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STATE OF ALABAMA)

COUNTY OF SHELBY)

**FIRST AMENDMENT DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

THIS FIRST AMENDMENT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the “First Amendment to Declaration”) is made as of the 15th day of March, 2024 (the “Effective Date”), by **CAHABA POINTE, LLC**, an Alabama limited liability company, having its principal place of business at 2530 Watkins Road, Birmingham, AL 35223 (“Declarant”).

W I T N E S S E T H:

WHEREAS, pursuant to that certain Declaration of Covenants, Conditions and Restrictions dated December 21, 2023 and recorded in instrument number 20231221000367200 in the Office of the Judge of Probate of Shelby County, AL (the “Declaration”), certain covenants, easements, rights, obligations and restrictions were established by Declarant to facilitate the development and operation of those certain parcels of real property located in Shelby County, Alabama, as more particularly described therein;

WHEREAS, Declarant desires to amend the Declaration as more particularly described herein;

NOW, THEREFORE, Declarant hereby declares that the Declaration shall be amended as follows:

1. Capitalized Terms. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

2. Storm Water System Maintenance. The last sentence of Section 2.3 of the Declaration is hereby deleted and the following is substituted in lieu thereof:

“The Parcel 4 Owner shall be solely responsible for repairing, insuring, cleaning and replacing the Storm Water System in good working order and repair.”

3. Monument Sign. Section 2.8 of the Declaration is hereby deleted and the following is substituted in lieu thereof.

“2.8 Monument Sign. The Declarant hereby establishes, grants, creates and reserves for the benefit of the Parcel 2 Owner, and as appurtenances to Parcel 3 and for the benefit of the Owner of each other Parcel from time to time and their respective Occupants, an easement in favor of the Parcel 2 Owner for the sole purpose to enable the Parcel 2 Owner to affix an Owner’s identification panels, or if such Parcel is subject to an Occupant, then such Occupant’s identification panels, on the monument sign located on Parcel 3, as shown on the Site Plan (the “Monument Sign”). Prior to the installation or replacement of such panel, such Owner shall provide the Declarant with signage plans (including method of connection to the Monument Sign) and the Declarant shall have approved of such signage plane, such approval not to be unreasonably withheld, delayed or conditioned. The Declarant hereby establishes, grants, creates and reserves for the benefit of, and as appurtenances to Parcel 3 and for the benefit of the Parcel 2 Owner, an easement for the purpose of making any necessary structural repairs and providing for the general maintenance of the Monument Sign, it being acknowledged the location of the Monument Sign, the location of each Owner or Occupant’s panel on such Monument Sign, such Monument Sign’s façade other than the panels, shall not be materially modified without the consent of the Owners. Parcel 2 Owner shall be responsible for all structural repairs and maintenance of the Monument Sign other than as set forth herein. Parcel 2 Owner shall maintain the Monument Sign in good condition and repair. This Section shall not provide any Owner or Occupant which it benefits the right to access Parcel 3 or otherwise perform any construction activities with respect to the Monument Sign other than as expressly set forth herein. Beginning upon the date that the Declarant is no longer an Owner, the approval rights set forth in this Section 2.8 shall be deemed assigned to Parcel 2 Owner.”

For the avoidance of doubt, the Parcel 3 Owner shall not be responsible for the maintenance and repair obligations with respect to the Monument Sign attributed to the Parcel 3 Owner in the Declaration, the responsibility of which shall be the obligations of the Parcel 2 Owner pursuant to the terms of this First Amendment to Declaration. The Parcel 2 Owner shall indemnify and hold harmless the Parcel 3 Owner from any claim or expenses arising from another Owner’s claim against the Parcel 3 Owner attributing such maintenance and repair obligations to Parcel 3 Owner.

4. Maintenance and Repair of Common Areas. Section 4.1(a) and Section 4.1(b) of the Declaration are hereby deleted and the following is substituted in lieu thereof:

“(a) Maintenance and Repair of the Common Areas. Notwithstanding anything to the contrary herein, the Parcel 2 Owner shall be solely responsible for maintaining, repairing, insuring, cleaning and replacing that certain shared access roadway as shown on the Site Plan (the “Southern Access Road”) in a first class manner and shall promptly repair any damage thereto. Other than the Southern Access Road, each Owner shall maintain and repair (or caused to be maintained and repaired) all Common Areas located from time to time within its Parcel and keep the Common Areas in good condition and repair, clean, free of rubbish and other hazard to persons using the Common Area and properly lighted. Any unimproved Common Area shall be kept dust and litter-free and shall be landscaped with grass and ground cover. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first-class developments of comparable size in the Birmingham, Alabama metropolitan area and in compliance with Governmental Requirements and the provisions of this Declaration. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Project as a whole. The foregoing obligations shall include the maintenance and repair of the Utility Lines that serve multiple Parcels. The Owners of the Parcels served by such Utility Lines shall mutually agree on the repair and replacement of such Utility Lines and related connections thereto that serve multiple parcels.

(b) Maintenance and repair obligations of each Owner described herein with respect to its respective Parcel, including but not limited to the Common Area on each’s respective Parcel, and in the

case of the Parcel 2 Owner, with respect to Southern Access Road, shall include, but shall not be limited to, the following:

i. Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or the use of the Common Areas by persons intending to conduct business with the occupants of the Project.

ii. Sign and Markers. Excluding the Monument Sign, placing, cleaning, keeping in repair, replacing and repainting any appropriate directional signs or markers, including any handicapped parking signs.

iii. Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including lamps, ballasts and lenses.

iv. Obstructions. Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the terms of this Declaration.

v. Sidewalks and Roadways. Maintaining, cleaning and replacing all sidewalks and roadways, including those adjacent and contiguous with Buildings located within the Project. Sidewalks shall be cleaned and swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area. Notwithstanding anything to the contrary herein, the Parcel 2 Owner shall be solely responsible for any and all maintenance, cleaning, replacements and repairs of the Southern Access Road.

vi. Landscaping. Maintaining, irrigating and replacing landscaping and keeping landscape irrigation systems in good condition and repair.”

5. Restoration of Common Areas. Section 4.4 of the Declaration is hereby deleted and the following is substituted in lieu thereof:

“4.4 Restoration of Common Area. In the event of any damage or destruction to the Common Area on any Parcel, whether insured or uninsured, excluding ordinary wear and tear, the Owner with respect to such Parcel shall restore, repair or rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction, unless such damage or destruction is caused by the negligence or willful act or omission of another Owner or another Parcel’s Occupant, or such Owner or Occupant’s invitees, contractors or agents, in which event such other Owner shall be responsible for such restoration.”

6. Prohibited Uses; Parcel 3. Section 4.7(n) of the Declaration is hereby amended and the following is substituted in lieu thereof:

“(n) For so long as FirstBank, a Tennessee banking corporation, or its successors and/or assigns are the Occupant of Parcel 3, no Parcel other than Parcel 3 shall be used for the operation of a bank, credit union or similar financial institution.”

7. Maintenance Contribution. Section 5.4 of the Declaration is hereby deleted and the following is substituted in lieu thereof:

“5.4 Maintenance Contribution. Each Owner shall reimburse the Parcel 2 Owner for such Owner’s pro rata share as set forth herein for the actual, reasonable and necessary out of pocket costs

incurred by the Parcel 2 Owner directly attributable to maintaining, repairing, and replacing the Storm Water System, the Southern Access Road, and the Monument Sign pursuant to Parcel 2 Owner's obligations under this Declaration (each Owner's share being referred to as its "Maintenance Contribution"). Such costs shall not include any management fees, overhead costs, or any other indirect costs. The Parcel 2 Owner shall use its best efforts to minimize such costs in a manner consistent with good business practices and all such costs shall be based upon competitive charges for similar services and/or materials that are available and commonly used in similarly situated developments of comparable size and purpose in the Birmingham, Alabama metropolitan area. The Maintenance Contribution for each Owner shall be as follows:

Parcel	Percentage of Maintenance Contribution
Parcel 1	19.70%
Parcel 2	27.16%
Parcel 3	16.42%
Parcel 4	36.72%

Notwithstanding the foregoing or anything to the contrary herein, the Parcel 1 Owner's Maintenance Contribution shall not include any costs related to the Monument Sign. The Parcel 2 Owner shall be responsible for the Monument Sign costs which would otherwise be attributable to the Parcel 1 Owner's Maintenance Contribution. Each Owner's Maintenance Contribution shall be paid within sixty (60) days of receipt of invoice therefor together with commercially reasonable supporting documentation evidencing such costs incurred by the Parcel 2 Owner connection with the Storm Water System and Southern Access Road, failing which, the Parcel 2 Owner shall be entitled to all rights and remedies available under this Declaration for a default including, but not limited to, the right to file a lien against such Parcel for the amount owed. In addition, if an Owner fails to pay such Maintenance Contribution when owed, then such Owner's Maintenance Contribution shall accrue interest at the rate described in Section 8.1 below from the date owed until the date paid in full. Parcel 2 Owner shall maintain complete and accurate books and records of all expenses incurred in connection with Parcel 2 Owner's maintenance obligations for which Maintenance Contributions are made hereunder. Such books and records shall be kept at a location reasonably accessible to the other Owners, and the other Owners may, with reasonable notice, inspect, copy and audit such books and records at any time during normal business hours. The Parcel 2 Owner shall promptly repay any such auditing Owner for any overpayments which auditing Owner identifies until refunded in full. If amounts which the Parcel 2 Owner has improperly billed auditing Owner exceed 3% of such auditing Owner's Maintenance Contribution for the applicable period, the Parcel 2 Owner shall pay for the reasonable cost of the audit within thirty (30) days following receipt of the invoice for same. By written notice to the other Owners, the Parcel 2 Owner may designate the Occupant of Parcel 2 to as the Parcel 2 Owner's agent for performing its maintenance obligations hereunder, provided that such designation shall not prevent the Parcel 2 Owner from being primarily responsible to the other Owners for the performance of such obligations."

8. Liability; Indemnification. Section 7.1 of the Declaration is hereby deleted and the following is substituted in lieu thereof:

"7.1 Liability; Indemnification. Each Owner (an "Indemnitor") shall defend, indemnify, and hold harmless the other Owners from all claims, losses, actions, proceedings and costs (including reasonable attorney's fees actually incurred and court costs) (a) resulting from any construction, including liens, or any accident, injury, loss, or damage occurring to any person or to the property of any person arising out of (b) resulting from the Indemnitor's (or its Occupant's, or either's contractors or agents) exercise of the rights, privileges, and easements granted herein (provided, however, that the foregoing shall not be applicable to

events or circumstances caused by the negligence or willful act or omission of the indemnified Owner), or (c) resulting from the Indemnitor's (or its Occupant's, or either's contractors or agents) violation of any of the restrictions, covenants, and conditions established hereby."

9. Other Terms. Except as amended pursuant to this First Amendment to Declaration, the terms, conditions, and provisions of the Declaration shall remain in full force and effect.

10. Binding Effect. This First Amendment to Declaration shall be binding upon and inure to the benefit of Declarant, the current and future Owners and Occupants of the Parcels, and their respective successors and assigns.

[Signature page to follow.]

IN WITNESS WHEREOF, this First Amendment to Declaration has been executed under seal and delivered effective as of the day and year first above written.

CAHABA POINTE, LLC, an Alabama limited liability company

By: 

Name: Allen W. Hawkins, III

Its: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

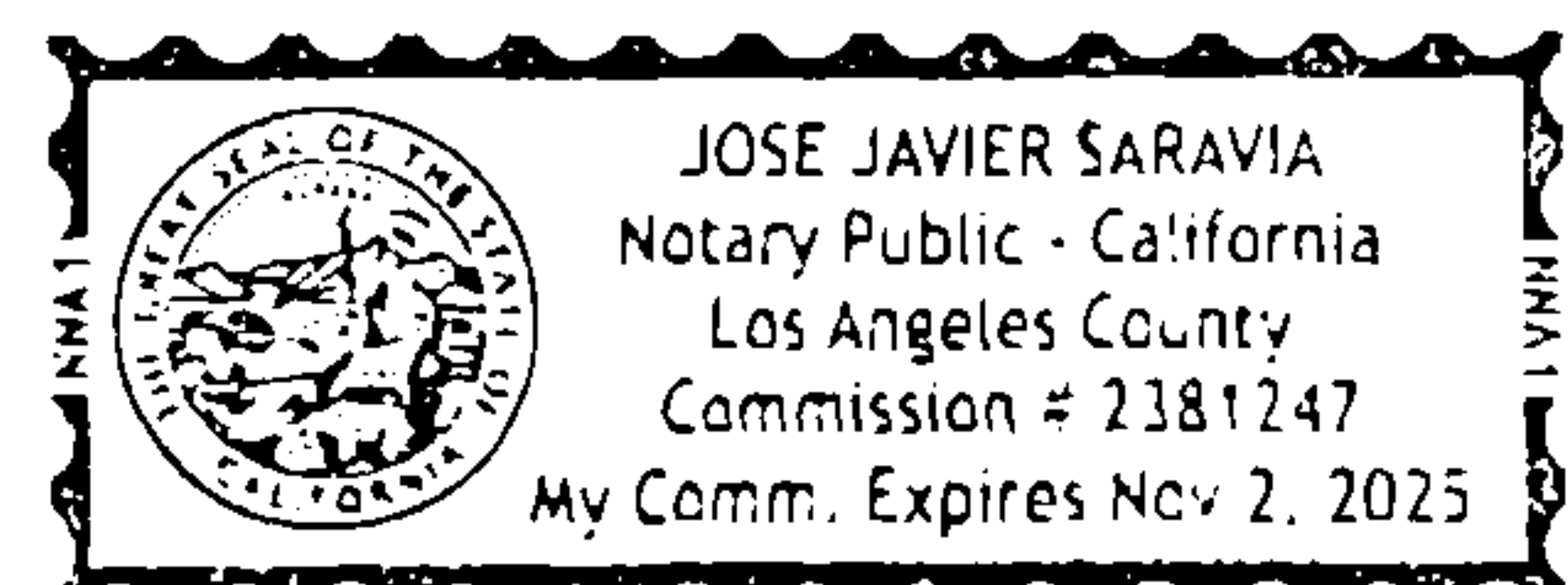
COUNTY OF Los Angeles)

On March 11, 2024 before me Jose Javier Saravia, notary public
(insert name and title of the officer) personally appeared Allen W. Hawkins, III, who proved to me on the basis of satisfactory evidence to the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jose Javier Saravia (SEAL)



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Official Public Records
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Clerk
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