


*This instrument prepared by and, after
recording, please return to:*

Erin Richardson
BURR & FORMAN LLP
171 Seventeenth Street NW,
Suite 1100
Atlanta, Georgia 30363

STATE OF ALABAMA)
)
COUNTIES OF SHELBY)


20090722000282800 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
07/22/2009 02:52:42 PM FILED/CERT

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**AGREEMENT NOT TO TRANSFER OR ENCUMBER
CERTAIN REAL PROPERTY**

**THIS AGREEMENT NOT TO TRANSFER OR ENCUMBER CERTAIN REAL
PROPERTY** (this "Agreement"), made and effective as of the 15th day of July, 2009, is executed by
RIVER GLEN VILLAGE, LLC, a Georgia limited liability company ("Owner") in favor of **PRIMARY
CAPITAL ADVISORS, L.C.**, a Georgia limited liability company ("Lender").

R E C I T A L S:

WHEREAS, Spring Village Holdings LLC, a Georgia limited liability company (the
"Borrower") is indebted to Lender pursuant to a loan in the maximum principal amount of \$830,000.00
(the "Equity Loan"), which Equity Loan is evidenced by that certain Equity Note dated May 31, 2007 in
the maximum principal amount of \$830,000.00 (together with any and all predecessor promissory notes,
amendments or modifications, hereinafter collectively referred to as the "Equity Note");

WHEREAS, the Equity Note is secured by, inter alia, that certain Second Deed to Secure Debt
given by Borrower to Lender dated May 31, 2007 and recorded June 5, 2007 in Deed Book 20009, Pages
291-298, Dekalb County, Georgia official records (together with any and all amendments or
modifications thereto, hereinafter collectively referred to as the "Equity Security Deed");

WHEREAS, the Equity Loan is further secured by, inter alia, that certain (i) Loan Guaranty
dated May 31, 2007 given by Focus Land Investors, LLC, a Georgia limited liability company ("Focus")
to Lender for the benefit of Borrower (hereinafter referred to as the "Focus Guaranty"); (ii) Loan
Guaranty dated May 31, 2007 given by Michael J. Blonder ("Blonder") to Lender for the benefit of
Borrower (hereinafter referred to as the "Blonder Guaranty"); and (iii) Loan Guaranty dated May 31,
2007 given by Bradley G. Johnson ("Johnson") to Lender for the benefit of Borrower (hereinafter referred
to as the "Johnson Guaranty");

WHEREAS, Lender has notified Borrower, Focus, Blonder, and Johnson (hereinafter
collectively referred to as the "Obligors") that an event of default has occurred under the Equity Note, the
Equity Security Deed, the Focus Guaranty, the Blonder Guaranty, and the Johnson Guaranty (hereinafter
sometimes collectively referred to as the "Equity Loan Documents") due to, inter alia, the failure of the
Obligors to pay all amounts owing under the Equity Loan Documents as and when due (the "Existing
Event of Default");

WHEREAS, Obligors have requested that Lender (i) waive the Existing Event of Default, (ii) partially defer the amount of the monthly installment of interest payable under the Equity Note, and (iii) grant certain other accommodations to Borrower. Lender has agreed to Borrower's request, subject to the terms and conditions of that certain Amendment to Loan Documents dated as of even date herewith (the "Modification Agreement");

WHEREAS, the Owner is an affiliated or related entity of the Borrower; and

WHEREAS, pursuant to the Modification Agreement, the Owner, Focus, Blonder and Johnson have agreed to execute and deliver this Agreement as additional security for the Equity Loan and all other such obligations of Obligors owing to Lender.

AGREEMENT:

NOW, THEREFORE, to secure the Obligations (as defined in the Modification Agreement), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals set forth herein are true and correct.
2. **Covenant Against Further Encumbrance.** Owner hereby represents and warrants to Lender that (i) it is lawfully seized and possessed of an indefeasible estate in fee simple in and to the real property more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), and (ii) as of the date of this Agreement, the Property is not encumbered by any security agreement, financing statement, lease, mortgage, deed of trust, conditional sales contract, lien, security interest, security title, or other voluntary encumbrance securing any monetary or non-monetary obligations of Owner or any other party, except for (a) that certain Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing from Mortgagor to Wells Fargo Bank, National Association dated June 16, 2008 and recorded June 17, 2008 as Instrument No. 20080617000246500, Shelby County, Alabama official records; (b) that certain Second Priority Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing from Mortgagor to Wells Fargo Bank, National Association dated June 16, 2008 and recorded June 17, 2008 as Instrument No. 20080617000246520, Shelby County, Alabama official records; (c) that certain loan made by Signature Bank to Blonder and Johnson in the principal amount of \$1,200,000.00, which represents a portion of Owner's equity in the Property; (d) liens and encumbrances disclosed in a title policy insuring the subject Property and in place on the date hereof; (e) liens and encumbrances which do not materially adversely affect the Property; and (f) such permitted liens or encumbrances approved by Lender in writing (collectively, the "Permitted Liens"). For as long as this Agreement remains in effect, Owner agrees that it shall neither permit nor suffer the existence of any further encumbrance upon the Property unless the prior written consent of Lender is first obtained. Any further encumbrance of the Property made in contravention of this Agreement shall be null and void *ab initio*.
3. **Covenant Against Transfer.** For as long as this Agreement remains in effect, Owner hereby covenants and agrees that it shall not transfer any portion of the Property, or any interest therein, without the prior written consent of Lender. Any transfer or conveyance of the Property made in contravention of this Agreement shall be null and void *ab initio*.
4. **Term.** This Agreement shall remain in full force and effect until the earlier of (i) the date upon which all Obligations have been fully and indefeasibly paid and satisfied, or (ii) the date upon which the benefits of this Agreement are released in writing by Lender. Otherwise, this Agreement shall remain in full force and effect notwithstanding any breach hereof by Owner.

5. **Notices.** Any notice or other communication required or permitted to be given by this Agreement or the other Equity Loan Documents or by applicable law shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) three (3) days following the date deposited in U.S. mail, certified or registered, with return receipt requested, or (c) one (1) day following the date deposited with Federal Express or other national overnight carrier, and in each case addressed as follows:

If to Owner:

River Glen Village, LLC
3715 Northside Parkway
Building 300, Suite 650
Atlanta, Georgia 30327
Attention: Bradley Johnson and Michael Blonder

With a copy to:

Weener & Nathan LLP
5887 Glenridge Drive, NE, Suite 275
Atlanta, Georgia 30328
Attention: Phil Weener

If to Lender:

Primary Capital Advisors, L.C.
2060 Mount Paran, N.W., Suite 101
Atlanta, Georgia 30327
Attention: Shannon Fields

With a copy to:

Burr & Forman LLP
171 Seventeenth Street, N.W.
Suite 1100
Atlanta, Georgia 30327
Attention: John O'Shea Sullivan

Failure to provide courtesy copies shall not render invalid any notice otherwise properly given. Any party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

6. **Jurisdiction; Waiver of Jury Trial.**

(a) The validity, interpretation, enforcement and effect of this Agreement shall be governed by, and construed according to the laws of, the State of Alabama.

(b) **OWNER, AND BY ACCEPTANCE HEREOF LENDER, HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS AGREEMENT, ANY OTHER**

INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATING TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE EXERCISE OF ANY RIGHT OR REMEDY HEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. OWNER ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO ACCEPT THIS AGREEMENT IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

7. Miscellaneous.

(a) Section headings shall be disregarded in the interpretation of this Agreement. This Agreement shall be construed without reference to the party responsible for its drafting. As used herein, the singular shall be deemed to include the plural, and *vice versa*. As used herein, the masculine gender shall be deemed to include the feminine, and *vice versa*.

(b) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. It shall not be necessary for all parties to sign the same counterpart.

(c) Owner hereby represents and warrants to Lender that this Agreement has been duly authorized, executed and delivered by Owner pursuant to all requisite authority, and constitutes a legal, valid and binding obligation of Owner, enforceable in accordance with its terms.

(d) Nothing herein shall be deemed to alter, diminish, modify or release any claim or cause of action which Lender may now or hereafter have against Owner, Borrower or any guarantor for any past, existing or future breach or default under any Equity Loan Document.

(e) Nothing herein and no course of dealing between the parties shall be deemed to constitute a commitment or obligation by Lender to further extend the maturity of the Equity Loan.

(f) This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

(g) Time is of the essence of this Agreement and the performance by Owner of all of the terms, covenants and conditions herein set forth.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

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

RIVER GLEN VILLAGE, LLC,
a Georgia limited liability company

By: [Signature]
Name: MICHAEL BLONDER
Title: MANAGER

[Seal]

Georgia
STATE OF ALABAMA)
Gwinnett COUNTY)

Michael Blonder, I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Blonder, whose name as Manager of River Glen Village, LLC, a Georgia limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as aforesaid.

Given under my hand and seal of office this 15 day of July, 2009.

[Signature]
Notary Public

My commission expires: _____

[NOTARIAL SEAL]

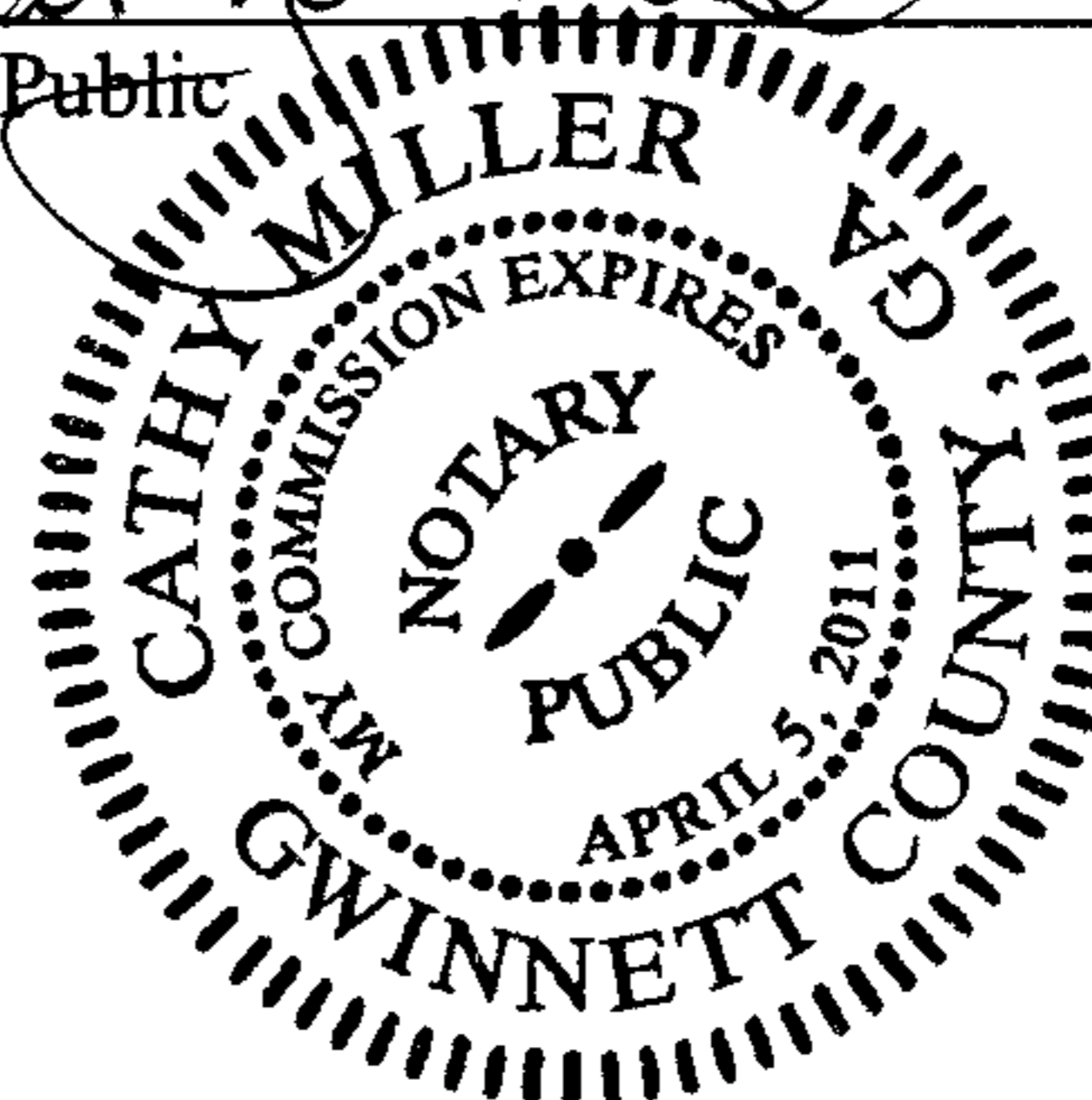



EXHIBIT "A"

Legal Description


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All the certain real property located in the County of Shelby, State of Alabama, described as follows:

Lot 6, River Ridge Plaza as recorded in Map Book 26, page 14, in the Probate Office of Shelby County, Alabama.

Parcel Identification Number: 02-7-35-0-001-003.000