



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/27/2022

File ID: TMP-2202

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Landlord's Consent to Encumber and Estoppel Certificate among the City of Huntsville, Pinnacle Bank, and High Point Huntsville, LLC.

Resolution No.

Finance Information:

Account Number: NA

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location:

Address: NA

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 19-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute a Landlord's Consent to Encumber and Estoppel Certificate, by and among the City of Huntsville, a municipal corporation in the State of Alabama, BancorpSouth Bank and High Point Huntsville, LLC, which said document is substantially in words and figures as that certain document attached hereto and identified as "Landlord's Consent to Encumber and Estoppel Certificate among the City of Huntsville, BancorpSouth Bank and High Point Huntsville, LLC," consisting of six (6) pages including Exhibit "A," and the date of October 27, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 27th day of October, 2022.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the 27th day of October, 2022.

Mayor of the City of Huntsville, Alabama

PREPARED BY AND
UPON RECORDATION
RETURN TO:

Cara J. Alday
Patrick, Beard, Schulman & Jacoway, PC
537 Market Street, Suite 300
Chattanooga, TN 37402
(423) 756-7117

STATE OF ALABAMA)

:

COUNTY OF MADISON)

LANDLORD'S CONSENT TO ENCUMBER AND ESTOPPEL CERTIFICATE

This Landlord's Consent to Encumber and Estoppel Certificate (the "Agreement") is entered into this 18 day of October, 2022 (the "Effective Date"), by and among The City of Huntsville, Alabama, a municipal corporation (the "Landlord") and Pinnacle Bank, a Tennessee bank (the "Lender") and High Point Huntsville, LLC, an Alabama limited liability company (the "Tenant").

RECITALS:

A. By a ground lease dated February 8, 2018 and more particularly described in paragraph 3.1 below (the "Lease"), Landlord leased the premises described in the Lease to Tenant.

B. The real property described in the Lease is more particularly described in Exhibit A attached hereto (the "Premises", defined in the Lease as the "Leased Premises"). Tenant is constructing and developing a project on the Premises, consisting of a climbing wall and other improvements (the "Improvements")

C. The representations and agreements herein are made by and among the parties hereto as further consideration for a loan (the "Loan") made or to be made by Lender to Tenant in the original principal amount of Five Million One Hundred Thousand and 00/100 Dollars (\$5,100,000.00), which Loan is or will be secured by a Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement and other Financing Documents as defined in the Lease, as the same may be amended, restated, supplemented, increased or otherwise modified from time to time (collectively the "Security Instruments") covering Tenant's leasehold interest under the Lease and the Improvements to be constructed on the Premises.

D. Landlord is hereby making the certifications, representations and agreements set forth herein, as of the Effective Date, to Lender, who in material reliance on such certifications, representations and agreements has agreed to make the Loan to Tenant which is secured by Tenant's leasehold interests under the Lease.

President of the City Council of the
City of Huntsville, Alabama
Date: October 27, 2022

E. The parties are entering into this Agreement to (1) to confirm certain understandings of the parties with respect to the Lease; (2) to confirm that the Lender is a mortgage lender under the terms of the Lease; (3) to provide for the rights, including non-disturbance, and obligations in favor of Lender contemplated by the Lease; and (4) to satisfy certain conditions of the Loan.

NOW, THEREFORE, in consideration of the mutual promises contained hereinafter and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties, Lender, Tenant and Landlord hereby agree as follows:

1. Consent to Encumbrance.

1.1 Landlord hereby consents to the encumbrance of the Tenant's leasehold estate by the Security Instruments securing the Loan.

2. Notice/Right to Cure/New Lease Upon Termination. [Intentionally Omitted].

3. Estoppel Certificate.

Landlord hereby represents and warrants to Lender:

3.1 Landlord: (a) is the sole record fee owner of the Premises; and (b) is the landlord under the Lease. Landlord has received no written notice that Tenant has assigned or will assign the Lease and its leasehold interests therein/mortgaged or will mortgage the Lease/subleased or will sublease the Premises, except to Lender.

3.2 The Lease, including without limitation all amendments, consists of the following:

(a) Ground Lease dated February 8, 2018 by and between The City of Huntsville, Alabama, a municipal corporation, as lessor, and High Point Huntsville, LLC, an Alabama limited liability company, as lessee, said lease or a memorandum thereof being recorded in the office of the Judge of Probate of the County of Madison, Alabama, in Book ____, at Page ____, and any amendments thereto.

(b) There are no modifications or amendments other than the Modification No. 1 to the original lease agreement, which is evidenced by a Memorandum of Ground Lease Agreement recorded in the office of the Judge of Probate of the County of Madison, Alabama, at File 2019-00069840.

3.3 That the Commencement Date of the Lease was October 1, 2018 and that the Rent commenced on October 1, 2018, that all rents under the Lease have been paid through September 30, 2022, and that all advance rents or deposits held by Landlord under the Lease consist of a Security Deposit of \$ -0-.

3.4 No actions, whether voluntary or otherwise, are pending against the Landlord under the bankruptcy or insolvency laws of the United States or any state thereof.

3.5 That the Lease is in full force and effect and has not been modified or amended, other than as may be set forth in section 3.2(b); that all rents and other charges due thereunder have been paid and that there exist no claims for damages or other liabilities of which the Landlord is aware arising out of the Lease or the performance of any terms, covenants or conditions of the Lease.

3.6 That there are no existing uncured defaults by any party to the Lease nor is Landlord aware of any facts which, with notice or the passage of time, would constitute a default by any party to the Lease. No controversy presently exists between Landlord and Tenant, including any litigation or arbitration, with respect to the Lease or the Premises.

3.7 To the best of the Landlord's knowledge without having conducted an investigation, there are no existing or outstanding offsets, counterclaims, defenses, deductions, or credits whatsoever with respect to the Lease, or any amount owing under the Lease.

3.8 Landlord has not assigned, transferred, sold, encumbered, or mortgaged its interest in the Lease or the Leased Premises (or any part thereof), except as expressly set forth in Schedule 3.8 attached hereto and has no knowledge of any liens and encumbrances, contractual rights or claims, previous transfers or conveyances, or agreements to transfer or convey, except the Lease.

3.9 No consent or approval of any third party is required in order for Landlord to deliver this Agreement. Landlord's consent shall be evidenced by the approval of the City Council and execution by the Mayor.

3.10 Landlord has not received written notice that it is in violation of any governmental law or regulation or of the Declaration, as defined in the Lease, applicable to its interests in the Premises and Landlord has no reason to believe that there are any grounds for any claim of any such violation.

3.11 Landlord has not received written notice of any actual or pending eminent domain proceedings or other governmental actions against Landlord's interest in the Premises.

4. Other Agreements.

4.1 This Agreement is governed by and construed in accordance with the laws of the State of Alabama without regard to principles of conflict of laws.

4.2 The Recitals set forth in this Agreement shall be a part of this Agreement.

4.3 This Agreement shall be binding upon and inure to the benefit of the Landlord, the Tenant and the Lender, and their respective heirs, personal representatives, successors and assigns.

4.4 Landlord has read this Agreement and acknowledges and understands the certifications, representations and agreements made herein. The undersigned signatory represents and warrants that he/she is duly authorized to execute this Agreement on behalf of Landlord. This Agreement is executed by Landlord, intending reliance hereon by Lender and its successors and assigns.

4.5. This Agreement may not be modified orally or by any course of conduct other than by a written instrument signed by all the parties hereto.

4.6. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

4.7. Any party may execute this Agreement by delivering to the other parties a facsimile copy hereof evidencing such party's signature. In any such case the party executing by facsimile shall promptly

thereafter provide a signed original counterpart hereof to the other parties; provided, that the non-delivery of such signed counterpart shall not affect the validity of enforceability hereof.

4.8. Capitalized terms used in this Agreement, but not otherwise defined herein, shall have the meaning attributed to them in the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed under seal as of the day and year first above written.

LANDLORD:

THE CITY OF HUNTSVILLE, ALABAMA,

a municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

HIGH POINT HUNTSVILLE, LLC

By: _____

John P. O'Brien, Manager

LENDER:

PINNACLE BANK

a Tennessee bank

By: _____

Bob Stinson, Senior Vice President

STATE OF _____)

:

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that _____, whose name is signed to the foregoing instrument as _____ of The City of Huntsville, Alabama, a municipal corporation, 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 _____ executed the same voluntarily and with full authority as the act of said company, on the day the same bears date.

Given under my hand and official seal, this ____ day of _____, 2022.

(SEAL)

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE)
 :
COUNTY OF HAMILTON)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that John P. O'Brien, Jr., whose name is signed to the foregoing instrument as Manager of High Point Huntsville, LLC, an Alabama limited liability company, 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 executed the same voluntarily and with full authority as the act of said company, on the day the same bears date.

Given under my hand and official seal, this 18th day of OCTOBER, 2022.

(SEAL)  Danina Campbell
Notary Public
My Commission Expires: 5/19/24

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Bob Stimson, whose name is signed to the foregoing instrument as Senior Vice President of Pinnacle Bank, a Tennessee bank, 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 Senior Vice President executed the same voluntarily and with full authority as the act of said bank, on the day the same bears date.

Given under my hand and official seal, this 18th day of OCTOBER, 2022.

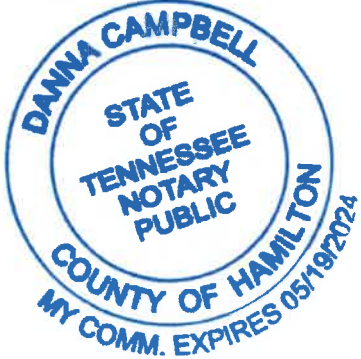
(SEAL)  Danina Campbell
Notary Public
My Commission Expires: 5/19/24

EXHIBIT A

[Description of the Premises]

The following real property, situated in the City of Huntsville, County of Madison, and State of Alabama: A portion of Tract 1 of the MidCity Subdivision Phase 2 as recorded in Doc. No. 2017-00611239 in the Office of the Probate Judge for Madison County, Alabama and being more particularly described as follows:

Said tract being a portion of Tract 1 of the MidCity Subdivision Phase 2 as recorded in Document Number 20170207000069290 in the Office of the Judge of Probate for Madison County, Alabama and being more particularly described as follows:

Commencing at a #5 rebar with a cap stamped "Garver LLC CA 445" found at the northeast corner of Lot 1 of the MidCity Subdivision Phase 1 as recorded in Document Number 20170207000069290 in the Office of the Probate Judge for Madison County, Alabama; thence along the east boundary of said Lot 1 South 14 Degrees 09 Minutes 50 Seconds East a distance of 64.51 feet to a #5 rebar with a cap Stamped "Garver LLC CA-445-LS" set; thence leaving said east boundary North 90 Degrees 00 Minutes 00 Seconds East a distance of 39.41 feet to the northwest corner of an existing concrete pad, said point being the Point of Beginning of the herein described tract, having established grid coordinates of (N) 1543535.60, (E) 405401.01, Zone East of the Alabama State Plane Coordinate System;

Thence along the edge of said concrete pad North 61 Degrees 47 Minutes 29 Seconds East a distance of 44.11 feet; thence North 82 Degrees 59 Minutes 55 Seconds East a distance of 40.95 feet; thence South 59 Degrees 00 Minutes 12 Seconds East a distance of 38.86 feet; thence South 9 Degrees 01 Minutes 44 Seconds East a distance of 51.64 feet; thence South 79 Degrees 59 Minutes 31 Seconds West a distance of 12.16 feet; thence South 12 Degrees 15 Minutes 21 Seconds East a distance of 5.74 feet; thence South 22 Degrees 56 Minutes 47 Seconds West a distance of 7.04 feet; thence leaving said concrete pad South 7 Degrees 48 Minutes 00 Seconds East a distance of 65.23 feet to the north edge of an existing concrete sidewalk; thence along said edge of sidewalk South 15 Degrees 57 Minutes 00 Seconds West a distance of 12.05 feet; thence leaving said edge of sidewalk North 8 Degrees 58 Minutes 44 Seconds West a distance of 88.02 feet to a point on the edge of said concrete pad; thence along said edge of concrete South 81 Degrees 40 Minutes 36 Seconds West a distance of 7.96 feet; thence North 84 Degrees 08 Minutes 36 Seconds West a distance of 86.99 feet; thence North 6 Degrees 43 Minutes 38 Seconds West a distance of 41.21 feet to the POINT OF BEGINNING.

The above described parcel contains 0.18 acres (7663.73 sq. ft.), more or less.