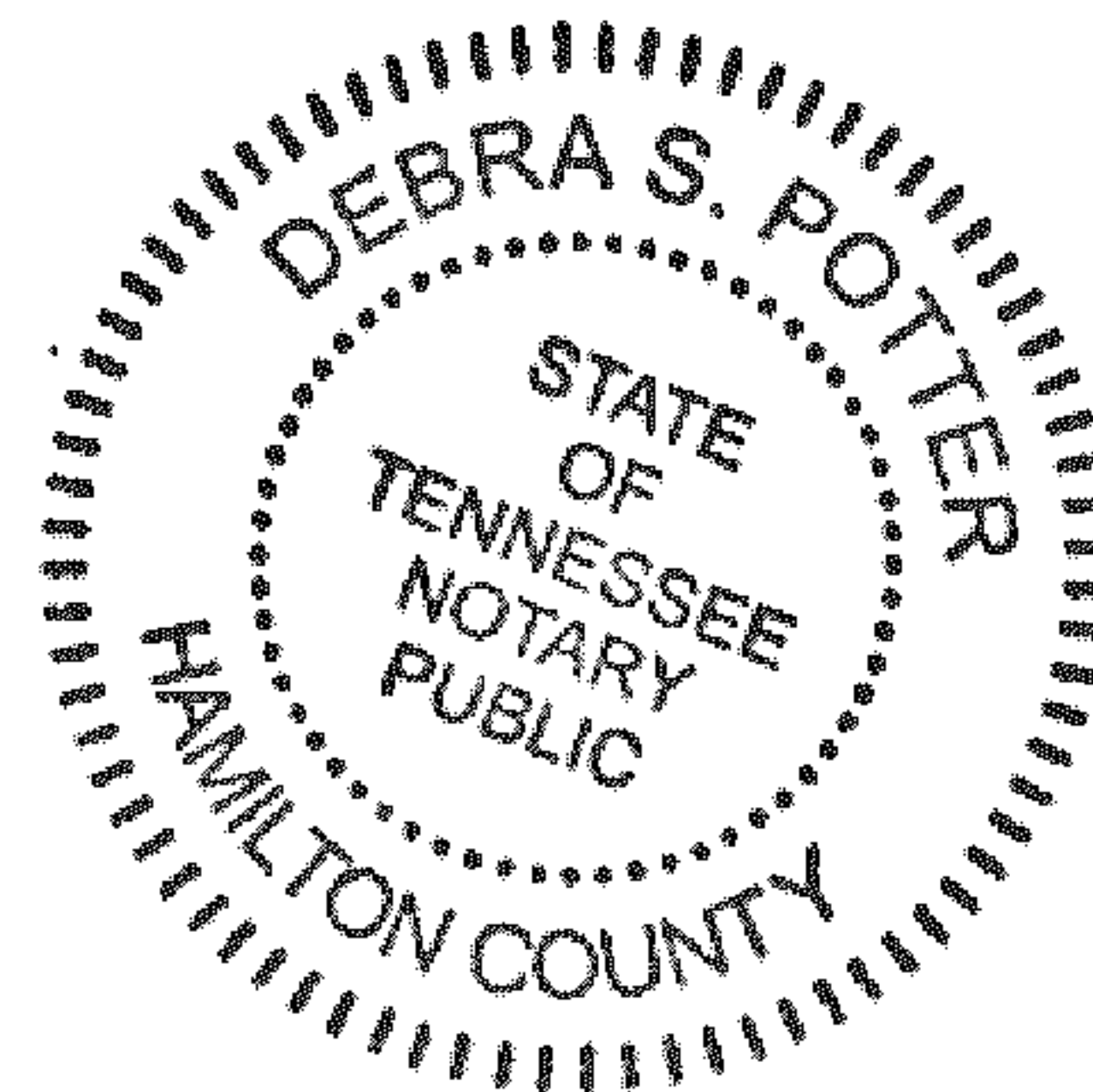
Debra S. Potter

Notary Public

My commission expires: 04/10/2023

**This Amended Mortgage prepared by**

Ms. Cara J. Alday  
Patrick, Beard, Schulman & Jacoway  
537 Market Street, Suite 300  
Chattanooga, TN 37402





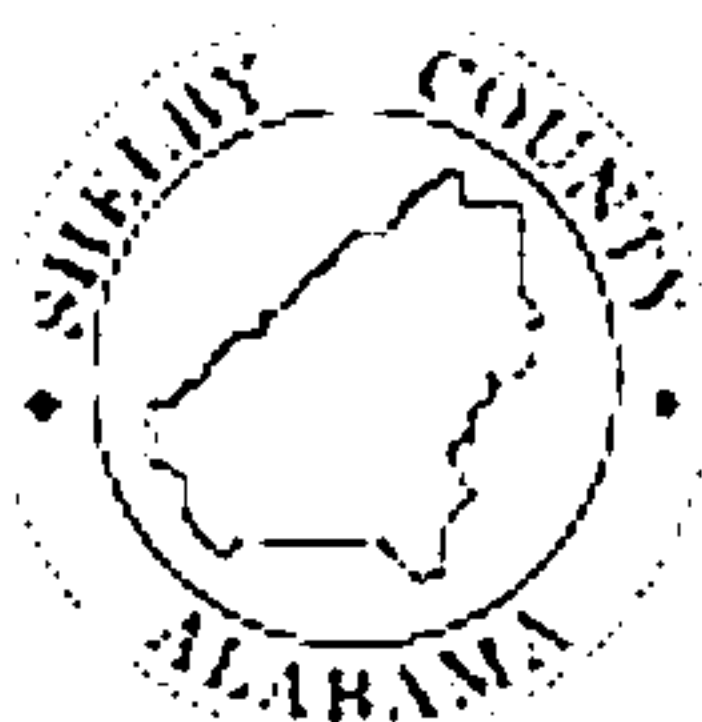
Commence at the Northwest corner of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West and run South along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section to the Southwest corner of said Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West; thence 60 degrees 52 minutes to the left in a Southeasterly direction a distance of 536.00 feet to a point; thence 90 degrees 00 minutes to the left and run in a Northeasterly direction for a distance of 516.00 feet to the point of beginning; thence 70 degrees 30 minutes to the left and run in a Northwesterly direction for a distance of 304.00 feet to a point; thence 38 degrees 15 minutes to the left and run in a Northwesterly direction for a distance of 142.71 feet to a point on the Easterly right of way line of Dewberry Drive, said point being on a curve to the right, said curve having a radius of 160.00 feet and a central angle of 22 degrees 42 minutes 25 seconds; thence 108 degrees 34 minutes 46 seconds to the right (angle measured to tangent of said curve) and run in a Northeasterly direction in the arc of said curve to the right and along said right of way line for a distance of 63.41 feet to the P.C.C. (point of compound curve) of a curve to the right said curve having a radius of 250.52 feet and a central angle of 41 degrees 05 minutes 04 seconds; thence Northeasterly in the arc of said curve and along said right of way line for a distance of 179.63 feet to the P.T. (point of tangent) of said curve; thence Northeasterly in the tangent to said curve and along said right of way line for a distance of 50.00 feet to the P.C. (point of curve) of a curve to the left, said curve having a radius of 167.05 feet and a central angle of 67 degrees 25 minutes; thence Northeasterly in the arc of said curve to the left and along said right of way line for a distance of 196.55 feet to the P.T. (point of tangent) of said curve; thence Northeasterly in the tangent to said curve and along said right of way line for a distance of 69.37 feet to a point on the Southwesterly right of way line of U.S. Highway No. 280; thence 100 degrees 55 minutes 30 seconds to the right and run in a Southeasterly direction along said right of way line for a distance of 145.00 feet to a point; thence 7 degrees 07 minutes 30 seconds to the left and run in a Southeasterly direction along said right of way line for a distance of 12.90 feet to a point; thence 90 degrees 00 minutes to the right and run in a Southwesterly direction for a distance of 480.00 feet to the point of beginning.

Situated in Shelby County, Alabama.

NOW KNOWN AS:

Lot 2, according to the Survey of Dewberry's Subdivision, as recorded in Plat Book 9, Page 11, in the Probate Office of Shelby County, Alabama.

Together with that non-exclusive right of way for ingress and egress as recorded in Real Volume 7, Page 461.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
09/22/2022 10:35:04 AM  
\$9036.00 JOANN  
20220922000365690

*Allen S. Bayl*